



THE COPYRIGHT ACT CHANGES TO MATCH THE TECHNOLOGICAL ADVANCEMENT IN THAILAND

After several discussions in the past, the Copyright Act (No. 5) B.E. 2565 on the amendment to the Copyright Act B.E. 2537 became effective on August 23, 2022. The amended Copyright Act will ensure and facilitate the protection of copyrighted works in the midst of this technologically advancing age and align Thailand's legislation with the World Intellectual Property Organization Copyright Treaty ("WCT"), of which the nation will become a part. More importantly, this Act will provide additional and appropriate measures to tackle copyright infringement in the growing digital industry of Thailand.

The significant changes included under the Amendment are as follows:

1) Internet Service Providers (ISPs), Safe Harbor and Notice and Takedown System

Under the Amended Act, the definition of "Service Provider" is re-defined to describe an intermediary who transmits computer data or provides other communication access to a computer system which includes a service provider providing system caching, hosting, and information location tools, whether on their own behalf, in the name of another person, or for the benefit of another person. In addition, the definition of "Service User" under the Amendment is defined to include anyone who uses ISP's service, whether or not payment is required.

In 2015, the Thai Government introduced Section 32/3 under the Copyright Act (No.2), which allowed copyright owners to obtain an injunction from the courts to enforce compliance against Internet Service Providers (ISPs). Despite this, it was later discovered that Section 32/3 was not practically enforceable. Specifically, due to a burdensome court process and strict timeframe, it is essentially difficult to initiate a lawsuit against the infringer under these conditions. In most cases, the copyright owners will encounter difficulties in locating or identifying the infringer(s). Moreover, ISPs are not likely to delegate compliance since infringing contents may be originated from overseas servers. It is rather clear that much of the burden falls on the copyright owners, which has caused a repercussive effect that has made enforcement of copyrighted works onerous, especially when the works are hosted through online platforms. The Amendment has solved the aforesaid difficulties by revoking and replacing Section 32/3 with the new provisions on "Notice and Takedown" which is the same concept as the US Digital Millennium Copyright Act ("DMCA"). This new amendment, commonly known as the "ISPs Safe Harbor", includes the notice and takedown procedure that aims to create a balance between copyright owner's rights and ISP's responsibilities. The new "Notice and Takedown" procedure will replace the previous court process, in which copyright owners are allowed to file a petition directly with the ISPs.





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With the new Notice and Takedown procedure, copyright owners can issue a notice to the ISPs directly requesting the ISPs to remove or disable access to allegedly infringing contents. Assuming that the copyright owner filed a notice in good faith, ISPs are required to cease all communication of the alleged content(s) and notify the alleged infringer of the takedown protocol. Following this, the alleged infringer will be allowed to file a counter-statement (optional), where the ISPs will revive the content within 30 days upon receipt of the counter-statement. To prevent the ISPs from doing so, the copyright owner is required to file a lawsuit against the alleged infringer before the court within the prescribed period and notify the ISPs of the same accordingly.

In order for ISPs to be exempted from copyright infringement liability for the provided services, ISPs must explicitly announce and implement a policy to terminate the services rendered to the repeated infringers and must have maintained compliance with the aforesaid policy.

2) Extended Term of Protection for Photographic Works

Unlike audiovisual works, cinematographic works, sound recordings or broadcasts, photographic works are not included in the amendment of Section 21 where the protection term of 50 years from the creation of such work or 50 years after the first publication of the work shall apply. This means that photographic works will enjoy terms of protection for the life of the author and 50 years after death subject to the protection term stipulated in the current Section 19. The extension of such protection term will result in a longer period for the copyright owner and its successors to benefit from the works, as well as stands to enhance the creation of photographic works.

Despite this, local critics have voiced their concerns that the amendment only covers photographic works, whereas other types namely cinematographic works, sound recordings and broadcasts are still limited to Section 21. Critics have further commented that the amendment should extend to a broader range of works, including cinematographic works and sound recordings.

3) Technological Protection Measure (TPM)

The provision on technological protection measure ("TPM") of the Copyright Act has been amended to anti-circumvention of such technology. Under Section 4 of the amended Act, TPM is re-defined as "a technology used to protect the rights of a copyright owner or the rights of a performer under this Act, or a technology used to control an access to copyrighted works or performance recordings efficiently." Section 53/4 was also added to re-define the circumvention of TPM as "Any act that circumvents a technological measure applied for the control of accessibility shall be deemed an infringement of technological measure.", where Section 53/5(1) was also amended to provide exceptions to the previous.

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Under the Copyright Act (No. 2) of 2015, there are no penalties for those who manufacture or distribute devices used for circumventing a technological measure. To ramp up measures against this cybercrime, Section 53/6 was added to impose infringement if any person was found to facilitate the circumvention of TPM, acts such as: knowingly providing, manufacturing, or sale of any product/technology that would render TPM ineffective would be deemed as an infringement. Whereas Section 53/8 was added to elaborate exceptions to the infringement of TPM. Lastly, a new penalty for circumventing TPM was added in Section 70/1 “Whoever infringes right management information under Section 53/1 or Section 53/2, or infringes technological measure under Section 53/4 or Section 53/6, shall be liable to fine not exceeding one hundred thousand Baht”.

The main purpose of setting out the penalties for any actions relating to the circumvention of TPM is to protect the copyrighted works in digital forms in a more efficient way to meet the modern technological landscape.

In summary, the amended Copyright Act will strengthen the protection of copyrighted works under Thai law and enable all involved parties in synergizing and protecting copyright works and introducing a robust regime for online copyright protection.

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