

# Course: Intellectual Property Law-Cambodia

## Lecture 8: Copyright and Related Rights (Part1)

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ច្បាប់ ស្តីពី សិទ្ធិអ្នកនិពន្ធ និងសិទ្ធិប្រហាក់ប្រហែល

Law on Copyright and Related Rights

Author's rights and neighboring rights

Promulgated by the head of state on March 05, 2003

Entry into force through out the country on March 26, 2003

## 69 Articles split into 8 Chapters

- Chapter 1: General Provisions (Art. 1-3)
- Chapter 2: Copyright (Art. 4- 40)
- Chapter 3: Related Rights (Art. 41-55)
- Chapter 4: Collective Management of Rights (Art. 56)
- Chapter 5: Disputes and Penalties (Art. 57-66)
- Chapter 6: The Application of International Treaties (Art. 67)
- Chapter 7: Transitional Provisions (Art. 68)
- Chapter 8: Final Provision (Art. 69)

# Topics

- Definition
  - What is copyright and what does it protect?
  - Idea/expression dichotomy
- Protection
  - Conditions
  - Rights conferred
- Enforcement
  - Infringement and remedies
  - Border measures

# What are the benefits of copyright?

## Article 1

The purpose of this law is, by providing for the rights of author, and the right related thereon with respect to works and the protection of **cultural products, performance, phonogram**, and the transmission of broadcasting organization in order to secure a just and legitimate exploitation on those cultural products, and thereby contribute to the development of culture.

- Economic benefits
- Benefits to society

# What is copyright?

- Copyright is a **property right** which protects **original works** such as novels, plays, music, paintings, sculptures, movies, film scripts and computer programs.
  - An **intangible type of property** granting certain rights to the creator of a work for a limited period of time

- **Distinct from the embodiment of the work**



John, Martin. *Manfred On The Jungfrau*. 1837.  
Oil on canvas.  
[https://commons.wikimedia.org/wiki/File:John\\_Martin\\_-\\_Manfred\\_on\\_the\\_Jungfrau\\_\(1837\).jpg](https://commons.wikimedia.org/wiki/File:John_Martin_-_Manfred_on_the_Jungfrau_(1837).jpg).

- Difference between copyright and Author's rights systems

# What are neighbouring rights?

- Neighbouring rights protect the rights of:
  - performers
  - producers of phonograms
  - broadcasting organisations

(Art. 2)

In this law, the principal terms shall have the following meaning:

- a- “Work” ស្នាដៃ means a **product** in which **thoughts** or **sentiment** are expressed in a creative way, and which falls within the **literary, scientific, artistic or musical domain**;
  
- b- “Author” អ្នកនិពន្ធ means a **person** who created a **work**;
  
- c- “Performance” ការសម្តែង means **the acting on stage** namely dancing, musical performance, singing, or **delivering in other ways and means** of artistic work, tradition, habit, literary, education, or science;

In this law, the principal terms shall have the following meaning:

- d- “Recitation” កាស៊ីត្រី means the oral expression by means of speaking, reading, and pronouncing of work in rhythm;
  
- e- “Performers” អ្នកសម្តែង mean artists, dancers, musicians, singers or other persons who give a performance;
  
- f- “Database” ប្រព័ន្ធថវិកា means an aggregate of information, articles, numerical, diagrams which is systematically constructed, so that such information can be searched for with the aid of a computer;

## Article 2

In this law, the principal terms shall have the following meaning:

g- “Audio visual work” ស្ត្រីដៃស្រាតិស្ស៊ីវី means a work, which consists of a series of inter-linked pictures, in which give an impression of movement, **with or without sound**, able to be **seen**, and if accompanied by **sound**, able to be heard.

h- “Broadcast” ច្រៀង ឃ័យ means the **transmission** of sound, pictures, documents or other messages through **radio, television, cable television or satellite**;

## Article 2

In this law, the principal terms shall have the following meaning:

i- “Communication to the public” ការផ្សព្វផ្សាយជាសាធារណៈ: is **the transmission by wire or without wire of the images or sounds, or both, of a work, a performance, a phonogram or a broadcast in such a way that the images or sounds can be perceived by persons outside the normal circle of a family and its closest social acquaintances at a place or places so distant from the place where the transmission originates** that, without the transmission, the images or sounds would not be perceivable and, further, irrespective of whether the persons can receive the images or sounds at the same place and time, or at different places and/or times individually chosen by them;

## Article 2

In this law, the principal terms shall have the following meaning:

j- “Phonogram” ប្រឡងក្រាម is the **fixation** of the **sounds** of a performance or other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;

- vinyl records, CDs, cassette tapes
- MP3 files, streaming audio

k- “Phonogram Producer” ផលិតករប្រឡងក្រាម means a person who produces the phonograms as providing in paragraph (j);

## Article 2

In this law, the principal terms shall have the following meaning:

l- “Computer program” កម្មវិធីកុំព្យូទ័រ means **a sum of instructions** expressed in letters, or codes, or illustrations, or in any other possible forms, once incorporated in a computer, which has its aim to accomplish a task or particular result by means of a computer or through an electronic procedure capable of information processing.

m- “Reproduction” ការផលិតឡើងវិញ is **the whole or partial making of one or more copies** of a work or phonogram in **any manner or form**, including **any permanent or temporary storage** of the work or phonogram **in electronic form**;

Article 2

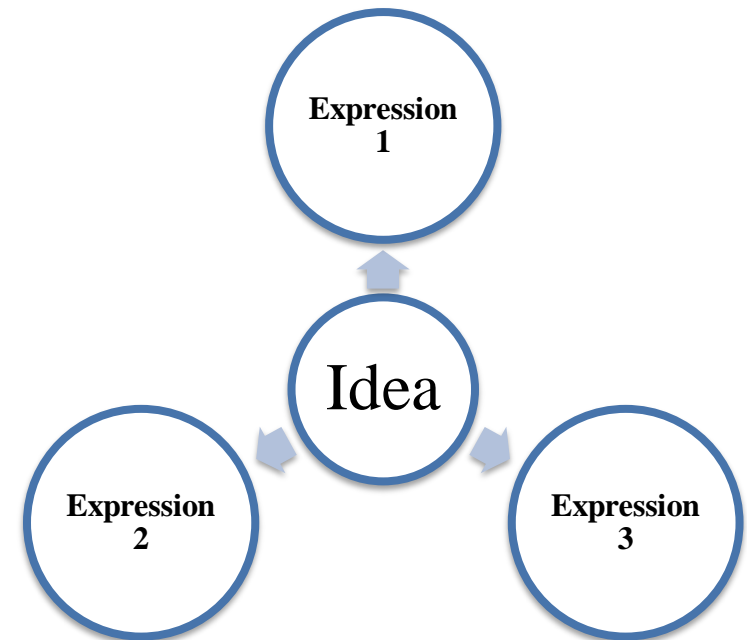
In this law, the principal terms shall have the following meaning:

n- "Broadcasting organization" អង្គការទូរទស្សន៍ means radio, television, and cable television station or satellite.

o- "Related Right" សិទ្ធិប្រហាក់ប្រហែល is the right of performer, phonogram producer, and broadcasting organization.

# What does copyright protect?

- Idea/expression dichotomy
- Protected: the expression



## Article 10

The following works shall not be fallen under any protection by this law:

e- **Idea**, formality, method of operation, concept, principle, discovery or mere data, **even if expressed, described, explained or embodied in any work.**

# Not protected under copyright

## **Article 10**

The following works shall not be fallen under any protection by this law:

- a- Constitution, Law, Royal Decree, Sub-Decree, and other Regulations.
- b- Proclamation (Prakas), decision, certificate, other instructed circulars issued by state organizations.
- c- Court decision or other court warrants.
- d- Translation of those materials mentioned in the preceding paragraphs (a), (b), and (c) of this article.
- e- Idea, formality, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained or embodied in any work.

# What does copyright protect?

Any form of original expression  
In various fields: literary, scientific, artistic

## Article 7

The following subject matters, in accordance with the contents of **Article 3**, are being protected under this law:

- a- All kinds of reading books or other literary, artistic, scientific, and educational documents,
- b- Lectures, speeches, sermons, oral or written pleadings and other works of the same characteristics.
- c- Dramatic works ស្ត្រីដ៏ដ្ឋានកម្ម or musical dramas.
- d- Choreographic works, either modern or adapted from traditional works or folklore.
- e- Circus performances and pantomimes ការសម្តែងកាយវិការ.
- f- Musical compositions, with or without words.

# What does copyright protect?

Any form of original expression

In various fields: literary, scientific, artistic

## **Article 7**

The following subject matters, in accordance with the contents of **Article 3**, are being protected under this law:

g- Audio-visual works.

h- Works of painting, engraving, sculpture or other works of collages, or applied arts.

i- Photographic works, or those realized with the aid of techniques similar to photography

j- **Architectural works.**

k- Maps plans, sketches or works pertaining to geography, topography, or other sciences.

l- **Computer program and the design encyclopedia documentation relevant to those programs.**

m- Products of collage work in handicraft, hand-made textile products or other clothing fashions.

# What about software?

- Computer programs and software are protected as literary works
- Article 10 of the TRIPS Agreement protects computer programs as literary works.
- Underlying subject matter is excluded
  - high-level ideas, functionality, and basic algorithms that are not directly expressed in the code
  - the design of user interfaces, such as menus, buttons, or dialog boxes

# Can databases be protected?

## Article 8

Derivative works including **translations, adaptations, arrangements and arrangements or other improvements** of works, or compilation of databases, whether in machine readable or other forms shall be also protected by this law.

The protection of any work referred to in the above paragraph shall be without prejudice to any protection of an original work incorporated in or utilized for the making of such a new work.

- EU Directive 96/9/EC on the legal protection of databases
- Original **selection or arrangement** of content = copyright protection
  - distinct from the material *in* the database
- **Substantial investment** = *sui generis* right

The following works shall be granted protection under this law including works of the authors, works of the performers, phonograms, and broadcasts through the broadcasting organizations.

**1). Works of the authors ស្ត្រីជំនួញកន្តិកាស្នេហាសំដៅ:**

- a- **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.
  
- b- **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.
  
- c- Audiovisual work, **the producer of which** has his headquarters or habitual residence in the **Kingdom of Cambodia.**
  
- d- **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.
  
- e- Works for which the **Kingdom of Cambodia has obligation to grant protection under international treaties.**

## Article 3

### 2) Works of the performers ស្ថាប័នអ្នកសម្តែងសំដៅ:

- (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
  - 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.

### 3) Phonograms ប្រឡូក្រាមសំដៅ:

- (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.

### Article 3

#### **4) Broadcasts through broadcasting organizations ការផ្សាយតាមស្ថាប័នផ្សាយសំដៅ:**

- (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.

## Article 6

Collaboration work ស្នាដៃសហការ refers to a work whose creation was the result of the joint efforts of several natural persons.

Derivative work ស្នាដៃបន្ត refers to a work created based on original work by means of translating, adapting or modifying.

Collective work ស្នាដៃសមូហភាព refers to a work created by several natural persons, at the initiative of a natural person, who edits, publishes and discloses it under his/her direction and name.

**Article 9**

The **title of any work** ចំណាងជើងនៃស្នាដៃមួយ, in which it presents **an original character of work**, is protected by law like the work itself.

No one can, even if the work is no longer protected in terms of articles 30 and 31 of this law, use the title of this work to individualize another work of the same genre, in conditions likely to give rise to confusion.

# The concept of originality

- Civil law
  - Expression of author's personality
    - Certain level of creativity
- Common law
  - Traditional: ‘sweat of the brow’
  - Modern: some creativity

## Originality is a key concept in copyright law.

A work will be regarded as original if it is the author's own intellectual creation.

# Original Works

## **Article 4**

To be reputed as originals are works, which are **the true intellectual creations of their authors.**

## **Article 5**

A work is deemed created, independently of all public disclosure, by the **sole fact of the realization, even if incomplete, of the author's idea.**

# Is copyright protection valid worldwide?

- Berne Convention
- Universal Copyright Convention (UCC)
- TRIPS Agreement
- WIPO Copyright Treaty (WCT)

## **Article 67**

The provisions of any international treaties in respect of Law on Copyright and Related Right, to which the Kingdom of Cambodia is a party, shall apply to matters dealt with by this Law.

In case of conflict with the provisions of this Law, the provisions of those international treaties shall prevail.

# Does copyright have to be registered?

- Not a requirement
  - Available in some countries
- The © symbol

## **Article 38**

Every work is **automatically protected**. The authors or right-holders may deposit their works at the Ministry of Culture and Fine Arts.

## **Article 39**

The registration may be voluntarily done at the Ministry of Culture and Fine Arts. This registration requires the record of the author's real name, date of the first publication of work, and date of the creation of work, as well as the record of the author's right.

## **Article 40**

The Ministry of Culture and Fine Arts shall issue the Certificate of Registration for the registered work. The applicant has to pay registration fee in accordance with the Joint-Declaration (PRAKAS) of the Ministry of Culture and Fine Arts and the Ministry of Economy and Finance.

# Who is the author?

- The creator

## **Article 11**

The title of author belongs, unless there is evidence to the contrary, to the natural person or persons in whose name the work is created and disclosed.

## **Article 13**

Natural person or legal person whose name has been publicly disclosed in that work during the time of communicating to the public, this person is vested with the author's rights unless having any contradicted evidence against it.

## **Article 14**

The author of a work under pseudonymous or anonymous enjoys the rights vested on that work.

# Who is the author?

- Co-authorship

## **Article 12**

Co-authors are the owners of a work of collaboration. Co-authors have to exercise their rights based on **unanimous and written agreement**. In case of disagreement, they have to file their petition to the court.

# Who owns the rights?

## **Article 15**

One or more natural person who realize(s) the intellectual creation of audio-visual work is (are) deemed to be the author/authors of that audio-visual work.

Unless having contradictory evidence, the following co-authors of the audiovisual work are:

- a). The director.
- b). The author of scenario.
- d). The author of the adaptation.
- e). The author of the spoken text.
- f). The author of the musical compositions, with or without words, specially created for the sake of that work.
- g). The author of the graphic arts for animated works.

# Who owns the rights?

- Works created in the course of employment

## **Article 16**

The author of work is the first holder of the moral and economic rights. In the case of **a work created by an author for the benefit of a natural or legal person who is an employer under the framework of a working contract** and the contract to utilize that work, unless otherwise specified by the provisions contradicted to the above mentioned contracts, **the economic rights in that work are considered to be transferred to the employer.**

# Who owns the rights?

## **Article 22**

Except for having contradictory provisions in the contract, **the economic rights on a computer program and its encyclopedia documentation** created by one or more employees in the exercise of their duties or following the instructions of their employer **are property of the employer who is alone entitled to exercise them.**

The same is true in favor of the person, who hires other persons to create the computer program by virtue of purchasing contract. That person shall entitle the economic right.

## Article 17

The conclusion of a contract between **the co-authors of an audiovisual work and the producer**, in which they undertake to make contributions to the audiovisual work excluding the author of musical works shall, unless provided otherwise in the said contracts, **imply a presumption of the assignment to the producer of the audiovisual work of the economic rights**. The co-authors shall, however, maintain their economic rights according to the extended use of their contributions, in case those contributions have been separately undertaken from the creation of audiovisual work.

# References

EPO, and EUIPO. *Intellectual Property Teaching Kit: IP Advanced Part II: Copyright*. 2nd Edition. EPO Munich: EPO, 2018.

Law on Copyright and Related Rights, 2003. (Cambodia)