

THAILAND

Draft amendment to Copyright Act promises updated protections

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The latest draft amendment of Thailand's Copyright Act is continuing to progress through the legislative process after being approved by the cabinet in late 2020. The current draft of the law, which is likely to pass by the end of this year, contains significant revisions that copyright owners, legal practitioners, and internet service providers (ISPs) should note.

Photographic works: longer term of protections

Under current law, the term of protection for photographic works is 50 years from the work's creation or first publication. The draft amendment of the Copyright Act extends this to be the lifetime of the author plus an additional 50 years.

This change would put Thailand's protection for photographic works in line with the WIPO Copyright Treaty, of which Thailand is getting ready to be a member.

Online infringement: safe harbours and takedowns

While the current Copyright Act provides injunctive relief against online infringement for copyright owners, together with an exemption from infringement liability for ISPs, the mechanism for doing so has proved ineffective.

The new draft therefore replaces this mechanism with safe harbour provisions that exempt ISPs from liability for copyright infringement committed by users, as long as the ISPs comply properly – including by implementing the notice-and-takedown system.

The draft provides a detailed definition of 'service providers' and divides ISPs into intermediary ISPs, caching ISPs, hosting ISPs, and search engine ISPs. The draft's definition of 'users' of ISPs includes anyone who uses an ISP's service (paying or otherwise).

In order to be exempted from liability for copyright infringement for their provided services, an ISP must have explicitly announced (and complied with) a policy to terminate services to repeated infringers.

ISPs must also adopt the notice-and-takedown system – a new addition by the draft. Under this system, which can be compared to the Digital Millennium Copyright Act in the US, copyright owners can send a notice of infringement (backed by evidence) to caching, hosting or search engine ISPs, informing them of any allegedly infringing data.

An ISP that has been notified is required to immediately take down the allegedly infringing data, its references, and access points from their system – or block access. The ISP must then notify the user who posted the material to allow him or her to oppose its removal. If the user responds with a counter-notice, the ISP must notify the copyright owner and confirm with the copyright owner whether to bring the relevant data back onto the system or maintain the takedown. Anyone who falsely files an initial notice or counter-notice is liable for any resulting damages.

Further details on the criteria, rules, and conditions for the notice and counter-notice procedures will come in additional regulations.

Technological protection measures

Technological protection measures (TPMs) are also defined more broadly in the draft, which identifies various TPM violations, prohibits providing services to circumvent TPMs, and imposes liability against manufacturers, sellers, or distributors of products, equipment, or services intended to cir-

cumvent TPMs.

Exceptions for each type of violation still exist, but the draft narrows their scope by specifying that the exact exceptions will be enumerated in forthcoming ministerial regulations. This is a more targeted approach than the current Copyright Act, under which the exception to liability arising from TPM circumvention only refers back to the exceptions for copyright infringement.

Takeaways

The draft amendment to the Copyright Act indicates that copyright owners will have more up-to-date tools to tackle online copyright infringement, while the safe harbor provisions should be a boon to ISPs that comply with the law.

By tracking the progress of this draft law and its subordinate regulations, these parties will be able to combat online copyright infringement in Thailand and lower their risk of liability.