

# Informed Counsel

Analysis of Recent Legal Developments in Southeast Asia



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## Copyright Protection in Virtual Reality

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Virtual reality (VR) describes a computer-generated simulation of a three-dimensional (3D) space, which allows users to feel as if they are exploring a physical environment. To achieve this effect, a user wears a headset that performs the dual functions of displaying the 3D images and blocking out physical reality. By tracking the movements of the user's head, the displayed images may be adjusted to create the sense of being able to view an environment in 360 degrees.

The year 2016 was a watershed moment for virtual reality due to the release of several new VR systems for consumer purchase. Ranging from high-end systems, such as Oculus Rift, to inexpensive cardboard headsets designed to work with smartphones, there are now multiple options available for those interested in experiencing virtual reality firsthand.

While the rise of virtual reality thus far has been driven mostly by video games—exemplified by the recent release of the PlayStation VR headset—the investments currently being made by prominent tech companies signal that virtual reality will soon change the way we surf the Internet and engage with social media.

In addition, creative programs like Tilt Brush already offer artists new and unique ways to create genre-defying works in VR environments. As VR tools continue to improve and the number of VR adopters increases, there will be a marked proliferation of creative works in the VR context. For example, the Internet platform Second Life is a virtual world in which users explore and interact using avatars. Second Life has its own internal currency and a large market for “in-world” digital goods, including real estate, artwork, avatar clothing, and even pets. Strong protection for VR works will ensure that creators are incentivized to innovate in this new area.

This article discusses the applicability of copyright to virtual reality and some of the novel issues presented by intellectual property protection of VR works.

### Copyright Protection

While virtual reality is still in its infant stages, artists are already finding that creating works in a virtual 3D space allows them to do things that were previously impossible. Virtual reality allows artists to “paint” using color and light, and incorporate motion and sound to create three-dimensional works that appear to float in the air. These creations defy categorization because they may combine elements of illustration, sculpture, music, and cinematography. In addition, the VR context allows users to interact with works in ways not possible in physical reality, such as by walking through an object to examine multiple layers.

The Thai Copyright Act B.E. 2537 (1994) was designed to be adaptable so that it could encompass new types of works. However, the Act does not explicitly provide for protection of creative works in virtual reality, which raises the question of whether such works are protected under copyright.

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## Copyright Protection (from page 1)

Section 6 of the Copyright Act specifies that a “[c]opyright work under this Act means a work of authorship in the form of a literary, 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*” (emphasis added).

The above language demonstrates that the Copyright Act is not limited to the technologies that were in existence at the time of drafting. As long as a new work can be classified as part of the literary, scientific, or artistic fields, and the work satisfies the other requirements of the Act, it will be protectable by copyright. Further, Thailand protects software under copyright law as a literary work. As VR works are represented by software, they will be protected by copyright regardless of the form they take.

While works are automatically protected by copyright upon their creation, rights holders should undertake recordation of their works with Thailand’s Department of Intellectual Property to establish prima facie evidence of copyright ownership and subsistence in the event they need to take legal action against an infringer.

### Infringement

Copyright provides an associated bundle of exclusive rights for copyright owners, such as the right to reproduce, rent, assign, license, communicate to the public, and create adaptations or derivative works. Because VR works are protected under copyright, other parties may not make the above uses of a work without the permission of the copyright owner. The flip side of this is that a VR reproduction of a real-world work will also be considered infringement as a derivative work.

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While we are still in the early days of virtual reality adoption, VR platforms should create clear Terms of Service stating that users may not use the platform to infringe the intellectual property rights of other parties. Users who violate these terms by creating infringing content may be blocked or removed from the service.

As adoption of virtual reality grows, VR platforms will also need to be protected against infringing uses of their services, much as user-generated content sites are today. If VR platforms allow users to interact with one another in

virtual space via the Internet, VR platforms will fall under the broad definition of internet service providers (ISPs) found in the Copyright Act. Section 32/3 of the Copyright Act grants immunity to ISPs against infringing content placed on their services by other parties, provided that they

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comply with court orders to remove such content. This immunity should encourage VR platforms to allow robust innovation by their users without fear of being held liable for any infringing activity their users may undertake.



### Enforcement

The intangible nature of VR works will make enforcement against infringing uses difficult, just as the Internet has presented numerous challenges for creators seeking to enforce their IP rights against online infringers. Jurisdiction over VR disputes will likely be tested early, and courts will have to determine whether to make jurisdiction dependent on the location of the creator, infringer, infringement, or servers hosting the virtual reality. These locations may be on opposite sides of the world, and each one will create different enforcement issues.

VR platforms can assist content owners by creating internal notification and removal procedures for infringing content. Creating these internal procedures will demonstrate the goodwill of the VR platform and encourage content creators to participate in virtual reality. Additionally, by creating dependable methods for removal of infringing content, content owners may protect their works while avoiding costly and lengthy litigation.

### Outlook

Due to its ability to create the impression of visiting new worlds, virtual reality has the potential to transform areas as disparate as entertainment, education, and tourism. While we cannot predict the path that virtual reality will eventually take, the innovative ways that virtual reality is already being used demonstrate that new markets for creative VR works will continue to proliferate. VR works need to receive strong protection under intellectual property laws in order to encourage creators to adopt virtual reality as their medium of choice. ⚖️