

Course: Intellectual Property Law-Cambodia

Lecture 9: Copyright and Related Rights (Part2)

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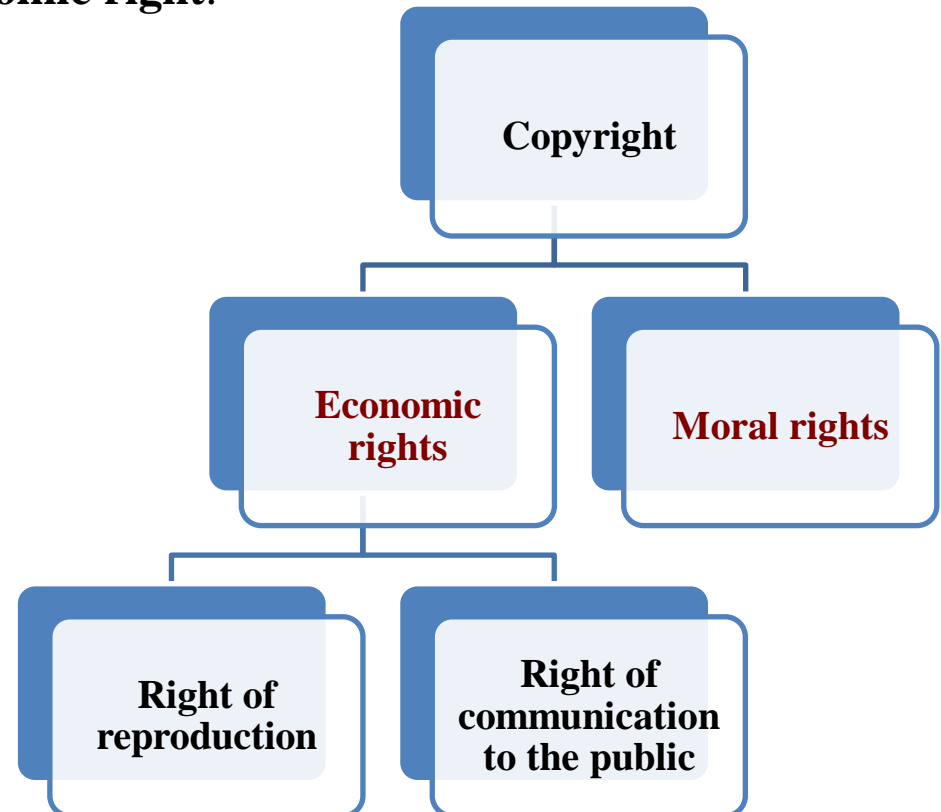
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What rights does copyright confer?

Article 18

The author of a work shall **enjoy an exclusive right** on that work, which shall be enforceable against all persons.

These rights include **moral right and economic right**.



What rights does copyright confer?

Article 19

The **moral right** of the author is **perpetual, inalienable, un-distrainable and imprescriptible**. It shall be transmitted *mortis-causa* to the heirs of the author or to the third party in accordance with provisions stipulated in the will.

In case of having no heir, this right will be subjected to the administration and governance of the state represented by the Ministry of Culture and Fine Arts.

Moral rights

- Divulgence (a)
- Paternity (b)
- Integrity (c)

Article 20

The moral right of the author contains the following three particular points:

- (a) The author has **exclusive right to decide the manner and the timing of disclosure** of his/her work as well as **the principle to govern this disclosure**.
- (b) For the purpose of relation with the public, the author enjoys **hi/her right in respect of his/her name, title, and work**.
- (c) The author has right to **oppose all forms of distortion, mutilation or modification** of the content of his/her work, which would be **prejudicial to his/her honor or reputation**.

Economic exploitation rights

- Reproduction
- Adaptation
- Public communication
- Distribution (rental and lending rights)

~~Resale???? (granted to the author of an artistic work to receive a portion of the resale price of the work)~~

Economic exploitation rights

Article 21

Economic right is the exclusive right of the author to exploit his/her own work through **the authorization of reproduction, communication to the public, and creation of derivative work.**

Unless otherwise specified in the provisions of **articles 24, 25, 26, 27, 28 and 29**, the author has exclusive right **to act by him/herself or authorize someone to do the followings:**

- a. **Translation** his/her work into foreign language.
- b. **Adaptation** and simplification or undertake any modifications of his/her work.
- c. **Rental or public lending** of the original or a copy of an audiovisual work, or a work embodied in a phonogram, a computer program, a database or a musical work in the form of musical notation.

Economic exploitation rights

Article 21

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- d. **Public distribution** by sale, rental of the original or a copy of the work that has not already been subject to a sale or transfer of ownership authorized by the owner of copyright;
- e. **Importation** into the country, the reproduction copies of his/her works.
- f. **Reproduction** of work.
- g. **Public performance** of the work.
- h. **Public display** of the work
- i. **Broadcasting** of the work;
- j. **Other means of communications to the public** of the work.

Rental right as mentioned in the above paragraph (c) of this Article, is not applicable **for the rental of computer program when the program itself is not the main objective of rent.**

Exceptions

- Two systems:
 - **fair use**
 - **exhaustive list**
- Three-step test
 - The limitation or exception can apply only in certain special cases.
 - The limitation must not conflict with the normal exploitation of the work.
 - The exception must not unreasonably prejudice the legitimate interest of the author.

Article 24:

(e) Of any work, in cases where reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author or the right-holder.

Article 23

The **importation** of a copy of work by any natural person, **for his/her personal use**, can be done without the consent of the author of that work or the right-holder.

Article 24

The private reproduction of a published work in a single copy shall be permitted without the authorization of the author or the right-holder, where the reproduction is made by a natural person exclusively **for his own personal purposes**.

The permission under the preceding paragraph of this article shall not extend to the **reproduction**:

- (a) Of a work of **architecture** in the form of building or other construction;
- (b) In the form of **reprography** of the whole or a substantial part of a book, and of a musical work in the form of musical notation;
- (c) Of the whole or of a substantial part of a **database** in digital form;
- (d) Of a **computer program**, other than a backup-copy.
- (e) Of any work, in cases where reproduction would conflict with a normal exploitation of the work or would otherwise unreasonably prejudice the legitimate interests of the author or the right-holder.

Article 25



The author cannot prohibit the following acts:

- a- **Free and private representations** made exclusively to a close circle of people such as family or friends.
- b- **The arrangement to preserve in a library** the copy of work for the purpose of conservation or research.
- c- **The use of work for the purposes of education**, which is not for financial gain.
- d- **The translation of works from Khmer language into the languages of the ethnic minorities or vice versa;**

Article 25

If there is a clear indication of the author's name and the source of work, the following acts are not subjected to any prohibitions by the author:

- The **analyses and short quotations** justified by the critical, polemical, pedagogical, scientific or informative nature of that work.
- The **broadcasting of press commentary**.
- The **dissemination of speeches** addresses to the public either entirely or in part, through press release or television broadcasting.
- The **adaptation of comic, style or caricature**, based on original work.
- The **reproduction of graphic or plastic work** which is situated in the public place, when this reproduction doesn't constitute the principle subject for subsequent reproduction.

Article 26

The author of work based on the true story of life of any person or family has to seek authorization from that person or family member who is the heir of that family.

Article 27

The temporary reproduction of a work is allowed on the condition that this reproduction takes place during the course of utilization of work for which the authorization of the right-holder is granted.

Article 28

Notwithstanding the provisions of Article 21 of this law, it is permitted, without authorization of the author and without payment of any remuneration, **to cite a legitimately published work in another work.**

This reproduction of citation must be done on the condition that source and author's name is indicated, if author's name is given in that source. Such citation also should not be made more than the necessary purpose.

Article 29

Notwithstanding the provisions of Article 21 of this law, it is permitted to:

a- Use **a legally published work** for the purpose of **illustration in publication** such as book or newspaper, or by broadcasting, or by audio or visual screening which are intended for **educational purposes**, without payment of any remuneration. In this connection, source and author's name must be identified, if author's name is given in the source.

b- Reproduce any separated articles, articles of the newspaper or magazine, or short extracts of any legally published works. This reproduction can be done providing that it is made by reprographic means, and must be used for **the sake of teaching or for examinations held by any educational establishments of which the activities do not lead directly or indirectly to commercial gain** and must be done with appropriate reason according to this specific objective. The said reproduction can be done without the author's authorization and without payment of any remuneration, but if the author's name is mentioned in the source, this source and name must be identified.

Term of protection

- The term of protection afforded by copyright varies from country to country. It also depends on the type of subject matter
- Basic rule: 50 years after the author's death

Article 30

The protection of economic right started from the date of the creation of a work. This protection covers the life of the author, and the whole 50 (fifty) years following his/her decease.

In the case of a work of collaboration, the economic rights shall be protected during **the life of the last surviving author and for 50 (fifty) years after his/her death.**

Article 31

The economic right in a work, published in an anonymous manner or under a pseudonym, is protected within **the entire period of 75 (seventy five) years counted from the end of calendar year in which such work has been published**, with the right-holder's authorization, for the first time.

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If, before the expiry of the said period, the identity of the author is revealed or is established beyond doubt of the public, the provisions of Article 30 is applied.

Transferring of economic rights

Article 32

The **transfer of right** mentioned in any paragraph of Article 21 of this law does not imply **the transfer of other rights stipulated in other paragraphs**.

When there is a contract covering the transfer or granting license for one of the rights mentioned in this article, **its effective scope is limited to the conditions of exploitation provided for in the contract**.

Article 33

Due to the death of the author, **economic right can be transferred to the author's heir or to any third party based on the provisions of the author's will**.

In case of having no heir or will, the governance and administration of this right is the responsibility of the state represented by the Ministry of Culture and Fine Arts.

The Exploitation of Economic Right

Article 34

Contracts of the exploitation of economic rights must be stated in writing, otherwise this contract will be considered as null and void. Only the author or right holder may have right to present any reasons for the nullity of contract.

Article 35

The contract for transferring of the exploitation of author's rights must be stated in writing, and separately specified each domain of exploitation of those transferred rights which are properly limited as to its coverage, and its extent, as to place, objectives and as to duration.

Article 36

In case of individual author contributes his/her separated work in the framework of establishing a collective work, **those individual authors can separately make the exploitation on their own contribution**, unless having any contradicted provisions, providing that that author doesn't cause any damages to the exploitation of that collective work.

In the case of work created by co-authors, the exploitation can be done unless **having consent of the co-authors**. In the case of those co-authors cannot reach any consent, the court will decide on that case.

Article 37

The transfer of right for exploitation on the author's work may be done wholly or partly. The author will receive the benefit from this transfer in accordance with the provisions of the transfer contract.

RELATED RIGHTS

Right of Performer

Article 41

The performer has exclusive right to authorize or undertake the following acts:

- a) The **broadcasting and the communication to the public** of his/her performance, except for the broadcasting of phonogram fixation of the performance authorized by the performer or re-broadcasting through television broadcasting or having authorization of the first broadcasting organization initially broadcast this performance.
- b) The **fixation in phonogram** of his/her unfixed performance.
- c) The **reproduction of a fixation** in phonogram of his/her performance.
- d) The **distribution to the public by sale or transfer of ownership**, of an original fixation in phonogram of his/her performance that have not been a subject to any distribution authorized by the performer.
- e) The **rental or lending to the public** of an original fixation in phonogram of his/her performance or copies thereof.

Right of Performer

Article 41

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Unless otherwise having no contradicted agreement, the performer has the following rights to:

- **Authorize the broadcasting** through any broadcasting organization, but the other broadcasting organizations are not authorized to broadcast this performance.
- **Authorize the broadcasting** through any broadcasting organization but that broadcasting organization is not authorized for the fixation of this performance in the phonogram.

Article 42

Independently of the economic right, and even after the transfer of this right, **the performer retains the right to require his/her written name to be displayed on live performance or fixed performance** except for the mode of use necessitates the omission of this mention. **The performer retains his/her right to object to all deformation, mutilation or other modifications of his/her performance which are prejudicial to his/her reputation.**

Article 43

Performers cannot forbid the reproduction and the communication to the public of their performance, **if it is accessory to** an event constituting the principal subject of a scene, or of a work, or of an audio-visual document.

Rights of Phonogram Producers

Article 44

Phonogram producer has the exclusive **right to record, to reproduce, or to communicate to the public of his/her phonogram.**

Article 45

All reproductions, sales, exchanges, leases, and communication to the public of the phonogram **must require the authorization of the phonogram producer.**

The phonogram producer has right to distribute to the public, by sale or by means of transfer of ownership, the original or copies of the phonogram that has not been subjected to any distribution authorized by that producer.

The phonogram producer also has right to import the copy of his/her phonogram for the purpose of communicating to the public.

Rights of Video Producer

Article 46

Video producer is the natural or legal person who has the initiative and responsibility for the recording of a sequence of images, with or without sound, leading to the realization of a video production.

All reproduction of video recording for the purpose of communicating to the public, sale, exchange, and lease requires the authorization of the video producer.

The transfer of right of the video producer recognized by virtue of this article cannot be done separately from the author's right and the performers' right which incorporated into the work of this video production.

Rights of the Broadcasting Organizations

Article 47

Broadcasting organizations consist of radio, television, and cable television station. These organizations **have exclusive right to undertake or authorize the fixation of its broadcast, communication to the public, re-broadcasting, reproduction, distribution on first lease of the copy of its broadcast.**

Article 48

The reproduction of any broadcast belonged to the broadcasting organization for the purpose of sale, lease, exchange, broadcasting or communicating to the public anywhere, must require the authorization of the said organization.

Remuneration

Article 49

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If a phonogram has been produced for commercial purposes, or a reproduction of such phonogram is used directly for broadcasting or other communication to the public, or is publicly performed, **a single equitable remuneration, for the performers and the producer of the phonogram, shall be paid by the user to the organization governing this collective right.**

The organization governing collective right is a legal person having duty to administer this remuneration, which is determined by the sub-decree.

Limitations of Rights

Article 50

Notwithstanding the provisions of articles 41, 42, 43, 44, 45, 46, 47 and 48 of this law, the following acts are permitted without the authorization of the right-holder, and without payment of any remuneration:

- a) The **reporting of news events**, on condition that only short fragments are extracted from the performance or from the substance of phonogram or from a broadcast.
- b) **The reproduction merely for the purposes of scientific research.**
- c) The **reproduction for the framework of educational purpose**, except for the performance or phonogram which has been produced for the educational purposes.
- d) **Quotation**, in the form of short citation extracted from the performance or phonogram or broadcast, provided that such quotation is conformed to the reasonable practice and justified the proper informative objective.
- e) **All other uses constituting exceptions** concerning works protected under copyright by the virtue of this law.
- f) Picture and sound recording for the purpose of wholly or partly simultaneous broadcasting on the realization of a ceremony, meeting or other national events from the broadcasting of the original station.

Duration of Protection

Article 53

1. The duration of protection for performer shall **be 50 (fifty) years** following the calendar year in which the performance was fixed in the phonogram, or in the absence of such fixation, from the end of the calendar year in which the performance took place.
2. The duration of protection for the phonogram producer shall be **50 (fifty) years** following the calendar year in which the phonogram has been published, or in the absence of such publication, from the end of the year following the fixation of the phonogram.
3. The duration of protection of the broadcasting program of the broadcasting organization shall **be 50 (fifty) years** following the end of calendar year in which this program has been broadcast.

The Transfer of Right

Article 54

Article 32, 33, and 34 of this law will be applied for the right of performer, phonogram producer, and broadcasting organization.

The Deposit

Article 55

Article 38, 39, and 40 of this law will be applied for the right of performer, phonogram producer, and broadcasting organization.

Collective Management of Rights

Article 56

The author of work and related-right holder can establish the collective management organization to protect and manage their economic rights.

The establishment of collective management organization of author's right, performer's right, and phonogram producer's right or video producer's right must require the recognition of the Ministry of Culture and Fine Arts.

The collective management organization of broadcasting right via radio, television, and cable television of the broadcasting organizations shall require the recognition of the Ministry of Information

Infringement

- What is infringement?
 - Infringement occurs when a **person exercises a right conferred on the author or the right holder without having obtained their consent unless the use is covered by an exception to copyright.**
- Using a substantial part of a work
- Defences
 - It is not the same expression but merely the same idea
 - It was non-creative material
 - The work has already entered the public domain

~~Exhaustion of rights???~~

For the purpose of Articles 64 and 65 of this law, the following acts are considered as illegal:

1. **The production or importation for sale or lease of any device or means** specifically designed or adapted to circumvent any device or means or intend to restrict the quantity of the reproduction of a work, a phonogram or a broadcast, or to impair the quality of the copies being made.
2. **The production or importation for sale or lease of any device or means** that is susceptible to assist the unauthorized person in the reception of an encrypted program, which is broadcast or otherwise communicated to the public, including the broadcasting by satellite.
3. **The suppression or modification**, without being permitted by the right-holder, of all information related to the regime of rights presented in electronic form.
4. **The distribution or importation for the purpose of distribution**, broadcasting through broadcasting organization, communication to the public or making available to the public, without authorization, of works or performances, of phonogram or broadcast of the broadcasting organization, while knowing that the information relating to the regime of rights, presented in electronic form, has been already suppressed or modified.

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The expression "**information on the regime of rights**" extends to:

- Information revealing the identification of the author, characteristics of the work, identification of the performer, characteristics of the performer, identification of the phonogram producer, characteristics of the phonogram, identification of the broadcasting organization, and characteristics of the broadcasting organization.

- Information enable someone to know the identity of the right-holder or characteristics of the information on the conditions and procedures in the utilization of work and other products covered by this law, and characteristics of number or code representing that information.

Remedies

- Identifying the defendants
 - The first of these is the need to identify the defendants in the case. They are not just the person or persons responsible for the unauthorized use, but also all persons involved in the chain of events leading to the infringement, including manufacturers, importers, resellers, retailers and, possibly, in the case of a legal person, directors and shareholders.
- Time factor
 - Provisional injunctions preventing any further distribution of the infringing copies of the work are therefore absolutely vital.

Remedies

- Provisional or precautionary measures
 - stopping further infringement, seizing infringing goods and seizing the movable and immovable propriety of the alleged infringer.
- Measures for preserving evidence
- Final relief

Disputes and Penalties

Article 57

Whosoever suffers or risks to suffer a violation of his/her copyright or related right can file petition to the court, in order:

- a) **To prohibit this violation of right, if it will be soon imminent.**
- b) **To desist the defendant from violating his/her right, if it is continue.** The complainant may file petition to have the defendant being subjected to the compensation of damages, to the redress of moral injury, and to the return of the disputed equipment or materials, as well as to the return of any benefits deriving from that illegal act.

Article 58

The court has authority to order the confiscation, destruction of equipment or materials being produced or used or made available in an illegal manner, or of equipment used in the violation, and which are found in the possession of the defendant or are being held by the application of this law.

Article 59

The **court has authority to order all provisional measures necessary** to ensure the conservation of evidence, especially the confiscation of subject matters reproducing from the unauthorized reproduction of a work.

The complainant is held responsible for the injury caused to the defendant, if his/her petition is proved to be unfounded by the court.

Article 60

Within 30 (thirty) days of the seizure, owner of the seized property, or a third party who governs the seized equipment or materials, can file petition to the court for the lifting of this seizure or to limit its effects.

Article 61

Within 30 (thirty) days of the seizure, if there is no sufficient petition being filed to the court, the court may order the lifting of this seizure based on the request of the seized property's owner, or on the request of a third party who governs the seized property.

Article 63

The **customs authority** can, based on the written petition of the owner of copyright or related right owner, retain under its framework of merchandise control, of which in the opinion of the right-holder constitutes the infringed goods. The court, competent authority who is the petitioner, and the governor of goods should be informed, without delay, by the customs authority, of the confiscation to which applied by this institution in regard to the said goods.

The provisions on border measures specified in the "Law on Marks, Trade name and Acts of Unfair Competition" must be applied for the supplement utilization of this article.

Article 64

All production, reproduction, or performance, or communication to the public, by whatever means, (of a work) in violation of the author's right, as defined by this law, are **offences which must be punished by law.**

Infringement of production or reproduction is punishable by 06 (six) months to 12 (twelve) months and/or 5,000,000 (five million) Riels to 25, 000, 000 (twenty five million) Riels fine. Double punishment is applied in case of repeated offense.

The importation or exportation of product obtained from the infringed acts of reproduction is punishable by 06 (six) months to 12 (twelve) months and/or 2,000,000 (two million) Riels to 10, 000, 000 (ten million) Riels fine. Double punishment is applied in case of repeated offense.

Infringement of performance or communication to the public is punishable by 01 (one) month to 03 (three) months and/or 1,000,000 (one million) Riels to 5, 000, 000 (five million) Riels fine. In case of having several offenses, punishment will be multiplied by the number of offense. Double punishment of the previous cases is applied in case of repeated offense.

Article 66

In each case covered by article 64 and article 65 of this law, the court may decide as the following:

- To order the confiscation of all or parts of the revenue obtained through the acts of infringement, and equipment specially installed for the purpose of committing this offence.
- To order the confiscated materials or equipment to be returned to the owner of copyright or related right, without prejudice to any moral injury to be compensated.
- To order the destruction of the confiscated materials or equipment.

Establishing the competent jurisdiction

- Basic rule:
 - domicile of the defendant
 - where the infringing activities took place
- Infringement on the internet?

Copyright and the internet

- Liability of ISPs
- P2P file sharing
- Protection through technological measures

References

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