

# Directors of Thai Companies Liable for Software Copyright Violation Legal Expert: “Be Proactive to Prevent Copyright Violations”

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Company directors are liable for software copyright violations at their business – even if they are unaware that the software piracy is taking place.

This is among the messages for business leaders from Edward Kelly, a partner with Thailand’s leading Intellectual Property practice at Tilleke & Gibbins in Bangkok, a veteran of hundreds of criminal copyright cases and a legal counselor to international and local businesses in Thailand.

“With the renewed emphasis and vigor that Thai law enforcement officials are putting into enforcement of software intellectual property rights, company directors need to be careful to ensure their companies are compliant with the law,” said Kelly. “In line with what other countries have done to protect the innovations of software developers and spur growth of the IT industry, Thailand recognizes the need for a strong crackdown on software piracy.

Now is the time for companies to ensure they are doing the right thing for their shareholders and employees—and that means doing all they can to avoid legal issues arising from copyright infringements. We suggest company directors do not take chances because the consequences are serious.”

Software piracy, copying of software without permission of the copyright holder, occurs at a rate of about 78% among businesses in Thailand. Even with Thailand’s Copyright Act, which clearly defined civil and criminal penalties for infringement, piracy continues to be a significant problem in the business community.

Under current copyright laws in Thailand, companies, directors and senior managers found responsible for violations face fines of up to 800,000 Baht and/or jail terms of up to 4 years plus liability for the actual cost of the software as civil damages.

## Responsibility for Employees Actions

Liability for copyright infringement may be imposed on an individual who is not a direct, primary participant in the infringement of the copyright. The doctrine of vicarious liability exists for the employee-employer relationship and is applicable to impose liability on the employer when an employee, acting within the scope of his or her employment, has infringed on a copyright.

Therefore, an employee who loads pirated software on to his or her office computer or notebook to assist in his or her work may create liability for the employer. A company director will be vicariously liable for an employee’s copyright infringement, even if the director has no actual knowledge and no intent to infringe and even if the employee has been directly told by the employer not to engage in the activity. Willful ignorance of the facts is not an excuse.

“The bottom line is that company directors are responsible for unlicensed software use that takes place at their business—even if they have instructed employees to use only licensed products,” said Kelly. “The law requires directors to have more than just good intentions; directors must be pro-active and ensure their place of business is compliant.”

## Independent Contractors

A company that engages independent contractors would also be liable for the independent contractor’s copyright infringement. For example, a company that hires a computer consultant who installs pirated software on the company’s system or who uses pirated software in performing tasks for the company may incur liability for copyright infringement.

“Again, responsibility is with the company directors to ensure the software being used is properly licensed,” said Kelly.

## Playing it Safe—Educate Employees

As a preventative measure, Kelly advises company directors to ensure the company adopts a statement of policy that prohibits software piracy, and actively informs all employees of the policy.

Employees should be told precisely what is and is not permissible software use under the copyright laws. A company should create a written anti-piracy policy and enforce it by taking disciplinary action for violations. The education policy should be thorough and extend to all employees involved in the purchase, use and distribution of software. There should be follow-up explanations and actual software-use checkups.

## Due Diligence

Company directors have tools at their disposal to ensure that their companies are compliant with software licensing terms.

For example, companies can conduct periodic audits to ensure that all software programs in use are authorized copies and that they are used in an authorized manner. Moreover, companies can adopt Software Asset Management (SAM), a process that is helpful in not only preventing inadvertent piracy, but also maximizing a company’s software investment.

“If pirating is uncovered through auditing, it should be ended swiftly,” said Kelly. “If the violations are intentional, strict disciplinary measures should be applied. The company should take a strong stand that is clear to anyone inside or outside the organization.”

“If the policy is visibly policed and vigorously enforced, unauthorized use will likely be reduced, which will minimize any possible damages to the copyright owner and any corresponding monetary award against the company,” said Kelly. Moreover, rigorous enforcement of a policy against piracy can help to reduce any personal liability of company officers and managers for acts committed by employees.

“By being proactive in combating piracy within their company, directors can save themselves from serious expense, disruption and embarrassment resulting from being criminally prosecuted for software violations,” said Kelly. “Ignoring liability for software copyright violations is a serious mistake that can and should be avoided.”