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Landlord Liability Research Progresses

In the August 2013 issue of *Informed Counsel*, we updated readers on the return of talks about enacting legal measures against landlords whose acts contribute to copyright and trademark infringement committed by their tenants. Tilleke & Gibbins, in collaboration with the Department of Intellectual Property, is now making progress on this project as part of an initiative to introduce legal measures, which will hopefully contribute to significantly reducing copyright and trademark infringement in Thailand.

The study began with a review of the laws on landlord liability in copyright and trademark infringement cases and precedent cases in foreign countries. It was found that persistent, direct enforcements (e.g., raid actions) against repeat infringers are ineffective at tackling the problems of copyright and trademark infringement. On the contrary, imposing secondary liability on landlords has resulted in demonstrable success, as illustrated by the cases surrounding the infamous Silk Street of Beijing. Thailand currently does not provide for secondary liability, but through international comparisons, we can assess whether such provisions should be implemented in Thai law.

As part of the research, two focus groups, which were aimed at gathering the opinions and suggestions of rights owners, lawyers, judges, public prosecutors, legal scholars,

and landlords, have been held, and several face-to-face interviews of representatives of each group have been conducted. As anticipated, the research team was able to gather insightful information from the different perspectives of all stakeholders.

From the focus groups and interviews that have been held thus far, not only have we gathered reasons in support of and in opposition to the implementation of the law on landlord liability, but we have also collected information, opinions, and suggestions that are useful for drafting the law. It seems clear that landlords are not denying their responsibility to society to help prevent illegal activities from taking place on their premises and are not acting against the implementation of this legal measure. The landlords are, however, asking for a law that is designed to prevent abusive implementation of the measures and that does not place undue burden on them.

What we have gathered from parties on both sides of the issue has shown us the necessity of considering the scope of: (1) who is to be recognized as a landlord; (2) the appropriate legal requirements for a landlord to be held liable, particularly the required level of intent; (3) certain exceptions that exempt a landlord from liability; (4) the appropriate civil liability and criminal penalties; and (5) the measures that prevent abuse of the landlord liability provisions and reduce the burden of the landlord in complying with the law.

Despite the tremendous benefits gained from the research thus far, there are still further actions to be taken and more research that must be carried out before this project is complete. Additional interviews are needed, and the research report, as well as the draft copyright and trademark legislation, needs to be finalized. We very much hope that the remaining actions will reveal additional useful information that assists the research team in introducing bills that are well balanced between the benefits to the copyright and trademark owners and the interests of the landlords, so that the bills will be accepted by the lawmakers and ultimately enacted into effective and practical laws. ⚖️