

Draft Amendment to the Copyright Act of Thailand

Thailand's Department of Intellectual Property (“**DIP**”) recently published the draft of the bill to amend the Copyright Act B.E. 2537 (the “**Bill**”) for public hearing and public consultation again during 31st January 2018 to 28th February 2018 before the DIP revises the Bill and proposes it to the Cabinet.

In 2015, the National Legislative Assembly of Thailand passed two amendments to the Copyright Act. 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) (“**Amended Copyright Act**”). Among many major amendments, new Section 32/3 has provided preliminary injunctive relief against online copyright infringement.

Under Section 32/3 of the Amended Copyright Act, in the event that a copyright owner has reasonable grounds to believe that a copyrighted work has been the subject of infringement on a computer system, he or she can file a motion with the competent court to request a court order be made against the service provider to remove an alleged copyright work from their computer systems. After the injunction is granted, the copyright owner is obliged to initiate a lawsuit within the period of time ordered by the court for the service provider to take down the infringing content.

The Amended Copyright Act is supposed to help copyright owners to tackle online infringement more efficiently. However, since the Amended Copyright Act came into force, there have been many problems in applying this new measure in practice and there are many unclear issues. For instance, some service providers may not be able to remove an alleged copyright work from their computer systems as the server is hosted in a foreign country and some copyright owners cannot initiate a lawsuit against the infringer within the period of time ordered by the court for the service provider to take down the infringing content because they cannot find the real identity of infringer.

The Bill aims to address these problems of inefficient measures against online infringement by revoking the Section 32/3 and introducing new scheme similar to the scheme in the Digital Millennium Copyright Act (“**DMCA**”), a United States copyright law that implements two 1996 treaties of the World Intellectual Property Organization (“**WIPO**”) and also some parts of EU Directive 2000/31/EC and some sections of Australia Copyright Law.

Under the Bill, a service provider must have a policy that provides for the termination in appropriate circumstances of subscribers and account holders of the service provider's system or network that are repeat infringers and also implement standard technical measures which do not impose substantial costs on service providers or substantial burdens on their systems or networks.

The new scheme under the Bill is that in the event that a copyright owner has reasonable grounds

to believe that a copyrighted work has been the subject of infringement on a computer system, he or she can send a notice to the service provider to remove an alleged copyright work, reference source or connecting or accessing point to such work from their computer systems or cease providing access to such computer data. A notification of claimed infringement must be in writing and contain certain information, e.g. name and contact details of copyright owner, identification of the copyrighted work claimed to have been infringed, identification of the material that is claimed to be infringing and a statement that the information in the notification is accurate.

Provided the notification complies with the requirements, the online service provider must without delay remove or disable access to the allegedly infringing material; otherwise, the provider loses its safe harbor and is exposed to possible liability. After the removal or ceasing providing access to the alleged infringing data, the service provider must take reasonable steps to promptly notify the alleged infringer of the action. If there is a counter notification from the alleged infringer, the online service provider must then promptly notify the claiming party of the individual's objection. If the copyright owner does not bring a lawsuit to the court within 15 days, the service provider is then required to restore the data to the system.

Besides the new “notice and take-down” scheme, the Bill will also amend some sections regarding technological protection measures (“**TPM**”). For instance, the Bill introduces new offence for a person who manufactures, sells, offers for sale, rents or offers for rent, imports or otherwise traffic in any technology, product, or service, that is primarily designed or produced for the purpose of circumventing a technological measure and has only limited commercially significant purpose or use other than to circumvent a technological measure or is marketed for use in circumventing a technological measure.

This published Bill is not its final version to be purposed to the Cabinet for their approval. We will update readers on its development in future issues of our newsletters.

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