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## Thai Cabinet Approves Draft Amendments to Copyright Act

The current Copyright Act B.E. 2537 (1994) has been in force for 18 years. Given the rapid technological change in the last two decades, copyright owners and practitioners widely agree that it is necessary to update the existing legislative framework to account for the rise of the internet.

A new draft Copyright Act, initially developed by the Ministry of Commerce, was approved by the Cabinet on October 9, 2012. Next, the current draft of the Copyright Bill will be forwarded to the House of Representatives and then to the Senate for further consideration and approval before becoming law.

Several steps remain in the legislative process, and it is unlikely that the Bill will pass into law soon. Nevertheless, Cabinet approval marks an important step forward for this legislation, and thus intellectual property rights owners should be aware of the key provisions currently included in the Bill.

### Interim Injunctive Relief

Under the proposed amendments, copyright owners will be allowed to petition the court for interim injunctive relief to block copyright infringement over the internet via a service provider's computer system.

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### Rights Management Information

Rights management information (RMI) is, essentially, ownership information that has been affixed to the copyrighted work. Under the proposed amendments, it would be considered infringement to delete or modify RMI, if the person making the deletion or modification is aware that such act may induce, cause, facilitate, or conceal infringement of a copyright or performer's rights. Further, the Bill holds that it is an offense to import or order the import of a copyright work with deleted or modified RMI for public distribution.

The Bill provides exceptions to RMI infringement if the deletion or modification is made by (1) an authorized official to enforce the law in order to protect the nation or national security; (2) an educational institution, archive, library, or organization that broadcasts to the public for non-profit purposes; or (3) making available a copyright work or its copy, after the RMI has been deleted or modified by any organization listed under the second exemption.

### Technological Protection Measures

Technological protection measures are defined in the Bill as “any technology designed to prevent reproduction or to control access to a copyrighted work or a recording of a performance...” This definition covers two types of measures: (1) access control technological protection measures; and (2) copy control technological protection measures.

The avoidance or circumvention of these measures will become illegal under the new law, if the person avoiding or circumventing the measures is aware that such action may induce or cause copyright infringement. Again, this infringement is subject to certain exceptions, such as national security.

### Exceptions to Copyright Infringement

As currently drafted, the new Copyright Bill exempts the following three acts from copyright infringement:

- ❑ Legal distribution of the original or a copy of a copyright work which is lawfully obtained from its owner.
- ❑ Reproduction in a computer system of a copyright work that is made or obtained lawfully, where it is necessary to use such reproduction to enable a component of a computer system or the transfer process of a copyright work via a computer system to work normally.
- ❑ A service provider who does not control, initiate, or order the committing of copyright infringement which is found on the service provider's computer system. Additionally, if the service provider complies with a court order to cease the infringing act or remove the infringing work from its computer system, the service provider will not be liable for the alleged infringing act that has been committed prior to the court order. The service provider is also not liable for any damages caused by any act done in compliance with the court order.

### Performer's Rights and Rights of Performer's Heir

Under the Bill, a performer has the right to identify himself or herself as a performer and to prohibit an assignee or any other person from distorting, shortening, adapting, or doing any other action to his or her performance that is prejudicial to the reputation or dignity of the performer. The performer's heir can enforce the performer's rights throughout the term of copyright protection, unless otherwise agreed in writing.

### Double Penalty

When an infringer commits copyright infringement intentionally or with the intent to have the copyright work or a performer's rights be widely accessible to the public, the Bill empowers the court to order payment of compensation in an amount not exceeding double the amount of damages incurred as a result of the infringement.

### Confiscation of Copyright-Infringing Goods

Under the Bill, the court can order confiscation or destruction, at the infringer's expense, of all of the articles made or imported into Thailand that infringe a copyright or performer's rights, as well as items used for committing an offense.

### A Step Forward

Taken together, these proposed amendments to the Copyright Act should provide an important step forward for Thai copyright law. The provisions, as currently drafted, recognize many of the important challenges copyright owners face in the digital age, clarify when exceptions to infringement may exist, and provide new guidance on enforcement through the courts. Copyright owners will therefore be closely monitoring the progress of the Bill through the Thai Parliament, as it moves toward becoming law. 🐘