

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2007 SPECIAL 301 REPORT

SPECIAL MENTION

LAOS (LAO PEOPLE'S DEMOCRATIC REPUBLIC)

Actions to be Taken in 2007: IIPA urges the Government of Laos to 1) implement the Agreement on Trade Relations by passage of a modern copyright statute; and 2) enact or issue regulations to impose licensing requirements upon optical disc manufacturing facilities, and to provide a level of transparency and oversight into these groups that are producing pirate and other illegal materials in Laos. The government has indicated it wishes to enact laws to regulate equipment that can be used to illegally pirate, but denies that there is any optical disc production in the country.

Laos has long appeared in the Special Mention section of the IIPA report because the country's location gives rise to concerns regarding the potential migration of optical disc plants from neighboring Southeast Asian countries where illegal overproduction and export is a significant problem. In 2004, press reported that there may be plants in Thailand near the borders of Laos and Burma, and in 2005, product sourced from Laos was seized by Thai authorities.¹ Thus, unfortunately, in 2005 and 2006, the fear of copyright owners has apparently become a reality. The motion picture industry estimates that the home video market is at or near a 100% piracy level.

Given the changing reality, it is time for Laos to take steps to strengthen protection for intellectual property to avoid becoming the next piracy haven. There is currently no copyright law in the country, although an official from Laos indicated in March 2006 that a new draft IP law had been submitted to the National Assembly and that copyright implementing regulations had already been drafted and were ready to be introduced once the law passed.² According to the government, penalties under the new law will include three months to two years imprisonment and a fine of 500,000 Kip to 50 million Kip (US\$52 to \$5,190) for copyright infringement ("with intent to violate this law for its own gain").³

There is little enforcement activity in Laos, although the Department of Intellectual Property, Standardization and Metrology (DISM) is apparently tasked with coordinating training of enforcement officials, the Ministry of Education, as well as deciding, along with Customs (under the Ministry of Finance), Department of Interior Trade under the Ministry of Commerce, and the Department of Economic Police under the Ministry of Public Security, to respond to specific industry complaints and decide what course of action to take.⁴

¹ See, e.g., Subin Khuenkaew, *Plant Churns Out Sex Films*, Bangkok Post, January 30, 2005, at http://www.bangkokpost.com/300105_News/30Jan2005_news16.php. On September 29, 2005, Royal Thai Police intercepted a private van which had just entered Thailand across the Nong Kai Laotian border control point. On being searched the vehicle was found to contain approximately 33,000 infringing discs, including pirate sound recordings. The driver was arrested and charged.

² Ratsamy Phanthavong, Department of Intellectual Property, Standardization and Metrology, Country Report on Copyright Issues in Lao PDR, 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).

³ *Id.*

⁴ *Id.* The official cited did not indicate that right holders had come forward with complaints, although he did indicate that there is one right holder organization operating in the country (presumably this is a collecting society).

The United States and Laos signed an Agreement on Trade Relations in 2003 which includes a chapter on intellectual property rights, and that agreement went into force in late 2004 when the U.S. Senate approved extending normal trade relations to Laos.⁵ As it considers the appropriate legislation to implement its obligations under this trade agreement, the Laotian government should also consider adopting measures designed to improve its border enforcement authority as well as consider measures that would regulate the optical disc plants that appear to be moving to the territory. Also under the trade agreement, the government of Laos is obligated to protect U.S. works/sound recordings and should take steps to implement its obligations as soon as possible. Laos is also a member of the Universal Copyright Convention (from September 16, 1955), providing another point of attachment for U.S. copyright subject matter, and while Laos is a member of the World Intellectual Property Organization (WIPO),⁶ Laos is not a member of any of the major copyright conventions of the WIPO (Berne Convention or Geneva [Phonograms] Convention). Laos is a WTO Observer Government, but the likelihood of accession to the WTO in 2007 is slim (the first meeting of the Working Party did not take place until October 2004).

⁵ The grant to Laos of Permanent Normal Trade Relations was part of the Miscellaneous Trade & Technical Corrections Act of 2004 signed by the President in December 2004.

⁶ By virtue of its membership in WIPO, Laos is eligible to request assistance from WIPO in the form of a mission or "study days" to work on copyright legislation. Also, IIPA understands the Government of Laos is in the process of preparing legislation for Laotian accession to the Berne Convention.