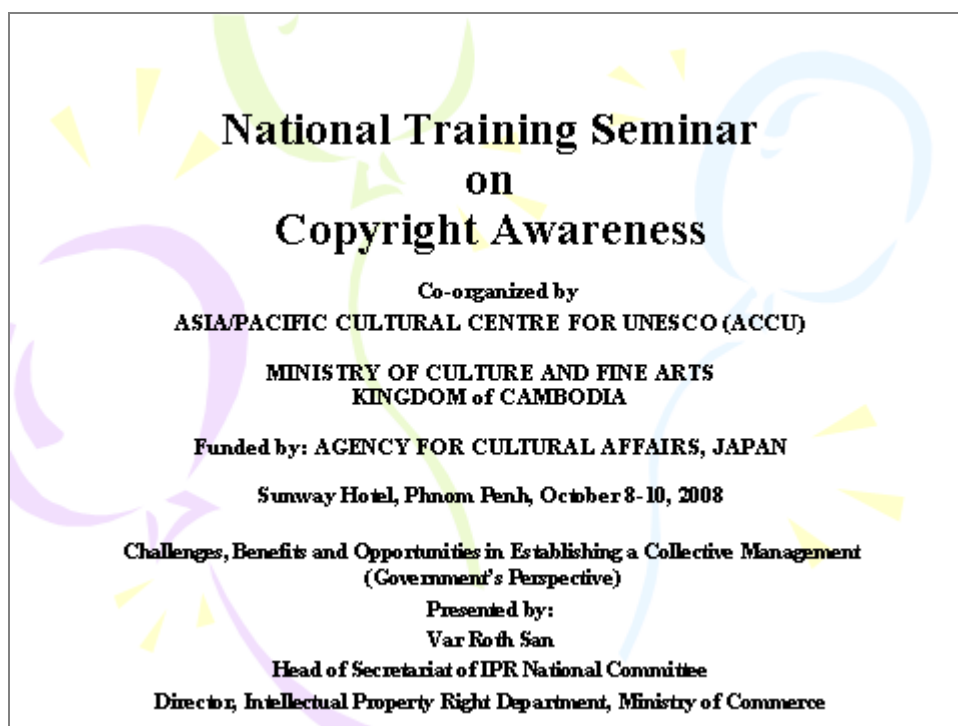


Topic 7: Challenges, Benefits and Opportunities in Establishing a Collective Management (Government's Perspective)

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I. Achievement <1/16>

I.1. Establishment of IPR Special Committee (1/10)

- 1999: Before becoming WTO Member
 - **Ministerial Committee Governing the Three Areas of IPR** (by decision of CM dated February 22, 1999): There were only 4 Ministries involved

Composition of the Ministerial Committee:

- **Minister of Min. Commerce** : Chairman
 - Intellectual Property Department (IPD): Secretariat
- **Minister of Min. Industry, Mines and Energy** : Deputy
- **Representative of Min. Culture & Fine Arts** : Member
- **Representative of Min. Information** : Member

I. Achievement <2/16>

I.1. Establishment of IPR Special Committee (2/10)

Duties of the Ministerial Committee:

- Prepare IPR Laws relating to CAM-US Agreement and ASEAN
- Smoothly coordinate IPR works among MoC, MIME, MCFA, and other related Ministries
- Coordinate receiving TA
- Report the result to the Government

I. Achievement <3/16>

I.1. Establishment of IPR Special Committee (3/10)

- 2008: Strengthening IPR Laws and Enforcement
 - **IPR National Committee** (by Sub-Decree of September , 2008): There are 14 Ministries involved

Composition of IPR National Committee :


- Minister of MoC : Chairman
 - Intellectual Property Department (IPD): Secretariat
- State Secretary of Min. Industry, Mines and Energy :Deputy
- State Secretary of Min. Culture and Fine Arts : Deputy
- Representative of the Office of Council of Ministers : Member
- Representative of Min. Interior : Member
- Representative of Min. Economics and Finance : Member

I. Achievement <4/16>

I.1. Establishment of IPR Special Committee (4/10)

Composition of IPR National Committee :

- Representative of Min. Information : Member
- Representative of Min. Post and Telecommunication : Member
- Representative of Min. Health : Member
- Representative of Min. Agriculture, Forestry and Fishery :Member
- Representative of Min. Environment : Member
- Representative of Min. Justice : Member
- Representative of Min. Education, Youth and Sport : Member
- Representative of Min. Tourism : Member



I. Achievement <5/16>

I.1. Establishment of IPR Special Committee (5/10)

Duties of IPR National Committee:

- Focal point in facilitating bilateral and multi-bilateral cooperation on Intellectual Property
- Coordinate smoothly IPR works among responsible ministries
- Cooperate and prepare draft laws and provisions related to IP for the purpose of implementing international agreements
- Receive and use technical assistance related to IP from other countries and international organizations



I. Achievement <6/16>

I.1. Establishment of IPR Special Committee (6/10)

Duties of IPR National Committee:

- Cooperate with responsible ministries in disseminating IP laws and provisions as well as awareness to the public, enforcement officers and students through educational institutions
- Cooperate with competent authorities, courts to prevent and enforce IPR infringement
- Study agreements and international treaties related to IPR to find out advantages and disadvantages for the purpose of getting approval for Cambodia's membership from the Royal Government of Cambodia
- Report the result to the Government at least 01 time per year and in each stage

I. Achievement <7/16>

I.1. Establishment of IPR Special Committee (7/10)

Duties of Each Agencies in Cambodia

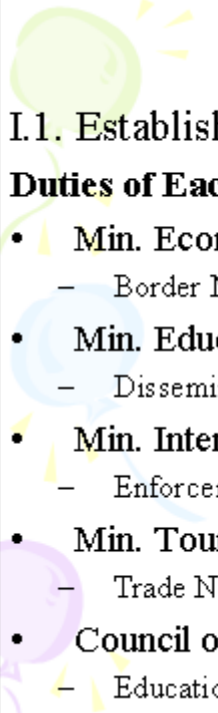
- MoC:
 - Marks, Trade Names, Acts of Unfair Competition
 - Geographical Indications (GIs)
 - Undisclosed Information and Trade Secrets
 - Licensing and Franchising of Marks
- MIME:
 - Patent, Utility Model Certificates, Industrial Design
 - Layout-Designs of Integrated Circuits
 - Plant-Breeder Rights

I. Achievement <8/16>

I.1. Establishment of IPR Special Committee (9/10)

Duties of Each Agencies in Cambodia

- Min. Agriculture, Forestry, and Fisheries:
 - Plant Breeder Rights
- Min. Environment:
 - Genetic Resources
- Min, Information:
 - Audio Visual Relating to Related Rights and Broadcasting Organizations
- Min. Justice:
 - Laws and Enforcement of IPR



I. Achievement <9/16>

I.1. Establishment of IPR Special Committee (10/10)

Duties of Each Agencies in Cambodia

- **Min. Economics and Finance (Customs):**
 - Border Measures
- **Min. Education, Youth and Sport:**
 - Dissemination of IP Laws and Regulations
- **Min. Interior (police):**
 - Enforcement of IPR
- **Min. Tourism:**
 - Trade Names of Tourist Firms
- **Council of Ministers:**
 - Education for Judges, Prosecutors, Clerk court, ...



I. Achievement <10/16>

I.2. Membership/International Cooperation (1/2)

World Intellectual Property Organization (WIPO): on July 25, 1995

- **Paris Convention:** on September 22, 1998
- **Member of WTO (Trade Related Aspects of Intellectual Property Rights Agreement-TRIPS):** on 13 October 2004
 - TRIPS Extension (2013)
- **To be members of:**
 - PCT (Patent Cooperation Treaty)-Relating to Patents
 - Berne Convention- Relating to Copyrights & Related Rights
 - Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplications of their Phonograms
 - The International Union for the Protection of New varieties of Plants (UPOV Convention)

I. Achievement <11/16>

I.2. Membership/International Cooperation (2/2)

- Trade Relations and Intellectual Property Rights Protection Agreement (CAM-USA) dated October 04, 1996 and came into force on October 25, 1996.
- MoU on IP Cooperation (CAM-THAI) on March 05, 1997
- ASEAN Framework Agreement on IP Cooperation on April 30, 1999
- EC-SEAN Intellectual Property Rights Program on February 2003 (ECAP II)
- Trade Investment Framework Agreement (TIFA) –CAM-USA-August 2006
- ASEAN-ANZ TIFA: Under negotiation
- ASEAN –EU: Under negotiation
- ASEAN- JAPAN: Under negotiation

I. Achievement <12/16>

I.3. Preparation of IP Laws & Regulations (1/4)

a. Ministry of Commerce (IPD):

1. Marks, Trade Names, and Acts of Unfair Competition (TM Law) was promulgated on Feb.07, 02
 - Sub-Decree for Implementing TM law adopted on July 12, 2006
 - Trademark Manual will be introduced in 2008-9
 - Declaration relating to Agent/Attorney (IP professional) will be introduced in 2008-9
 - Sub-Decree relating to Procedures for Enforcement of IPRs will be introduced in 2009-10

I. Achievement <13/16>

I.3. Preparation of IP Laws & Regulations (2/4)

a. Ministry of Commerce-IPD (Cont):

2. Geographical Indications (GIs) being drafted and amended (TA from French). It would be promulgated in 2008-9
3. Trade Secrete and Undisclosed information (Implementation WTO TRIPS Art. 39.3)
 - TA from Canada- APEC-EIP Project. The Draft Law will be completed in 2008 and promulgated in 2009-10
 - Sub-Decree for Implementing the Law will be drafted at the end of 2009.
4. Licensing and Franchising Law- TA needed (Plan: 2010)

I. Achievement <14/16>

I.3. Preparation of IP Laws & Regulations (3/4)

b. Ministry of Industry, Mines, and Energy

4. Patents, Industrial Designs, and Utility Models (promulgated on Jan.02, 03). It can be amended to comply with Generic drugs for public health or we can prepare separated law.
 - Declaration instead of Sub-Decree for Implementing the Law was introduced on June 29, 2006
5. Integrated Circuit Protection (drafted and under review. To be promulgated in 2008-09)
 - Declaration for Implementing the Law will be drafted in 2009
6. Seed Law including Breeder Right Protection (Min. Industry and Agriculture): promulgated on May 13, 2008- Not compliance with UPOV- It must be amended
 - Declaration for Implementing the Law will be drafted in 2009

I. Achievement <15/16>

I.3. Preparation of IP Laws & Regulations (4/4)

c. Ministry of Culture and Fine Arts

7. Literary & Artistic Properties (Copyrights & Related Rights): Promulgated on Mar.05, 2003

- Sub-Decree on Collective Management is being drafted

NB: Copyright Department, Min. Culture, was newly established (mid 2007)

d. Ministry of Telecommunication

8. Encrypted Satellite Signal Protection Law

- TA needed. To be promulgated 2009-10

e. Unknown Institution

9. Traditional knowledge/Folklore Protection

I. Achievement <16/16>

I.4. Juridical Reforms (1/1)

- The establishment of Commercial & IP Court law is being drafted- After review by Ministry of Justice, now this law is sent to MoC for re-amended
- Civil Procedure Code (Passed on July 06, 2006- Already entered into effect)
- Civil Code (passed on 08-12-2007-Not yet enter into effect)
- Criminal Procedure Code (passed on Aug-10-2007-Already entered into effect)
- Criminal Code (is being drafted)
- Code of Conduct for Judges and Prosecutors (passed by the King on Feb-22-2007)
- Law concerning the establishment of courts (discussed between Council of Jurists and Ministry of Justice)
- Setting up special schools for judges, prosecutors, court clerks and lawyers:
 - Royal Academy for Judicial Professions was established by Royal Decree dated Jan-21-2005
 - Royal School for Judges and Prosecutors was established on Feb-05-2002
 - Royal School for Court Clerks was established on Jan-21-2005
 - Center for Lawyer Training and Professional Improvement was established on Sep-14-2001

II. 2008-2010 Main Action Plan <1/14>

39 Main Activities

II.1. Prepare IP Legislations and Access to IP International Treaties:11 Activities

Provide for a comprehensive IPR legal environment in line with the RGC's commitments (international, regional and bilateral) and international standards but also for the benefit of the local and international protection of Cambodian IP assets.

II.2. Promote Capacity Building among IP Offices:16 Activities

Upgrade administration of IP in Cambodia and support both by a coordinated development of IP Offices capacities and the development of IP Professionals/Experts in Cambodia.

II. 2008-2010 Main Action Plan <2/14>

39 Main Activities

II.3. Develop regulations, Procedures and Guidelines:7 Activities

Development of IP enforcement capacities and networking between agencies as well as with the private sector-lawyers, companies.

II.4. Public Awareness:5 Activities

Increased private sector awareness on the importance of IP protection. Fostering IP Asset Creation.

II. 2008-2010 Main Action Plan <3/14>

39 Main Activities

II.1. Prepare IPR Legislations and Access to IP International Treaties- 11Activities <1/3>

- **Activity A.1:** Review and monitor the remaining steps required for TRIPS compliance (as well as the other International, regional or bilateral commitments by the RGC)
- **Activity A.2:** Draft Law on the protection of Geographical Indications (GIs)
- **Activity A.3:** Draft Sub-Decree implementing the GIs Law, in particular related to the GIs Commission and control procedures
- **Activity A.4:** Draft Law on Layout Designs of Integrated Circuits

II. 2008-2010 Main Action Plan <4/14>

39 Main Activities

II.1. Prepare IPR Legislations and Access to IP International Treaties- 11Activities <2/3>

- **Activity A.5:** Draft Law on Undisclosed Information and Trade Secrets.
- **Activity A.6:** Examine only New Plant Varieties Protection Parts of Seeds Management Law to comply with UPOV Convention.
- **Activity A.7:** Draft Sub Decree on Collective Management of Copyrights and Related Rights.
- **Activity A.8:** Draft Law on Compulsory Licensing for public health.

II. 2008-2010 Main Action Plan <5/14>

39 Main Activities

II.1. Prepare IPR Legislations and Access to IP International Treaties- 11Activities <3/3>

- **Activity A.9:** Examine requirements and consequences ("costs/benefits") of possible accession by Cambodia to the Berne Convention, the Patent Cooperation Treaty, the Madrid Protocol/Agreement, the Singapore Treaty on Trademarks and the Hague agreement.
- **Activity A.10:** Examine requirements and consequences ("costs/benefits") of possible accession by Cambodia to the International Convention for the Protection on New Plant Varieties (UPOV Convention).
- **Activity A.11:** Draft Law or Sub-Decree on "Franchising and Licensing of Marks".

II. 2008-2010 Main Action Plan <6/14>

39 Main Activities

II.2. Promote Capacity Building among IP Offices- 16 Activities <1/5>

- **Activity B.1:** Draft Declaration on the qualification of IP professionals or IP agents.
- **Activity B.2:** Organize a consultation on IP teaching/training in Cambodia, to assess existing resources and needs for IP teaching material in various institutions involved in the teaching of IP in Cambodia and to initiate the creation of a Sub-committee (Public-Private) on IP Education
- **Activity B.3:** Design a training/Educational manual (in Khmer language) to incorporate IPR definitions, international principles and their transposition into the Cambodian IP legal system.

II. 2008-2010 Main Action Plan <7/14>

39 Main Activities

II.2. Promote Capacity Building among IP Offices- 16 Activities <2/5>

- **Activity B.4:** Create a ad-hoc IP translation group for a uniform and qualitative translation of IP related documents and the compilation of a IP lexicon for translated terms.
- **Activity B.5:** Organize a “train-the-trainer” training, led by the authors of the Educational training Manual.
- **Activity B.6:** Undertake training (by trained trainers) for IP Offices new staff and in provinces, in selected targets (universities, Chamber of Commerce .etc) in the provinces, and in other relevant venues

II. 2008-2010 Main Action Plan <8/14>

39 Main Activities

II.2. Promote Capacity Building among IP Offices- 16 Activities <3/5>

- **Activity B.7:** Produce as needed and translate into Khmer training materials on relevant IPR agreements conventions and classifications
- **Activity B.8:** Provide IP scholarships (Postgraduate level) for selected teacher/trainer (public servants only) on IP
- **Activity B.9:** Review current Appeal procedures and practices related to trademarks, propose revised practices as necessary and support the MoC in the drafting a declaration on "Function and Procedures for Appeal Board of MoC"

II. 2008-2010 Main Action Plan <9/14>

39 Main Activities

II.2. Promote Capacity Building among IP Offices- 16 Activities <4/5>

- **Activity B.10:** Review current practices on substantive examination and opposition procedures for Trademarks and Patents, and revise practices as necessary.
- **Activity B.11** Support a study tour abroad to observe the substantive examination and opposition procedures for Trademarks, Industrial Design and Patents.
- **Activity B.12:** Assess automation needs and to provide equipment to (1)- the Department of Industrial Property to facilitate the registration of the Patents, Utility models and Industrial Design as well as New Plant Varieties –(2) the Department of Copyrights and Related Rights, the of Ministry of Culture and Fine Arts for Copyrights and related rights

II. 2008-2010 Main Action Plan <10/14>

39 Main Activities

II.2. Promote Capacity Building among IP Offices- 16 Activities <5/5>

- **Activity B.13:** Resource and Manage Audit of the IP Administration in Cambodia :analyze of the current resources and structure of the IP Administration and propose for possible optimization plan.
- **Activity B.14:** Support a study tour abroad to observe the appeal process for mark and patent.
- **Activity B.15:** Support a study tour abroad to observe the process of registration and deposit of copyrights works and Copyrights Administration System.
- **Activity B.16:** Support a study tour/training abroad to observe the implementation of Marks and Patents Administration Systems.

II. 2008-2010 Main Action Plan <11/14>

39 Main Activities

II.3. Develop Regulations, Procedures, and Guidelines-7 Activities <1/2>

- **Activity C.1:** Draft a Sub-Decree on "Border Enforcement" for IPR.
- **Activity C.2:** Draft a Sub-Decree on "the Control of Production, Import, and Export of Optical Discs (CD, DVD)".
- **Activity C.3:** Draft a Sub-Decree on "Procedures for Enforcement of IPR"
- **Activity C.4:** Prepare a training Manual on IP enforcement and relevant procedures (including procedures and best practices in neighboring countries, when relevant).

II. 2008-2010 Main Action Plan <12/14>

39 Main Activities

II.3. Develop Regulations, Procedures, and Guidelines-7 Activities <2/2>

- **Activity C.5:** Organize a "train-the-trainers" training, led by the authors of the training manual to enforcement related agencies)
- **Activity C.6:** Organize annual workshops on the application targeted risk management with the participation of right-holders to provide tools to identify fake from genuine products
- **Activity C.7:** Audit on Cambodian IP enforcement procedures and possible bottleneck/gap in the coordination between competent authorities

II. 2008-2010 Main Action Plan <13/14>

39 Main Activities

II.4. /Dissemination/Public Awareness <1/2>

- **Activity D.1:** Assist the registration and management of Cambodian GI products (pilot project)
- **Activity D.2:** Support the creation and maintenance of a one door access website Khmer/English for the dissemination of IP relevant information.
- **Activity D.3:** Support the design and dissemination (publication and TV spot) of IP communication material.

II. 2008-2010 Main Action Plan <14/14>

39 Main Activities

II.4. Dissemination/Public Awareness <2/2>

- **Activity D.4:** Organize workshops on IP Valuation and Commercialization in Phnom Penh, Siam Reap and another location in Cooperation with the Local Chamber of Commerce.
- **Activity D.5:** Assess the relevance and possible requirements for the creation of a joint IPD/DIP/Copyright Department "IP information & IP consulting desk" in Phnom Penh but also other relevant locations to foster IP applications

III. Challenges, Opportunity to Set Up CMO <1/12>

III-1. Protectable works-Art. 3: <1/4>

A. Works of the authors:

- Works of authors who are nationals of, or have their habitual residence in Cambodia, including legal entity established under the law of the Kingdom of Cambodia and having headquarters located in the territory on the Kingdom of Cambodia.
- Works of first publishing in the Kingdom of Cambodia, including works of first publishing abroad, which were brought to publish in the Kingdom of Cambodia within 30 days (thirty days) of the first communication to the public.

III. Challenges, Opportunity to Set Up CMO <2/12>

III-1. Protectable works- Art.3: <2/4>

A. Works of the authors:

- Audiovisual work, the producer of which has his headquarters or habitual residence in the Kingdom of Cambodia.
- Works of architecture erected in the Kingdom of Cambodia and other artistic works incorporated in a building or other structures located in the Kingdom of Cambodia.
- Works for which the Kingdom of Cambodia has obligation to grant protection under international treaties.

B. Works of the performers:

- (a) Performers who are nationals of Cambodia;
- (b) Performers who are not nationals of Cambodia but whose performances:
 - Take place in the territory of Cambodia; or

III. Challenges, Opportunity to Set Up CMO <3/12>

III-1. Protectable works- Art. 3: <3/4>

B. Works of the performers:

- Are incorporated in phonograms that are protected under this Law, or
- Have not been fixed in a phonogram, but are included in the broadcasts qualifying for protection under this law.

C. Phonograms:

- (a) Phonograms, the producers of which are nationals of Cambodia;
- (b) Phonograms first fixed in the Kingdom of Cambodia;
- (c) Phonograms first published in the Kingdom of Cambodia.

III. Challenges, Opportunity to Set Up CMO <3/12>

III-1. Protectable works- Art. 3: <4/4>

D. Broadcasts through broadcasting organizations:

- (a) Broadcasts of broadcasting organizations, the headquarters of which are located in the Kingdom of Cambodia;
- (b) Broadcasts transmitted from transmitters located in the Kingdom of Cambodia.
- The provisions in this Law shall also apply to performers, phonogram producers, and broadcasting organizations that are eligible for protection by virtue of and in accordance with any international treaties or other international agreements to which the Kingdom of Cambodia is a party.

NB: It means that any works created outside Cambodia will not be protected

III. Challenges, Opportunity to Set Up CMO <5/12>

III-2. Bern Convention, Art. 3

- Authors who are nationals of one of the countries of the Union, for their works, whether published or not
- Authors who are not nationals of one of the countries of the Union, for their works first published in one of those countries, or simultaneously in a country outside the Union and in a country of the Union

NB: It means that when Cambodia becomes a member of the Bern Convention all works created outside Cambodia (members of the Bern Convention) must also be automatically protected

III. Challenges, Opportunity to Set Up CMO <6/12>

III.3. Cambodia's Obligation and TRIPS Extension

- **WTO Obligation: Must be member of:**
 - Berne Convention (2005)
 - Geneva Convention for the Protection of Producers of Phonograms Against Unauthorized Duplications of their Phonograms (2005)
 - Sub-Decree for Implementing Copyright Law (2005)
- **TRIPS Extension:**
 - Until: 01 July 2013, except Articles 3, 4, 5
(Art. 3: National Treatment; Art. 4: Most-Favoured-National Treatment; Article 5: Multilateral Agreement on Acquisition or Maintenance of Protection)
- What are the benefits and disadvantages of joining the Bern Convention? TA needed. Whether Cambodia should be a member of the Bern Convention ASAP or after July 2013?

(Membership must be approved by the Government and ratified by the National Assembly. Therefore, we must report the benefits and the disadvantages to the government and National Assembly before getting approval and ratification)

III. Challenges, Opportunity to Set Up CMO <7/12>

III-4. Challenges for Cambodia

A. Lack of Public Awareness on Copyright law and Enforcement

1. Public Sector:

- IP Bodies
 - Officials of Min. MoC, and Culture, and Fine Arts
- Policy-Makers
- University & Schools
 - Teachers, Professors
 - Young people who represent future generations of consumers, creators of IPR
 - Curricular in educational institutions

III. Challenges, Opportunity to Set Up CMO <8/12>

III-4. Challenges for Cambodia

2. Private Sector:

- Business Groups:
 - Chamber of Commerce, businessmen, IP associations
- Enterprises, SMEs
- NGOs
- Authors, performer, inventor associations
- Collective Management Organizations
- Legal Professionals: Bar associations & legal group
- Owners of IP rights, including copyright owners

3. The Media:

- The Press (engaging the press-written, television, radio)- means for mass communication of campaign
- Advertisement Service Providers
- Internet Service Providers, ...

III. Challenges, Opportunity to Set Up CMO <9/12>

A. Lack of IP knowledge for Enforcement Bodies

- Economic Polices
- Customs, Camcontrol
- IP Officials Responsible for Litigation
- Provincial & Municipal Officials
- Judges, Prosecutors, Clerks
- Lawyers, IP professionals

III. Challenges, Opportunity to Set Up CMO <10/12>

C. Weakness of IP Offices

- Separated IP offices of Cambodia
- Lack experiences of IP offices including newly created Copyright Department, Min. Culture
- No incentive in respect of financial support
- ...others

III. Challenges, Opportunity to Set Up CMO <11/12>

III.5. Legal Establishment of CMO

- **Article 49: The organization governing collective right must be determined by Sub-Decree**
- **Article 56: CMO must be recognized by the Ministry of Culture and Fine Arts.**
- **Whether CMO's responsibility for works created in Cambodia is enough?**
- **Whether local copyright owners are willing to pay salary for staffs who work for the CMO?**
- **Will the above challenges impact the creation of CMO?**
- **Is it the right time to have CMO in Cambodia before joining Bern Convention? Or It should be established after joining Bern Convention?**

III. Challenges, Opportunity to Set Up CMO <12/12>

III-6. Possibilities to avoid conflict

Benefits and disadvantages of Jointing Bern Convention and the creation of CMO must be deeply studied including:

- The impacts of challenges of Cambodia:
 - Lacks of public awareness
 - Lack of experiences of enforcement bodies
 - Weakness of Copyright Department
 - Uncompleted Juridical reforms
 - Ability of Local Copyright Owners
- Scope of collection of remuneration must be clearly defined:
 - Whether remuneration should be collected from taxi drivers, service providers for some ceremonies such as wending ceremonies or not?
 - How about mobile phone service providers (music and VCD)?
 - ...others