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# Thailand's New Law for Combating Online IP Infringement



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More and more intellectual property infringement is shifting from physical locations to digital or online venues. Internet users can easily offer counterfeit products for sale through social media or social networks, or upload pirated movies on to websites. In most cases, it is difficult to trace back the infringement activity to catch the actual infringer behind a fake username.

The Thai government has taken notice and tried to ad-

dress this problem by amending the Copyright Act in 2015. Furthermore, an amendment to the Computer Crime Act gives rights holders a new tool for combating online IP violations, and will be in force in May 2017.

While the two laws have the same goal, they are applied through different approaches. This article will provide an overview of the two different legal approaches in combating online IP infringement and compare them for the benefits of IP owners in choosing the most suitable option to combat online infringement.

## **Copyright Act.**

The amended Thai Copyright Act (No. 2), which came into force on August 4, 2015, provides copyright owners with a tool to tackle online infringement. Section 32/3 allows for preliminary injunctions that remove copyright-infringing works from the internet, while at the same time providing an exemption from liability for internet service providers (ISPs).

Under this section, the copyright owner must file a motion with the court requesting an injunction against

the infringing material. The motion must clearly state any information regarding the ISP, infringement claims, and details of the investigation process that will lead to the finding of the infringement and evidence thereof, including the potential damages and other relevant factors.

If all required information is provided and the court sees the necessity, the court may order the ISP to remove the copyright-infringing content. Afterwards, the copyright owner must initiate legal action against the actual infringer within a specified time period.

#### Obstacles

However, copyright owners have had some issues in getting injunctions under this section. In many of the unsuccessful cases, the court rejected the request because copyright owners had, in the court's view, failed to provide sufficient information, such as details and evidence of the investigation process.

Even if the court grants an injunction order, there are still obstacles in the implementation process. Takedown orders targeting foreign ISPs with servers hosted outside of Thailand are often unenforceable since Section 32/3 does not explicitly provide for website blocking. As a result, some copyright owners have turned their focus to other enforcement options.

### Computer Crime Act.

Prior to the amendment of the Computer Crime Act (CCA), there was an idea to using Sections 14(1) and 20 of the old Computer Crime Act B.E. 2550 (2007) to address IP infringement on the internet.

The old CCA provided a mechanism for a government officer to ask the court to block the distribution of forged computer data or false computer data, which were contrary to the public order or good morals. But this approach was not feasible in practice because it was hard to interpret offering counterfeit goods for sale, or the sharing of pirated movies, as distributing “forged computer data” or “false computer data.” Thus, officials have been reluctant to take action against these types of IP infringement offenses on the Internet.

#### Section 20(3) of the Amended Computer Crime Act

Recently, the CCA was amended to solve several issues, including adding new enforcement measures to tackle online IP infringement.

The Computer Crime Act (No. 2) B.E. 2560 (2017), which takes effect on May 24, 2017, provides for a permanent injunction to block websites that have online IP-infringing content or for removing such data. Section 20(3) states that where there is dissemination of computer data which is a criminal offense against intellectual property, an official may, with approval from the Minister of Digital Economy and Society, file a motion with evidence to the court requesting the cessation of dissemination or deletion of such computer data from the computer system.

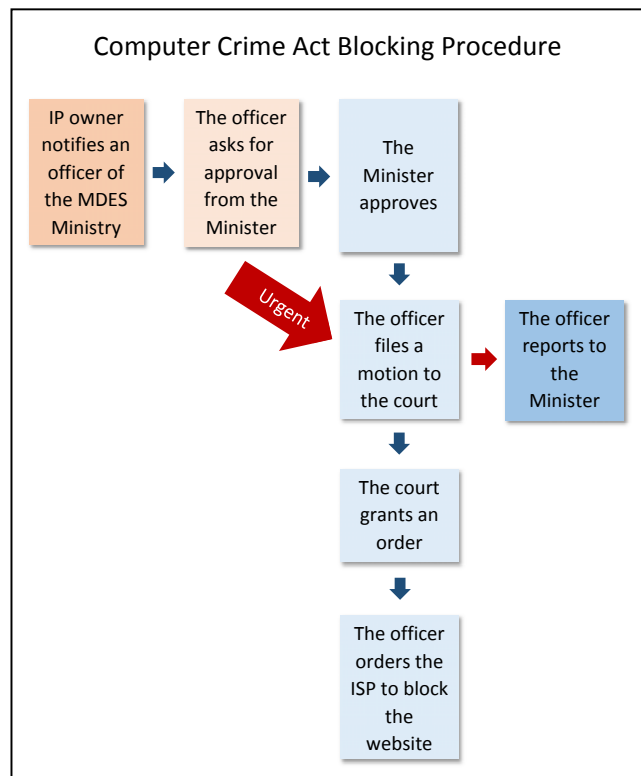
Under the CCA, the Ministry of Digital Economy and

Society (MDES) and its officials have primary authority related to these provisions.

#### Implementing the Procedure

In practice, it is usually the IP owner who finds the alleged infringement on a website. The IP owner may provide the website address to an officer of the MDES assigned to investigate and collect evidence for further consideration by the minister.

Once the minister approves, the officer will then file a motion with the court requesting that the website be blocked or its content deleted. However, in an urgent case, the officer may file a motion with the court before obtaining approval from the MDES. If this is the case, the officer must report the matter to the minister as soon as possible after the motion has been filed.



Finally, if the court grants the request, the officer may either block the website or order the ISP to do so. The rules, timeline, and methods for enforcing the court order are regulated by the Minister's Notification.

By using the latest amendment of the CCA, an IP owner will be entitled to block the dissemination of IP-infringing data on the internet.

### Comparison Between Approaches.

With the same aim of combating online infringement, the two laws are applied through different approaches. If we compare Section 32/3 of the Copyright Act and Section 20(3) of the CCA, we see some differences with respect to the scope of infringement, type of order, available action, and responsible person.

When the case does not involve copyright infringement, the only applicable approach is Section 20(3) of the CCA. However, for a copyright infringement case, rights

	Copyright Act § 32/3	Computer Crime Act § 20(3)
Subject matter of infringement	Copyright infringement	IP infringement
Type of order	Preliminary injunction	Permanent injunction
Available action	Remove/other methods	Remove/block dissemination
Responsible person	Copyright owner	Government officials

owners may choose between these two approaches based on their preferred outcome—that is, whether they wish to remove the content or block the website.

In addition, the burden on IP owners to investigate and collect evidence under Section 32/3 of the Copyright Act is heavier than under the CCA. This is because under the CCA, government officials, or MDES officers, are responsible.

Moreover, the Copyright Act provides preliminary injunctive relief, which requires the copyright owner to initiate legal action after the material has been taken down, while the CCA provides a permanent injunctive relief that does not require further legal action. IP own-

ers should keep these different factors in mind when deciding the appropriate approach to take against online infringement.

### Looking Forward.

In addition to the latest amendments to the Copyright Act, the amended CCA can be a very effective tool. Section 20(3) is a new approach for IP owners seeking to enforce their rights against IP infringement on websites. With respect to the law in other jurisdictions, it seems website blocking is a new development in combating online infringement. Like all new legal approaches, we hope that the CCA can be applied effectively and fairly, without affecting the pace of technological advancement in Thailand. It will not be until an appropriate test case is considered by the court that we can assess whether the CCA is an effective tool. The question of how the CCA will be interpreted and applied in practice will depend on the resolve of IP owners, government officials, and the courts.