

# Informed Counsel

Analysis of Recent Legal Developments in Southeast Asia



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## The Compliance Framework for Online Content in Thailand

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With the growing power and influence wielded by online content, concerns have been raised in Thailand (as in many other countries) that online channels, which facilitate free and easy exchange of information across a variety of forums, could be used to conduct illegal activities that will incite discontent and conflict within the country. This is especially true of information exchanged and shared through social media and Over-the-Top (OTT) services.

In a bid to exercise a degree of control over online content, a number of laws and regulations have been prescribed focusing specifically on types of information that should be restricted, or prohibited, from being disseminated online. The following is an overview of Thai laws and regulations relating to online content.

### Computer Crimes Act

The Computer Crimes Act (CCA) is used by the government as a tool to control, restrict, and prohibit the dissemination of specific information by computer. The CCA also authorizes authorities to monitor internet traffic and suppress content that falls within the scope of the following criteria:

- ▶ Distorted, false, or partially false content which is likely to cause damage to the general public with malicious intent.
- ▶ False content which is likely to cause damage to national security, public safety, national economic stability, or infrastructure for the public benefit, or cause panic to the general public.
- ▶ Content that constitutes a criminal offense relating to national security or terrorism, the royal family, or relationships with foreign nations, as prescribed under the Penal Code.
- ▶ Content that constitutes a criminal offense under the laws relating to intellectual property.
- ▶ Content which, by itself, is contrary to Thai public order or good morals.
- ▶ Obscene or pornographic content.
- ▶ Computer data or emails which could be regarded as a disturbance to the recipients, wherein there is no option for them to easily opt out or unsubscribe.

The provisions of the CCA also provide enforcement measures aimed at tackling intellectual infringement through online platforms. These measures provide the possibility of imposing a permanent injunction, which allows for the suspension or blocking of websites that contain content, or disseminate any data, that is deemed to infringe intellectual property. The provisions also allow for the removal of such data from computer systems.

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## Online Compliance in Thailand (from page 1)

### Child Protection Act

The Child Protection Act prohibits the dissemination of any information relating to a child with the intention of causing damage to the mind, reputation, prestige, or any other interests of that child, or which seeks benefit for oneself or others in an unlawful manner.

### Copyright Act

With millions of people spending an increasing proportion of their time online in order to enjoy online content and services, several types of infringing digital content (e.g., movies, songs, or games) can easily be illegally disseminated and consumed through online platforms, increasing the risk of copyright infringements. Notably, an amendment to the Copyright Act that came into force in 2015 provides alternative relief for copyright infringement in the form of a preliminary injunction, allowing the injured parties to have infringing content removed from the internet.

### NCPO Orders

In addition to these attempts to curb widespread distribution of unregulated online content, Thailand's interim government, the National Council for Peace and Order (NCPO), has attempted to exert additional controls over digital rights by imposing extensive prohibitions on the dissemination and broadcasting of information via various forms of media.

These NCPO orders empower authorities to prohibit the dissemination and broadcasting of any information that falls within the confines of the following criteria:

- ▶ False content that could cause defamation or have a negative impact on the royal family.
- ▶ News or information that could be harmful to national security.

- ▶ Criticism of the NCPO's operation which is provided in bad faith, or any false information that could impair the NCPO's credibility.
- ▶ Voices, photos, and videos relating to the confidential operation of government agencies.
- ▶ Information which could cause controversy or polarization within the country.
- ▶ Information that invites people, or leads to the assembly of people, in order to oppose NPCO officials, or people associated with the NCPO.
- ▶ A threat to commit an act of violence against other people, or which causes panic or fear among the general public.

On top of these extensive restrictions, the NCPO orders also further prohibit individuals and media from inviting academics, or former civil servants, for interviews or to express opinions that are deemed to be in a manner that could exacerbate conflicts, or which distort information and cause confusion amongst the public.

### Moving Forward

The extensive restrictions and prohibitions cited above have not been initiated without concerns being raised in some quarters, and there is consternation that the drive to enforce the law could also result in a reduction in individual rights to freedom of expression.

Therefore, finding a balance and suitable resolutions for these issues appears to be a crucial challenge for Thailand's regulatory authorities, and ultimately, the country's next government, which will come to power after the widely anticipated elections are held in March 2019. In the meantime, and whatever the outcome, it is imperative that both individuals and corporations understand the laws relating to online content, and exercise caution when engaging in any online transactions or businesses, in order to mitigate their exposure to potential penalties that may be imposed for transgressions. 🚧