



International Copyright Law

A Practical Global Guide
Second Edition
Consulting Editor **Ben Allgrove**

Table of contents

Introduction _____ 7

Ben Allgrove
Baker McKenzie, London

The EU, UK and US _____ 13

**approaches to permitted
uses under copyright law:
comparative reflections and
contemporary trends**

Stavroula Karapapa
University of Essex

**Data and text mining:
an overview of EU developments** _____ 21

Ben Allgrove
Josh Boyden
Jason Raeburn
Baker McKenzie, London

**Harmonisation of EU
copyright law – a long and
winding road** _____ 29

Birgit Clark
Baker McKenzie, London

Argentina _____ 51

Maria Paula Bassi
Ana Paula Gallardo
Bernard Malone
Baker McKenzie, Buenos Aires

Australia _____ 79

Helen Macpherson
Allison Manvell
Baker McKenzie, Sydney

Belgium _____ 101

Karel Nijs
Alain Strowel
Patrice Vanderbeeken
Pierstone, Brussels

Canada _____ 119

Cristina Mihalceanu
Sangeetha Punniyamoorthy
DLA Piper (Canada) LLP

China _____ 139

Sharon Qiao
Tim Smith
Rouse

Denmark _____ 177

Mogens Dyhr Vestergaard
Bird & Bird, Copenhagen
Jesper Rothe
Bech-Bruun, Copenhagen

France _____ 197

Pauline Celeyron
Nathalie Marchand
Baker McKenzie, Paris

Germany _____	225	Mexico _____	355
Joachim Lehnhardt		Roberto Arochi	
Quinn Emanuel Urquhart		Manuel Morante	
& Sullivan LLP		Arochi & Lindner	
Greece _____	245	Netherlands _____	375
George A Ballas		Nathalja Doing	
Theodore J Konstantakopoulos		Steffen Hagen	
George Ch Moukas		Baker McKenzie, Amsterdam	
Nikolaos A Papadopoulos		New Zealand _____	389
Ballas, Pelecanos & Associates LPC		Justin Graham	
Hong Kong _____	265	Chapman Tripp	
Kenny GK Cheung		Philippines _____	407
Baker McKenzie, Hong Kong		Noelle Jenina Francesca E Buan-	
India _____	277	Nicandro	
Deepak Gogia		John Paul M Gaba	
Rajendra Kumar		Aleli Angela G Quirino	
Ashish Marbaniang		Angara Abello Concepcion Regala	
Latha R Nair		& Cruz Law Offices (ACCRALAW)	
K&S Partners		Poland _____	427
Ireland _____	299	Krzysztof Czyżewski	
Ciara Browne		Czyżewscy Law Firm	
Gerard Kelly		Portugal _____	447
Mason Hayes & Curran LLP		Margarida Castillo Silva	
Italy _____	317	Ricardo Henriques	
Stefania Baldazzi		César Bessa Monteiro	
Sky Italy		César Bessa Monteiro, Jr	
Laura Borelli		Abreu Advogados	
Giacomo Vacca		Russia _____	467
Roberto Valenti		Denis I Khabarov	
DLA Piper, Milan		Baker McKenzie, Moscow	
Japan _____	339	Singapore _____	485
Daisuke Tatsuno		Alban Kang	
Baker McKenzie, Tokyo		Bird & Bird ATMD LLP	

South Africa _____	511	United States _____	649
Vicky Stilwell		Danielle Benecke	
KISCH IP		Baker McKenzie, Palo Alto	
South Korea _____	531	Avi Toltzis	
Nayoung Kim		Josh Wolkoff	
Seoung-Soo Lee		Baker McKenzie, New York	
Chang Hwan Shin		Vietnam _____	681
Kim & Chang		Quach Minh Tri	
Spain _____	549	Tran Manh Hung	
José María Méndez Zori		BMVN International LLC (a	
Baker McKenzie, Madrid		member of Baker McKenzie)	
Sweden _____	571	About the authors _____	703
Catharina Bratt		About Globe Law _____	727
Håkan Sjöström		and Business	
Ann-Charlotte Söderlund Björk			
GOZZO Advokater HB			
Thailand _____	589		
Ploynapa Julagasigorn			
Suebsiri Taweepon			
Darani Vachanavuttivong			
Tilleke & Gibbins			
Turkey _____	609		
Uğur Aktekin			
Hande Hançar			
Mutlu Yıldırım Köse			
Gün + Partners			
United Kingdom _____	625		
Ben Allgrove			
Julia Dickenson			
Baker McKenzie, London			

Thailand

Ploynapa Julagasigorn
Suebsiri Taweepon
Darani Vachanavuttivong
Tilleke & Gibbins

1. Copyright treaties and conventions

Thailand is a party to the following main international copyright treaties and conventions:

Common name	Full name	Entry into force
Berne Convention	Berne Convention for the Protection of Literary and Artistic Works	17 July 1931
TRIPS Agreement	WTO Trade-Related Aspects of Intellectual Property Rights Agreement	1 January 1995
Marrakesh Treaty	Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print-Disabled	28 January 2019

Thailand is a civil law jurisdiction. The national legislation governing copyright is the Copyright Act BE 2537 (1994). Thai courts are not bound to follow the reasoning used in precedents, but they can be used as a reference on a case-by-case basis.

Thailand is bound to protect the copyright works of member countries of both international agreements, but it is not a signatory to the Rome Convention of 1961 or the Universal Copyright Convention. Thailand operates a dualistic jurisprudence approach, and thus treaties are not enforced in Thailand until they are made into law – which includes an act, royal decree or ministerial regulation – through legislative enactment. For example, in order to comply with the Marrakesh Treaty, which sets mandatory limitations and

exceptions for the benefit of the blind, visually impaired, and otherwise print-disabled, the Copyright Act BE 2537 (1994) was amended in 2018 so that Thailand could accede to the Marrakesh Treaty in 2019. Recently, the Cabinet approved Thailand's membership of the WIPO (World Intellectual Property Organization) Copyright Treaty ('WCT'). While awaiting Thailand's accession to the WCT, the Copyright Act BE 2537 (1994) is now pending amendments.

2. What can be protected?

2.1 How is a protected 'work' defined?

Under the Copyright Act BE 2537 (1994), a copyright work means a work of authorship in the form of a literary (which includes computer programs), 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.¹ According to the Act, a copyrightable work is required to meet four requirements: expression of idea; expression in a recognised work; originality; and non-illegality.

However, copyright protection does not extend to "ideas or procedures, processes or systems, or methods of use, or operation, or concepts, principles, discoveries, or scientific or mathematical theories".²

Non-copyright works include those which do not satisfy the nature and criteria of copyright, as explained below in section 2.2. These include works for which the term of protection has expired and that are thus in the public domain for others to freely use, or in cases where the copyright has been waived by the author, the work subsequently falls into the public domain.

2.2 What are the criteria for protection?

The principle of originality means that a copyright work must be directly made by the author himself, with his or her own appropriate level of capability, knowledge or judgement for such work, and not copied from another work.

The Act defines an 'author' as a person who makes, or creates, a copyright work, but there is no requirement that the author must use his or her own thoughts or ideas in order to obtain protection.³

For copyright to subsist in a work, Thai law does not require the work to be fixed in any specific medium of expression. This is equivalent to copyright laws in civil law countries, but contradicts those in some common law countries. Thus, in Thailand, oral works or speeches can be copyright works.

1 Section 6, paragraph 1 of the Copyright Act BE 2537 (1994).

2 Section 6, paragraph 2 of the Copyright Act BE 2537 (1994).

3 Section 4, paragraph 1 of the Copyright Act BE 2537 (1994).

2.3 Specific works

Under the Copyright Act BE 2537 (1994), there are nine categories of works of authorship that are copyrightable:⁴

- literary works (including computer programs);
- dramatic works;
- artistic works;
- musical works;
- audiovisual works;
- cinematographic works;
- sound recordings;
- sound and video broadcasting; and
- other works in the literary, scientific or artistic domain.

(a) ***Literary works***

'Literary works' comprise any kind of literary work, such as books, pamphlets, writing, printed matter, lectures, sermons or addresses, including computer programs.

(b) ***Dramatic works***

A 'dramatic work' is a work of choreography, dancing or acting, or a performance presented in a dramatic arrangement, including pantomime.

(c) ***Musical works***

A 'musical work' is a work which is composed for the purpose of playing or singing, regardless of whether it includes rhythm and lyrics, or only has rhythm, including arranged and transcribed musical notes or musical diagrams. In other words, the rhythm together with the song lyrics creates the copyrighted musical work. However, the work of the song lyrics alone may be separately protected as a literary work.

(d) ***Artistic works***

'Artistic work', regardless of whether or not the work has artistic value, means a work of one or more of the following descriptions:

- *work of painting or drawing*, which means the creation of a configuration consisting of lines, light, colours or any other element, or the composition thereof, upon one or more materials;
- *work of sculpture*, which means the creation of a configuration with a tangible volume;
- *work of lithography*, which means the creation of pictures using a printing process, and includes printing blocks or plates that are used in the printing;

4 Section 4 of the Copyright Act BE 2537 (1994).

- *work of architecture*, which means the design of buildings or constructions, an interior or exterior decoration design, as well as a landscape design, or the creation of a model consisting of buildings or constructions;
- *photographic work*, which means a creation of pictures using an image-recording apparatus, which allows the light to pass through a lens to a film or glass, which is subsequently developed using a liquid chemical in a specific formula, or by any process that creates a picture, or an image recorded by any other apparatus or method;
- *work of illustration*, which means a map, structure, sketch or three-dimensional work with respect to geography, topography, or science; and
- *work of applied art*, which means a work which uses each, or a composition, of the works as mentioned in the preceding bullets for utility (aside from the appreciation of the merit of the work), such as for the practical use of such work, decorating materials or appliances, or for commercial benefit, whether with or without artistic merit, and shall include photographs and plans of such works.

(e) ***Sound recordings***

A 'sound recording' is a work which consists of a sequence of music, sounds of a performance, or any other sound which is recorded on any kind of medium and is capable of being replayed with equipment that is suitable for such a medium, but not including the soundtrack of a cinematographic work or other audiovisual work.

(f) ***Cinematographic works***

A 'cinematographic work' is an audiovisual work consisting of a sequence of visual images which can be continuously shown as moving pictures, or can be recorded on another medium so as to be continuously shown as moving pictures, including the soundtrack of such cinematographic work, if any.

(g) ***Typographical arrangements***

The Copyright Act BE 2537 (1994) does not list 'typographical arrangements' under specific works. The most related form of protection may be claimed in the form of an artistic work under the subcategory as a 'lithographic work' in Section 4 of the Act. Nevertheless, claiming artistic copyright work over a typographical arrangement as a lithographic work could be interpreted narrowly and excluded by the court, because it is not explicitly recognised by the Act. Thus, the protection of typographical arrangements under the Act would be rather thin.

(h) **Databases**

The Copyright Act BE 2537 (1994) does not list ‘databases’ under specific works. However, protection may be afforded under Section 12 of the Act regarding collections or compilations of data, whether in machine-readable form or on other devices. The databases may also be protected as literary works under Section 4 of the Act, which covers all kinds of production in the literary domain including computer programs.

(i) **Other**

Compilations: Copyright in a work which is a compilation or a composition of copyright works under the Act, done with the consent of the copyright owner, or a compilation or composition of data or other materials which are readable or conveyable by a machine or other apparatus, shall vest in the person who makes the compilation or the composition, provided that he or she has done so by means of selection or arrangement in a manner which is not an imitation of the work of another person, without prejudice to the owners of copyright in the works or data or other materials created by the original authors which are compiled or composed.⁵

Broadcasting works: A ‘broadcasting work’ is a work which is communicated to the public by means of radio broadcasting, sound, or video broadcasting on television, or by any other similar means.

Computer programs: ‘Computer program’ is included under ‘literary works’ in Section 4 of the Copyright Act BE 2537 (1994) (see section 2.3 above), and it refers to a set of instructions, or anything which is used with a computer to make the computer work, or generate a result, regardless of the computer language. This broad definition includes a program that is written in either source code or object code, and one using any computer language.

Audiovisual works: An ‘audiovisual work’ is a work which consists of a sequence of visual images recorded on any kind of medium, and which is capable of being replayed with equipment that is suitable for such medium, including the soundtrack of such work, if any.

This is an extract from the chapter ‘Thailand’ by Ploynapa Julagasigorn, Suebsiri Taweepon and Darani Vachanavuttivong in *International Copyright Law: A Practical Global Guide, Second Edition*, published by Globe Law and Business.

5 Section 12 of the Copyright Act BE 2537 (1994).

International Copyright Law

A Practical Global Guide, Second Edition

International Copyright Law: A Practical Global Guide, Second Edition

From its origins protecting the rights of authors and producers on a national level, copyright has expanded to become a semi-harmonised body of law with international reach. With the advance of technology, that reach is directly influencing how many types of business operate and use and protect rights around the world. It is also a high-priority topic on legislative agendas for policy makers.

The second edition of *International Copyright Law* features up-to-date contributions from experts in over 30 jurisdictions worldwide, setting out the legal framework of their copyright laws and how to protect and exploit rights in creative and entrepreneurial works. It covers the types of work that can be protected, formalities for and duration of protection, rules relating to the ownership of copyright works, defences and infringement.

This edition also contains new chapters on:

- A comparative look at the trends we see in permitted uses under EU, UK and US copyright law;
- A particular focus on the emerging set of exceptions we see for text and data mining; and
- An analysis of the state of harmonisation of copyright across the European Union.

International Copyright Law, Second Edition will assist individuals in multinational companies and lawyers in private practice who deal with copyright works such as publications, music and films in knowing their rights under copyright law in all the main commercial markets in the world.

