

Company directors face civil and criminal liability for software piracy

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Company directors can be held liable for software copyright violations in their businesses, even if they are unaware that software piracy is taking place at their companies, according to Thai copyright law.

The Thai Copyright Act of 1994 states that if a juristic person (a company) commits copyright infringement, all directors or managers are jointly liable for the offence.

This means that if a company is sued as a first defendant, its authorised directors may also be attached as additional defendants in the case.

Software piracy, which is the copying of software without permission from the copyright holder, continues to occur among businesses in Thailand at an alarming rate. According to the Global Software Piracy Study of International Data Corporation (IDC), Thailand's software piracy rate was 72% in 2011, with the commercial value of pirated software at up to US\$852 million.

Under current copyright law in Thailand, companies, directors and senior managers found responsible for violations face fines of up to 800,000 baht and/or jail terms of up to four years, plus liability for the actual cost of the software as civil damages. These are extremely serious consequences that no one would want to face, so it is essential for company directors to understand their responsibilities and take action to prevent software piracy.

Downloading and installation by employees and contractors: Liability for copyright infringement may be imposed on an individual who is not a direct, primary participant in the infringement. The doctrine of vicarious liability exists for the employee-employer relationship, and applies to imposing liability on the employer when an employee, acting within the scope of his or her employment, has infringed on a copyright.

Therefore, an employee who loads and installs pirated software onto his or her office computer or laptop to assist in his or her work may create liability for the employer. A director can be vicariously liable for an employee's copyright infringement, even if the employer has told the employee directly not to engage in the activity. The law requires directors to have more than just good intentions; directors must be proactive and ensure their place of business is compliant with the law.

In addition, company directors can be liable if an outside contractor commits copyright infringement while working for the company.

For example, a company that hires a computer consultant who installs pirated software on the company's system, or who uses pirated software in performing tasks for the company may incur liability for infringement.

Again, responsibility is with the company and its directors to ensure the software being used is properly licensed.

Increased punishments on the horizon: The present Thai Copyright Act B.E. 2537 is now 18 years old and is being updated, with new amendments likely to be enacted soon. At least two provisions entail more stringent liability of a copyright infringer, including the company and its directors. Under the proposed amendments, the court may order the infringer to pay damages to the copyright owner up to two times the actual damages caused by the infringement.

In addition, any articles produced by copyright infringement can be ordered confiscated or destroyed by the court at the expense of the infringer.

Education as a preventive measure: As a preventive measure, company directors should ensure that the company adopts a statement of policy that prohibits software piracy and actively informs all employees of the policy. Employees should be told precisely what is and is not permissible under copyright law.

A company should create a written anti-piracy policy and enforce it by taking disciplinary action for violations. Education should be thorough and should extend to all employees involved in the purchase, use, and distribution of software. There should be follow-up explanations and actual software-use checkups.

Software due diligence: Company directors have tools at their disposal to ensure that their companies are compliant with software licensing terms. For example, companies can conduct periodic audits to ensure that all programs in use at the company are authorised copies, and that all software is used in an authorised manner. Moreover, companies can adopt and implement a Software Asset Management (SAM) policy that is helpful not only in preventing inadvertent piracy, but also in maximising a company's software investment.

If software piracy is uncovered through auditing, it should be swiftly terminated. If the violations are intentional, strict disciplinary measures should be applied. The company should take a strong stand that is clear to anyone inside or outside the organisation.

If the policy is visibly policed and vigorously enforced, unauthorised use will likely be reduced, which will minimise any possible damages to the copyright owner and any corresponding monetary award against the company. Moreover, rigorous enforcement of a policy against piracy can help to reduce any personal liability of company officers and managers for acts committed by employees.

By being proactive in combating piracy within the company, directors can save themselves from serious expense, business disruption, and embarrassment resulting from being criminally prosecuted for software violations. Ignoring liability for software copyright violations is a serious mistake that can and should be avoided.