

# Newsletter

## THAILAND: DRAFT AMENDMENT TO THE COPYRIGHT ACT INCLUDES EXEMPTIONS TO SERVICE PROVIDER LIABILITY AND THE REMOVAL OF INFRINGED ONLINE CONTENT

### Introduction

Rapid changes in technology over the past few decades has resulted in Thailand's current Copyright Act not providing adequate protections for copyrights and not meeting international standards. Thailand has been a member of the World Intellectual Property Organization since 1989 and is scheduled to accede to the WIPO Copyright Treaty (the "WCT") subject to amendments required under that WCT being made to local legislation. To address both the issue of the gaps under the Thai Copyright Act and for Thailand to qualify under the WCT, Thai Cabinet approved the Draft Act on Amendment to the Copyright Act ("the **Copyright Bill**") on 29 September 2020.

Among other amendments, the significant changes included under the Copyright Bill are as follows:

1. protections to copywritten photographs have been extended;
2. court proceedings for petitions by copyright holders have been updated;
3. service provider liabilities and exemptions have been updated; and
4. amendment to the nature of infringement of "technological protection measures".

This briefing will discuss key aspects of these amendments.

### Protection to copywritten photographs

Under the current Copyright Act, protections exist for a term of 50 years from the date of the authorship. So long as that work is publicized during that period, the copyright will endure for 50 years from the date of first publication. Under the Copyright Bill, protections to photographic work will be extended to the life of the photographer and the next 50 years after the photographer's death.

### Court proceedings for copyright infringement claims

Section 32/3 of the current Copyright Act provides a process for copyright owners to file a petition to the Court seeking orders for service providers (i.e. internet service providers or computer data storage service providers) to stop committing copyright infringements.

If the Court finds that the petition is well-grounded, the judge will order the service provider to suspend activities claimed to be infringing a copyright or to remove the work claimed to be infringing a copyright from a computer system. The copyright owner is also obliged to initiate a lawsuit against the infringer within the period set by the Court. However, this measure is impractical as in some cases, server providers do not have access to servers located in foreign countries.

Therefore, the Copyright Bill proposes amendments that purport to solve this obstacle by revoking section 32/3 and introducing a new scheme. Under the new scheme, a service provider can be exempted from liability provided that the service provider announces and complies with the measures to cancel the services rendered to a service user, regardless of whether he or she pays for the service fees, and who has explicitly committed repeated copyright infringements.

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## Exemptions from copyright infringement liability

The Copyright Bill extends the definition of “service provider” as follows:

- 1) an intermediate service provider;
- 2) a temporary computer data storage service provider;
- 3) a computer data deposit service provider; and
- 4) a computer data source searching service provider.

To qualify for exemptions to copyright infringement liability, service providers must comply with the conditions included in the Copyright Bill and those to be announced by the Minister of Commerce as follows:

- 1) **Liability of an intermediate service provider** - an intermediate service provider will be exempt from copyright infringement if such service provider has transmitted computer data through an automated technical process. Such service provider must not originate such transmission or select its recipients, and contents of the computer data must not be changed.
- 2) **Liability of a temporary computer data storage service provider** - a temporary computer data storage service provider will be exempt from copyright infringement if the service provider transmits computer data through its system or a computer network without changing that data or uses intervening technology in order to obtain data related to the usage of service users, and has a system for keeping the data up-to-date.
- 3) **Liability for copyright infringement of a computer data deposit service provider and a computer data source searching service provider on the internet** - a computer data deposit service provider and a computer data source searching service provider on the internet will be exempt from copyright infringement if those service providers do not know, or do not have reason to know that the computer data stored on their system or computer network infringed copyright. Upon knowing or being notified of any copyright infringement, such service providers must promptly remove such computer data, reference source codes, connecting or access points to such computer data from their computer systems, or cease providing access to such computer data.

If there is evidence to believe that there has been copyright infringements on a computer system of a computer data deposit service provider and/or a computer data source search service provider, a copyright owner can send a notice to such service providers. The notice would request the removal of such materials, reference source codes, connecting or access points to such computer data from their computer systems, or cease providing access to such computer data. A service provider that removes or disables access to infringing materials without delay and notifies the service user of the alleged infringement (*Notice and Take Down*) will be exempt from liability for copyright infringement.

If a service user raises an objection, the service provider shall send a copy of such objection to the copyright owner and inform them that he/she will reupload the computer data, reference source codes, connecting or access points to their computer systems, or continue providing access to such computer data within 15 days from the receipt of the objection from the service user. The service provider shall restore such computer data, reference source codes, connecting or access point to their computer systems within 15 days unless the copyright owner informs the service provider that he/she has filed a lawsuit against the service user. The form of objection in this regard must be in line with the rules, methods and conditions set forth by the regulations of the Ministry of Commerce.

## Amendment to the nature of infringement of ‘technological protection measures’

Under the Copyright Bill, the offence of infringement of technological measures is expanded to any action that causes technological measures for the prevention of or control to access to copyrighted works being rendered inoperable or useless.

In addition, producing, selling, rendering or distributing any services that would impact on technology protection measures for the purposes of infringing copywritten materials is a punishable offense. Liability for infringing technological protection measures will be waived if performed for specified purposes under the Copyright Bill, which include, but are not limited to, testing or examination of a computer security system with permission from the computer owner, the computer system owner, or the computer network owner, as the case may be, research wherein a researcher obtains the copyrighted work or a copy thereof legitimately and his or her best efforts have been made, in good faith, to seek permission from the copyright owner, or national security.

## Conclusion

The Copyright Bill includes amendments that will modernize Thailand’s regulations to protect copywritten materials and paves the way to accession to the WCT. The Copyright Bill revises the process for taking down content that infringes on copyrights to be more practical and outlines exemptions from copyright infringement liability for different types of service providers, creating the ability to enforce copyright claims by copyright

owners, while providing a safe-harbour for service providers. The Copyright Bill will be submitted to the Parliament for consideration and approval and is subject to possible changes prior to enforcement.

If you would like to discuss any of the legal implications of the matters discussed above, please contact the authors listed in the right-hand column.



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This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited. If you should have any inquiries about the publications, or would like more information about Chandler MHM Limited, please contact [bd@mhm-global.com](mailto:bd@mhm-global.com).