

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2007 SPECIAL 301 REPORT

SPECIAL MENTION

CAMBODIA

Cambodia is specially mentioned again this year, since it is a destination for pirate imports from neighboring and nearby countries/territories, and since there may be optical disc production in the country. The Cambodian government denies the existence of optical disc or cassette production,¹ but admits that a “group of small traders formed by certain retail shops in the markets” trade in pirate materials. Since Cambodia has virtually no legitimate demand, the existence of an optical disc plant that could produce millions of pirate optical discs is of great concern. The motion picture industry reports virtually 100% piracy in the home video market, and book publishers continue to report pirate product imports from Vietnam.² Industry also believes that pirated optical discs, originating in China, are being transshipped via Cambodia, along with other contraband, into Thailand.

The government of Cambodia should be encouraged to devote resources at the border to stop pirate shipments, and should inspect any locations or plants producing any carriers or optical discs with copyright content, and should shut down any found to be producing illegally. The government reported in March 2006 that it is engaging in seminars to explain the importance of copyright and raise “awareness,”³ and that its Committee to Suppress the Infringement of Copyright of Motion Pictures and Videos has carried out raids (noting the most recent raid in 2005, in which 20,000 pirate CDs and VCDs and 10 CD-R burners were seized). The government indicates that six defendants were brought to court on April 7, 2005. However, there is no update provided on this case.⁴

Cambodia and the United States entered into the “U.S.-Cambodia Trade Relations & Intellectual Property Rights Agreement” in 1996. This Agreement obligated Cambodia “[t]o provide adequate and effective protection and enforcement of intellectual property rights.” The Agreement also provides a point of attachment for U.S. works (sound recordings are defined as works), and includes strong substantive as well as enforcement obligations, as well as the requirement that Cambodia join or at least give effect to major copyright treaties (the Berne Convention and Geneva [Phonograms] Convention), and to make “best efforts to join” those treaties by December 31, 1998.⁵ Cambodia has not joined these treaties, but apparently in 2005, was making preparations to join the WIPO “Internet” Treaties, the WCT and WPPT, as well as the Berne Convention. Cambodia joined the WTO on October 13, 2004. On July 14,

¹ Mr. Long Ponnasirivath, Deputy Director General of Administration in Charge of the Copyright Office, Ministry of Culture and Fine Arts, reported at an ASEAN-3 Seminar in March 2006 that “presently Cambodia doesn’t have either manufacturing of optical disc/cassettes or big volume circulation and distribution of such products.” See Long Ponnasirivath, Country Report on the Copyright Policy for Promotion of Cultural Industries in Cambodia, The ASEAN-3 Copyright Seminar, “APEC Anti-Counterfeiting and Piracy Initiative” and “New Trends in Copyright Related Cultural Industries,” March 1-3, 2006, Tokyo, Japan (on file with IIPA).

² U.S. book publishers reported losses totaling \$4.5 million due to copyright piracy in Cambodia in 2005.

³ See *supra* note 1. Deputy Director General Ponnasirivath indicates that 14 of 24 provinces in Cambodia have received training.

⁴ *Id.*

⁵ At that time, Cambodia was also already a member of the Universal Copyright Convention (U.C.C.).

2006, Deputy U.S. Trade Representative Karan Bhatia and Cambodian Minister of Commerce Cham Prasidh signed a Trade and Investment Framework Agreement (TIFA) aimed at enhancing trade and investment between the two countries and providing a forum to address bilateral trade issues. It is hoped that copyright piracy and protection issues will play an important role in the periodic discussion groups convened to further the TIFA.⁶

In order to join the WTO, and implementing many key obligations of the 1996 Agreement, Cambodia passed the Law on Copyrights and Related Rights (promulgated by His Majesty the King on March 5, 2003).⁷ The 2003 Law went far in implementing the requirements of the WCT and WPPT. For example, it provides protection for temporary copies, a WIPO treaties-compatible definition of “communication to the public” including an interactive “making available” right, and provisions prohibiting the trafficking in circumvention devices which partially, but not fully, implement the WCT and WPPT requirements. The enforcement provisions, while not perfect, are adequate to combat copyright piracy, including civil and criminal remedies and the confiscation and destruction of infringing equipment and materials.⁸ The gap in the legal structure is the absence of a regulation regarding optical disc plants, but the Law on Copyrights should be used to address illegal activities occurring in any locations or plants producing pirate materials. The Cambodian government should be encouraged to adopt comprehensive optical disc regulations and to have the appropriate regulations in place before pirate production becomes a significant problem.

⁶ See United States Trade Representative, *United States, Cambodia Sign Trade and Investment Framework Agreement*, July 14, 2006, at http://ustr.gov/Document_Library/Press_Releases/2006/July/United_States_Cambodia_Sign_Trade_Investment_Framework_Agreement.html (USTR's press release specifically indicates the two countries “will discuss such issues as intellectual property rights....”)

⁷ The law was adopted by the National Assembly on January 21, 2003 and ratified by the Senate on February 13, 2003. Deputy Director General Ponnasirivath reported at the March 2006 ASEAN+3 Seminar in Tokyo that a Sub-Decree to implement the 2003 Law as well as a Sub-Decree for the Governance of Collective Management Societies are being drafted by the Ministry of Culture and Fine Arts through support of “WIPO and other international organizations.” Other related regulations include the Sub-Decree No. 63 on the Protection and Enforcement of Motion Pictures and Videos; Proclamation (*Prakas*) on the Rights and Procedures Against Copying and Imitating Copyright Works; and Proclamation (*Prakas*) to Establish a Committee to Suppress the Infringement of Copyright of Motion Pictures and Videos.

⁸ It should also be pointed out that there are no border measure provisions in the copyright law, but that, according to Deputy Director General Ponnasirivath, the Customs Code contains specific IPR provisions.