

WIPO TRAINING COURSE on the Enforcement of Intellectual Property Rights

Wipo-UN ESCAP-UNEP Regional Workshop on the Environmentally Safe
Disposal of Intellectual Property-Infringing Goods

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Outline

- National Legal Framework
- An overview of the issues related to obstacle, hurdle and challenges.
- IPRs Supervision in Cambodia
- National Committee for IPRs
- Enforcement Authority and Agency;
- Issues related to IPR Violation
- Roles and Responsibilities of CCDG;
- Education and Public Awareness;
- Key challenges.

Why Do We Enforce IPR?

- Obligations under membership of regional & int'l agreements and conventions.
- Health and safety (Consumer protection)
- Attractive investment and technology transfer
- Inspire and protect creativeness and innovation
- Prevention of the Pervasiveness of Criminal Syndicate
- Economic Development

Borders and Trading Routes



- Population: ~14.5 Million
- Land Area: 185,035 KM²
- Capital City: Phnom Penh
- Border: Thailand, Viet Nam, Lao & Gulf of Thailand
- Main Port: SHV Int'l Seaport,
- Local Seaports
- PHN Int'l River Port
- Inland Ports & SEZs
- Airport: PHN & S'Reap Int'l Airports
- Int'l, bilateral Border Gates
- Illegal Border-Cross Gates

Cambodia Membership

- WIPO on July 25, 1995
- Paris Convention on September 22, 1998
- Member of ASEAN on April 30, 1999
- ASEAN Framework Agreement on IP Cooperation on April 30, 1999
- MoU on Trade Relations and IPRs Protection Agreement (CAM-USA) Oct 04, 1996
- MoU on IP Cooperation (CAM-THAILAND) on 05/03/1997
- Willing to be the member of Madrid Protocol, Bern Convention, and PCT

Legal Framework

Cambodian laws concerning IPR enforcement-1991

- Law on Marks, Trade Name and Acts of Unfair Competition, February 07, 2002;
- Law on Patent, Utility Model Certificate and Industrial Design, 22/01/2003;
- Law on Copy Rights and Related Rights, 05/03/03;
- Plant Variety Protection 2008
- Law on Geographical Indication, debating at the Council for Ministers
- Law on Trade Secret, Layout Designs and Competition policy.

Legal Framework (Cont'd)

Cambodian regulations concerning IPR enforcement

- Sub-Decree on the Implementation of Law concerning Marks, Trade Names and Acts of Unfair Competition, dated July 12, 2006
- Sub-Decree No. 63 on the establishment of Committee for Suppression of Copyright Infringement, dated September 04, 2000;
- Sub-Decree No. 142, dated September 18, 2008 on the establishment of the National Committee for IPR;

Legal Framework (Cont'd)

Related Laws and regulations:

- Civil Code and Civil Procedure dated July 17, 2007;
- Criminal Code and Criminal Procedure of November 27, 2009;
- Law on the Management of Quality and Safety of Products and Services dated June 21, 2000;
- Customs Law dated July 20, 2007;
- Law on the Management of Pharmaceutical Products dated May 09, 1996;
- Sub-decree on Solid Waste Management-April, 27,1999
- Law on Environmental Protection and Natural Resource Management 1996

IPRs Supervision in Cambodia

IPRs

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graph TD; IPRs[IPRs] --> DIPR[Department of Intellectual Property Rights<br/>Ministry of Commerce]; IPRs --> DIP[Department of Industrial Property<br/>Ministry of Industry, Mines and Energy]; IPRs --> DCR[Department of Copy Rights & Related Rights<br/>Ministry of Culture and Fine Arts]; DIP --> DIP_L["- The Law concerning Marks, Trade names, and Acts of Unfair Competition;<br/>- Geographical Indications<br/>- Trade Secret."]; DIP --> DIP_R["- The Law on Patents, Utility Models and Industrial Design<br/>- Integrated Circuit (Layout Designs)<br/>- Plant Variety Protection"]; DCR --> DCR_L["- Law on Copyrights and Related rights"];
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Department of Intellectual Property Rights
Ministry of Commerce

- The Law concerning Marks, Trade names, and Acts of Unfair Competition;
- Geographical Indications
- Trade Secret.

Department of Industrial Property
Ministry of Industry, Mines and Energy

- The Law on Patents, Utility Models and Industrial Design
- Integrated Circuit (Layout Designs)
- Plant Variety Protection

Department of Copy Rights & Related Rights
Ministry of Culture and Fine Arts

- Law on Copyrights and Related rights

National Committee for Intellectual Property Rights



The Components of National Committee for IPRs

- Minister of the Ministry of Commerce	Chairman
- Secretary of State of the Ministry of Industry, Mines and Energy	Deputy Chairman
- Secretary of State of the Ministry of Culture and Fine Arts	Deputy Chairman
- Representative of the Council of Ministers	Member
- Representative of the Ministry of Interior	Member
- Representative of the Ministry of Economics and Finance	Member
- Representative of the Ministry of Information	Member
- Representative of the Ministry of Post and Telecommunication	Member
- Representative of the Ministry of Health	Member
- Representative of the Ministry of Agriculture, Forestry and Fishery	Member
- Representative of the Ministry of Environment	Member
- Representative of the Ministry of Justice	Member
- Representative of the Ministry of Education, Youth and Sport	Member
- Representative of the Ministry of Tourism	Member

The duty of National Committee for IPRs

- Acting as the focal point in facilitating for the bilateral and multi-bilateral cooperation on Intellectual Property with other Countries and International organizations,
- Consolidating in running smooth works related to Intellectual Property between related ministries,
- Cooperating to promote preparation of draft laws and provisions related to Intellectual Property in implementing international agreements,
- Allocating technical support related to Intellectual Property from other countries and international organizations,
- Cooperating with related ministries to disseminate laws and provisions as well as the knowledge of Intellectual Property to the public, enforcement officers and students,
- Cooperating with competent authorities, court to prevent infringement of Intellectual Property Right,
- Cooperating with relevant ministries to research and study on the agreements and international treaties related to Intellectual Property to find out advantages and disadvantages before reporting for being membership to the government.
- Reporting the working achievements at least 01 time per year and in each stage to the Government.

Cambodia Government

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graph BT; CG[Cambodia Government] --> LB[Legislative Branch]; CG --> EB[Executive Branch]; CG --> JB[Judicial Branch]; NA([National Assembly]) --> S[Senate]; S --> CC[Constitutional Council]; CC --> LB; RM([Relevant Ministries]) --> CM[Council for Ministers]; CM --> EB; TLC([The Level of Courts]) --> SCM[Supreme Council for magistracy]; SCM --> JB;
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Legislative
Branch

Constitutional
Council

Senate

National
Assembly

Executive
Branch

Council for
Ministers

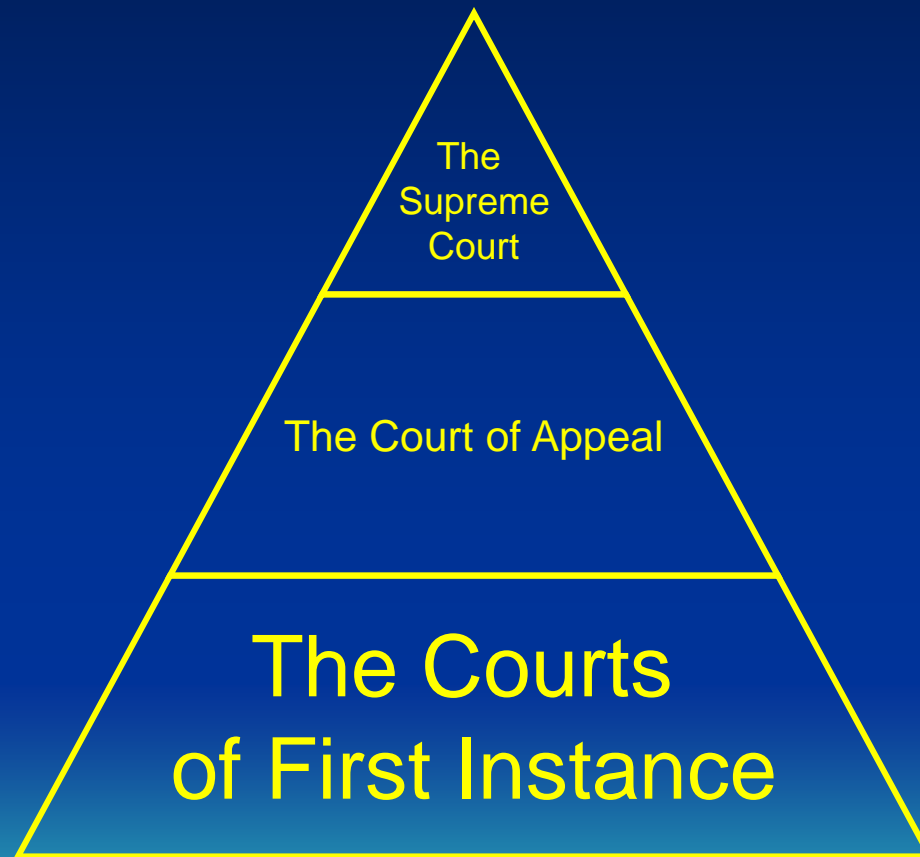
Relevant Ministries

Judicial
Branch

Supreme Council
for magistracy

The Level
of Courts

The Level of the Courts of Cambodia



Cambodia on the way to establish Commercial Court

Courts of First Instance



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graph TD; A[Courts of First Instance] --> B["- Municipal Court<br/>- Provincial Courts"]; A --> C[Military Court]; D((All cases in Civil or Criminal)) --> B; E((Military Cases)) --> C;
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The diagram is a flowchart titled "Courts of First Instance". It branches into two main categories: "Municipal Court" and "Provincial Courts" on the left, and "Military Court" on the right. Below the left category is an oval containing the text "All cases in Civil or Criminal". Below the right category is an oval containing the text "Military Cases". Arrows point from the ovals to their respective court categories.

- Municipal Court
- Provincial Courts

All cases in
Civil or Criminal

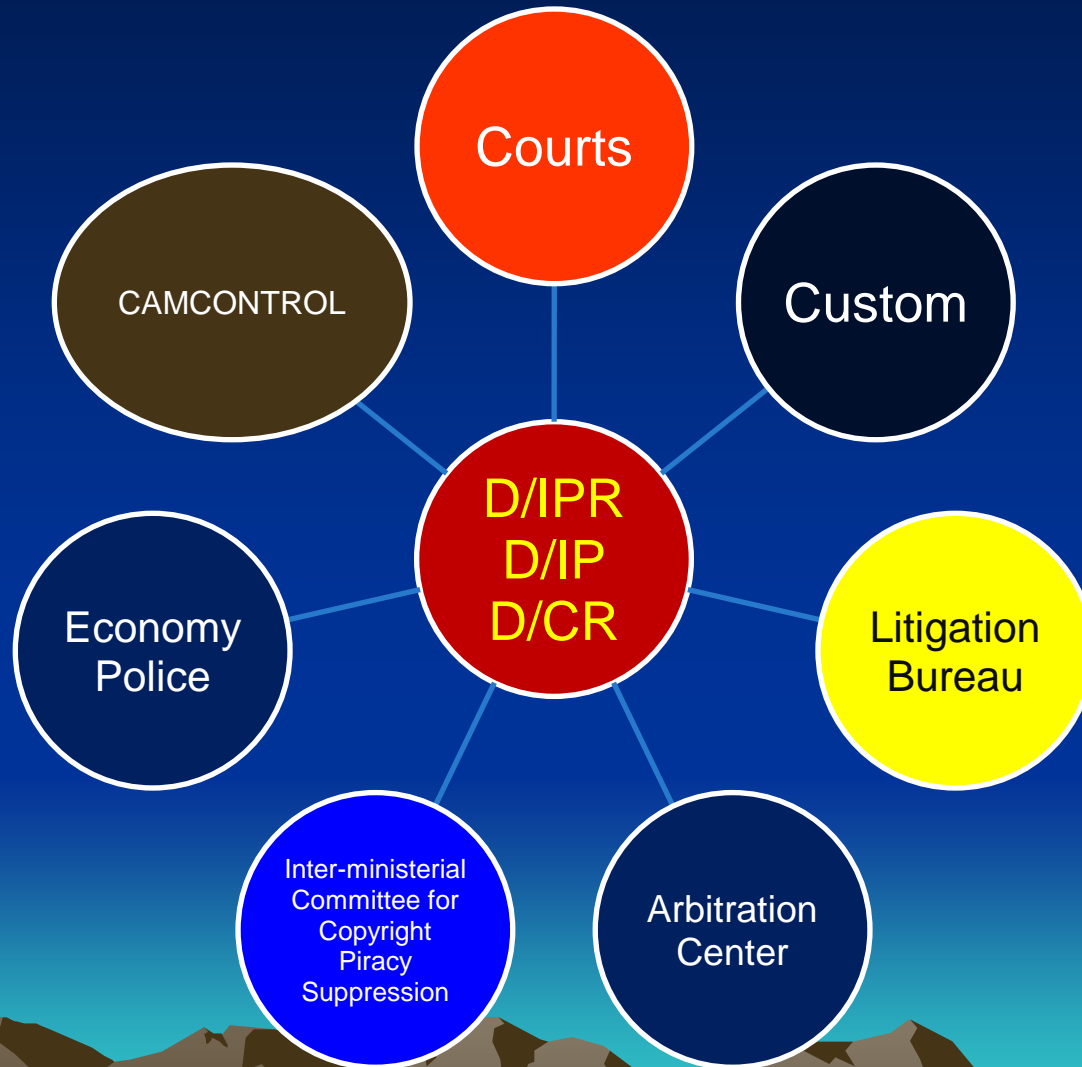
Military Court

Military Cases

Establishment of Commercial Court

- Cambodia commitment in WTO
- Steering deliberation

IP Enforcement Authorities



Legal Prosecution against the Infringement



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graph TD; A[Legal Prosecution against the Infringement] --- B[Administrative Procedure]; A --- C[Civil Procedure]; A --- D[Criminal Procedure]
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Administrative Procedure

Civil Procedure

Criminal Procedure

Trademark Enforcement

Outline of the enforcement steps	Administrative, civil & criminal actions Infringement pursuant to the Law on Marks, Trade Name and Acts of Unfair Competition Civil Code and Civil Procedure - (Civil Judgement and Provisional Measures).
Preliminary injunctions	Both preliminary and final injunction can be obtained in the court (first instance court) by right-holder to prevent the lost of interests caused by the importation and/or infiltration of alleged infringing goods into commercial channel. Injunction can be done through Provisional and Border Measures as stipulated in Chapter 9 and 10 of Law on Marks, Trade Name and Act of Unfair Competition.
Time frame for various legal actions	20 months and plus
Alternative dispute resolution	Reconciliation procedure organized by the D/IPR department
Civil Remedies	Injunction, Damages, Account of profits
Criminal Sanctions	Monetary fines or imprisonment or both
Administrative Sanctions	Prohibition of import; revocation of registration, seizure and forfeiture of counterfeit goods if agreed by both parties

Alternative Dispute Resolution at D/IPR

- At the request of right holder to take action against the infringement
- A non-binding procedure in which a neutral intermediary, assists the parties in reaching a settlement of the disputes
- The two parties will be invited to discuss and find out the common dispute resolution
- A commitment contract should be signed by the two parties
- Restraining Order (effective than a warning letter of the right holder)
- Counterfeit & Confusing similar goods Valuation from D/IPR
- Revoke the validity of the registration
- Compensation of damages can be made upon the agreement of both parties
- Penalties and fine can not be made here
- Seizure or destruction of counterfeit goods can not be made, unless otherwise agreed by the parties

Statistic of Alternative Dispute Resolution

Year	2009	2010	2011	2012
Amount	12	32	20	18









Civil Seizure and Destruction of Infringing Goods

- Prevent infringing articles from entering into the channel of commerce
- Cambodian IP law contain authorization for civil seizures and destruction Art. 69 of TM, Art 57 of CRL
- Seizures may be done pre-trial in copyrights or trademark counterfeiting cases

Border Measure Ex Officio Action

Article 43

- Counterfeit goods
- Confusing similar goods
- Pirated goods
- Cease and desist order
- Seizure and Forfeiture Order by Court

Can be prosecuted based on complaints or Ex Officio Action (State prosecution)

Criminal Prosecution

- Trafficking in counterfeit trademark, service mark (Art. 64 of TM law)
 - Fine: 1-20Million Riels-Imprison: 1-5years or both
- Trafficking in counterfeit labels, documentation and packaging (Art.65 of TM law)
 - Fine: 5-10M Riels-Imprison: 1m-1years or both
- ❖ (Art. 64 of CRL)
 - Unauthorized production, reproduction,
 - Fine: 5-25M Riels or -Imprison: 6m-1years or both
 - Performance or communication to the public a copyrights works
 - Fine: 1-5M Riels or -Imprison: 6m-1years or both
 - Import or export pirated goods
 - Fine: 2-10M Riels or -Imprison: 6m-1years or both

Right Holders VS Infringements

Right holder can alternatively attack infringement in the different ways:

- Issue warning to the infringer to stop importing /distributing infringing goods (informal);
- Request competent authorities to take action in the channel of commerce or customs authority to suspend the clearance at the border;
- Sue for money damages and/or specific relief in civil court;
- Seek criminal prosecution and/or fines.

Cases related to IPR Violation

Cases related to the IPR violation:

- Trade Marks (violation to the mark owner's authorized exclusive rights to the distributor)
- Copy Rights (no permission/authorization from the right owner or the authority).

IPR Violation Related Items

Most of the IPR violation related Items has been detected as follow:

- Food and Beverage;
- Cosmetics and medicines;
- CD, DVD, Video Cassettes
- Machinery and spare-parts;
- Tobacco and cigarettes

Enforcement Activities

- Counterfeit Liquor: 125 Boxes = 1500 Bottles
- Counterfeit Nokia Earphones and Nokia's Covers: 51 Cases = 1530 packets
- Date of Seizure: 12/02/10
- Importer: unidentified



Enforcement Activities



Enforcement Activities

- Fake pharmaceutical: 19.280 Ton
 - Importer arrested
 - Detention Date: March 08, 2010
 - Merits of the case initiated by the Prosecutor + Police leading to court trials
 - Destruction date: Jan 25, 2011
- 20.115Kg of fake Pharmaceutical
at Kampong Loung
- By H.E. Mr. Seang Bun Leang



Enforcement Activities

- Pirated goods:
287,583 pieces;
- CD write: 163 Sets;
- CD Writer: 45 Sets
- Confiscated Date: 2009



Enforcement Activities



- Pirated goods: 256,034 pieces
- CD Writer: 12 Sets
- Relevant materials
- Confiscated in year 2010
- Destruction date: 24/01/11



Channel Distribution of Counterfeit Products

There are different and traditional kinds of selling or distributing counterfeit products:

- Open-air and wet markets (most popular)
- Super Markets, Stores and Marts;
- Street Vendors
- Door to door
- Internet (unlikely to be included)

Main Duties of CCDG

At the border:

- To assist Customs in technical aspects related to certain sensitive products;
- To inspect imp-exp products under its responsible policy.

Main Duties of CCDG (Cont'd)

At the domestic markets:

- To ensure the quality and safety of products and services.
- To provide the protection in order to ensure the fair trade practices.
- To ensure the compliances of products and services as required by the national standard.
- To take action against all forms of commercial frauds.
- To raise consumers' education and awareness

Official's Capacity Building

Officials from IPD have conducted short time training course for enforcement officials (CCDG, Customs, Police, Judge).



Education and Public Awareness

- CCDG's officials have launched education and awareness campaigns at schools and commune levels (including some issues related to IPR).
- Arrangement has been made btw MOC & MOEYS:
 - To launch awareness campaign at public secondary and high schools.
 - After the class at weekend.

Education and Pubic Awareness



Key Challenges

- Laws and regulations
- Enforcement official's capacity building.
- Collaboration among enforcement agencies, especially clear-cut responsibility.
- Indispensable cooperation with the right holders
- Education and awareness raising (IP Curriculum, Media, etc.)
- Neither Specialized courts nor specialized judges-
- Regional & Int'l cooperation

Thank you
for your attention!!!