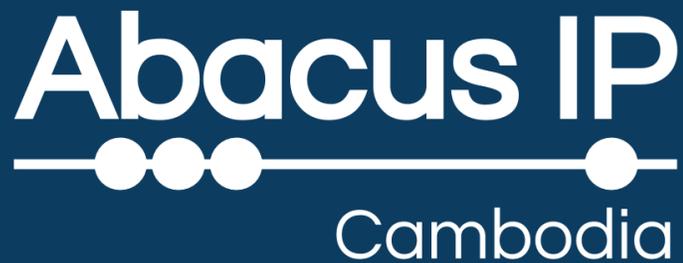


Copyright Law in Cambodia



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info@abacus-ip.com
+855 (0)12 215 129
www.abacus-ip.com

436 Plov Lum, Chamkar Orvleuk,
Sangkat Kakab, Khan Posenchey
Phnom Penh, Cambodia

Introduction

The Law on Copyright and Related Rights affords authors of original works a set of exclusive economic and moral rights. As stated in Article 1, by providing authors with a just and legitimate exploitation of their cultural products, the law contributes to the development of culture. The law was enacted in 2003 as part of Cambodia's accession to the World Trade Organization. The voluntary deposit of copyrighted works is performed through the Ministry of Culture and Fine Arts.

Gaining Copyright Protection

Every work is automatically protected, though authors and right-holders may, but are not required to, deposit their works at the Ministry of Culture and Fine Arts.¹ Whether or not it is publicly available or disclosed, a work is considered to be created simply when the author's idea is realized, even if incomplete.² Works must be "original", meaning they are the true intellectual creation of their author.³

The deposit at the Ministry of Culture and Fine Arts requires the author's real name, date of first publication, date of creation of the work, and a record of the author's right.⁴ Upon submission of this information and payment of a registration fee, the Registrar will issue a Certificate of Registration.⁵

While Article 3 sets forth nationality, residence and publishing requirements for protection, it also states that works are protect for which Cambodia has an obligation to protect under international treaty.⁶ Under several treaties to which Cambodia is a member, works created and published around the world are generally protected, with few exceptions.

Types of Copyrightable Works

A "work" is defined as a product in which thoughts or sentiments are expressed in a creative way, and can be literary, scientific, artistic or musical.⁷ The law lists thirteen broad types of copyrightable works:⁸

- All kinds of reading books or other literary, artistic, scientific, and educational documents
- Lectures, speeches, sermons, oral or written pleadings and other works of the same characteristics
- Dramatic works or musical dramas

¹ Copyright Law, Article 38

² Copyright Law, Article 5

³ Copyright Law, Article 4

⁴ Copyright Law, Article 39

⁵ Copyright Law, Article 40

⁶ Copyright Law, Article 3

⁷ Copyright Law, Article 2

⁸ Copyright Law, Article 7

- 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 works pertaining to geography, topography, or other sciences
- Computer program and the design encyclopedia documentation relevant to those programs
- Products of collage work in handicraft, hand-made textile products or other clothing fashions.

Specifically excluded from protection are:⁹

- Constitution, Law, Royal Decree, Sub-Decree and other regulations, and their translations
- Proclamations (Prakas), decision, certificate, other instructed circulars issued by state organizations, and their translations
- Court decisions or other court warrants, and their translations
- Idea, formality, method of operation, concept, principle, discovery or mere data, even if expressed, described, explained or embodied in any work.

Authorship

It is presumed that the author is the natural person or persons in whose name the work is created and disclosed.¹⁰ Upon creation, the author is the first holder of the moral and economic rights.¹¹ If the author is an employee and created the work as part of their job, unless stated otherwise in their employment contract, the economic rights are considered automatically transferred to the employer.¹² The employee is still considered the original author, and retains the moral rights to the work.

When two or more persons jointly create a work, they are deemed co-authors of a work of collaboration.¹³ Unanimous and written consent of all co-authors is required to exercise their rights.¹⁴ So for example, if a collaboration is to be licensed, all co-authors must sign the license agreement. In case of disagreement, they can petition the court for resolution.¹⁵ For audio-visual works (ex. films), it is presumed that the following are co-authors:¹⁶

- director
- author of scenario
- author of adaptation
- author of the spoken text
- author of the musical compositions, with or without words, specially created for the sake of the work
- author of the graphic arts for animated works.

⁹ Copyright Law, Article 10

¹⁰ Copyright Law, Article 11

¹¹ Copyright Law, Article 16

¹² Id.

¹³ Copyright Law, Article 12

¹⁴ Id.

¹⁵ Id.

¹⁶ Copyright Law, Article 15

Rights of Authors

Authors rights are divided into two categories - moral rights and economic rights - which are enforceable against all persons.¹⁷ Moral rights are as follows:¹⁸

- exclusive right to decide the manner and timing of disclosure of the work, as well as the principle to govern this disclosure
- for the purpose of relation with the public, the right in respect of his name, title, and work
- right to oppose all forms of distortion, mutilation or modification of the work, which would be prejudicial to their honor or reputation.

These three moral rights are perpetual, inalienable, undistrainable and imprescriptible - meaning they last forever, cannot be sold or otherwise transferred, and cannot be seized or otherwise taken away. Moral rights are inherited by an author's heirs upon their death.

Economic rights are the exclusive rights to exploit the work, through authorization of reproduction, communication to the public, and creation of derivative works, specifically:¹⁹

- translation into a foreign language
- adaptation and simplification or undertake any modifications
- rental or public lending of the original or a copy of an audio-visual work, or a work embodied in a phonogram, computer program, database or musical work in the form of musical notation
- 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
- importation into Cambodia
- reproduction
- public performance
- public display
- broadcasting
- other means of communication to the public

Limitations on the Rights of Authors

Importation and copying of copyrighted works, with certain exceptions, is permitted for personal use.²⁰ Further limitations allow for:²¹

- free and private representations made exclusively to a close circle of people such as family and friends
- arrangement to preserve in a library the copy of a work for the purpose of conservation or research
- use of work for education, so long as not for financial gain
- translation of works from Khmer into ethnic minority languages, and vice versa
- analysis and short quotations justified by the critical, polemical, pedagogical, scientific or informative nature of the work, so long as properly attributed
- broadcasting of press commentary, so long as properly attributed

¹⁷ Copyright Law, Article 18

¹⁸ Copyright Law, Article 20

¹⁹ Copyright Law, Article 21

²⁰ Copyright Law, Article 23 and 24

²¹ Copyright Law, Articles 25 and 29

- dissemination of speeches addressed to the public either entirely or in part, through press release or TV broadcasting, so long as properly attributed
- adaptation of comic, style or caricature, so long as properly attributed
- reproduction of graphic or plastic work which is situated in a public place, when this reproduction doesn't constitute the principle subject for subsequent reproduction, so long as properly attributed.

Works based on the true story of life of any person or family require their authorization, or that of their heirs.²²

Duration of Economic Rights

Economic rights begin at the date of creation, and end fifty years after the death of the author.²³ For collaborations, the economic rights expire fifty years after the death of the last surviving author.²⁴ When the work is published anonymously or under a different name, the period of protection is seventy-five years after publication.²⁵

Transfer and Exploitation of Economic Rights

Any contract for the exploitation or transfer of economic rights must be made in writing, otherwise is null and void.²⁶ Any of the economic rights can be transferred individually or collectively, the transfer of one right does not imply or require the transfer of others.²⁷ Economic rights can be transferred to the author's heir or any third party by the author's will.²⁸ When no heir or will exists, the Ministry of Culture and Fine Arts shall be responsible for governing and administering the economic rights.²⁹

Disputes and Penalties

Any copyright holder, who suffers or risks suffering a violation of their rights, may petition the court:³⁰

- to prohibit the violation of their rights, if it will be imminent
- to desist from violating their rights, if they are ongoing.

In addition, the plaintiff is entitled to compensation of damages, to redress of moral injury, to the return of disputed equipment and materials, and return of any benefits deriving from the infringement.³¹

In addition to civil liability, the law also imposes criminal penalties for certain copyright infringement activity. Infringement of production and reproduction rights are punishable by six to twelve months imprisonment and/or 5 - 25 million Riel (US\$1,250 - 6,250) fine (doubled for repeat offenses).³²

²² Copyright Law, Article 26

²³ Copyright Law, Article 30

²⁴ Id.

²⁵ Copyright Law, Article 31

²⁶ Copyright Law, Article 34

²⁷ Copyright Law, Article 32

²⁸ Copyright Law, Article 33

²⁹ Id.

³⁰ Copyright Law, Article 57

³¹ Copyright Law, Article 57

³² Copyright Law, Article 64