

# Informed Counsel

Analysis of Recent Legal Developments in Southeast Asia



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## Thai Copyright Act Amendments: Updating the Law for the Digital Age



Left| **Nandana Indananda**  
Partner  
nandana.i@tilleke.com

Right| **Suebsiri Taweepon**  
Attorney-at-Law  
suebsiri.t@tilleke.com

**T**hailand's Copyright Act B.E. 2537 (1994) came into force on March 21, 1995. Over the course of the nearly 20 years since its passing, the Act had previously remained unchanged, devoid of any amendments, despite numerous attempts by legislators to strengthen copyright protection and modernize the law to keep up with technological changes.

One of the copyright bills recently introduced by the National Legislative Assembly (NLA) of Thailand contains broader and more advanced tools for copyright owners to tackle copyright infringement. This copyright bill proposes reforms on copyright protection and liability in relation to the protection of Rights Management Information (RMI) and Technological Protection Measures (TPM).

The NLA has now passed this bill into law, having published it in the *Royal Gazette* on February 5, 2015. The bill will come into force 180 days after publication. With this significant development in mind, law enforcers, legal practitioners, and copyright owners need to become familiar with what the new copyright law has in store. This article will examine the protection of RMI and TPM introduced by this copyright bill.

### Copyright Infringement Exception under the First-Sale Doctrine

Section 32/1 of the amended Copyright Act explicitly recognizes the exception of copyright infringement under the first-sale doctrine. This new section stipulates that any distribution of original or copied copyrighted work—the ownership of which is lawfully acquired—does not amount to copyright infringement. This exception applies to all copyrighted works that are recognized by the Thai Copyright Act.

### Exception for Temporary Reproduction in Computer Systems

With the understanding that copyrighted works sometimes need to be duplicated in order to allow a computer system to function, the amended Copyright Act provides an exception to reflect this need, similar to exceptions contained in the copyright laws of many countries. Section 32/2 stipulates that any duplication of a copyrighted work that is required to be made in order to allow a computer system to function normally shall not be deemed as an act of copyright infringement.

### Preliminary Injunctive Relief for Copyright Infringement on Computer Systems

Section 32/3 of the amended Copyright Act will introduce a new injunctive measure which copyright owners can use to prevent the distribution of copyright-infringing content on the computer systems of Internet service providers. Under this section, in the event that a copyright owner has reasonable grounds to believe that a copyrighted work has been the subject of infringement on a computer system, he or she can file a motion with the competent court to request a court order be made against the service provider to stop the infringement. A "service provider," as defined in the Act, includes any person who provides access to the Internet or any services that allow people to communicate with one another over a computer system and any person who provides computer information storage services.

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When granting such an injunction, the court will specify the period of time within which the service provider must comply with the court order. After the injunction is granted, the copyright owner is obliged to initiate a lawsuit against the infringer within the period of time ordered by the court for the service provider to take down the infringing content. If the service provider is not the person who controls, initiates, or orders the infringing act to be carried out in the computer system, he or she will be exempt from liability for copyright infringement upon compliance with the court order, and he or she cannot be held liable for any damage incurred by his or her action carried out under the order.

### Protection of Performer's Moral Rights

The amended Copyright Act protects the moral rights of performers, similar to those of creators of copyrighted works, under Section 18. Under the new Section 51/1, a performer is entitled to identify himself or herself as a performer in the performance and has the right to protect his or her reputation by prohibiting any person, including the assignee of the performer's rights, to distort, shorten, adapt, or perform any other act with respect to the performance to the extent that such act would cause damage to the reputation or dignity of the performer.

### Protection of Rights Management Information

Sections 53/1 and 53/2 of the amended Act stipulate the civil liability of a person who deletes or modifies RMI with the knowledge that such deletion or modification would induce, cause, facilitate, or conceal copyright or infringement of a performer's right, as well as a person who communicates to the public or imports into Thailand for distribution any copyrighted work with the knowledge that the RMI of such work has been deleted or modified.

The liability for RMI infringement is not stipulated without exceptions. Under Section 53/3, exceptions are provided for cases in which:

1. the deletion or modification was made by an authorized official in order to enforce the law or to safeguard national security;
2. the deletion or modification was made by an educational institution, library, or public broadcasting agency for nonprofit purposes; or
3. the communication to the public of copyrighted work, in which RMI has been deleted or modified, was carried out by an educational institution, library, or public broadcasting agency for nonprofit purposes.

### Protection of Technological Protection Measures

Circumvention of TPM is prohibited under Section 53/4 of the amended Act—a person who circumvents TPM or provides the service of circumvention can be held liable for infringement if the circumvention was performed with the knowledge that such circumvention would induce or cause infringement on a copyrighted work or a performer's rights. Similar to infringement of RMI, any person who circumvents TPM may be fined and imprisoned in accordance with the penalties specified in Section 70/1.

The exceptions to liability arising out of TPM circumvention are included in Section 53/5, under which the act of

a person who circumvents TPM shall not be deemed to be an infringing act under Section 53/4 if such circumvention was:

1. necessary, provided that it falls within the exceptions to copyright infringement under the law;
2. to analyze the components required to cause one computer program to work with another;
3. to conduct research and analysis and identify defects of encryption technology;
4. to test, examine, or repair security systems of a computer, computer system, or computer network;
5. to stop the function of TPM which relates to the collection and dissemination of data that indicates the online activities of an individual;
6. to enforce the law and safeguard national security, which must be made by an authorized official; or
7. to gain access to copyrighted work, which must be made by an educational institution, library, or public broadcasting agency and made for nonprofit purposes.

### Punitive Damages

The amended Copyright Act broadens the scope of civil remedies available for copyright infringement by applying the concept of punitive damages. Section 64 of the Act, an existing section, has been amended to include a second paragraph which allows a competent court to double the amount of damages determined under the criteria set out in the first paragraph of the same section in the event that there is clear evidence that the copyright or performer's right was infringed on with the intention to allow the work to be widely accessible by the public.



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### Seizure and Destruction of Counterfeit Goods

The provision on the seizure and destruction of counterfeit goods under the Copyright Act has been changed significantly. Under the new Section 75, copyright owners are no longer entitled to ownership of the infringing articles. Rather, Section 75 grants the competent court the authority to order the infringing articles to be confiscated or destroyed, with the infringer bearing the cost of the destruction.

The amendments to the Copyright Act will equip copyright owners with broader and more advanced tools to tackle copyright infringement in the new digital age. An air of skepticism remains, however, over how well the new measures will be applied in practice. Therefore, it is important for copyright owners to keep a close eye on any new developments that may arise.