

# Guide to Copyright Law in Cambodia

*Abacus IP, 2018*

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## **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 of the law, by providing authors with a just and legitimate exploitation of their cultural products, the law aims to contribute to the development of culture. The law was enacted in 2003 as part of Cambodia's accession to the World Trade Organization. Cambodia is a member of the Trade-Related Aspects of Intellectual Property Rights (TRIPS) but is not a member of the Berne Convention for the Protection of Literary and Artistic Works. Most recently, on July 5, 2016, the Ministry of Culture and Fine Arts issued a Prakas (declaration) on the Collective Management Organization (CMO). CMOs are formed by copyright owners to manage their rights in common, by administering licenses, collecting royalties, and enforcing rights on their behalf.

## **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.<sup>1</sup> The law lists thirteen broad types of copyrightable works:<sup>2</sup>

- All kinds of reading books or other literary, artistic, scientific, and educational documents;
- Lectures, speeches, sermons, oral or written pleadings and other works with the same characteristics;
- Dramatic works or musical dramas;
- Choreographic works, either modern or adapted from traditional works or folklore;
- Circus performances and pantomimes;
- Musical compositions, with or without words;
- Audiovisual 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;

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<sup>1</sup> Law on Copyright and Related Rights, Art. 2

<sup>2</sup> Law on Copyright and Related Rights, Art. 7

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- 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:<sup>3</sup>

- 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.

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<sup>3</sup> Law on Copyright and Related Rights, Art. 10

## **Authorship**

It is presumed that the author is the natural person or persons in whose name the work is created and disclosed.<sup>4</sup> Upon creation, the author is the first holder of the moral and economic rights.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> Unanimous and written consent of all co-authors is required to exercise their rights.<sup>8</sup> 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.<sup>9</sup> For audiovisual works (ex. films), it is presumed that the following are co-authors:<sup>10</sup>

- Director;
- Author of scenario;
- Author of adaptation;
- Author of the spoken text;
- Author of the musical compositions, with or without

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<sup>4</sup> Law on Copyright and Related Rights, Art. 11

<sup>5</sup> Law on Copyright and Related Rights, Art. 16

<sup>6</sup> Id.

<sup>7</sup> Law on Copyright and Related Rights, Art. 12

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Law on Copyright and Related Rights, Art. 15

words, specially created for the sake of the work;

- Author of the graphic arts for animated works.

## **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.<sup>11</sup> 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.<sup>12</sup> Works must be "original", meaning they are the true intellectual creation of their author.<sup>13</sup>

Works of authors will be automatically protected where:<sup>14</sup>

- The authors are nationals of, or have their habitual residence in Cambodia, including legal entities established under Cambodian law and having headquarters located in the territory of Cambodia;
- Works first published in the Kingdom of Cambodia, including works first published abroad that were then published in Cambodia within 30 days of their first communication to the public;
- Audiovisual works, the producer of which has his

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<sup>11</sup> Law on Copyright and Related Rights, Art. 38

<sup>12</sup> Law on Copyright and Related Rights, Art. 5

<sup>13</sup> Law on Copyright and Related Rights, Art. 4

<sup>14</sup> Law on Copyright and Related Rights, Art. 3

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headquarters or habitual residence in Cambodia;

- Works of architecture erected in Cambodia and other artistic works incorporated in a building or other structure located in Cambodia;
- Works for which Cambodia has obligation to grant protection under international treaties.

The protection required under international treaties merits particular attention, as many foreign copyright holders mistakenly believe their works are automatically protected in Cambodia. This is not the case, due to an important exception. While Cambodia is a member of the World Trade Organization and thus bound by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which requires, through the Berne Convention, to automatically extend copyright protection to foreign works, Cambodia is exempted from this obligation as a least developed country until July 1, 2021.<sup>15</sup> Until this exemption expires, foreign works will not be protected unless they satisfy the requirements specified above regarding a connection to Cambodia.

The voluntary 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.<sup>16</sup> The author's information will be incorporated into the application form. A notarized or certified power of attorney will be required if the application is filed through a local representative. Upon submission of the application form, the POA if local representative is appointed, and payment of the registration fee

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<sup>15</sup> See WTO Extension of the Transition Period, Art. 66.1

<sup>16</sup> Law on Copyright and Related Rights, Art. 39

of USD 15, the Registrar will issue a certificate of registration.<sup>17</sup> Under current practice, it usually takes around 14 days to obtain the certificate. The primary benefit of the registration is to serve as an evidence should a dispute arise.

## **Rights of Authors**

Authors' rights are divided into two categories - moral rights and economic rights - which are enforceable against all persons.<sup>18</sup> Moral rights are as follows:<sup>19</sup>

- 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.<sup>20</sup>

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<sup>17</sup> Law on Copyright and Related Rights, Art. 40

<sup>18</sup> Law on Copyright and Related Rights, Art. 18

<sup>19</sup> Law on Copyright and Related Rights, Art. 20

<sup>20</sup> Law on Copyright and Related Rights, Art. 19

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Economic rights are the exclusive rights to exploit the work, through authorization of reproduction, communication to the public, and creation of derivative works, specifically:<sup>21</sup>

- Translation into a foreign language;
- Adaptation and simplification or undertaking any modifications;
- Rental or public lending of the original or a copy of an audiovisual 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.

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<sup>21</sup> Law on Copyright and Related Rights, Art. 21

## **Limitations on the Rights of Authors**

Importation and copying of copyrighted works, with certain exceptions, is permitted for personal use.<sup>22</sup> Further limitations allow for:<sup>23</sup>

- 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;
- Dissemination of speeches addressed to the public either entirely or in part, through press release or TV broadcasting, so long as properly attributed;

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<sup>22</sup> Law on Copyright and Related Rights, Arts. 23 and 24

<sup>23</sup> Law on Copyright and Related Rights, Arts. 25 and 29

- 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 requires their authorization, or that of their heirs.<sup>24</sup>

## **Duration of Economic Rights**

Economic rights begin at the date of creation, and end fifty years after the death of the author.<sup>25</sup> For collaborations, the economic rights expire fifty years after the death of the last surviving author.<sup>26</sup> When the work is published anonymously or under a different name, the period of protection is seventy-five years after publication.<sup>27</sup> Collective, audiovisual and posthumous works are protected for seventy-five years from the end of the calendar year in which they were made accessible to the public.<sup>28</sup> This is limited to 100 years if the work has not been made accessible to the public within fifty years of its creation.<sup>29</sup>

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<sup>24</sup> Law on Copyright and Related Rights, Art. 26

<sup>25</sup> Law on Copyright and Related Rights, Art. 30

<sup>26</sup> Id.

<sup>27</sup> Law on Copyright and Related Rights, Art. 31

<sup>28</sup> Id.

<sup>29</sup> Id.

## **Transfer and Exploitation of Economic Rights**

Any contract for the exploitation or transfer of economic rights must be made in writing, and otherwise is null and void.<sup>30</sup> 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.<sup>31</sup> Economic rights can be transferred to the author's heir or any third party by the author's will.<sup>32</sup> When no heir or will exists, the Ministry of Culture and Fine Arts shall be responsible for governing and administering the economic rights.<sup>33</sup>

## **Performance Rights**

A performance is defined as 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.<sup>34</sup> Crucially, the rights reside in the *performers*, rather than others involved in the production, such as directors, authors, composers or choreographers.<sup>35</sup> The performer has the exclusive right to undertake and authorize the following:<sup>36</sup>

- Broadcasting and communicating the performance to the public, with certain exceptions;
- Recording the performance, and reproducing thereof;

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<sup>30</sup> Law on Copyright and Related Rights, Art. 34

<sup>31</sup> Law on Copyright and Related Rights, Art. 32

<sup>32</sup> Law on Copyright and Related Rights, Art. 33

<sup>33</sup> Id.

<sup>34</sup> Law on Copyright and Related Rights, Art. 2 (c)

<sup>35</sup> Law on Copyright and Related Rights, Art. 2 (d)

<sup>36</sup> Law on Copyright and Related Rights, Art. 41

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- Distributing to the public by sale or transfer of ownership, of an original recording that has not been distributed with the performer's authorization;
- Renting or lending to the public of a recording;
- Authorizing broadcasting through any broadcasting organization (radio and television), to the exclusion of other organizations;
- Authorizing broadcasting through any broadcasting organization, without the right of recording.

Independent of the aforementioned economic rights, and even after transferring them, the performers retain the right to require their written name to be displayed on the live performance or in the recording.<sup>37</sup> The performers further retain the moral right to prevent all deformation, mutilation or other modifications of the performance that prejudice their reputation.<sup>38</sup> However, performers cannot forbid reproduction and communication to the public of their performance if it is merely accessory to an event constituting the principal subject of a scene, work or audiovisual piece.<sup>39</sup>

The performer's exclusive economic and moral rights are subject to the same limitations on author's rights listed above, as well as limitations for:<sup>40</sup>

- Reporting of short fragments for news events;

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<sup>37</sup> Law on Copyright and Related Rights, Art. 42

<sup>38</sup> Id.

<sup>39</sup> Law on Copyright and Related Rights, Art. 43

<sup>40</sup> Law on Copyright and Related Rights, Art. 50

- Reproduction merely for scientific research purpose;
- Reproduction for educational purpose, except if the work was produced specifically for educational purposes;
- Quotation of short citations, provided it is reasonable and justified;
- Recording of picture and sound for simultaneous broadcasting of a ceremony, meeting or other national event.

The same provisions regarding transfer and deposit of an author's rights, described above, apply to performance rights.<sup>41</sup> Performance rights last fifty years following the calendar year in which the performance was fixed in phonogram, or if it was not, then from the end of the calendar year in which the performance took place.<sup>42</sup>

## **Phonogram Producer Rights**

A “phonogram” is defined in the law as 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.<sup>43</sup> In other words, a phonogram is a sound recording, made in any format (CD, cassette, MP3, etc.) but not the sound of a film, television show or computer game (these would be audiovisual works). All

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<sup>41</sup> Law on Copyright and Related Rights, Arts. 54 and 55

<sup>42</sup> Law on Copyright and Related Rights, Art. 53 (1)

<sup>43</sup> Law on Copyright and Related Rights, Art. 2 (j)

reproductions, sales, exchanges, leases and communication to the public require the producer's authorization.<sup>44</sup> The producer further enjoys the economic right to distribute, by sale or transfer of ownership, the original and copies of the phonogram, unless they have already been subjected to authorized distribution.<sup>45</sup> This embodies the concept of the first sale doctrine, meaning the exclusive rights in a particular recording expire on the first authorized sale. The producer also has the right to import copies for communication to the public.<sup>46</sup>

The limitations concerning performance rights, described above, also apply to phonogram producers.<sup>47</sup> Likewise, the same provisions regarding transfer and deposit of an author's rights, described above, apply to phonogram producer rights.<sup>48</sup>

Phonogram producer rights last fifty years following the calendar year in which the work was published, or if it was not, then the year of fixation of the phonogram.<sup>49</sup>

## **Audiovisual Producer Rights**

An audiovisual work is defined as one consisting of a series of inter-linked pictures giving the impression of movement, with or without sound.<sup>50</sup> The producer is the natural or legal person who has the initiative and responsibility in recording the work.<sup>51</sup> All reproduction of the recording for purpose of communicating to

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<sup>44</sup> Law on Copyright and Related Rights, Art. 45

<sup>45</sup> Id.

<sup>46</sup> Id.

<sup>47</sup> Law on Copyright and Related Rights, Art. 50

<sup>48</sup> Law on Copyright and Related Rights, Arts. 54 and 55

<sup>49</sup> Law on Copyright and Related Rights, Art. 53 (2)

<sup>50</sup> Law on Copyright and Related Rights, Art. 2 (g)

<sup>51</sup> Law on Copyright and Related Rights, Art. 46

the public, sale, exchange and lease requires the producer's authorization.<sup>52</sup> The transfer of audiovisual rights must be made together with the author's rights and performer's rights incorporated into the production.<sup>53</sup>

The limitations concerning performance rights, described above, also apply to audiovisual producers.<sup>54</sup>

Audiovisual works are protected for seventy-five years from the end of the calendar year in which they were made accessible to the public.<sup>55</sup> This is limited to 100 years if the work has not been made accessible to the public within fifty years of its creation.<sup>56</sup>

## **Broadcasting Organization Rights**

Broadcasting organizations, consisting of radio, television and cable television, have the exclusive right to undertake or authorize the fixation of its broadcast, communication to the public, re-broadcasting, reproduction, distribution and first lease of the copy of their broadcast.<sup>57</sup> Reproduction of a broadcast for sale, lease, exchange, broadcasting or communicating to the public requires the organization's authorization.<sup>58</sup>

The limitations concerning performance rights, described above, also apply to broadcasting organizations.<sup>59</sup> Likewise, the same

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<sup>52</sup> Id.

<sup>53</sup> Id.

<sup>54</sup> Law on Copyright and Related Rights, Art. 50

<sup>55</sup> Law on Copyright and Related Rights, Art. 31

<sup>56</sup> Id.

<sup>57</sup> Law on Copyright and Related Rights, Art. 47

<sup>58</sup> Law on Copyright and Related Rights, Art. 48

<sup>59</sup> Law on Copyright and Related Rights, Art. 50

provisions regarding transfer and deposit of an author's rights, described above, apply to broadcasting organization rights.<sup>60</sup>

The duration of protection of the broadcasting program is fifty years following the end of the calendar year in which the program was broadcast.<sup>61</sup>

## **Collective Management Rights**

Collective management organizations (CMO) can be established by authors, performers, phonogram and audiovisual producers to protect and manage their economic rights.<sup>62</sup> The legal framework is provided for under Chapter IV of the Law on Copyright and Related Rights as well as the Prakas (Declaration) on Collective Management Organization dated July 5, 2016. The CMO is formed to administer the licensing of rights, collection of royalties and enforcement measures of its member right holders.

Only authors and owners of related rights (performances, phonograms, audiovisual works, and broadcasts) who are of Cambodian nationality may form a CMO.<sup>63</sup> The application, to be made to the Department of Copyright and Related Rights of the Ministry of Culture and Fine Arts, must include the statute and internal rules governing the organization.<sup>64</sup> The registration is valid for a period of five years and the registration can be renewed for subsequent two-year terms indefinitely.<sup>65</sup>

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<sup>60</sup> Law on Copyright and Related Rights, Arts. 54 & 55

<sup>61</sup> Law on Copyright and Related Rights, Art. 53 (3)

<sup>62</sup> Law on Copyright and Related Rights, Art. 56

<sup>63</sup> Prakas on Collective Management Organization, Art. 4

<sup>64</sup> Prakas on Collective Management Organization, Arts. 6 and 7

<sup>65</sup> Prakas on Collective Management Organization, Art. 8

Natural and legal person interested in exploiting works controlled by the CMO may seek an authorization and pay remuneration.<sup>66</sup> The authorization must be in a contract form and must determine the kind of works to be exploited, the number of works, the place to be used and time period.<sup>67</sup> Finally, the Prakas enables the Ministry of Culture and Fine Arts to settle disputes between CMOs and licensees, as well as between members of the CMO.<sup>68</sup>

## **Disputes and Penalties**

Any copyright holder who suffers or risks suffering a violation of their rights, may petition the court to prohibit the violation of their rights, if it will be imminent, or to desist from violating their rights, if they are ongoing.<sup>69</sup>

In addition, the plaintiff is entitled to compensation for damages, to redress of moral injury, to the return of disputed equipment and materials, and return of any benefits deriving from the infringement.<sup>70</sup>

Furthermore, the law also imposes criminal penalties for certain copyright infringement activity. Infringement of production and reproduction rights is punishable by six to twelve months imprisonment and/or 5 - 25 million Riel (Approx. USD 1,250 - 6,250) fine (doubled for repeat offenses).<sup>71</sup>

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<sup>66</sup> Prakas on Collective Management Organization, Art. 11

<sup>67</sup> Id.

<sup>68</sup> Prakas on Collective Management Organization, Art. 12

<sup>69</sup> Law on Copyright and Related Rights, Art. 57

<sup>70</sup> Id.

<sup>71</sup> Law on Copyright and Related Rights, Art. 64

## **Quick Reference: Copyright**

### **Applicable Laws & Regulations (selected)**

- Law on Copyright and Related Rights
- Prakas on Collective Management Organization

### **Filing Requirements**

- Full name of Author(s)
- Date of first publication of work
- Date of creation of work
- Record of author's right
- Notarized power of attorney, if applicable

## **Duration & Renewal Requirements**

- Most works: Life of the author + 50 years
- Anonymous, pseudonymous works, collective, audiovisual & posthumous works: 75 years from publication
- Performance works: 50 years from fixation, or if not fixed, then from performance
- Phonograms: 50 years from publication, or if not published, from fixation
- Broadcasts: 50 years from broadcasting

## **Official Fees**

- Application Filing: USD 15

## **Pheng Thea**

Pheng Thea is the co-founder and principal of Abacus IP, a full-service intellectual property agency in the Kingdom of Cambodia. A seasoned IP professional, Mr. Pheng is licensed by the Cambodian Ministry of Commerce's Department of Intellectual Property and certified by the World Intellectual Property Organization.

Prior to founding Abacus IP, Mr. Pheng lead the IP prosecution practice at a leading Cambodian law firm. His practice involved the registration and maintenance of hundreds of trademarks, patents, industrial designs and other forms of IP on behalf of innovators and businesses from around the globe.

Mr. Pheng is a graduate of the faculty of law of Pannasastra University of Cambodia. In addition, he holds a Certification in Intellectual Property Specialization from the World Intellectual Property Organization and the University of South Africa.

**David Haskel**

David Haskel is a co-founder and director of Abacus IP, a full-service intellectual property agency in the Kingdom of Cambodia. A member of the State Bar of California, David maintains a broad practice across all areas of intellectual property in Cambodia

Prior to founding Abacus IP, David served as managing partner of a leading Cambodia law firm in Phnom Penh, representing clients in a wide range of commercial and IP matters. He has further legal experience with law firms in Silicon Valley, San Francisco and Berlin. Before entering the legal profession, David worked as a research associate with a non-partisan think tank in San Francisco.

David holds a Juris Doctor from the University of California, Berkeley, with a specialization in law and technology, as well as a Bachelor of Arts in political economy from the same institution. Having also studied at Sciences Po in Paris and Tsinghua University in Beijing, he speaks English, French, German and Mandarin.