

Protecting foreign works by copyright laws in Cambodia

On 27 June 2020, Cambodia passed the Law on the Adoption of the Kingdom of Cambodia to be a Party to the Berne Convention for the Protection of Literary and Artistic Works of 1886, and its Amendment of 1979 to approve Cambodia's accession to the Berne Convention. Cambodia became the 180th contracting party to the Berne Convention. The Berne Convention entered into force for Cambodia on March 9, 2022.

Implications:

- ✓ Creating legal corridor for protection of foreign works: Previously, under the Law on Copyright and Related Rights, works produced outside Cambodia were not protected, except those published in Cambodia within 30 days of the first communication to the public (for works of author), first fixed or published in Cambodia (for phonograms), or transmitted from transmitters located in Cambodia (for broadcasting organizations). Now, with Cambodia's accession to Berne Convention, works from another contracting state (foreign works) are afforded the same protection in Cambodia as domestic works, without the need for any formalities.
- ✓ Strengthening Cambodia's IP ecosystem through the modernization of IP institutions, the updating of IP legislation and regulations, and the development of the capacity of Cambodians to use the IP system effectively.
- ✓ Encouraging talented Cambodians to make creative works in order to promote and develop the creative industries.
- ✓ Respecting author's and owner's rights: Cambodian individuals and businesses that previously used such works without permission will now be required to obtain permission from the rights-holder or face legal consequences.

Principles of protecting works and the rights of the creators under the Berne Convention adopted to Cambodia:

With Cambodia's accession to Berne Convention, Cambodia is now obligated to adopt key measures for the protection of works and the rights of creators (authors, musicians, poets, painters, etc.) under the Berne Convention to safeguard not just Cambodian works, but also foreign works. The Berne Convention protects literary and artistic works through the application of **03 basic principles** and **minimum standards of protection provisions**.

(1) The 03 basic principles are the following:

(i) Works originating in one of the Contracting States (that is, works the author of which is a national of such a State or works first published in such a State) must be given the same protection in each of the other Contracting States as the latter grants to the works of its own nationals (principle of "national treatment")

(ii) Protection must not be conditional upon compliance with any formality (principle of "automatic" protection)

(iii) Protection is independent of the existence of protection in the country of origin of the work (principle of "independence" of protection). If, however, a Contracting State provides for a longer term of protection than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied once protection in the country of origin ceases.

(2) The **minimum standards of protection** relate to the works and rights to be protected, and to the duration of protection:

(a) As to works, protection must include "every production in the literary, scientific and artistic domain, whatever the mode or form of its expression" (Article 2(1) of the Convention).

(b) Subject to certain allowed reservations, limitations or exceptions, the following are among the rights that must be recognized as exclusive rights of authorization:

- the right to translate,
- the right to make adaptations and arrangements of the work,
- the right to perform in public dramatic, dramatico-musical and musical works,

- the right to recite literary works in public,
- the right to communicate to the public the performance of such works,
- the right to broadcast (with the possibility that a Contracting State may provide for a mere right to equitable remuneration instead of a right of authorization),
- the right to make reproductions in any manner or form (with the possibility that a Contracting State may permit, in certain special cases, reproduction without authorization, provided that the reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author; and the possibility that a Contracting State may provide, in the case of sound recordings of musical works, for a right to equitable remuneration),
- the right to use the work as a basis for an audiovisual work, and the right to reproduce, distribute, perform in public or communicate to the public that audiovisual work.

The Convention also provides for "moral rights", that is, the right to claim authorship of the work and the right to object to any mutilation, deformation or other modification of, or other derogatory action in relation to, the work that would be prejudicial to the author's honor or reputation.

(c) As to the duration of protection, the general rule is that protection must be granted until the expiration of the 50th year after the author's death. There are, however, exceptions to this general rule. In the case of anonymous or pseudonymous works, the term of protection expires 50 years after the work has been lawfully made available to the public, except if the pseudonym leaves no doubt as to the author's identity or if the author discloses his or her identity during that period; in the latter case, the general rule applies. In the case of audiovisual (cinematographic) works, the minimum term of protection is 50 years after the making available of the work to the public ("release") or – failing such an event – from the creation of the work. In the case of works of applied art and photographic works, the minimum term is 25 years from the creation of the work.

(3) The Berne Convention allows certain limitations and exceptions on economic rights, that is, cases in which protected works may be used without the authorization of the owner of the copyright, and without payment of compensation. These limitations are commonly referred to as "free uses" of protected works, and are set forth in Articles 9(2) (reproduction in certain special cases), 10 (quotations and use of works by way of illustration for teaching purposes), 10bis (reproduction of newspaper or similar articles and use of works for the purpose of reporting current events) and 11bis(3) (ephemeral recordings for broadcasting purposes).

(4) The Appendix to the Paris Act of the Convention also permits developing countries to implement non-voluntary licenses for translation and reproduction of works in certain cases, in connection with educational activities. In these cases, the described use is allowed without the authorization of the right holder, subject to the payment of remuneration to be fixed by the law.

The Berne Union has an Assembly and an Executive Committee. Every country that is a member of the Union and has adhered to at least the administrative and final provisions of the Stockholm Act is a member of the Assembly. The members of the Executive Committee are elected from among the members of the Union, except for Switzerland, which is a member ex officio.

The Berne Convention, concluded in 1886, was revised at Paris in 1896 and at Berlin in 1908, completed at Berne in 1914, revised at Rome in 1928, at Brussels in 1948, at Stockholm in 1967 and at Paris in 1971, and was amended in 1979.

The Convention is open to all States. Instruments of ratification or accession must be deposited with the Director General of WIPO.

Contact

KENFOX IP & Law Office

Building No. 6, Lane 12/93, Chinh Kinh Street, Nhan Chinh Ward, Thanh Xuan District, Hanoi, Vietnam

Tel: +84 24 3724 5656

Email: info@kenfoxlaw.com / kenfox@kenfoxlaw.com