

Thailand: Amendments to Thailand's Copyright Act Create Punitive Damages, Exhaustion, and Other Rights and Remedies

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1. Protection against Tampering with Rights Management Information ("RMI")

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To make Thailand's Copyright Act consistent with the WIPO Copyright Treaty—of which Thailand is not yet a contracting state—the Copyright Act now defines RMI as "information which identifies the author of a work, the work itself, a performer, a performance, a copyright owner, the duration and conditions of use of a work enjoying copyright as well as any numbers or codes that represent such information when any of these items of information is attached to or appears in connection with the work enjoying copyright or recording of the performance."

Under the amended law, the deletion or alteration of any RMI with knowledge that such act may induce, cause, accommodate, or conceal an act of infringement of copyright or of a performer's rights is deemed an act of RMI infringement, which is a criminal offense punishable with a fine ranging from THB 10,000 to THB 100,000 (about US\$275 to US \$2,750). The law also provides that importing or communicating to the public a work in which RMI has been deleted or altered is an infringing act, if done with knowledge that the RMI has been deleted or altered.

2. Protection against Circumvention of Technological Measures

Also to bring Thailand's Copyright Act into conformity with the WIPO Copyright Treaty, the amended Copyright Act provides that the circumvention of technological measures, or the provision of services for such purpose with knowledge that the provision of services may induce or cause infringement of copyright or of a performer's rights, is deemed an infringing act. The law defines technological measures as "any technology designed to prevent reproduction of or restrict the access to a work enjoying copyright or a performance recording; such technology must have been effectively used on the work enjoying copyright or the performance recording." The circumvention of technological measures is a criminal offense punishable with a fine ranging from THB 10,000 to THB 100,000 (about US \$275 to US \$2,750). The law acknowledges, however, that deleting "cookies" from one's own computer does not constitute circumvention of technological measures.

3. Internet Service Provider (ISP) Liability

The amended Copyright Act provides that ISPs can be ordered by the Intellectual Property and International Trade Court ("IP & IT Court") to remove infringing content from their systems. If the copyright owner has credible evidence that an ISP's computer system contains infringing content, the owner may petition the IP & IT Court for an injunction. The petition must describe, among other things, the damage that may be caused by the infringement, and must contain a request for a court order for the ISP to remove the infringing content from the ISP's system or to stop the infringing act by other means. If the IP & IT Court is persuaded to issue an injunction, it will take immediate effect, following which, the copyright owner must take legal action against the alleged infringer without delay. If the ISP complies with the injunction, it will not be held responsible for any damage caused by such compliance.

4. Exhaustion of Rights

The amended Copyright Act provides for the “first sale doctrine.” Prior to the amendments, the Act stated that selling a copyrighted work was considered an act of communicating the work to the public and could only be done with the copyright holder’s permission. Under the amendments, however, the sale of a legally acquired copyrighted work is explicitly recognized as legal: “The sale of an original work enjoying copyright or copy thereof by the party who has legally acquired such work or copy thereof shall not be deemed copyright infringement.”

5. Temporary Copying Is Fair Use

Prior to the amendments, it was unclear whether Random Access Memory (“RAM”) copying was fair use. This term refers to a computer automatically but temporarily copying installed programs and other materials to the computer’s RAM during, for example, the buffering process. The amended Copyright Act now clearly states that RAM copying is legal: “Acts conducted [upon] a work enjoying copyright lawfully created by or acquired through a computer system which are in the form of reproduction necessary for the use of a copy of the work in order to enable the equipment used in the computer system or the process for transmission of a work enjoying copyright via the computer system to work properly shall not be deemed copyright infringement.”

6. Moral Rights

Under the amendments, performers also have moral rights. Previously, only authors of copyrighted works had moral rights. The amended Copyright Act states, “A performer shall have the rights to present himself as the performer of his performance and to prohibit an assignee or any other person from distorting, mutilating, adapting or otherwise acting on such performance to the prejudice of the performer’s reputation or honor.”

7. Punitive Damages

Prior to the amendments, Thailand did not provide for punitive damages in the context of copyright or any other intellectual property right. Now, the law provides that in a case where there is clear evidence that the infringement of copyright or of a performer’s rights has been committed deliberately or with the intention of causing the copyrighted work or the performer’s rights to be widely accessible to the public, the IP & IT Court may order the infringer to pay up to twice the amount of actual damages awarded to the plaintiff.

8. Confiscation of Infringing Materials

Prior to the amendments, the Copyright Act provided that all infringing items would be handed over to the copyright owner or performer. The amended law now provides that such items must be confiscated, and the IP & IT Court may order their destruction at the infringer's cost.

9. Unauthorized Recordings in Movie Theaters Are Not Fair Use

The new law is designed to deter the following scenario: Previously, several pirates would each enter a movie theater to record certain segments of a film. The segments would then be merged together to form a bootlegged version of the entire film, which would be sold to consumers for the pirates' financial gain. The pirates operated in this manner so that, if caught, each of them could claim that he recorded the film segment only for personal use and that his act should therefore be considered fair use under Section 32(2) of the Copyright Act. The revised Act now states, "The reproduction by recording the sound or pictures or both of a cinematographic work copyrighted under this Act in a cinema theater as defined by the Act on Motion Picture and Videos, whether in whole or in part, without a license under Section 15(5), during its showing in a cinema theater shall be deemed copyright infringement. Section 32, Paragraph Two (2) shall not be applied under such circumstances."

10. Reproduction for the Disabled Is Fair Use

A new section has been added to the Copyright Act to provide that the not-for-profit reproduction or adaptation of a copyrighted work for the benefit of the disabled who are not otherwise capable of accessing such works due to visual, hearing, intellectual, learning, or other types of impairment is deemed fair use.

Primary Contacts

Robin N. Baydurcan