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## Using the Computer Crimes Act to Combat Online Piracy

The increase in online shopping has proven lucrative for legitimate retailers. But traders selling counterfeit and pirated products have also taken advantage by selling a wide range of counterfeit products online. In searching for new solutions to battle intellectual property infringement on the internet, recent meetings between government officials and members of the private sector in Thailand have resulted in an innovative approach that relies on existing legislation. This article will provide an overview of the current regulatory environment and the recommended procedures that will facilitate the shutting down of illegal retail websites, and help to halt the rise in purchases of counterfeit goods on the internet.

### Online Piracy Challenges

According to a report by the Department of Intellectual Property (DIP), 40 percent of pirated films, music DVDs, and CDs are offered for sale online. For counterfeiters, there are three key benefits in shifting from traditional brick-and-mortar marketplaces to online retailing:

1. There is no stall rental fee.
2. Many of the corrupt activities surrounding the sale of counterfeit goods can be avoided.
3. Storage of goods is not required, which reduces the chances of being caught in possession of the illegal goods and subsequently arrested.

Since existing IP laws in Thailand do not explicitly sanction the sale of counterfeit goods online, IP owners have, up until now, been unable to take aggressive action against these online sellers. In practice, IP owners have tried to tackle this type of infringement in Thailand by conducting investigations to uncover the source of the fake goods, followed by raid actions at storage facilities, stockrooms, and warehouses.

This investigation-and-raid approach, however, is increasingly becoming hampered by the fact that online traders do not typically store their goods on their premises. Instead, traders purchase the counterfeit products from other sellers in the market, after having received purchase orders from their customers.

### Existing Legal Framework

In the absence of specific legislation to address these activities, the Thai government has tried to solve this problem by relying on related legislation. When advising IP owners of their enforcement options, one suggestion raised by the DIP is to apply Sections 14 and 20 of the Computer Crimes Act B.E. 2550 (2007).

“Section 14: Whoever commits the following offenses shall be liable to imprisonment for a term not exceeding five years, or a fine of not exceeding THB 100,000, or both:

- (1) Entering wholly or partially spurious computer data or false computer data into a computer system, in a manner that is likely to cause injury to other persons or the public. ...

Section 20: In the case where the commission of an offense under this Act involves the distribution of computer data that may affect the security of the Kingdom, as prescribed in Book II, Title I or Title I/I of the Penal Code, which may be inconsistent with public order or good morals, the competent official may apply for a motion to the court to order that the distribution of such computer data be blocked.”

In 2011, these sections were applied to a case related to food and medical products before Thailand’s Criminal Court. In Red Case Sor. 33/2554, the defendant committed an offense of advertising the sale of food, medicine, and medical equipment by using untrue information that was deceptive to consumers. The court deemed that this act constituted an offense under Section 14(1) of the Computer Crimes Act. The court therefore issued an order to block the distribution activities undertaken by the website, pursuant to Section 20 of the Act.

As this judgment shows, Sections 14 and 20 grant to the court the authority to block the distribution of forged computer data or false computer data, upon the request of an officer, if the court finds that such contents may be inconsistent with public order or good morals. Unfortunately, the content of the Computer Crimes Act is not clear in defining whether offering counterfeit goods for sale on a website can be considered “forged computer data.” Although some government officials claim that this law sets out the right to take action against websites that offer fake goods for sale online, others opine that fake goods offered on a website cannot be deemed “forged computer data” under Section 14.

### Proposed New Approach

In seeking a solution to this problem, representatives from the Ministry of Information and Communication Technology (MICT), the DIP, and the private sector met on March 12 and March 20, 2012. During the meeting, the Director-General of the DIP stated that she encouraged IP representatives or IP owners to submit a formal letter to the MICT requesting to shut down these websites under Section 14. When an IP owner proceeds with such a formal letter, this would provide a type of test case to determine whether Section 14 of the Computer Crimes Act can feasibly be used to shut down websites that offer fake goods for sale.

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In light of these developments, a detailed procedure was proposed during the meeting, as outlined in the inset box (right).

If all parties implement this procedure, it could enable IP owners to shut down websites selling counterfeit or pirated goods in as little as two weeks. Clearly, this would be a major development for long-suffering IP owners who have battled online piracy for years.

### Implementing the Procedure

Although the debate is ongoing, it is evident that the Thai government intends to implement more stringent measures in the near future to inhibit the stream of illicit gains enjoyed by illegal online retailing operations. When an IP owner decides to test the approach proposed by the DIP and a court order is requested, practitioners will eagerly await the outcome for any developments in this area of the law. If the Computer Crimes Act is deemed practicable, it would provide an efficient route for IP owners to shut these websites down, without incurring additional investigation costs.

However, if the court decides that the activities of illegal online retailers—specifically, offering counterfeit goods for sale on a website—do not constitute “forged computer data” under Section 14, it will then be necessary for all stakeholders to push ahead with further amendments to existing IP law. ⚖️

