

# Thailand

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## 1. Copyright treaties and conventions

Thailand is a party to the following main international copyright treaties and conventions:

Common name	Full name	Entry into force
Berne Convention	Berne Convention for the Protection of Literary and Artistic Works	July 17 1931
TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights	January 1 1995

Thailand is a civil law jurisdiction. The national legislation governing copyright is the Copyright Act BE 2537 (1994). Thai courts are not bound to follow the reasoning used in precedents, but they can be used as a reference on a case-by-case basis.

Thailand is bound to protect the copyright works of member countries of both international agreements, but it is not a signatory to the Rome Convention of 1961 or the Universal Copyright Convention. Thailand operates a dualistic jurisprudence approach, and thus treaties are not enforced in Thailand until they are made into law – which includes an act, royal decree or ministerial regulation – through legislative enactment.

## 2. What can be protected?

### 2.1 How is a protected ‘work’ defined?

Under Thailand’s Copyright Act, a copyright work means a work of authorship in the form of a literary (which includes computer programs), dramatic, artistic, musical, audiovisual, cinematographic, sound recording, sound and video broadcasting work, or any other work in the literary, scientific or artistic field, whatever the mode or

form of its expression.<sup>1</sup> According to the Act, a copyrightable work is required to meet four requirements: expression of idea; expression in a recognised work; originality; and non-illegality.

However, copyright protection does not extend to “ideas or procedures, processes or systems, or methods of use, or operation, or concepts, principles, discoveries, or scientific or mathematical theories”.<sup>2</sup>

Non-copyright works include those which do not satisfy the nature and criteria of copyright, as explained below in section 2.2. These include works for which the term of protection has expired and that are thus in the public domain for others to freely use, or in cases where the copyright has been waived by the author, the work subsequently falls into the public domain.

## 2.2 What are the criteria for protection?

The principle of originality means that a copyright work must be directly made by the author himself, with his own appropriate level of capability, knowledge or judgement for such work, and not copied from another work.

The Copyright Act defines an ‘author’ as a person who makes, or creates, a copyright work, but there is no requirement that the author must use his own thoughts or ideas in order to obtain protection.<sup>3</sup>

For copyright to subsist in a work, Thai law does not require the work to be fixed in any specific medium of expression. This is equivalent to copyright laws in civil law countries, but contradicts those in some common law countries. Thus, in Thailand, oral works or speeches can be copyright works.

## 2.3 Specific works

Under the Copyright Act, there are nine categories of works of authorship that are copyrightable:<sup>4</sup>

- literary works (including computer programs);
- dramatic works;
- artistic works;
- musical works;
- audiovisual works;
- cinematographic works;
- sound recordings;
- sound and video broadcasting; and
- other works in the literary, scientific or artistic domain.

### (a) *Literary works*

‘Literary works’ comprise any kind of literary work, such as books, pamphlets, writing, printed matter, lectures, sermons or addresses, including computer programs.

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1 Section 6, paragraph 1 of the Copyright Act BE 2537 (1994).

2 Section 6, paragraph 2 of the Copyright Act BE 2537 (1994).

3 Section 4, Paragraph 1 of the Copyright Act BE 2537 (1994).

4 Section 4 of the Copyright Act BE 2537 (1994).

**(b) Dramatic works**

A 'dramatic work' is a work of choreography, dancing or acting, or a performance presented in a dramatic arrangement, including pantomime.

**(c) Musical works**

A 'musical work' is a work which is composed for the purpose of playing or singing, regardless of whether it includes rhythm and lyrics, or only has rhythm, including arranged and transcribed musical notes or musical diagrams. In other words, the rhythm together with the song lyrics creates the copyrighted musical work. However, the work of the song lyrics alone may be separately protected as a literary work.

**(d) Artistic works**

'Artistic work', regardless of whether or not the work has artistic value, means a work of one or more of the following descriptions:

- *work of painting or drawing*, which means the creation of a configuration consisting of lines, light, colours or any other element, or the composition thereof, upon one or more materials;
- *work of sculpture*, which means the creation of a configuration with a tangible volume;
- *work of lithography*, which means the creation of pictures using a printing process, and includes printing blocks or plates that are used in the printing;
- *work of architecture*, which means the design of buildings or constructions, an interior or exterior decoration design, as well as a landscape design, or the creation of a model consisting of buildings or constructions;
- *photographic work*, which means a creation of pictures using an image-recording apparatus, which allows the light to pass through a lens to a film or glass, which is subsequently developed using a liquid chemical in a specific formula, or by any process that creates a picture, or an image recorded by any other apparatus or method;
- *work of illustration*, which means a map, structure, sketch or three-dimensional work with respect to geography, topography, or science; and
- *work of applied art*, which means a work which uses each, or a composition, of the works as mentioned in the preceding bullets for utility (aside from the appreciation of the merit of the work), such as for the practical use of such work, decorating materials or appliances, or using it for commercial benefit, whether with or without artistic merit, and shall include photographs and plans of such works.

**(e) Sound recordings**

A 'sound recording' is a work which consists of a sequence of music, sounds of a performance, or any other sound which is recorded on any kind of medium and is capable of being replayed with equipment that is suitable for such a medium, but not including the soundtrack of a cinematographic work or other audiovisual work.

(f) ***Cinematographic works***

A 'cinematographic work' is an audiovisual work consisting of a sequence of visual images which can be continuously shown as moving pictures, or can be recorded on another medium so as to be continuously shown as moving pictures, including the soundtrack of such cinematographic work, if any.

(g) ***Typographical arrangements***

The Copyright Act does not list 'typographical arrangements' under specific works. The most related form of protection may be claimed in the form of an artistic work under the subcategory as a 'lithographic work' in Section 4 of the act. Nevertheless, claiming artistic copyright work over a typographical arrangement as a lithographic work could be interpreted narrowly and excluded by the court, because it is not explicitly recognised by the act. Thus, the protection of typographical arrangements under Thai copyright law would be rather thin.

(h) ***Databases***

The Copyright Act does not list 'databases' under specific works. However, protection may be afforded under Section 12 of the act regarding collections or compilations of data, whether in machine-readable form or on other devices. The databases may also be protected as literary works under Section 4 of the act, which covers all kinds of production in the literary domain including computer programs.

(i) ***Other***

**Compilations:** Copyright in a work which is a compilation or a composition of copyright works under the Act, done with the consent of the copyright owner, or a compilation or composition of data or other materials which are readable or conveyable by a machine or other apparatus, shall vest in the person who makes the compilation or the composition, provided that he has done so by means of selection or arrangement in a manner which is not an imitation of the work of another person, without prejudice to the owners of copyright in the works or data or other materials created by the original authors which are compiled or composed.<sup>5</sup>

**Broadcasting works:** A 'broadcasting work' is a work which is communicated to the public by means of radio broadcasting, sound, or video broadcasting on television, or by any other similar means.

**Computer programs:** 'Computer program' is included under 'literary works' in Section 4 of the Copyright Act (see section 2.3 above), and it refers to a set of instructions, or anything which is used with a computer to make the computer work, or generate a result, regardless of the computer language. This broad definition includes a program that is written in either source code or object code, and one using any computer language.

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5 Section 12 of the Copyright Act BE 2537 (1994).

**Audiovisual works:** An ‘audiovisual work’ is a work which consists of a sequence of visual images recorded on any kind of medium, and which is capable of being replayed with equipment that is suitable for such medium, including the soundtrack of such work, if any.

### 3. Formalities for protection

As Thailand is a member of the Berne Convention, copyright works are automatically protected and therefore require no formalities such as registration.

Nevertheless, copyright owners can record their work and relevant information with the Department of Intellectual Property (DIP), in the Ministry of Commerce, regardless of legislation pertaining to the procedures in the Copyright Act. The recordation of a copyright work (which is sometimes called ‘notification for recordation’) is undertaken at the Copyright Office, DIP.

One major benefit of recording the copyright work with the Copyright Office is to ensure that there is concrete evidence of the copyright work being registered with the government authority. Such recordation is also helpful to the copyright owner, as it categorically proves the date of creation of the work, as well as the identity of the copyright owner, in case a dispute arises over the true ownership of the work.

### 4. Duration of protection

The term of protection can be classified in certain categories of work or authorship as follows:

Type of work	Duration of protection	Comments
Literary	Lifetime of the author and 50 years after his death	Joint ownership: copyright shall subsist for the lifetime of the joint authors and 50 years after the death of the last-surviving joint author If the author or all joint authors die prior to the publication of a work, copyright shall subsist for 50 years from first publication of the work
Dramatic	Lifetime of the author and 50 years after his death	As above
Musical	Lifetime of the author and 50 years after his death	As above

*continued overleaf*

Type of work	Duration of protection	Comments
Artistic	Lifetime of the author and 50 years after his death	As above
Photographic	50 years from authorship	If the work is published during such period, copyright shall subsist for 50 years as from first publication
Audiovisual	50 years from authorship	As above
Audio and video broadcasting	50 years from authorship	As above
Sound recordings	50 years from authorship	As above
Cinematographic work <sup>6</sup>	50 years from authorship	As above
Applied art <sup>7</sup>	25 years from authorship	If the work is published during such period, copyright shall subsist for 25 years from the date of its first publication.
Computer programs	Lifetime of the author and 50 years after his death	A computer program is protected as a literary work; the term of protection is therefore similar

In general, a copyright shall subsist for the lifetime of the author and 50 years after his death. Where the work is a joint authorship, copyright shall subsist for the lifetime of the joint authors, plus 50 years after the death of the last-surviving joint author. If the author or all joint authors die prior to the publication of a work, copyright shall subsist for 50 years from first publication of the work.

Where the author is a legal person, such as a company or other entity recognised

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6 Section 21 of the Copyright Act BE 2537 (1994).

7 Section 22 of the Copyright Act BE 2537 (1994).

by Thai law, copyright shall subsist for 50 years from the authorship. If the work is published during this period, the copyright shall subsist for 50 years from the first publication of the work. A copyright work created by an anonymous or pseudonymous author shall subsist for 50 years from the authorship. If the work is published during this period, copyright shall subsist for 50 years from the first publication.

Copyright in a photographic work, audiovisual work, cinematographic work, sound recording, or audio and video broadcasting work shall subsist for 50 years from authorship. If the work is published during this period, copyright shall subsist for 50 years from the first publication. Copyright in a work of applied art shall subsist for 25 years from the authorship of the work. If the work is published during this period, copyright shall subsist for 25 years from the first publication.

Copyright in a work which is created during the course of employment shall subsist for 50 years from the authorship. If the work is published during this period, copyright shall subsist for 50 years from the first publication.

When the term of copyright protection expires in the course of a year, and the expiry date is not the last calendar day of the year, or the exact date of expiry is not known, copyright shall subsist until the last day of that calendar year.<sup>8</sup> The publication of a copyright work after the expiry of the term of copyright protection shall not cause copyright in such work to recommence.<sup>9</sup>

## **5. Ownership of works**

### **5.1 Initial ownership**

A person who originally creates a copyright work without being employed or commissioned in relation to the creation of the work shall be the copyright owner in this work. Without the formality of registration, at the moment of authorship, he is automatically deemed both the author and copyright owner. He may assign the copyright to another person at his own will; but the status as an author and the author's moral rights, particularly the right of paternity and the right of integrity, by contrast, remain with the author.

The author of a work shall be the owner of the copyright in the work, subject to the following conditions:<sup>10</sup>

- at the time of creating a yet unpublished work, or when it first became published, the author was either a Thai citizen, or a person who was either resident all the time, or most of the time, in Thailand, or a national or a resident of a member country of the Berne Convention or the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS);
- the work was first published within Thailand, or a member country of the Berne Convention or TRIPS, or a non-member country of the Berne Convention or TRIPS, and was subsequently published in Thailand or a

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8 Section 25 of the Copyright Act BE 2537 (1994).

9 Section 26 of the Copyright Act BE 2537 (1994).

10 Section 8 of the Copyright Act BE 2537 (1994).