

SOUTH-EAST ASIA



**Virtual Roundtable on
Industry and Intermediary Cooperation
Against Online IPR Infringements
in Thailand**

Issues and Challenges Faced by IPR Owners Against Online Infringements

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Main Challenges Faced by IPR Owners Against Online Infringements

- Wide acceptance of counterfeit products online and wide spread infringing contents (software, music, movies, trademarked consumer goods) still very easy to access.
- Strengthen legislation and regulation regarding online enforcement and address lack of regulations for some products on online market places which creates a vacuum which infringers exploit
- Perceived lack of proactive and effective enforcement.

Current Legislative Framework

LAWS	Copyright Act B.E. 2537 (as amended in 2015)	Computer Crime Act BE 2560 (2017)
Article	Section 32/3: “In the case where there is reliable evidence showing that there is a <u>copyright infringement</u> in the computer system of a service provider , a copyright owner may <u>submit a petition requesting the court to order the service provider to cease such copyright infringement</u> ”.	Section 20/3: “When there is an action to disseminate computer data, the competent official [from Ministry of Economy and Society- MDES], with approval from the Minister, may file a <u>petition with supporting evidence, to the court of jurisdiction, for a court order to suppress the dissemination or to remove such computer data from a computer system</u> ”.
Type of infringement	Copyright only	Completed by Ministerial Regulation All intellectual property rights
Type of order	Temporary injunction	Permanent injunction
Available actions	Request to the Court for removal of infringing content from the Internet. <u>Must be followed by a lawsuit against the infringer</u>	Request to the Court for removal of infringing content from the Internet or website blocking. <u>No further legal action needed</u>

Current Legislative Framework

Instrument	Copyright Act amended to 2015 Current draft Amendments	Computer Crimes Act amended to 2017 With 2017 Notification
Subject matter	Copyright	All IP rights, various proscribed actions
Categories	Draft Amendment to Copyright Act s.4 (definitions) – ‘service provider’ – four categories. New s. 43/1; <ul style="list-style-type: none"> (1) Mere conduit (2) Temporary storage – caching (3) Hosting (4) Search engine 	Notification 2017 clause 4 <ul style="list-style-type: none"> (1) mere conduit (2) System caching – temporary storage (3) Hosting (4) Search engine (5) (Other – general access/ communication means)
Action	Direct take-down request or effect blocking without delay, process for challenge	Request Court to remove infringing content from the Internet, or website blocking.

Legislative Framework and Developments: Proposed Amendments to Thai Copyright Act

1ST PHASE:

Aims at enhancing mechanism to protect copyright in the digital environment and preparing for Thailand's accession to the WIPO Copyright Treaty (WCT)

- ***Current status:*** The Council of State is in the scrubbing process before submit the amended draft to the cabinet & parliament

19 October 2018 – The draft was approved in principle by the Cabinet, 16 August 2019 – It has successfully reviewed by the Council of States, 10 – 30 September 2019 – Public hearing)

2ND PHASE:

The Department of Intellectual Property is now working on additional amendments to the Copyright Act to prepare for Thailand's accession to the WIPO Performances and Phonograms Treaty (WPPT)

Recommendations

- Recommendation 1: Establish/Strengthen the legal framework for online infringement (as proposed for example under the proposed amendments to new Copyright Act of Thailand to be completed by specific regulations- not adopted yet).
- Recommendation 2: Analyze in a holistic way the on-line intermediaries and what they can do to contribute to IPR objectives, and what each can and cannot do.

EABCs recommends to bring in all and more types of ISPs to the discussion such as financial intermediaries.

Recommendations

- Recommendation 3: Following the good practices in Europe, the EABC supports the initiative of asking ISPs (in particular market places) to enter into MoUs that would allow for higher co-operation with IP enforcement authorities and IPR owners.
- Recommendation 4: Establish a closer co-operation of IPR owners and private sector in general with newly established online IP infringement enforcements bodies such as the online infringement suppression division of the Thai Department of Intellectual Property and the Center of Operational Policing of Thailand Against Intellectual Property Violations and Crimes on the Internet Suppression (COPTICS)
- Recommendation 5: Continue to build awareness education activities through business groups of how using unauthorized versions is economically unattractive and means anti-innovation.

Recommendations

- Recommendation 6: Adopt proactive measures to detect online infringement in order to prevent IP violation in the same pace with IP infringers.
- Recommendation 7: EABC supports a better understanding of on-line governance and that the best model is MSM – Multi-Stakeholder. Like privacy and cybersecurity, IPR respect and protection is a matter of public policy and to be successful requires support and engagement by many stakeholder groups including responsible government agencies, IP rights holders, intermediaries and users