

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2006 SPECIAL 301

SPECIAL MENTION

CAMBODIA

Cambodia is specially mentioned this year since it is still believed there is one optical disc plant in the capital, and due to its location, the potential for migration of more optical disc plants remains a possibility. Since Cambodia has virtually no legitimate demand, the existence of a 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. 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 plants producing optical discs or other kinds of copyright content, and should shut down any found to be producing illegally.

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,” and provided 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 requiring Cambodia to join or at least give effect to major copyright treaties (the Berne Convention and Geneva “Phonograms” Convention) (and to make “best efforts to join by December 31, 1998).¹ 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.

In order to join the WTO, and implementing many key obligations of the 1996 Agreement, Cambodia passed the Law on Copyrights and Related Rights (adopted by the National Assembly on January 21, 2003 and ratified by the Senate on February 13, 2003). The 2003 Law went far in implementing the requirements of the WCT and WPPT (e.g., it provides protection for temporary copies, a WIPO treaties-compatible definition of “communication to the public” including the “making available” right, and prohibitions against trafficking in circumvention devices which partially, but not fully, implements 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. The gap in the legal structure might be the absence of a regulation regarding optical disc plants, but the Law on Copyrights should be used to address illegal activities occurring in the one known plant, if any. Nonetheless, 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.

¹ At that time, Cambodia was also already a member of the Universal Copyright Convention (U.C.C.).

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