

US software piracy chase could see Thai companies sink

The United States is launching a groundbreaking crackdown on companies it does business with that use illegal software _ and the ripple-on effect to Thailand could be devastating

Published: 19/08/2012 at 02:07 AM

Newspaper section: [Spectrum](#)

Thai companies using pirated software that export their products to the US could be crippled by a law aimed at targeting the use of illegal IT.



The Unfair Competition Act (UCA) is being harnessed primarily to take action against US importers of pirated software and products created using it. Those importers will face heavy penalties unless they desist from profiteering from cheap, illegal imports.

At 26.4 billion baht, the commercial value of pirated software in Thailand is almost triple that of the annual sales of legal products.

The most damaging impact is likely to be on local companies exporting illegal software and products created using pirated software to the US. Companies that have been found to be using pirated software in other aspects of their business also face penalties. They stand to face the prospect of having their products blacklisted as well as facing damages claims for using unauthorised IT products.

Attorney Wiramrudee Mokkhavesa from law firm Tilleke & Gibbins' Intellectual Property Department warned Thai manufacturers and exporters that American companies had already started taking legal action which would increase this year.

"Companies and attorneys-general in the US have already started sending notices to many Thai manufacturers warning them to replace stolen IT," he said. "It is expected that legal proceedings against those lawbreakers are due this year".

The UCA _ covering unauthorised use and sale of both hardware and software _ was first introduced in the southern US state of Louisiana in June 2010. It has since been enacted in 36 states and three territories in varying forms and similar legislation is being considered by some European countries, Tilleke & Gibbins said.

Under the law, the attorney-general of a state and the owners of the IT copyright can take action against companies both inside and outside the United States who use pirated copies if the original product is marketed or sold in the US. The copyright owners will first issue a notice to the offending companies to replace the illegal product within 90 days or face punitive measures including paying damages, having their products seized and being blacklisted.

In the case of a company outside the US being penalised, the importer of the foreign products would also face a damages claim.

Under this law, a directly competing manufacturer inside or outside the US, the attorney-general of the state and the owners of the IT are entitled to file suits against companies that use illegitimate IT in the manufacture, distribution, marketing or sale of products sold or offered for sale in the US. Given that the use of pirated software in Thailand is high for both personal and industrial purposes, replacing illegal IT would have a massive financial impact on manufacturers and exporters in the country. In a 2011 survey conducted by the Business Software Alliance (BSA) in Thailand, 74% of computer users admitted to acquiring pirated software. The Royal Thai Police's Economic Crime Suppression Division said that complaints of stolen IT use are lodged against 1,000 to 2,000 companies each year.

"Although we have more than 1,000 complaints about factories violating intellectual property every year, we can raid only about 800 companies," division deputy commander Chainarong Charoenchainao told Spectrum. "Over 90% of these are found using pirated software."

Aiming at slashing the nation's intellectual property infringement rate to 70%, the division plans to raid about 2,000 factories in the industrial provinces of Samut Prakan, Rayong, Chanthaburi and Trat this year.

Buntoon Wongseelashote, chairman of the Trade Issue Committee of the Thai Chamber of Commerce, admitted that the "Unfair Competition Act could adversely affect the cost competitiveness of Thai entrepreneurs when shifting to the use of authorised software."

Software costs could vary according to the size and type of the business.

When looking at the price of design software such as AutoCAD _ a design program for construction and engineering widely used in various industries _ it is clear that the price for legal software towers over that of illegal copies. The price for a genuine AutoCAD LT 2013 commercial program with a one-year free subscription is about 150,000 baht, whereas illegal copies can be bought for as little as 250 to 300 baht.

However, Mr Buntoon encourages Thai companies to use authorised IT as it is vital if the country wants to preserve its markets in the US.

"The Thai economy relies heavily on exports and markets in the US are extremely important. It is necessary for companies to comply with the law," Mr Buntoon said.

The Commerce Ministry's International Trade Promotion Department said Thailand's export value to the US in 2011 was about US\$22 billion (695 billion baht), which was ranked the fourth among all export destinations. The value is equal to 7.84% of Thailand's entire export value with about 10,000 exporters in the country.

Despite its possibly widespread and grave effect, manufacturers and exporters seem to be unaware of the law and its potential to hurt their businesses.

When asked how the UCA has influenced Thai companies so far, Payungsak Chartsutipol, chairman of the Federation of Thai Industries (FTI), said he is uncertain about the law as members of his group have yet to discuss it with him.

"I am not quite sure and never receive complaints from our members," he said.

Likewise, Teerawat Rakthananon, deputy managing director of Mahanakorn Rice Co Ltd, said he "had no idea" when asked if he knew anything about the UCA.

Pol Col Chainarong said that Thai companies' awareness of the UCA is very low. "I would estimate that only 10% of them know about it."

Tilleke & Gibbins refused to elaborate on the names of companies who received warnings, nor how many there were.

"We cannot say but we affirm that it is not a small number," said Darani Vachanavuttivong, managing director at the firm.

Ms Darani predicted the number of companies that will be given notice under the UCA will grow as it has already gone into effect in many states.

"After the law was enacted in 36 states and territories, it is believed many more exporters using illegitimate IT will receive notices," she said.

On the flip side, some say the UCA, to some extent, will benefit the Thai software industry in general.

Somporn Maneeratanakul, president of the Association of the Thai Software Industry (ATSI), says that while the UCA will mainly benefit foreign software companies, he also believes the legislation is positive for local software developers.

"Actually the positive effects of the UCA are not limited only to software or IT from the US but also other countries.

Thai software developers will benefit from the enforcement of this law as well," Mr Somporn said.

Moreover, the ATSI president is hopeful that the UCA will assist in boosting public and corporate consciousness of property rights as well and encourage IT innovation here. He said the Copyright Act (BE 2537) has been unsuccessful in protecting the property rights of Thai and foreign software developers due to the lack of personnel needed to enforce it and a consistent, clear direction from policy-makers.

As the UCA has a wide impact on more than 10,000 exporters, it will have more teeth than the Thai legislation.

"Under the Copyright Act, only 1,000 Thai IT companies could stand up to protect their rights, but under the UCA, over 10,000 entrepreneurs are required to uphold intellectual property rights," Mr Somporn said.

"This will eventually yield greater positive results to Thai software developers."

According to the BSA's Software Piracy Study issued in May 2012, the commercial value of the pirated software market in Thailand in 2011 was \$852 million, almost three times the value of legal software sales at \$331 million.

This market reality would undermine innovation among Thai software manufacturers as they gear up to compete when the Asean Economic Community comes into effect in 2015, the report stated.

The International Data Corporation (IDC), which provides research and analysis in the Asia-Pacific region, estimated earlier this year that the overall value of software sales in Thailand will amount to 22 billion baht; of these 85% (18.7 billion baht) belong to imported software while the rest (3.3 billion baht) is from local products.

Innovation is key to the sustainable development of emerging economies such as Thailand, Kitti Tangjitmaneesakda, vice chairman of the FTI, pointed out. "This law will stimulate innovation in our country," Mr Kitti said. "One of the problems which has hindered Thailand's economic growth is the insufficient investment in R&D which is important to spurring innovation and the creation of new technology. So the UCA will hopefully spark innovation."

Ms Darani suggested the law could open a new chance for Thai industries if the manufacturers and exporters are able to quickly respond to the new rules of the game.

"This is a good opportunity for Thai entrepreneurs because if we can comply with the law, we are capable of convincing our trade partners in the US that from now on, we can also promote our products by telling our customers that we use legitimate IT in every manufacturing process therefore there is no problem with intellectual property. It is a great chance to act before our competitors," she said.

"But if we fail to replace stolen IT, we will be delisted from trading partners and lose all chances," Ms Darani reiterated.

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