

Ninth Session of the Advisory Committee on Enforcement

Topic Preliminary Alternative Dispute Resolution

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I-Introduction

- IP knowledge of the public is still limited.
- The IP enforcement system is formed of a coordination mechanism of separate authorities responsible for IPRs enforcement.
- Each agency has its own structure and policy to deal with IP infringement.
- Judges, prosecutors and enforcement officials have the limited IP knowledge and experience in dealing with IP matters (long trial and costly).

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I-Introduction (Cont)

- Court may request for IP examiner's recommendation or participation in the hearing before rendering a decision in IP cases.
- Practitioners and right holders requested MoC to play role as intermediary in providing PADR.
- However, single agency can not fully deal with IP infringement.
- To strengthen IP enforcement, those agencies have to cooperate among them closely.

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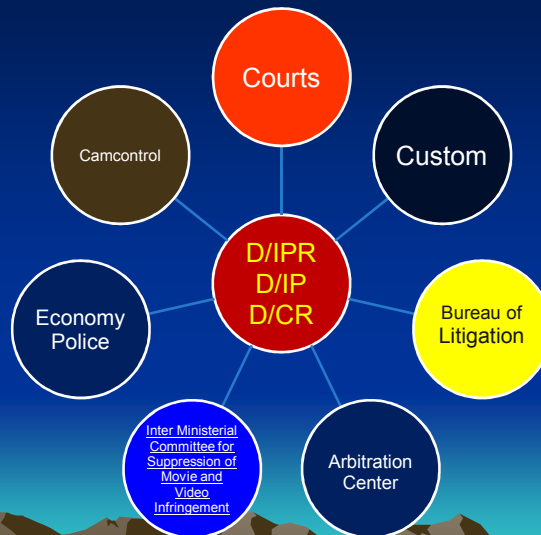
II-Legal Framework

- Article 1(1) of TRIPS provides “Members shall be free to determine the appropriate method of implementing the provisions of this Agreement within their own legal system and practice”, Member States are encouraged to adopt appropriate methods to enforce IPR effectively.
- Sub-Decree 64 on the Implementation of Law concerning Marks, Trade Names and Acts of Unfair Competition, dated July 12, 2006.
- Declaration establishing the Bureau of Litigation, the Department of Intellectual Property Rights, Ministry of Commerce, Sept 18, 2007.
- Sub-committee for Enforcement will be established.
- the Sub-decree on Enforcement Procedures will be drafted.

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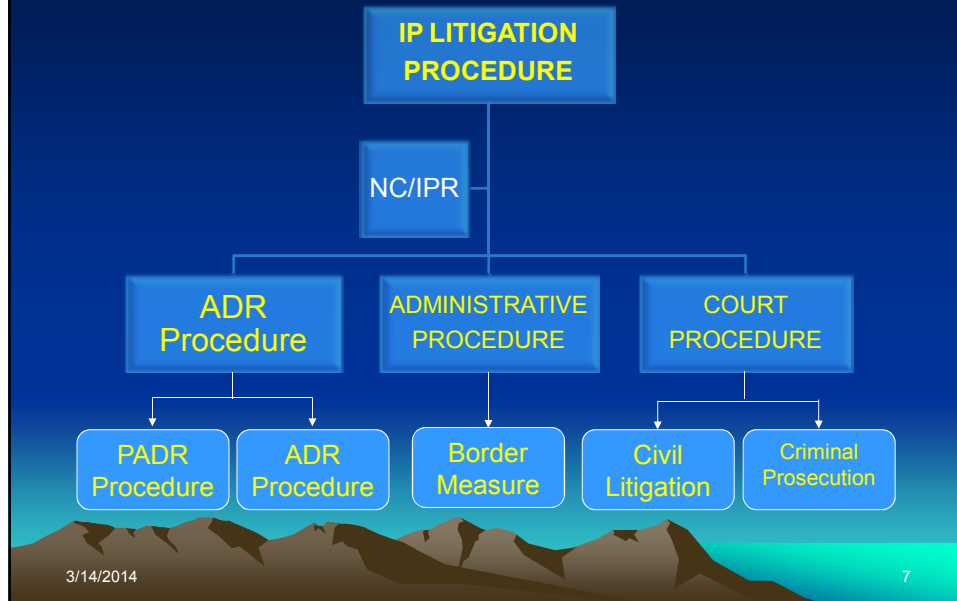
III-IP Enforcement Agencies



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IV-Litigation Procedure



V-Role of PADR

- Act as intermediary to provide PADR.
- Facilitate negotiation between the parties with differing legal points of view to resolving their differences amicably.
- Guide and regulate the process, to prevent the parties from digging into their respective positions.
- Intermediary assists the parties in reaching a settlement of their disputes.

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V-Role of PADR (Cont)

- Non-binding role.
- Binding role with administrative imposition.
- Revoke trademark registration.
- Issue public warning letter against infringer to ban importing & distributing counterfeit goods.

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V-Role of PADR (Cont)

- Assess validity of IP infringement case at the request from enforcement authorities or right holders.
- Provide recommendation to the courts or participate in the court hearing at the request from the courts.
- Partnership with private sector.

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VI-Litigation Procedure-DADR

- At the request of any interested party to a dispute.
- Petition Check.
- Petition Examination.
- Negotiation hearing, the parties shall be invited to discuss and find out the common dispute resolution.

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VI-Litigation Procedure-DADR (Cont)

- The outcome of the resolution is determined by the parties.
- Non-binding or binding.
- Settlement result shall be signed by the parties under the auspicious of neutral intermediary from the IP office (Royal civil servants).
- Settlement result is enforceable as a contract.

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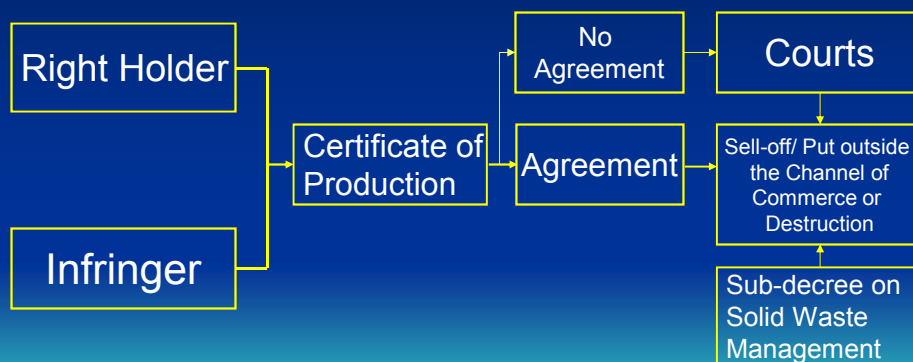
VI-Litigation Procedure-DADR (Cont)

- Compensation of damages shall not be made unless the parties agree.
- the presiding intermediary has no power to enforce a ruling, seizure or destruction of counterfeit goods cannot be made unless otherwise agreed by the parties.
- Penalties and fines can not be prosecuted under PADR. (Only court)

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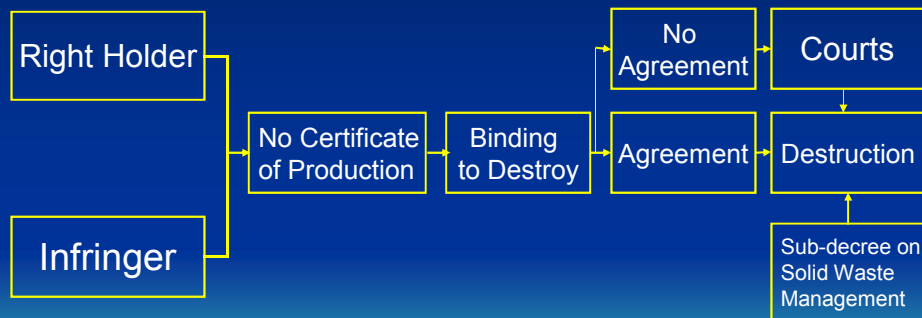
VII-Disposal Procedure of Infringing Goods



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VII-Disposal Procedure of Infringing Goods (Cont)



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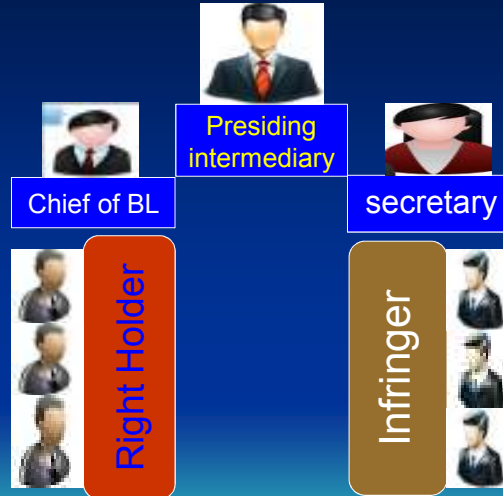
VIII-Structure of the PADR Procedure

- Organized through a negotiation hearing
- Being similar to a court hearing or a mediation process.
- PADR is in between the procedure of courts and mediation.
- The presiding intermediary will comprise of the director or deputy director of the D/IPR alternatively accompanied by the chief or the deputy chief of Bureau of Litigation and a secretary with IP knowledge and experience.

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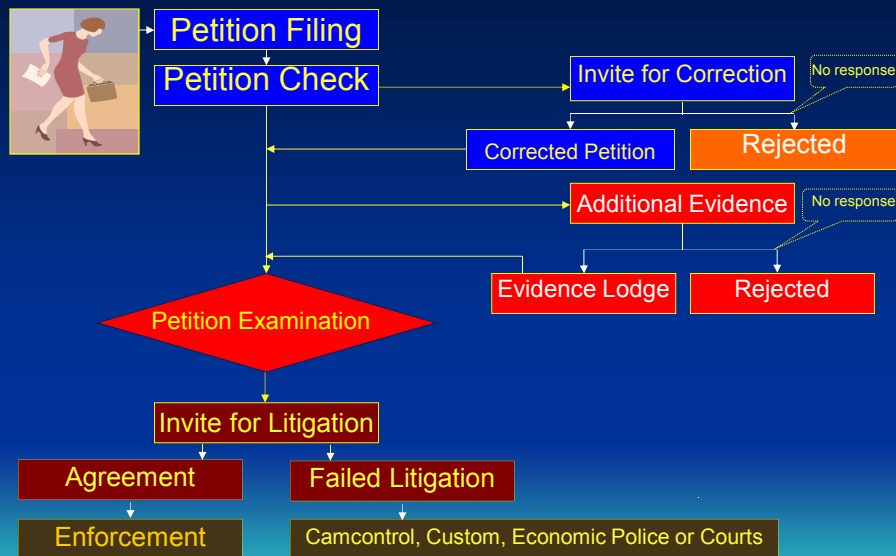
VIII- Structure of the PADR Procedure (cont)



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IX-WORKFLOW for PADR



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X-The PADR is Appropriate to IP Disputes Resolution

A Single Neutral Procedure

- IP disputes often involve parties from different parts of the country and the world.
- As courts may provide a risk of inconsistent results.
- At the request of any party to the dispute, the matter may be resolved under PADR.
- Avoiding the expense (time and cost) and complexity of multi-jurisdictional litigation).

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X-The PADR is Appropriate to IP Disputes Resolution (Cont)

Party Autonomy

- PADR is a private nature offering parties to control over the way the dispute is resolved before the intermediary.
- Negotiation for compensation between parties is better than the prosecution of an infringer with the jail sentence.
- the intermediary may also impose on the parties to reach an agreement through an administrative procedure.

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X-The PADR is Appropriate to IP Disputes Resolution (Cont)

Neutrality

- To avoid any local court advantage that one of parties may enjoy in the context of court litigation, where familiarity with the applicable law and local processes can offer significant strategic advantages.
- the PADR provides the parties taking over negotiation power better than in the court system, optionally, they may refuse in reaching agreement.

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X-The PADR is Appropriate to IP Disputes Resolution (Cont)

Expertise

The presiding intermediary has special expertise in IPR required for the resolution of the disputes.

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IX-The PADR is Appropriate to IP Disputes Resolution (Cont)

Confidentiality

- This allows the focus to be kept on the merits of the dispute, and may be of special importance, where as often in the case of IPR disputes, commercial reputation is at stake.
- Both parties can enforce the consensual agreement as a contract.
- PADR is a private procedure except when agreed otherwise; all parties may preserve confidentiality regarding the settlement agreement.

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X-The PADR is Appropriate to IP Disputes Resolution (Cont)

Efficiency

- Need for efficient dispute resolution procedures.
- PADR offers parties control (short deadlines) to reach a quick result as they wish; when the infringing party tries to delay the right holder's proceedings, the intermediary may preserve the right to set a fixed deadline for closure of proceedings.
- One procedure, neutral expert, final settlement agreement.

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X-The PADR is Appropriate to IP Disputes Resolution (Cont)

Finality of Agreement

- PADR agreements are not normally subject to appeal; in case of breach, parties may appeal to the court.
- Court decisions can be generally contested through one or more rounds of litigation.

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X-The PADR is Appropriate to IP Disputes Resolution (Cont)

Preserving Party Relationships

- Private and administrative procedure, at the request of the parties.
- Flexible; can be tailored to the parties' needs.
- Confidentiality helps parties to focus on the merits of the dispute, without concern about its public implications.

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XI-Case Studies



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XI-Case Studies (Cont)



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XI-Case Studies (Cont)



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XII-Statistics of IP Infringement 2011-13

Year	Petition Received	Preliminary Alternative Dispute Resolution		Carried over
		Withdrawal or Rejection	Dispute Resolution	
2010				3
2011	26	1	19	9
2012	29	4	20	14
2013	19	5	19	9

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XIII-Conclusion

- Cambodian practices, we have established that the people of a least developing country has limited IP knowledge and experience to deal with IP matters.
- IP office should to take part in IP enforcement, preliminary alternative dispute resolution, partnership with private sector, and collaboration with enforcement agencies.
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for your attention!!!

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