

### USTR BOOSTS PHILIPPINES BUT FRUSTRATES THAILAND

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04 May 2011

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#### **The USTR's Special 301 report is closely followed by governments in southeast Asia and has provoked mixed reactions this year in Thailand and the Philippines**

In its **2010 Special 301 report** the USTR announced out-of-cycle reviews of both countries. These reviews are designed to "encourage progress on IPR issues of concern" and "provide an opportunity for heightened engagement" and can lead to a change.

In the 2011 report the Philippines has consolidated its 2009 promotion from the priority watch list to the watch list while Thailand has been unable to move from the priority watch list.

"Thailand has made clear progress over the past few years so the US government should give some credit to Thailand's initiatives. Legislation should not be the condition to remove Thailand from the PWL," said Alongkorn Ponlaboot, Thailand's deputy commerce minister.

Alongkorn, who featured in Managing IP's **2010 list of the 50 most influential people in IP**, has led Thailand's efforts to obtain promotion from the priority watch list, which lists the most egregious IP offenders, to the watch list.

The country was demoted from the watch list to the priority watch list in 2007 at the height of the controversy of its decision to issue compulsory licences for some pharmaceutical patents related to anti-AIDS and anti-cancer drugs.

It has been trying to get back on the watch list ever since.

In February this year Alongkorn met USTR officials to ask for the country to be moved from the list, in the light of high-profile campaigns to crack down on piracy and counterfeiting.

But the **report** remained critical, describing enforcement efforts as "weak and non-deterrent".

"Piracy and counterfeiting, including illegal downloading of pirated works from the Internet, and the theft of cable and satellite signals, remain rampant in Thailand, and the motion picture industry has reported a significant increase in unauthorized camcording of motion pictures in theatres," states the report.

Despite this criticism, the report welcomed the establishment of a National Committee on the Creative Economy and an improvement in IP awareness.

This praise was echoed by IP practitioners in the country. James Evans, a consultant with Tilleke & Gibbins said that his firm was "surprised" at the decision to keep Thailand on the priority watch list.

Evans added that much has been achieved in the past 12 months: "Customs pro-activity has been getting better, although it is true that the rights holder must first record their trade mark with Customs to enable them to seize. The continued efforts by the DIP in contributing to mediation and enforcement have also been of note as well as the implementation of the Thailand Creative Economy project."

Frustration in Thailand has contrasted with relief in the Philippines, which remains on the watch list but was praised for passing a law to prohibit unauthorised video recording in film theatres.

"The United States encourages the Philippines to continue efforts to reform its judicial system, including by designating particular courts to adjudicate civil and criminal IPR cases, and by promulgating specialized IPR procedural rules that would streamline the judicial process for IPR cases," states the report.

The IP Office of the Philippines produced a statement **claiming** that it had not been downgraded "despite the efforts from powerful lobby groups in Washington DC to place the Philippines in the priority watch list".

For example, the International Anti-Counterfeiting Coalition **asked** for the Philippines to be put on the priority watch list, saying that members had seen "no significant improvement with regard to intellectual property enforcement in 2010".

"We are only one step away from being removed completely," said Ricardo Blancaflor, director general of the Intellectual Property Office of the Philippines.

"Ensuring an effective enforcement strategy against IPR violations is part of the government's broader goal to establish an IP-friendly Philippines," he added.

Elsewhere in southeast Asia, Indonesia remains on the priority watch list while Malaysia and Vietnam are on the watch list.

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