

KARAOKE BUSINESS AND ROYALTY FEE COLLECTING AGENCIES

Since their introduction, karaoke machines have been popular among Thai consumers and part of the restaurant business throughout the country. But karaoke machines cannot operate without musical content, most of which is copyright-protected.

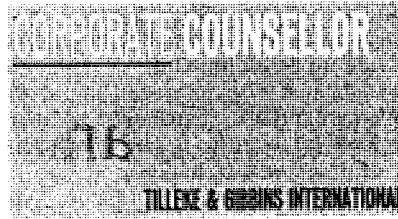
Widespread use of karaoke machines together with musical works has certainly caught the attention of musical copyright owners. They started to enforce their rights by specifying the royalty rate and conducting police raids against those who use tunes without authorisation. It is important to note that using musical works without proper authorisation is a criminal offence carrying a jail term of up to four years or a fine of up to 800,000 baht (Section 69 (2) Copyright Act).

For most small business owners, this fine is a huge figure. In 2002, a group of small restaurant owners with illegal karaoke operations surrounded a leading Thai musical company on Asok Road to protest the business concept in which musical companies would collect royalty fees for songs used by karaoke businesses. The restaurateurs later moved their protest to the Ministry of Commerce.

Since 2002, the Department of Intellectual Property (DIP), the Ministry of Commerce, and the police, among other agencies, have tried to resolve the conflict between restaurateurs and rights owners, but little progress has been achieved. Copyright owners want to collect royalty fees whenever their songs are played, whereas the karaoke operators believe fees are too high and that many musical companies collect fees outside of a properly regulated system.

Furthermore, there is no system in place to determine who the rightful owner of each song is. Some composers have transferred their copyright to more than one music publisher. The DIP has listed these "problem songs" and has asked the police not to prosecute the karaoke operators using these problematic songs.

This uncertainty calls for a law to regulate collecting agencies. In 2007, during Prime Minister Surayud Chulanont's administration, the ministry proposed to amend the Copyright Act to establish a collection agency that would administer a minimum number of songs, with royalty rates controlled by the DIP. The minimum songs requirement is to avoid too many small agencies, each owning only a few songs, collecting royalty fees. A lot of collecting agencies would impose too great a burden on



karaoke operators. But the draft was shelved by the National Assembly because of protests against the agency's establishment in front of Parliament by a group believed to be connected to the musical right owners.

Government-facilitated meetings have continued since, but to no avail. In 2009, under Prime Minister Abhisit Vejjajiva's government, the Ministry of Commerce has proposed new amendments of the Copyright Act for review by the Council of State, which serves as the government's legal adviser. While the amendments propose to make buying counterfeit products an offence, and to make landlords liable when tenants sell counterfeit products, a proposal for a royalty collection agency is not included. After two years of trying to pass its 2007 proposal, it seems the Ministry of Commerce has given up hope, at least in the short term.

Thailand is one of the few countries in Southeast Asia that leaves royalty fee collection to musical companies, who take the law into their own hands without any proper control from authorities. Other Asean countries have established collection agencies, including the Philippines' Filipino Society of Composers Authors and Publishers, Singapore's Recording Industry Performance Singapore, and Malaysia's three collection agencies.

The lack of royalty collecting systems in Thailand means karaoke machine operators continue to be pitted against copyright owners and their collection agencies. Therefore, it is important that there must be clear and manageable legal rules for the collecting of royalties in the karaoke business. The authorities need to come up with concrete solutions to solve this long-pending predicament. It is unlikely that this matter would come to an end soon unless concerted efforts are made by all parties concerned.

By Inthupim Chokwaranun, Attorney-at-Law, Intellectual Property Department, Tilleke & Gibbins International Ltd. Please send comments to Andrew Stoutley at andrew.s@tillekeandgibbins.com