

## New legislation to deter abuses of e-commerce

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Thailand has enacted legislation to confront the emerging challenges of the internet and e-commerce. I will summarise here the present state of Thai copyright, cyber-squatting and criminal law to illustrate the point.

There is no doubt that Thailand, with its fast-emerging economy, will follow the route of more developed countries in internet use. In the year 2000, Thailand had approximately 2,300,000 internet users. By 2005, the number of users had grown to 8,420,000, a 266.1 percent increase in five years, but Thailand still has but a 12.7 percent penetration rate, with abundant room to grow. In more industrialised Asian countries like Singapore, Japan, and South Korea, the penetration rate approaches more than 67 percent. Similarly, as usage goes up, e-commerce will inevitably increase in Thailand.

### **Synopsis of Thai e-commerce law**

In Thailand, there have been relatively few laws passed that are directly tailored to the needs and realities of e-commerce and the internet. For example, five pieces of legislation relating to e-commerce are being considered or have been passed into law: The Electronic Transactions Bill, the Universal Access Bill, the Data Protection Law, the Computer Crime Law and the Electronic Fund Transfer Law.

### **Success against internet distributors of fake and pirated goods**

That is not to say that Thailand has no law to protect against abuses of e-commerce. Fortunately, most illegal activity on the internet is still covered by the traditional civil and commercial code and criminal law, even though the laws were created prior to the explosion of e-commerce. For example, fraud remains fraud; it does not change if the internet is used as a medium. Moreover, if a person illegally sells counterfeit goods, such as clothes, on the internet, that person will be prosecuted for violating Thailand's intellectual prop-

erty laws. An illustration can be found in sections 27 to 31 of the Copyright Act B.E. 2537, which provides protection for audio-visual works, cinematographic works, sound recordings, sound and video broadcasting and computer programs.

Penalties for copyright infringement are found in sections 69 and 70 with penalties ranging from 10,000 to 200,000 bahts (depending on the work infringed) to imprisonment from three months to four years and/or a fine of 50,000 to 800,000 bahts (depending on the work infringed) if committed for commercial purposes. Additionally, sections 108 and 109 of the Trademark Act B.E. 2534, as amended by the Trademark Act (No. 2) B.E. 2543, provide protection for trademarks, service marks, certification marks and collective marks. Despite the presence of these laws, there are many instances of persons, Thai and foreign, creating websites to take advantage of Thailand's perceived lax enforcement of such laws.

But enforcement is improving, as Thai law can be more effective than the laws in many developed countries. A series of raids were recently conducted against a person whom we will call John Philip Roberts, along with his wife and several other British and Ukrainian nationals who worked together to distribute fake goods internationally out of Pattaya, Thailand, through websites such as [www.kitshirts.com](http://www.kitshirts.com), [www.hotfl.com](http://www.hotfl.com), [www.designershirts.com](http://www.designershirts.com), [www.tshirtsbyemail.com](http://www.tshirtsbyemail.com), [www.teamshirt.com](http://www.teamshirt.com) and [www.sportshop4you.biz](http://www.sportshop4you.biz). Roberts is being investigated by police as to whether he is a member or affiliate of an organised criminal gang based in Pattaya, whom some have referred to as the bandidos, generally comprised of motorcycle aficionados and ex-convicts from the UK. This gang is known to be involved in several illegal activities, including counterfeiting, piracy, land scams, prostitution and gambling.

So far, criminal trademark charges have been brought against Mr Roberts for violating the Thai TM Act Section 110, which exposes him to liability for fines up to US\$10,000 and/or jail time of four years. He is presently out on bail of 50,000 bahts, and is subject to further prosecution following completion of the police inquiry against him and submission of his case to the public prosecutor.

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