



Copyright Law in Cambodia

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INTRODUCTION

Cambodia's Law on Copyright and Related Rights provides protection for original works of authorship. Enacted in 2003 to comply with Cambodia's WTO obligations, the Law was modeled on general copyright principles common to many other jurisdictions. While the Law has been in effect for several years now, it is largely untested and copyright infringement is rife.

This guide couples a synthesis of the legal provisions with practical advice and interpretation. While all the major topics are discussed, the reader should consult the text of the law itself, or ideally an experienced copyright attorney, before relying on this guide for legal advice.

COPYRIGHTABLE SUBJECT MATTER

The Copyright Law protects the following subject matter:

- All kinds of reading books or other literary, scientific, and educational documents,
- Lectures, speeches, sermons, oral or written pleadings and similar works,
- Dramatic works and musical dramas,
- Choreographic works, either modern or adapted from traditional works or folklore,
- Circus performances and pantomimes,
- Musical compositions, with or without words,
- Audio-visual works,
- Works of painting, engraving, sculpture or other works of collages, or applied arts,
- Photographic works, or those realized with the aid of techniques similar to photography,
- Architectural works,
- Maps, plans, sketches or other works pertaining to geography, topography, or other sciences,
- Computer programs and the design, encyclopedia, and documentation relevant to those programs.
- Products of collage work in handicraft, hand-made textile products or other clothing fashions.

The Law specifically excludes from protection all laws, regulations, government circulars, court decisions, and their translations, as well as any idea, formality, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained or embodied in a work. Works are protected whether publicly disclosed or not. A work is deemed created by the sole fact of the realization, even if incomplete, of the author's idea.

AUTHORSHIP

The author is the person, or persons, who create a work. All economic and moral rights automatically vest in the initial author or authors. The Law presumes that the person or persons in whose name the work is created and disclosed are the authors, unless there is evidence to the contrary. A collaborative work is the product of the joint efforts of two or more natural persons, the co-authors. Co-authors can only exercise their rights with the unanimous and written consent of all other co-authors. In case of disagreement, they must petition a court for resolution.

Where a work made by an author within the scope of employment, unless contracted otherwise, the economic rights are considered to have been transferred to the employer. Anonymous and pseudonymous authors have the same rights as named authors. However, unless such an author makes known her identity and demonstrates she is the author, she will be represented by the publisher or original discloser of the work. That representative can enforce the author's moral and economic rights, but must have in their possession an agreement identifying the author's identity.

For audio-visual works, the law presumes that the co-authors are the director, the author of scenario, author of the adaptation, author of the spoken text, author of the musical composition, and the author of the graphic arts for animations.

ECONOMIC RIGHTS

The author enjoys the exclusive economic rights to their work, subject to certain limitations. The core of the economic right is the exclusive right to exploit the work by authorizing the reproduction, communication to the public, and the creation of derivative works. More specifically, only the author can himself, or authorize another to:

- Translate the work into a foreign language;
- Adapt and simplify, or undertake any modifications of the work;
- Rent or publicly lend the original or a copy of an audiovisual work, phonorecord, computer program, database, or musical work;
- Publicly distribute by sale or rental, a copy that has not already been subject to an authorized sale or transfer of ownership;
- Import into the country copies of the work;
- Reproduce the work;
- Publicly perform the work;
- Publicly display the work;
- Broadcast the work; and
- Communicate the work by other means to the public.

MORAL RIGHTS

Authors also enjoy certain moral rights, which are perpetual, inalienable, undistrainable, and imprescriptible. Although moral rights cannot be sold or transferred during the author's lifetime, they are passed to the heirs on the author's death.

There are three specific moral rights. First, the author has the exclusive right to decide the manner and timing of the work's disclosure, as well as the principle to govern this disclosure. Second, the author has the right to be publicly attributed with the work and title. Third, the author has the right to oppose all forms of distortion, mutilation or modification of the content of the work, that would be prejudicial to their honor or reputation.

PERFORMANCE RIGHTS

The Law contains special provisions for a performer's rights. A performer is defined as any artist, dancer, musician, singer, or other person who gives a performance. Each performer has the exclusive right to authorize or undertake the following acts:

- Broadcasting and communicating the performance to the public, with certain exceptions;
- Fixing in phonogram their unfixed performance;
- Reproducing a fixation in phonogram of their performance;
- Distributing to the public by sale or transfer of ownership, of an original fixation in phonogram that has not been the subject of an authorized distribution; and
- Renting or public lending of an original fixation in phonogram of the performance, or copies thereof.

LIMITATIONS TO RIGHTS

Notwithstanding the authors' exclusive moral and economic rights, the following acts are specifically permitted:

- Importing a copy of a work by a natural person, for their personal use;
- Privately reproducing a work in a single copy, by a natural person for their own personal purposes, with certain exceptions;
- Freely and privately representing a work to a close circle of people, such as family or friends;
- Arranging to preserve in a library the copy of a work for conservation or research;
- Using a work for educational purposes, but not for financial gain;
- Translating works from Khmer into ethnic minority languages, and vice versa;
- Using analyses and short quotations justified by the critical, polemical, pedagogical, scientific or informative nature of that work, so long as the source and author are properly attributed;
- Broadcasting of press commentary, so long as the source and author are properly attributed;
- Disseminating speeches and addresses to the public, either entirely or in part, through press release or television broadcast;
- Adapting of comic style or caricature based on an original work, so long as the source and author are properly attributed;
- Reproducing graphic or plastic works situated in a public place, when this reproduction doesn't constitute the principle subject for reproduction, so long as the source and author are properly attributed;
- Citing a legitimately public work in another work, so long as the source and author are properly attributed, and no more than is necessary;
- Temporarily reproducing a work, in the course of authorized use of the work.

COPYRIGHT DURATION

Copyright protection begins the moment the work is created. Moral rights last forever; they extend beyond the life of author and are passed to their heirs. The term of the economic rights depends on the type of authorship:

- Sole author: life of the author plus 50 years after their death;
- Collaborative work (multiple authors): life of the last surviving author plus 50 years after their death;
- Published anonymous, pseudonymous, collective, audiovisual, and posthumous works, published within 50 years of their creation: 75 years from the end of the calendar of the year of publication;
- Anonymous, pseudonymous, collective, audiovisual, and posthumous works which have not been published within 50 years of their creation: 100 years from the end of the calendar year of its creation.

TRANSFER AND EXPLOITATION OF ECONOMIC RIGHTS

Each of the individual economic rights is freely transferable. The transfer of one of these rights, such as the right to make a translation, does not imply the transfer of any of the other rights, such as the right to adapt a work for a film. The parties to an assignment or license are free to attach conditions of exploitation to the transfer.

All contracts for the exploitation of economic rights must be in writing. They must separately specify each domain of exploitation of those transferred rights, properly limited in place, objective and duration. Where an individual author contributes their separate work to a collective work, they retain the right to exploit their own contribution, unless otherwise agreed, provided that the author's exploitation does not damage the collective work. A co-author must have the consent of all co-authors to exploit a work, disagreements must be referred to a court.

DEPOSIT AND REGISTRATION

Although every work is automatically protected, authors or their rights-holders may deposit their works at the Ministry of Culture and Fine Arts. The registration requires a record of the author's real name, date of the first publication of work, date of creation of work, as well as the record of the author's right. The Ministry will issue a Certificate of Registration upon proper registration. The Law specifies no particular benefits to registration, and it is purely voluntary.