

## THAILAND

## Ten key changes to the Copyright Act

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Over the past 20 years since its enactment, the Thai Copyright Act BE 2537 (AD 1994) has remained unchanged, despite numerous attempts by legislators to modernise the law. As a result, Thailand's copyright law is out of date, and legal measures to combat piracy are inadequate.

In late 2014, however, the National Legislative Assembly passed two copyright bills into law. They were published in the *Royal Gazette* on February 5 2015, and will take effect 180 days after publication.

In this article, we will examine 10 major amendments that will be introduced to Thailand's copyright law.

- 1. Unauthorised camcording in cinemas:** Unauthorized recording of movies in cinemas, even for personal use, is explicitly prohibited under Section 28/1. Violators of this provision may be subject to the penalties listed in Section 69/1, which include imprisonment for six months to four years, or a fine ranging from B100,000 to B800,000 (\$3,000 to \$24,000), or both.
- 2. Disabled persons exception:** Under Section 32 (9), reproduction or adaptation of copyright works for the benefit of disabled persons is not considered copyright infringement, provided it is for non-profit purposes.
- 3. First-sale doctrine exception:** A form of the first-sale doctrine is found in Section 32/1, which states that lawful distribution of an original copyright work or its copies by a person who has lawfully obtained the ownership of such work or copies is exempt from copyright infringement.
- 4. Temporary reproduction exception:** Under Section 32/2, reproduction of copyright works in a computer system, which is necessary for the system to operate normally (as comput-

ers make temporary copies of data in the memory), does not amount to copyright infringement.

- 5. Preliminary injunctions against infringement of copyright in computer systems:** Section 32/3 allows copyright owners to seek preliminary injunctive relief against the unauthorised distribution of copyright works in computer systems. If a copyright owner has evidence to believe that copyright infringement is taking place in the computer system of a service provider, he or she may file a motion in the court for an order against the service provider to stop such infringement.
- 6. Rights management information (RMI):** The protection of RMI is provided for in Sections 53/1 and 53/2. The manipulation of RMI amounts to infringement of RMI, provided that the manipulator is aware that his or her actions could infringe a copyright or performers' rights. RMI infringement also occurs where the act of importing into Thailand for sale or making available to the public any copyright-protected work is done with the knowledge that the RMI of such work has been removed or altered.  
There are, however, exceptions listed in Section 53/3. For example, any deletion or change made to RMI by an authorised official or educational institution is permitted.
- 7. Technological protection measures:** Under Section 53/4, circumventing technological protection measures or offering such a service is prohibited if a person is aware that such act could constitute infringement of a copyright or performers' rights. Criminal liability is imposed on a person who commits such an act, according to Section 70/1. Specific exceptions where circumvention is allowed are also provided for under Section 53/5, for example, circumvention for the purpose of testing security problems of computer systems.
- 8. Performers' moral rights:** The new Copyright Act recognises that performers also have moral rights in addition to the economic rights provided by law. According to Section 51/1, a performer has the right to identify himself or herself as the performer of his or her performances and to prevent his or her assignee or

any other person from any modification of his or her performances that would be prejudicial to his or her reputation or dignity.

- 9. Punitive damages:** Punitive damages are introduced under Section 64, paragraph 2. If there is clear evidence that copyright infringement or infringement of a performer's right is committed intentionally so that the copyright work or a performer's right can be widely accessed by the public, the court may award higher levels of damages but may not exceed double the amount.
- 10. Seizure and destruction of counterfeit goods:** Section 75 has been amended to allow the court to order that infringing materials be destroyed at the expense of the infringer. Previously, an owner of a copyright or performer's right had to take possession of infringing materials.

Thailand has taken a step in the right direction to tackle copyright infringement more effectively, particularly in today's digital era. But several provisions in the new law are vague, which may lead to disputes over their proper interpretation and practice. For this reason, IP owners should closely examine the new copyright law to broaden their understanding and protect themselves to the fullest extent.