

Amendments to the Copyright Law to Cope with the Digital Technology

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The National Legislative Assembly of Thailand passed two amendments to the country's copyright law. They were the Copyright Act (No. 2) B.E. 2558 and the Copyright Act (No. 3) B.E. 2558 amending the Copyright Act B.E. 2537 (A.D. 1994). They were published in the Royal Gazette on 5th February 2015 and became effective from 4th August 2015. The two amendments covered 8 major changes and additions listed below. Their top purpose is to make the copyright law more relevant and more practical given the advance of the digital technology.

1. Exception of Fair Use Principle

Reproduction for personal or commercial use without permission of a cinematographic work by recording its sounds or pictures or both in whole or in part in a theater while the work is being shown is a copyright infringement (Section 28/1).

2. Exhaustion of Rights

The first sale doctrine is recognized. The sale of an original copyright work or its copy by the party who has legally acquired such work or such copy is not a copyright infringement (Section 32/1).

3. Liability of Internet Service Provider (“ISP”)

Internet Service Providers can be ordered by the Intellectual Property and International Trade Court (“Court”) to remove an alleged copyright work from their computer systems. If there is credible evidence proving that there is infringement of a copyright work in an ISP's computer system, the copyright owner can file a petition with the Court for the Court to order the ISP to takedown the infringing work (Section 32/3).

4. Rights Management Information (“RMI”)

Deletion or modification of RMI of a copyright work from its label or packaging knowingly that such act could persuade, cause, facilitate or conceal infringement of a copyright or performer's right is RMI infringement. A person who publishes to the public or imports into Thailand for distribution any copyright work knowingly that the RMI of such work has been deleted or modified is deemed to have infringed the RMI (Sections 53/1 and 53/2).

The exceptions of RMI infringement are reproduction, alteration, publication or utilization for research, education and library use for a non-commercial purpose without RMI or with modified RMI (Section 53/3).

5. Technological Protection Measures (“TPM”)

Circumvention or provision of service that causes circumvention of TPM used to protect a copyright work or performer's right work knowingly that such act could persuade or cause infringement against such work is TPM infringement (Section 53/4).

Circumvention of TPM solely for the purpose of analyzing elements of a computer program that is necessary to achieve interoperability of such computer program with other programs is not TPM infringement (Section 53/5).

6. More Protection for Performer's Right

A performer is entitled to present himself as a performer in his performance and prohibit the assignee of his right or any other person from distorting, mutilating, adapting or otherwise acting on his performance to prejudice his reputation or honor unless he has agreed otherwise in writing (Section 51/1).

7. Punitive Damages Now Possible

If there is clear evidence showing that infringement of a copyright or performer's right has been committed deliberately or intentionally to cause a copyright work or a performer's right to be widely accessible to public, the Court has the authority to order the infringer to pay compensation as a punitive damages up to two times of the direct damages initially awarded to the copyright owner or the performer (Section 64).

8. Infringer Pays Destruction Costs

In a copyright infringement case, the Court has the authority to order the infringing articles to be confiscated or destroyed and order the infringer to bear the confiscation or destruction costs (Section 75).

The amendments are expected to provide adequate protection to copyright works and to facilitate copyright owners in utilizing their works in the digital environment.



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