

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2007 SPECIAL 301 REPORT

THAILAND

Special 301 Recommendation: Thailand should be elevated to the Priority Watch List.

EXECUTIVE SUMMARY

The Royal Thai government experienced turmoil in September 2006, when a coup d'état succeeded in overthrowing Prime Minister Thaksin Shinawatra. We recognize the upheaval to the Royal Thai government caused by these events and it is in some respects remarkable that the government organs dealing with intellectual property and trade issues managed to continue working to take actions against end-user piracy. Unfortunately, other piracy phenomena, like domestic retail piracy, optical disc piracy, book piracy, and cable and signal theft piracy, remained largely unchecked in 2006. All report that, notwithstanding many raids and seizures in some sectors, piracy continues to cause major losses. A principal cause may be the failure to prosecute key piracy players (as opposed to designated employees of pirates), and the lack of deterrence in the final outcomes of criminal cases brought to prosecutors and before the criminal court. This is exacerbated by the lack of a strategic approach by the Thai government to combating piracy in Thailand. Thailand needs a fulltime, fully staffed and funded enforcement body like that found in neighboring countries/territories like Malaysia, Singapore and Hong Kong. Simply put, while the Royal Thai government has responded to some industries' concerns, the outcomes of the government's actions to address these piracy concerns have not resulted in lowering the levels and amounts of piracy in Thailand.

PRIORITY ACTIONS REQUESTED IN 2007

- **Prosecute Owners of Pirate Production and Distribution Hubs in Thailand, with Deterrent Sentences Imposed:** With piracy levels remaining largely the same, notwithstanding some retail actions and plant closures, the Royal Thai government must swiftly seek prosecutions against key producers and distributors of pirate products (including the owners of the manufacturing plants) to the maximum extent of the law. The Royal Thai government is called upon to use its new forensic capabilities and knowledge of the plants to finally enforce against pirate production, as well as enforce against those distributing pirate optical discs. The Royal Thai government should also apply a system of "total enforcement" by employing other laws available to fight piracy as stipulated in the Prime Ministers Regulation of the Suppression of Piracy, 2536 (of April 16, 1993).
- **Establish Continuous Enforcement Against Retail Piracy:** Enforcement campaigns against retail piracy in Thailand have led to some impressive results, but need to be sustained in 2007. The MOU on suppression of piracy should be fully implemented and sustained throughout the year.
- **Effectively Curtail Pirate Imports and Exports:** The industries report increasing imports into Thailand from Malaysia and China, among others, and some industries continue to note pirate exports from and transshipments through Thailand. Royal Thai Customs officials must seize more pirate copyright product in 2007 and must work with express mail carriers to

establish mechanisms to inspect express shipments as other countries have done effectively in recent years.

- **Effectively Deal with End-User Software Piracy:** Unauthorized use of business software in commercial settings causes the greatest losses to the business software industry in Thailand. While the Royal Thai government has responded favorably to requests for enforcement made by the business software industry to the police for end-user software piracy and retail actions in 2006, the rate of software piracy still remains uncomfortably high at 80%. This clearly indicates that more must be done.
- **Legitimize Usage of Published Materials:** Book piracy in the form of illegal photocopying for the domestic market and print piracy for export continues to thrive in Thailand. To date neither the Royal Thai government nor the universities have taken a stand to ensure use of legitimate textbooks in schools and universities. Exceptions in the copyright law regarding educational use of copyright works – provisions that in the past have been applied in ways that place Thailand out of the mainstream of international norms – must be amended.
- **Modernize Copyright and Related Laws and Join WCT and WPPT:** To deal with increasing Internet penetration and to avoid the problems of Internet piracy, the Royal Thai government should take steps in 2007 to modernize its copyright law, in particular, to fully implement the WIPO Internet Treaties, the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT), and to include modern and effective enforcement provisions to eradicate all forms of piracy, including in the digital environment. The government should ensure that laws can effectively address book piracy (including by narrowing exceptions that at present are interpreted as allowing wholesale copying of books without authorization), signal theft (cable and satellite piracy), and illegal camcording of movies, among others.

For more details on Thailand's Special 301 history, see IIPA's "History" Appendix to this filing at <http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>, as well as the previous years' country reports, at <http://www.iipa.com/countryreports.html>.

THAILAND
Estimated Trade Losses Due to Copyright Piracy
(in millions of U.S. dollars)
and Levels of Piracy: 2002-2006¹

INDUSTRY	2006		2005		2004		2003		2002	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Records & Music	20.7	50%	21.9	45%	24.9	45%	26.8	41%	30.0	42%
Business Software ²	164.0	80%	155.0	80%	100.0	78%	84.0	80%	57.3	77%
Entertainment Software	NA	82%	NA	75%	NA	76%	NA	82%	47.3	86%
Books	35.0	NA	30.0	NA	30.0	NA	28.0	NA	28.0	NA
Motion Pictures ³	NA	NA	149.0	62%	30.0	60%	28.0	60%	26.0	70%
TOTALS	219.7⁴		355.9		184.9		166.8		188.6	

PIRACY AND ITS EFFECTS IN THAILAND

Piracy continues to have a detrimental effect on the market for the copyright industries. Most piracy phenomena continued largely unabated in 2006, despite the fact that the Royal Thai government is now in possession of optical disc forensic equipment and samples that should permit them to identify and act against the manufacturers of infringing OD titles. Some optical disc actions, some sporadic retail raids, and some noted actions against cable pirates at least demonstrate that the Royal Thai government recognizes the problem and is trying in some measure to do something about it, albeit in an *ad hoc* manner. Since the coup d'état in September 2006, enforcement has largely ceased and, as a result, the piracy rate and losses to U.S. industry have been increasing.⁵ The record industry suffered the most pronounced effects of piracy, estimating that Thai music industry revenues dropped 30% in 2006. International labels have cut losses by downsizing staffs. IIPA understands that approximately 20 local Thai independent labels were forced out of business in 2006. Piracy of business software has seriously compromised the business of resellers and distributors of genuine software. Book piracy continues to hinder the growth of legal industry. The retail markets like Panthip Plaza and MBK shopping malls continue as black spots of piracy in Bangkok.

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2007 Special 301 submission at www.iipa.com/pdf/2007spec301methodology.pdf. For information on the history of Thailand under Special 301 review, see Appendix D at (<http://www.iipa.com/pdf/2007SPEC301USTRHISTORY.pdf>) and Appendix E at (<http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>) of this submission.

² BSA's 2006 statistics are preliminary. They represent the U.S. publishers' share of software piracy losses in Thailand, and follow the methodology compiled in the Third Annual BSA/IDC Global Software Piracy Study (May 2006), available at <http://www.bsa.org/globalstudy/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. BSA's 2005 piracy statistics were preliminary at the time of IIPA's February 13, 2006 Special 301 filing; the 2005 data was revised and posted on the IIPA website in September 2006 (see <http://www.iipa.com/statistics.html>), and the 2005 revisions (if any) are reflected above.

³ MPAA's trade losses and piracy levels for 2005 were available for a limited number of countries and are based on a methodology that analyzes physical or "hard" goods and Internet piracy. For a description of the new methodology, please see Appendix B of this report. As loss numbers and piracy levels become available for additional countries and for 2006 at a later time, they will be posted on the IIPA website, <http://www.iipa.com>.

⁴ Without factoring in the motion picture losses for 2005, the piracy losses actually went up in 2006, from \$206.9 million to \$219.7 million.

⁵ Piracy of international recordings is higher than for domestic recordings. The recording industry estimates that in 2006, the piracy rate for local repertoire was in the range of 30-40%, while the rate for international repertoire exceeded 50%.

Optical Disc Piracy (Factory and Burning): Pirate production of optical discs in plants (CDs, VCDs, DVDs, CD-ROMs) remains a major hurdle to the growth of legitimate copyright industries in Thailand. Nonetheless, since the optical disc regulation came into force in late 2005, inspections have commenced, an “exemplar” program has been introduced (whereby plants provide samples from molds used to produce discs, which can be used for forensic matching to the injection mold machine in the plant and can be matched with any discs found in the market made on that mold machine as well),⁶ and some suspected pirate plants have closed or leased out their equipment. On the other hand, a recently announced optical disc plant inspection program appears to be cosmetic in nature (hopefully not as a public relations ploy during the annual Special 301 review process). Foreign right holders groups have been informed that they will not be allowed to participate in these plant inspections and that the inspection team will not be allowed to take any exemplars from the plants visited.

IIPA reported 42 optical disc production plants in 2005, but as of January 2007, there are reportedly 41 plants,⁷ with 190 optical disc production lines (up from 155 in 2005). A very conservative estimated capacity for production in Thailand stands at 665 million discs per year in the plants alone, greatly exceeding any rational legitimate domestic demand (e.g., estimated legitimate domestic demand stood at roughly 60 million discs in 2004). Most of the known plants are in Bangkok or the provinces surrounding Bangkok, while several are in neighboring provinces to the East and Southeast of Bangkok closer to the Cambodia border. Press has reported that there may also be plants near the borders of Laos and Burma; product sourced from Laos was seized in Thailand in 2005, and in 2006 the MPA seized more than 25,000 DVD's that had originated from Burma.⁸ The plants can generally produce any format, including audio CD, VCD, or DVD, employing kits to change formats (even from a blank CD-R or DVD-R line).

Pirate optical discs manufactured in Thailand have shown up in 2006 in the United Kingdom, Belgium, South Africa, Taiwan, Sweden, and other ports in the EU, the U.S., and countries in Latin America (although the motion picture industry reports decreased exports, while acknowledging that some product may be transshipped through Thailand). In 2006, industry notes increased piratical imports from Malaysia and China (as well as Laos) as a concern.⁹ Royal Thai Customs claims it has no power under the current law to examine and intercept transshipments. To the extent shipments are mixed (pirate imports, and transshipped pirate goods), this lack of authority is creating major problems.

⁶ In preparation for the establishment of the Optical Disc forensic laboratory in Thailand, the plant visit and exemplar collection program was launched, to gather necessary information on manufacturing from all plants visited as well as to collect samples of optical discs produced from those visited plants. The Thai Government, led by DIP and the Police, started the plant visits on March 9 (through March 20) with two teams comprised of two DIP staff, one police officer, and several industry representatives. The result was successful with a total of 38 plants visited and exemplars collected from all the plants except one (Verko, which refused to provide an exemplar, claiming its machines had been “down”). In addition, a series of training and seminars were conducted in conjunction with the program. In one, conducted on March 1, 2006, industry took 15 DIP and Police officials to visit the MPO (Asia) Plant in Chasesongso Province to obtain a better understanding on how optical discs are manufactured.

⁷ The known CD plants are listed in Appendix A to this report. There are reportedly three additional unregistered plants.

⁸ See, e.g., Subin Khuenkaew, *Plant Churns Out Sex Films*, Bangkok Post, January 30, 2005, at http://www.bangkokpost.com/300105_News/30Jan2005_news16.php. On September 29, 2005, Royal Thai Police intercepted a private van which had just entered Thailand across the Nong Kai Laotian border control point. On being searched the vehicle was found to contain approximately 33,000 infringing discs (apparently there was no international or U.S. repertoire), including pirate sound recordings. The driver was arrested and charged.

⁹ Industry reported that on March 13, 2005, Royal Thai Customs of Songkhla Province intercepted 30,000 pirate discs suspected to have originated in Malaysia. It was also reported in Manager Daily Newspaper on February 6, 2007, that in 2006 Thai authorities seized Baht 30 million worth of pirate optical discs originating from Myanmar.

In addition to plant production, there is increasing local “burning” of all kinds of copyright content onto recordable discs (CD-R, DVD-R, etc.), mainly due to the affordability of burning machines.

Retail Piracy (Optical Discs) in Thailand: Pirate optical discs, whether factory produced or burned onto recordable discs, continue to harm the local market for copyright materials. The Royal Thai government response has been to run sometimes effective but usually short-lived campaigns to weed out retail piracy from notorious pirate markets.¹⁰ In mid-November 2005, a new Special Task Force from the Criminal Investigation Bureau (CIB), under the command of Police Lieutenant General Ek-karat Meepreecha, Deputy Commissioner of CIB, was appointed, and by early December 2005, raiding activity of this Task Force had commenced. However, the Special Task Force was dissolved due to the coup d'état in September 2006. Following a meeting between several right holders and now former Police General Achirawit, the STF had been re-established. However, Police General Achirawit has since resigned from the Police force following the transfer of Police Commissioner General Govit to the Prime Ministers' office on February 5, 2007 (and it is unknown at the time of this report what the status of the STF will be).

Signal Piracy (Cable and Satellite) and Unauthorized Public Performances of Audiovisual Works: Piracy of cable and satellite broadcasting signals (the unauthorized transmission of U.S. programming over systems from original cable or satellite transmissions) remains rampant, causing revenue losses estimated at US\$160 million (the second highest losses in the Asia-Pacific region).¹¹ Illegal decoder boxes and smart cards are widely available in Thailand. The cable industry notes that in late 2006, there were over 1.33 million pirate cable hook-ups (representing a 10% increase over the prior year), compared with 509,000 legitimate subscribers to the major Pay TV operators in Thailand. Thailand has yet to establish an effective system to license and regulate broadcast and cable-casting facilities, one that has the authority to take actions that will deter illegal broadcasters. In 2005, establishment of a National Broadcasting Commission to perform this role again stalled, perhaps indefinitely.

¹⁰ For example, under the leadership of General Pol. Noppadol Soomboonsupt, significant progress was made in 2004 and well into 2005, until his retirement in October 2005. Progress was also seen from March through September 2005 in reducing retail piracy in Bangkok and vicinity, as General Jarumporn Suramani of the Bangkok Metropolitan Police Bureau was very active in carrying out *ex officio* raids against street retailers, particularly in the so-called “red zones” and “yellow zones” in the Bangkok area. Piracy hotspots in Thailand were categorized by the government and industry in mid-2004 into “Red Spot” targets (Klongtom, Panthip Plaza, Khao San Road, Patpong, Silom Road, Sukhimvit Road (3-19), Night Bazaar Area, Patong Beach, Chaweng Beach, Pattaya Beach, Santisuk Market, Kinyong Market) and “Yellow Spot” targets (Sapanlek, Baanbor, Mahboonklong, Nomchit Mall, Pata Pinklao, Fortune Tower, Donmuang, Je Leng Plaza, Tawana Plaza, Zeer Rangsit, Kata Beach, Karon Beach, Computer Plaza, Icon, Rincom Market, Yongdee Market, BKS Market, Big C Bangyai, Tantawan Plaza, Bangsrimuang, Hua Hin). Other Bangkok malls where pirated products are readily available include: Future Randi, Seacon, Seri, Future and Gankee. There are also a number of malls in other cities and/or provinces where pirated merchandise is available, including Teok Com-Sriracha, Teok Com-Pattaya, Teok Com-Khonkean, Pantip-Chiang Mai, CM Building and Chiang Mai. In 2006, out of meetings with the Panthip Plaza Management Team in March, industry discussed Panthip's recent hiring of a Police Team from the Central Investigation Bureau to conduct daily inspections for 60 days in a row. This was coordinated in conjunction with a public awareness campaign to be carried out inside the buildings owned by Panthip, i.e., Panthip Plaza, Banglumpoo Ngamwongwan, Tawanna and Panthip Plaza Chiang Mai, including exhibition booths, legitimate copyright goods for sale and live-performances/activities. The campaign was carried out in June 2006. Unfortunately, due to tight budgets, the plan did not pan out in the end, and Phantip Mall and MBK Malls currently remain piracy hot-spots.

¹¹ 2006 revenue loss estimate were taken from The Cable & Satellite Broadcasting Association of Asia's (CASBAA) study “The Cost of Piracy: Asia-Pacific Pay-TV Industry Study,” October 2006 (prepared by Standard Chartered).

Public performance piracy also thrives in Thailand, as many unlicensed cable operators, particularly in provincial areas outside of Bangkok, now transmit continuous, unauthorized motion pictures on dedicated movie channels operating on their systems. Hotels also screen videos over in-house movie systems, most bars in tourist areas openly exhibit videos without authorization, and a growing number of bars and restaurants have also added “private” rooms to illegally screen U.S. motion pictures.

Book Piracy: Illegal photocopying, illegal print piracy of entire books, and unauthorized translations, adaptations and compilations involving both entire books and substantial portions of books continue to devastate U.S. publishers in Thailand. Such piracy is rampant in and around university campuses,¹² where university presidents, professors, and students exhibit blatant disregard for the law and the rights of copyright owners.¹³ Photocopy shops routinely make copies without question. Many of these books are “pre-copied” to fulfill anticipated demand in accordance with the students’ reading lists, but copying is also done to order. Unauthorized compilations of materials for the university market continue to hurt academic publishers. In addition, unauthorized translations of English books into Thai, and significant excerpts thereof, continue to be a problem. Despite regular contacts by publishers with lecturers and university authorities about the problem, the authorities have taken little action and government enforcers have not stepped in to help.

On top of a climate already rife with commercial photocopying and other forms of book piracy, some decisions by the Thai courts seem to endorse the outright copying – even by commercial enterprises – of complete books or substantial portions thereof under a faulty interpretation of the Thai fair use provision.¹⁴ If Thai law continues to permit what these judges say it does, Thailand will remain in violation of its international obligations under the Berne Convention and the TRIPS Agreement. This deficiency must be corrected through amendments, and/or through the free trade agreement process. Action is past due.

¹² Photocopying and print piracy is rampant in primary and secondary schools as well.

¹³ University campuses where piracy of published materials is particularly prevalent include Chulalongkorn University, Assumption University, Sripatum University, and Mahanakorn University.

¹⁴ See, e.g., *Prentice Hall Inc. v. Kanokchai Petchdawong*, Black Case No. Or. 326/2542, Red Case No. Or. 784/2542 (Cent. Int. Prop. Int. Trade Court, July 23, 1999) (unofficial translation) (on file with IIPA) (plaintiff claimed copyright infringement by a copy shop owner who was copying entire textbooks; court indicated strongly that receipts showing copies made on behalf of students would likely entitle defendant to avail himself of fair use defense under Article 32, setting no limit on scope of permissible copying under the Thai interpretation of the Berne three-part test). Article 32(6) of the Copyright Law provides, in relevant part:

An act against a copyright work under this Act of another person which does not conflict with normal exploitation of the copyright work by the owner of copyright and does not unreasonably prejudice the legitimate rights of the owner of copyright shall not be deemed an infringement of copyright. Subject to the provision in the first paragraph, the following acts in relation to a copyright work shall not be deemed an infringement of copyright

(1) *research or study of the work which is not for commercial profit;*

...

(6) *reproduction, adaptation, exhibition or display by an instructor for the benefit of own instruction which is not for commercial profit;*

(7) *reproduction, partial adaptation of work, abridgement or making a summary by an instructor or an academic institution for the purpose of distributing or selling to the attendants in the class or in the institution which is not for commercial profit;*

(8) *use of the work in questioning and answering in an examination.*

Books are also being reproduced and passed off as originals through professional printing houses capable of producing large quantities. U.S. Customs and Border Patrol agents have seized several shipments of these books destined to consumers in the United States, and industry suspects there are many similar pirate exports to major overseas markets. Royal Thai Customs must work with right holders to eradicate this problem.

End-User Piracy Rate of Business Software Remains One of Highest in Asia: The wilful use of unlicensed or pirate software in the workplace continues cause the greatest losses to the business software industry. The rate of unauthorized uses of business software in business settings remains unacceptably high in Thailand, at 80% in 2006, and revenue losses continue to increase year-on-year. Only Vietnam, China and Indonesia have higher rates of piracy in the Asia-Pacific region, where the average piracy rate remains above 50%. Thus, while the business software industry has been able to get full cooperation from enforcement authorities in conducting end-user raids (the police conducted a record fifteen end-user raids based on complaints filed by the Business Software Alliance) and retail raids, these raids do not seem to be having a significant deterrent effect on the overall piracy rate in Thailand.

Entertainment Software Piracy: Piracy of entertainment software products remains prevalent in Thailand, whether optical disc (imported factory-produced discs or locally produced discs or “burned” discs) or cartridge-based games. Entertainment Software Association (ESA) member companies continued to conduct “mall sweeps” (aimed at reducing game piracy in the malls) in cooperation with local police. While cooperation with the local police continued to be positive, they must be encouraged to undertake these “sweeps” or actions on their own initiative as it is only through sustained action that the mall/retail outlets will be cleaned up. Entertainment software publishers also face piracy in the following form: a console is housed in an arcade-type shell and is operated by depositing tokens or coins into the machine. However, the console housed in the shell is typically modified or has a circumvention device (mod chip) installed, and thus, the console is rendered capable of playing pirated games. These coin-operated consoles can be found all over Thailand.

Piracy at Internet game rooms (IGRs) or Internet cafés remains a significant concern, although ESA member companies have had some success in turning such IGRs into legitimate operations through licensing arrangements with and the sale of authorized product to IGR owners-operators. However, ongoing support from enforcement authorities is needed to ensure continued improvement in this market.

Cartridge-based entertainment software continues to be heavily pirated in Thailand, with pirated and counterfeit cartridge-based video game products being imported from China. Enforcement by local authorities remains weak.¹⁵ Thailand also continues to be a transshipment point for pirated Nintendo video game cartridges, especially to Europe.¹⁶

Internet Piracy Has Grown: With the growth of Internet usage in Thailand (NECTEC reports that as of January 2007, there were 7.08 million Internet users in Thailand, compared with 670,000 in 1998, and 3.5 million in 2001,¹⁷ it is unfortunate that Internet piracy is also growing steadily, with a noticeable increase in optical disc hard goods web sites being hosted in Thailand. Though there is no legislation on ISP’s liability, ISPs remain cooperative in taking

¹⁵ In 2006, only one seizure occurred – products were seized by the local police at the Bangkok Airport.

¹⁶ In 2006, there were 21 actions worldwide involving the seizure of counterfeit cartridge games from Thailand, with products being seized in France, Germany, The Netherlands, and the United Kingdom.

¹⁷ See <http://iir.ngi.nectec.or.th/internet/user-growth.html>.

illegal websites down. The business software industry has seen increasing numbers of Internet-related cases.¹⁸ The broadband penetration rate, however, remains low,¹⁹ so much of Thailand's Internet usage is limited to mobile applications and Internet cafés. It has been reported that piracy at Internet cafés has increased significantly in recent years, with Internet café users/customers using café computers to download pirated material from the Internet and burn them on to CDs on the café premises. It is thus critical that the Royal Thai government ensure that all Internet cafés allow use of only legal copyright materials, including entertainment software products, and permit only legal activity at these establishments. Other Internet-related problems involve illegally “ripping” music and storing music in thumb drives or on MP3 players.

Camcorder Piracy:²⁰ In 2006 there were six reported cases of illegal copying of movies on camcorders in Thai cinemas. An essential element in the fight against camcorder piracy is the enactment of legislation to prevent the unauthorized operation of audiovisual recording equipment in motion picture theaters while a motion picture is being exhibited. Although in Thailand this may amount to a violation of the copyright law, there is no specific provision on the subject, and the penalties would be extremely limited absent proof of a “commercial purpose.” We urge the Royal Thai government to take whatever steps are necessary to ensure that adequate protection against camcording piracy is reflected in its national legislation.

Organized Crime in Piracy – Link: Evidence of organized crime involvement in piracy in Thailand continued to mount in 2006. Threats to right holders and their representatives are commonplace, and right holder representatives were physically attacked and injured on several occasions again in 2006.²¹ Investigative irregularities abound, including substitution of low-level defendants for major ones after raids, delays in post-raid inquiries, and leniency of police officers during raids. IP violations have still not been included in various organized crime statutes, such as the Money Laundering Prevention and Suppression Act B.E 2542 (MLPSA).²² Unfortunately, while the government had intended to include copyright piracy as a predicate offense in a draft bill to amend the MLPSA in 2004, the Law Drafting Committee of the Council

¹⁸ For example, in 2005, there were 8,915 Internet cases involving business software downloads, representing an increase of 583% from the year before, and mainly involving P2P networks. The Royal Thai Police conducted two Internet raids based on information supplied by the business software industry. There was one court verdict in one of these Internet cases in 2005, but the result was a non-deterrent 25,000 Baht fine (US\$632) as the initial three month prison sentence was reduced to 45 days in a plea bargain, and then suspended to one year probation. Such a sentence would not serve as a deterrent to those engaged in similar crimes.

¹⁹ Recent reports indicate that in 2004, the number of broadband subscribers suddenly increased six-fold, but that broadband penetration remains low, at fewer than two subscribers per 10,000 people. Research and Markets, *2005 Telecoms, Mobile and Broadband in Asia report Cambodia, Laos, Myanmar, Thailand and Vietnam*, summary at http://www.researchandmarkets.com/reportinfo.asp?report_id=302150&t=e&cat_id=20.

²⁰ The vast majority of movies are stolen right off the screen by professional camcorder pirates, who use video cameras to illicitly copy a movie during exhibition in a movie theatre – usually very early in its theatrical release or even prior to the film's release (e.g., at a promotional screening). Camcorder pirates are often sophisticated criminals and typically sell the master recordings to illicit “source labs” where they are illegally duplicated, packaged and prepared for sale on the black market, then distributed to bootleg “dealers” throughout the world. As a result of camcorder piracy, many motion pictures become available over the Internet – on peer-to-peer networks, file transfer protocol (FTP) sites, Internet Relay Chat (IRC) rooms, or auction sites – as well as on street corners and night markets around the world during the U.S. theatrical release and well before their international debuts.

²¹ An industry representative who worked on an anti-piracy team was shot and killed in Nakorn Pratom Province on October 14, 2006. The gunman was caught within a few days. Other industry representatives have been known to be threatened or attacked by armed criminals in Thailand. A staff person of a third party outsource company was also attacked during a raid in Open Market in Nonthaburi Province on December 21, 2006.

²² Under the MLPSA, generally it is a crime to transfer, convert or receive the transfer of funds or property arising from certain criminal acts including hiding or concealing the source of funds. Violators are liable to imprisonment of a maximum of ten years and a fine of up to 200,000 baht (about US\$5,055).

of State concluded that copyright should be removed as a predicate offense.²³ The decision remains up to the Cabinet, and IIPA in the strongest terms urges the Cabinet to add copyright piracy back as a predicate offense for the enforcement of the MLPSA.

ENFORCEMENT UPDATES IN THAILAND

CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS FOR 2006 (SOUND RECORDING DATA COVERS JAN-SEPT)			
THAILAND			
ACTIONS	MOTION PICTURES	BUSINESS SOFTWARE	SOUND RECORDINGS
NUMBER OF RAIDS CONDUCTED	1,809	20 ²⁴	437
NUMBER OF VCDs SEIZED	317,381		3,853
NUMBER OF DVDs SEIZED	590,787		69,017
NUMBER OF CD-S SEIZED	0		73,599
NUMBER OF INVESTIGATIONS	9,500	0	
NUMBER OF VCD LAB/FACTORY RAIDS	71,171	0	
NUMBER OF CASES COMMENCED	0	0	
NUMBER OF INDICTMENTS	2,189	0	437
NUMBER OF DEFENDANTS CONVICTED (INCLUDING GUILTY PLEAS)	0	0	403
ACQUITTALS AND DISMISSALS	0	0	
NUMBER OF CASES PENDING	N.A.	5 ²⁵	239
NUMBER OF FACTORY CASES PENDING	N.A.	0	
TOTAL NUMBER OF CASES RESULTING IN JAIL TIME	N.A.	0	65
SUSPENDED PRISON TERMS	18		
MAXIMUM 6 MONTHS	10		62
OVER 6 MONTHS	N.A.		
OVER 1 YEAR	N.A.		
TOTAL SUSPENDED PRISON TERMS	N.A.		
PRISON TERMS SERVED (NOT SUSPENDED)	N.A.	0	
MAXIMUM 6 MONTHS	N.A.		3
OVER 6 MONTHS	N.A.		
OVER 1 YEAR	N.A.		
TOTAL PRISON TERMS SERVED (NOT SUSPENDED)	N.A.	0	
NUMBER OF CASES RESULTING IN CRIMINAL FINES	N.A.	0	131
UP TO 40,000 BAHT	N.A.		106
40,000-200,000 BAHT	N.A.		25
OVER 200,000 BAHT	N.A.		
TOTAL AMOUNT OF FINES LEVIED (IN US\$)	N.A.		
	N.A.		
	N.A.		
	N.A.		

THAILAND CRIMINAL ACTIONS 2005	SOUND RECORDINGS	MOTION PICTURES
Raids Conducted	427	1,490
CDs Seized	267,633	323,408 (VCDs)
DVDs Seized	24,996	524,356
CD-Rs Seized ("burned")	9,980	54,694
Investigations	-	1,702
VCD Lab/Factory Raids	154	
VCD/DVD Production Lines Seized	-	2
Printing/Package Machines Seized	-	1
Stampers Seized		32
Cases Settled	-	
Cases Commenced	427	356

²³ Nont Horayangura and Say Sujintaya, *Committee rejects IP offences on public interest grounds*, September 28 2004, at <http://www.worldcopyrightlawreport.com/Article/?r=435&c=3003050>.

²⁴ This includes 15 end-user raids and 5 retail raids.

²⁵ As the retail raids were conducted in November and December, there has not been sufficient time for the cases to be concluded.

THAILAND CRIMINAL ACTIONS 2005	SOUND RECORDINGS	MOTION PICTURES
Number of Indictments	427	356
Number of defendants indicted (including guilty Pleas)	455	
Acquittals and dismissals	-	
Number of cases pending	265	10
Number of Factory cases pending	-	
Total number of cases resulting in jail time	157	
Suspended prison terms	-	
Maximum 6 months	150	
Over 6 months	4	
Over 1 year	-	
Total suspended prison terms	154	
Prison terms served (not suspended)	-	
Maximum 6 months	1	
Over 6 months	1	
Over 1 year	1	
Total prison terms served (not suspended)	3	
Number of cases resulting in criminal fines	151	
Up to \$1,000	125	
\$1,000 to \$5,000	26	
Over \$5,000	-	
Total amount of fines levied (in US\$)	-	

General Notes on Enforcement in Thailand: The year 2006 was mixed for industry in terms of obtaining enforcement against copyright piracy. Enforcement, at least with respect to OD piracy, declined markedly after the coup d'état in September 2006. Industry noted some optical disc plant closures, but in most cases, the plant owners simply changes names and continue to operate in a different location. Industry also notes some sporadic activity against retail piracy (especially in June upon the 60th Anniversary of the King's accession to the Throne, in which retail piracy around Bangkok stopped for about two weeks),²⁶ as well as some significant actions against cable pirates throughout the year. The Royal Thai government has reported that in 2005, the Royal Thai Police conducted 5,610 raids and seized almost 1.4 million pirate goods,²⁷ and stopped 193 pirate shipments and seized almost 765,500 pirate goods at the borders. We do not have statistics at this date from the government on raids in 2006.

Most industry sectors report good relations with the key enforcement organizations in the Royal Thai government, including the Department of Intellectual Property, Royal Thai Police (and its Economic and Technological Crime Suppression Division – or ECO-TECH) and the Central Investigation Bureau (CIB), Customs, Office of the Public Prosecutor for IPR cases, and the IP Court.²⁸

²⁶ See, e.g., *Thailand: Commerce Ministry Steps Up Anti-Piracy Campaign*, June 5, 2006, Thai News Service Section: General News (in which Deputy Commerce Minister Preecha Laohapongchana indicated that Thailand's Ministry of Commerce has intensively stepped up its campaign against pirated products starting from June 1 to show that the country is cooperating with the international community to stop using counterfeit goods, and indicated that more than 280 people had been arrested during the first four months of 2006 for intellectual property violations with more than 62,000 pirated goods seized).

²⁷ This compares with 5,179 raids reported in 2004, with seizures of almost 802,500 pirate products; 4,142 raids reported in 2003, with seizures of more than 1.1 million pirate products; and 3,363 raids reported in 2002, with seizures of more than 743,700 pirate products. See Thailand Country Report, ASEAN+3 Seminar. The Royal Thai government reported a total of 8,895 IP violations were brought to courts between January and November 2006, with 2.68 million units of illegal products seized, compared with 7,689 cases and 2.26 million units seized for all of 2005 (these numbers include copyright, trademark and patent cases). See *Thailand: Arrests for Intellectual Property Rights Violations Rose in 2006*, Thai News Service, January 15, 2007.

²⁸ Some entertainment software companies report that there have been several occasions where enforcement difficulties have been encountered when certain police officers demand updates powers of attorney (POA) and/or affidavits. But for the most part, the relationship with law enforcement has been positive.

General Notes on Problem Areas: Other areas like book, entertainment software, an end-user software piracy remained largely unchecked. In addition, the courts, while being held up as a model for specialized IP courts in the Southeast Asian region, meted out largely non-deterrent judgments both in terms of civil and criminal results in 2006. Prosecutors in Thailand seem satisfied trying employees rather than owners of businesses engaged in piracy.²⁹ The situation became more difficult as of September due to the coup d'état (e.g., the CIB IPR Task Force was dissolved). The Police Force under the now former Deputy Commissioner General Achirawit Suwanapasat (Number 2 of the Police Force and superior to the CIB and ECOTECH) set up a Special Task Force comprising of five teams with full authority to conduct piracy raids nationwide since 28 December 2006. However, General Achirawit has since resigned and the police officers assigned to be in these five teams were only recently been appointed. As of late January 2007, no right owner has had an opportunity to employ this Special Task Force. Due to political jockeying after the coup d'état, police were much less able to focus on IP issues.³⁰ Nonetheless, it appears enforcement efforts have returned as of early 2007, with primary enforcement problems remaining the lack of adequate manpower and budget. There also remain problems in terms of irregularities in the enforcement system, for example, leaks of major or sensitive targets occur all too often.³¹

Optical Disc Enforcement Results Have Shown Some Promise: The motion picture industry in particular, but others as well, have had some notable successes in 2006 in fighting optical disc piracy. The Royal Thai government reports that since September 2005, it has undertaken inspections of all of the now 38 plants, is requiring SID Code in all plants, and has either closed down some of the suspected pirate plants or those plants have leased out their equipment to others.³² Seizures have been significant, which is a testament to increased cooperation, but, as IIPA has noted for years, also indicates the size and scope of the piracy problem – in other words, Thailand has obviously not implemented a zero tolerance policy towards piracy. For example, between January and October 2006, the motion picture industry program in Thailand undertook 1,816 investigations and participated in 1,477 raids, resulting in the seizure of 202,530 VCDs, 416,706 DVDs, 272,345 CD-Rs, 9,500 DVD-Rs, and 112 CD-R burners. In all, 459 new criminal prosecutions involving motion picture industry product were initiated. A further raid in November reinforces that this effort appears sustained.³³

²⁹ Industry reports that most police IP enforcement teams will accept an owner's request to send a nominated employee as the offender in a case, meaning that the actual owner will escape a criminal record and will not have to worry about follow-up raids.

³⁰ IIPA also notes the continued existence of a Mobile Unit supported by industry which has been running largely retail raids against so-called "Red Zone" and "Yellow Zone" targets, mainly in Bangkok, but also operating in other provinces like Chiang-mai, Phuket, Pattaya and Haad-yai every month. The Unit is equipped with the power to raid and arrest as well as seize pirate products. Now that industry is supporting enforcement efforts, the DIP should be empowered to engage in anti-piracy work in parallel with the Police Force. The laws would not need to be amended to achieve this since the DIP is the competent authority under the Copyright Law, the Trademark Law, the Optical Disc Act, the Patent Act, the Semi-Conductor Act and the Geographical Indication Act.

³¹ For example, in some enforcement actions, after filing charges against retail outlets in a particular mall, all shops in the mall may shut down that day making enforcement impossible to carry out.

³² Thailand Country Report, The ASEAN+3 Copyright Seminar, "APEC Anti-Counterfeiting and Piracy Initiative" and "New Trends in Copyright Related Cultural Industries," March 1-3, 2006, Tokyo, Japan (on file with IIPA).

³³ Motion Picture Association, *Royal Thai Police And MPA Investigators Seize 30 Optical Disc Burners In Bangkok Raid*, November 24, 2006 (indicating that on November 23, acting on information generated during a previous enforcement action in Chon Buri Province, officers from the Royal Thai Police ECO-TECH division raided a four-story residential building in central Bangkok, arresting a woman and seizing 30 DVD-R burners, 8,000 pirated movie DVD-Rs, 75,000 DVD covers and 15,000 blank DVD-Rs. The majority of the pirated DVD-Rs were infringing MPA member company titles. The seized burners are estimated to have been capable of producing nearly 3.2 million pirated optical discs in one year, which could yield illegal revenues of US\$7 million. Many of the discs seized were already boxed and ready for shipment to Chon Buri province, in eastern Thailand, and Nakorn Sithamraj, in southern Thailand.

Helpful Action Taken Against Pirate Cable Operators: Industry is pleased at action taken in April 2006 in which 25 officers from Thailand's Central Investigation Bureau, led by General Eakarut Meepreecha and accompanied by industry representatives, raided four cable operators suspected of illegally broadcasting MPA member company movies.³⁴ The four pirate cable operators collectively represent the entire cable broadcasting market for the province of Phuket and had the potential to reach its entire population of 1.6 million people. Acting under search warrants granted by Thailand's Intellectual Property and International Trade Court, four teams of STF police officers were dispatched from Bangkok's CIB to the southern province of Phuket, one of the many provinces in Thailand where cable piracy is known to be rampant. The raids resulted in the STF sealing off broadcasting equipment and shutting down the unauthorized channels. Operators were charged with the unauthorized broadcasting of copyright content, a violation under Thailand's Copyright Act, and face possible imprisonment for up to four years, fines of up to US\$20,000, as well as the potential of forfeiture of their companies' equipment. The suspects may also be liable and subject to criminal penalties for unauthorized broadcasting (including up to one year in prison) under Thailand's Telecommunication Act. A second raid in November 2006 resulted in one arrest, seizure of equipment used for pirate cable operation, and the shutdown of three pirate cable operators.³⁵

Increased Business End-User Software Piracy Raids: In 2006, the police conducted a record fifteen criminal end-user software piracy raids and five criminal retail raid actions. Most of these cases are still with police inquiry officers as the retail raids were only conducted in November and December 2006. Local law enforcement authorities (the Royal Thai Police) provided good support for these actions although the police manpower has been limited during some periods of the year. On November 9, 2006, the ECID section of the Royal Thai Police gave its first joint press conference where the Business Software Alliance announced the enforcement taken against software infringers and highlighted some of the retail and end user raids conducted. The press conference was followed by another a few weeks later. Both received wide local media coverage and are encouraging developments.

Courts Fail to Mete Out Deterrent Sentences: The Thai Intellectual Property and International Trade (IP&IT) Court has long stood as an example of how a country, through specializing its judiciary to the particularities of copyright infringement and piracy, could effectively improve the functioning of its courts and deal with the peculiarities of copyright at the same time. Over the years, the IP&IT court has sped up dockets and done away with other procedural hurdles that have long plagued right holders.

There remain some serious weaknesses in adjudication of copyright cases in Thailand, most notably in the failure of the courts in some cases to mete out deterrent sentences. In some recent judgments, no punishment has been imposed beyond community service, while most other cases result in suspended sentences and/or non-deterrent fines.³⁶ Several other problems include the following:

³⁴ *Thailand's Largest Cable Piracy Raid Nets Four Illegal Operators*, Companies Illegally Broadcasting MPA Member Company Movies Represented Entire Phuket Cable Market, May 5, 2006.

³⁵ Motion Picture Association, *Three Pirate Cable TV Broadcasters Raided and Shut Down in Thailand Enforcement Action Follows Release of Study Estimating Asia-Pacific Pay-TV Piracy Losses At US\$1.13 Billion This Year*, Hong Kong November 1, 2006 (noting that on October 31, police officers from Bangkok's Bangsue, Yannawa and Samray Districts, accompanied by industry representatives, raided three major cable channels suspected of illegally broadcasting Motion Picture Association member company movies in metropolitan Bangkok, and that the 30 people on the police task force arrested one man, seized broadcasting equipment and shut down unauthorized channels belonging to Thai Soon Cable TV, Golden Channel Cable TV, and Sunshine Entertainment Cable TV).

³⁶ Average fines for offenders at the IP&IT court have dropped considerably. A typical optical disc retail offender will receive a 15,000 Baht (US\$400) penalty with a suspended jail sentence.

- **Obtaining Search Warrants Has Become More Difficult:** For some industry members, obtaining search warrants from the IP&IT court has become problematic, with some judges rejecting search warrant applications from copyright owners without valid reason. There have even been cases in which the criminal judge has rejected a search warrant arguing that the right holder should take a civil action against the infringer rather than request a warrant. Difficulties in obtaining search warrants seriously undermine copyright owners' abilities to enforce their rights in Thailand.³⁷
- **Bail-Outs Render Criminal Arrests Virtually Non-Deterrent:** Since early 2005, the Royal Thai government has allowed insurance companies to intervene in criminal proceedings to secure bail for poor defendants. As of January 2007, all 1,420 local police stations nationwide are installed with insurance bail-bond booths to allow defendants, including copyright pirates, to be released from custody for around 10% of the bail set for them (usually 50,000 Baht up to 200,000 Baht depending on the seriousness of the charge). While IIPA does not challenge the concept of bail bonds, the establishment of this system in Thailand results in copyright pirates viewing arrest as a mere cost of doing business, since they know they can get out immediately. That, in combination with lack of deterrent sentencing in the criminal cases, results in the system being completely non-deterrent.
- **Difficulty Obtaining Anton Pillar Orders and Preliminary Injunctions:** Another major problem experienced by right holders in 2005 is the relative difficulty in obtaining Anton Pillar orders and injunctions in a timely manner from the IP&IT Court. Judges have become increasingly strict when reviewing and granting search warrants, especially for *ex parte* orders. The percentage of rejected orders has increased in recent years.
- **Lack of Continuous Hearing Schedule:** Hearings in copyright cases in Thailand are scheduled at lengthy intervals (e.g., one-month intervals or more in some instances), which is causing undue delays even in straightforward piracy cases. These delays and lengthy breaks defeat any deterrence which may result from a successful case outcome.
- **Problems with Submission of Forensic Evidence:** Copyright owners face problems in having police units send seizures for examination. The main reason the police give for not sending such exhibits to the new forensic facility is that they claim they have not been given a directive from higher authorities to do so. The police should swiftly deliver seized products for examination upon seizure.

TRAINING, TECHNICAL ASSISTANCE, PUBLIC AWARENESS

Handover of Forensic Equipment: On August 7, in a ceremony between the United States Embassy and the Royal Thai Police Office (organized by the motion picture and record industries), the U.S. government handed over a full set of forensic equipment to the Thai government for its enforcement activities related to optical disc piracy in Thailand. The installation of this forensic equipment in Thailand has been viewed quite positively.³⁸ The forensic system was originally designed by the International Federation of Phonographic Industries) and has been used for years by the copyright industries to successfully detect

³⁷ The motion picture industry, by contrast, reports no difficulties in obtaining warrants.

³⁸ See IFPI Enforcement Bulletin, September 2006. A specialist unit of the Department of Intellectual Property, headed by Deputy Director General, Mr. Banyong Limprayoonwong, has since February 2006 worked with the Royal Thai Police and industry to provide essential support services for the forensic laboratory unit. These services include training, formal visits to all licensed Thai plants, as well as information and exhibit exchanges.

copyright infringing disc production in 17 countries since 2000. Malaysia is the only other Asian country to have such a capability modeled on the IFPI/MPA process, and use of the technology there has resulted in the filing of criminal cases and optical disc license revocations across the country. The new equipment will enable the Thai authorities to identify the manufacturing sources of pirate product originating from local optical disc factories. All Royal Thai government agencies engaged in optical disc anti-piracy activity will be able to use the facility to track pirate manufacturing sources. The equipment will be operated by the Royal Thai Police's Forensic Division.

Trainings/Public Awareness in 2006: Copyright owners once again engaged in many trainings and public awareness activities in 2006 to assist the Royal Thai government to achieve its mission of eradicating piracy. For example, the Motion Picture Association participated in ten training sessions in Thailand between January and October 2006. In addition, the Royal Thai government reported trainings between the Business Software Alliance and the Department of Intellectual Property on software asset management aimed at corporate end-users, educational institutions and libraries. In November 2006, MPA and ESA representatives participated in a regional training program at the International Law Enforcement Academy (ILEA) in Bangkok. The ILEA program was attended by 44 law enforcement officers (both Customs and police officials) from several Southeast Asian countries and provided information on product identification (i.e. distinguishing counterfeit and pirated products from the authentic goods). Appendix B to this report contains a representative list of some of the many industry trainings and seminars carried out in 2006.

COPYRIGHT LAW AND RELATED ISSUES

Memorandum of Understanding (MOU) on the Prevention and Suppression of the Distribution of Intellectual Property Rights Infringing Products: On August 16, 2006, the Royal Thai Police, the Bangkok Metropolitan Administration (BMA), the Department of Intellectual Property, the Department of Special Investigation, copyright owners and representatives, and owners of leading department stores in Bangkok, entered into a Memorandum of Understanding (MOU) on the Prevention and Suppression of the Distribution of Intellectual Property Rights Infringing Products. The signing ceremony was witnessed by distinguished members of the diplomatic corps from the Delegation of the European Commission, Embassy of the United States of America, Embassy of France, Embassy of Switzerland, Embassy of Malaysia, Embassy of Myanmar, Embassy of Cambodia, ECAP II and JETRO. Parties adhering to the MOU are bound to help facilitate cooperation between public and private sectors to prevent and suppress the distribution of IPR infringing products by strictly applying all relevant laws. It is the first time that the major department stores, complexes and malls have agreed to help right owners and the government to prevent and suppress the IPR infringement. The MOU also prioritizes areas of operation in Bangkok and the major provinces as follows (this follows along the prioritization for retail raiding that has taken place in past years, but codifies it for the parties involved):

Red Zones

1. Bangkok

- (1) - (3) Klong Thom, Sapan Lek and Baan Mor shopping areas
- (4) - (5) Patpong and Silom shopping areas
- (6) Mah Boon Krong (MBK) Center
- (7) Sukhumvit area (Soi 3 – 19)
- (8) Panthip Plaza

2. Chiangmai Province
3. Phuket Province
4. Koh Samui District in Surattani Province
5. Pattaya in Chonburi Province
6. Haad Yai District in Songkla Province
7. Ao Nang area in Krabi Province
8. Hua-Hin in Prajuabkirikan Province

Yellow Zones

1. Bangkok
 - (1) Nom Chit shopping area, Lad Prao
 - (2) Pata Pin Klao shopping area
 - (3) Fortune shopping area
 - (4) Taladmai Don Muang shopping area
 - (5) Tawanna shopping area
 - (6) Pratunam shopping area
 - (7) Jae Leng shopping area
 - (8) Kao San Road shopping area
 - (9) Sapan Bhud shopping area
2. Patumtani Province
3. Nonthaburi Province
4. Nakornrachasrima Province
5. Konkan Province
6. Ratchaburi Province

IIPA views the signing of the MOU as a favorable event, and looks forward to being able to report in the future about the results arising from it in the fight against piracy in Thailand.

Optical Disc Act Being Implemented Slowly, But Problems in the Statute Remain:

In 2005, a long-awaited Optical Disc Act was passed into law, published in the Royal Gazette on May 31, 2005, and went into effect on August 29, 2005.³⁹ While the Act is by no means ideal legislation, it does provide a basis for enforcement against licensed facilities. The law is missing some essential tools necessary for a first-class law:

- **No License Regime:** The Act requires only “notification,” not approval, for a plant to begin producing optical discs. There is no provision governing the term for which a plant may produce discs, nor for a renewal process. There is no means by which one’s ability to produce can be revoked, however the penalties for producing optical discs without notifying the authorities is a fine of not more than Baht 200,000 (US\$6,000) and/or a jail term of not more than one year.
- **No Timely Monitoring of Export of ODs and Imports/Exports of Machines, Stampers/Masters and Raw Materials:** The Act contains after-the-fact “notification” requirements (with lengthy grace periods), and there is no provision for monitoring transfers of stampers/masters. However, it is noted that under the Thai Import & Export Law a permit is required from the Ministry of Commerce before one is authorized to import optical disc machinery.

³⁹ Act of the Production of OD Products, B.E. 2548 (2005, effective August 29, 2005).

- **No Express Seizure, Forfeiture, and/or Destruction of ODs, Stampers/Masters, and Machinery:** The Act fails to provide expressly for seizure, forfeiture, and/or destruction of discs, stampers/masters, or machinery found as a result of an inspection to be in violation of the statute or found to be infringing copyright or trademark. Regulations should provide for this.
- **Criminal Penalties Strengthened, But Still No Mandatory Minimums:** The Act contains no mandatory minimum fines and no mandatory imprisonment.
- **“Copyright Code” May Inadvertently Create Burden on Right Holders: Unclear Whether Identification Code Must be Applied to Stampers/Masters:** The Optical Disc Act requires three types of Codes to be engraved or affixed on every disc produced in optical disc plants. They are 1) SID Code (mold code), 2) Mastering Code or LBR Code; and 3) Copyright Owner’s code. The first two codes are applied by optical disc factories. The Copyright Owner’s Code is problematic for some industry members. It requires copyright owners, if they wish to produce their copyrighted work in an OD format, to apply for the copyright owner’s code prior to the production. For some industry members this creates an onerous burden on the ability of legitimate copyright owners to do business in Thailand. Under this definition and other provisions, copyright owners must apply for and affix a “mastering code” to all legitimate discs. This requirement could create a formality that may run afoul of Thailand’s international obligations.⁴⁰

Free Trade Agreement and Copyright Act Revisions: Negotiations toward a possible free trade agreement between the U.S. and Thailand began in June 2004, but were stalled in 2006, especially after the coup d’état in September. Any FTA IP chapter would contain obligations to ensure that Thailand’s Copyright Act reaches the level of protection afforded by the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, and would require many other strengthening amendments. For example, Article 32(6) of the law (which has been misinterpreted to allow photocopying of entire books under “fair use”) would certainly need to be amended as part of the FTA process. The Optical Disc Act also falls short in important respects of what an FTA would aim to achieve.

IIPA understands that the Royal Thai government was working on a new copyright law (or at least a comprehensive set of amendments) in 2004 and 2005; however, this stalled largely due to the coup d’état (the government is focused and committed to deal with the Thai Constitution first). The latest draft copyright amendments have not been made available for public comment, but we understand they are in many respects similar to the draft released in 2003.⁴¹ We note that, to meet the requirements generally called for in FTAs with the United States, the Royal Thai government, even if it passed the latest known draft legislation, would still need to make further important revisions in many areas.

ISP Liability: One important legal question involves the extent to which Internet service providers can be held liable for infringing activities occurring over their services. A law dealing with ISPs in Thailand has been enacted,⁴² and went into force in early 2000, but the National

⁴⁰ This kind of copyright owners’ code application process is a flaw that could, if it was used in a way to interfere with the exercise of copyright, might call into question compliance with the Berne Convention’s “no formality” clause. At least some industries find the code burdensome and problematic and call for its deletion from the law.

⁴¹ Please see IIPA’s analysis of that draft in IIPA’s 2005 Special 301 report, at <http://www.iipa.com/rbc/2005/2005SPEC301THAILAND.pdf>

⁴² Act on Organizations Allocating Frequency Waves and Supervising Radio/Television Broadcasting and Telecommunication Business B.E. 2543 (2000).

Telecommunication Business Commission (NTBC), responsible for implementing the provisions of that law, still has not been established after more than six years. Currently, ISPs operate their business under agreements made with the Communications Authority of Thailand (CAT). ISPs must comply with contractual agreements with CAT, requiring the ISPs to control, verify, or warn their customers not to use their services in ways that contradict any laws. It does not appear that ISPs are at present obligated to immediately remove or take down an infringing website, but police and copyright owners may request an ISP to remove an infringing website from its system when there is evidence of infringement. The police may also request ISPs to provide information regarding the identity of the persons operating a website when such information is required for investigation or when there is evidence of infringement.

Revision of the Customs Code: In order to be in line with the TRIPS Agreement, Royal Thai Customs must revise the Customs Code. Proposed revisions would make intellectual property infringing product subject to seizure and destruction on an *ex officio* basis, and not subject to release back into the stream of commerce. The Customs officer should be able to inspect products contained in transshipments if there are reasonable grounds to believe that the products contained in the transshipment infringe others' intellectual property rights. The infringing products found would be destroyed, sent back to the original port, or disposed of in any manner in which they cannot be released back into commerce. There was a public hearing on the new Customs Code on April 28, 2006, but IIPA is aware of no further progress toward passage of these amendments.

Motion Picture-Specific Legislation: The Motion picture industry is very interested in formulating anti-camcording legislation. In addition, a law dealing with cable piracy would be a welcome addition to the anti-piracy laws.⁴³

MARKET ACCESS

Thailand currently imposes some restrictions on market entry that, in addition to piracy, form barriers to entry of legitimate business and unduly prejudice foreign right holders. The Royal Thai government should take steps in 2007 to eliminate or reduce such restrictions, while resisting the urge to impose new restrictions.

Proposed Screen Quota: IIPA has become aware of proposed amendments to the Film Act involving the possible imposition of a screen quota on foreign films distributed in Thailand. While such a move would cause concern for IIPA and the motion picture industry, we understand that further movement on these amendments in 2007 is unlikely, given the government's stated intention to focus its primary efforts on revisions to the Thai Constitution.

Investment Bans in Broadcasting: Foreign investment in terrestrial broadcast networks is prohibited. A draft broadcasting law ("Act on Broadcasting and Television Business Operations") would allow foreign investment in free and pay television but would limit such investment to a 25% equity share.

⁴³ The draft broadcast legislation contains provisions prohibiting signal theft and the production or distribution of signal theft-related devices, punishable by up to one year imprisonment and a fine of up to 2 million Thai baht (US\$50,553). Stronger penalties are needed if this law is to be effective. Unfortunately, the bill remains pending. Other legislation passed in January 2000, the Frequencies Management Act, created a National Broadcasting Commission, but selection of its members has been unduly delayed.

In addition, advertising is prohibited on pay television systems under the 1992 amendments to the Radio Communications Act of 1955. The draft broadcasting law contemplates the establishment of criteria within which business operators may seek advertising income, but would require that a portion of received advertising income be deposited in a national development fund. In October 2005, the Royal Thai government allowed original advertising carried on foreign satellite channels to 'pass through' on local pay-TV networks – a very positive sign.

Censorship: The Tape and Video Cassette Law puts heavy burdens on the motion picture and recording industries. Since the transfer of authority for administering this law moved from the Police Bureau to the Ministry of Culture, the process to obtain approval and a "censorship code" for music videos and live performances is lengthy – ranging from 2 to 30 days. In addition, strict censorship guidelines in home video products have an adverse effect on the importation of DVDs, due to the costly nature of having to delete such scenes from the DVD master simply for the Thai market.

GENERALIZED SYSTEM OF PREFERENCES

Thailand currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provides "adequate and effective protection of intellectual property rights." In 2005, \$3.6 billion in Thailand's exports to the United States benefited from the GSP program, accounting for 18.1% of its total exports to the U.S. During the first 11 months of 2006, \$3.9 billion worth of Thai goods (or 19% of Thailand's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code.

APPENDIX A: List of Registered Plants in Thailand

	Name of Plant	Location of Plant
1.	307 Group Co., Ltd.	Bangkok
2.	Bayer Thai Co., Ltd.	Muang Rayong Province
3.	C.D. Square Co., Ltd.	Nonthaburi Province
4.	Chai Rung Enterprise Co., Ltd.	Bangkok
5.	Crystal Disc Industries Co., Ltd.	Nonthaburi Province
6.	Cyber Planet Disk Co., Ltd.	Bangkok
7.	Delta Disc Co., Ltd.	Ayutthaya Province
8.	Diamond Mastering Disc Co., Ltd.	Nonthaburi Province
9.	Digital P.V. Co., Ltd.	Bangkok
10.	Disc Com Co., Ltd.	Nonthaburi province
11.	Dyntec Disc Production Co., Ltd.	Nakornpathom Province
12.	E.V.S. Entertainment Co., Ltd.	Samutsakorn Province
13.	General Record International Industry Co., Ltd.	Nonthaburi Province
14.	G.M. InterGroup Co.Ltd	Bangkok
15.	Inter Magnetics (Thailand) Co., Ltd.	Bangkok
16.	June Plaspack Co., Ltd.	Chacheungsao Province
17.	K. Master Co., Ltd.	Patoomthanee Province
18.	L.L.I. technology Co., Ltd.	Samutprakarn Province
19.	M.G.A. Co., Ltd.	Bangkok
20.	Micron Storage Media Co., Ltd.	Chonburi Province
21.	M.P.O Asia Co., Ltd.	Chacheangsao Province
22.	Nontakit Co., Ltd.	Nonthaburi Province
23.	Onpa Co., Ltd.	Bangkok
24.	Optical Disc Technology Co.,Ltd	Nakornnayok Province
25.	Pailin Laser Metal Co., Ltd.	Bangkok
26.	Plan Star Electronics Co., Ltd.	Samutsakorn Province
27.	Rota Group Co. Ltd.	Bangkok
28.	Siam Seiko Enterprise Ltd., Part.	Chachoengsao Province
29.	Supphaisan International Co Ltd	Nakornpathom Province
30.	T.L.(1992) Co., Ltd.	Bangkok
31.	Thai Media Industries Co., Ltd.	Bangkok
32.	Thai Polycarbonate Co., Ltd.	Rayong Province
33.	T.T.N.M Co., Ltd.	Samutprakarn Province
34.	Two Dimension Manufacturing Co., Ltd.	Nonthaburi Province
35.	UD.Compact Disc.Co.Ltd	Nonthaburi Province
36.	Universal Mastering Co., Ltd.	Nakornpathom Province
37.	Van World International Group Co., Ltd.	Bangkok
38.	Verko (Thailand) Co., Ltd.	Nonthaburi Province

Appendix B: Thailand Representative List of Industry Training in 2006

Topic	Date	Organized by	Participants/Purpose
OD Plant Visit of Judges on IP&IT Court	January 27, 2006	TECA	30 judges of the IP&IT Court visited an optical disc factory, MPO (Asia), in Chaeongsua Province, to learn about OD production.
Copyright Cultivation Campaign	February 3, 2006	DIP and private sector, including MPA, Thai Entertainment Content Trade Association (TECA), BSA and a local music group	Students in secondary schools countrywide. (around 5,000 students)
Forensic Testimony	February 15, 2006	MPA, IFPI and TECA	30 judges of the IP&IT Court.
"Don't buy, Don't sell Don't use pirate and fake products" campaign	February 21, 2006	Ministry of Commerce	Many copyright owners with their PR teams, singers and superstars marched along pirate areas, including Klong Thom, Fortune, Tawanna, and Mall-Bangkopi, and demanding the public not to support pirated products.
Plant Visit and CD Exemplar Collecting Program	February 28, 2006	IFPI & TECA, MPA	40 persons from the DIP, DSI, Police and the Office of Public Prosecutors for IP Litigation at the DIP.
Plant Visit and Exemplar Collection	March 9-20, 2006	IFPI, TECA, MPA, DIP	38 plants visited and exemplars collected from almost all the visited plants.
IP Enforcement Seminar	March 18-19, 2006	MPA	50 prosecutors from the CIPIT Litigation department. Subjects included "Internet piracy" and "Film piracy and Organized crime"
"Campaign to Create Public Awareness on Copyright"	May 3, 2006	Department of Intellectual Property and MPA	DIP and industry working alongside the Office of Basic Education.
Meeting with Governor of Chonburi province	May 17, 2006	The Prevention and Suppression of Intellectual Property Infringement Committee (PSIP) and MPA	Presentation to the Chonburi Governor to discuss challenges and strategies to fight piracy in Chonburi province
Internet Piracy Seminar	May 19, 2006	TECA	40 state-attorneys of the Department of Intellectual Property and International Trade Litigation.
Anti-Piracy Marching Campaign	June 1, 2006	Ministry of Commerce	The campaign was to raise public awareness as well as to urge the public not to buy and sell pirate products.
Seminar on the Obstacles of IP Cases Proceeding and Coordination as a Key to Success	June 2-3, 2006	The Department of Special Investigation (DSI).	Around 100 DSI Staff attended the seminar. Mr. Piset Chiyasak spoke to the group on behalf of TECA.
IP Judicial Summit	June 2-3, 2006	Central Intellectual Property and International Trade Court and MPA	40 judges from the Supreme Court and CIPIT court attended this summit coordinated by MPA. MPA Thailand and regional staff provided presentations covering internet piracy, organized crime, forensic evidential procedures and outreach strategies.
VCD Give-away to IP/IT Court	June 15, 2006	TECA and MPO (Asia) (one of the optical disc plants)	1,000 VCDs on "Introduction to IP/IT Court" given away to IP&IT as requested by TECA.
Seminar on the Protection of IP and Suppression of Violations	June 21, 2006	Department of Intellectual Property and MPA	200 Inspectors from the Bangkok Metropolitan Police Bureau attended and provided with an update on current IPR legislation.
Destruction Ceremony	June 30, 2006	Ministry of Commerce, Customs Department, Royal Thai Police Bureau in cooperation with private sector "IP Protection and Infringement Suppression Committee"	Samutprakarn Province, in which more than one million infringing items worth around 100 million Baht were destroyed.
The Training for Effectiveness of Internet Piracy Investigation	July 7, 2006	MPA and TECA Representatives, and Economic and Technological Crime Suppression Division (ECO-TECH)	150 Royal Thai Police (to update them on the current Internet piracy situation).
Seminar on Prosecuting End-User Software Piracy Cases	July 2006	BSA	33 members of the IP&IT Court (including the Chief Justice).

Appendix B: Thailand Representative List of Industry Training in 2006

Topic	Date	Organized by	Participants/Purpose
Forensic Equipment Handover Ceremony	August 7, 2006	IFPI, TECA and MPA	Forensic equipment handover ceremony between the US Embassy and the Royal Thai Police Office.
MOU Signing Ceremony	August 16, 2006	Ministry of Commerce	The Royal Thai Police, Bangkok Metropolitan Administration, DIP, DSI, IPR owners/representatives and leading malls signed MOU on the Prevention and Suppression of the Distribution of IPR Infringing Products.
Provincial Police, Region 7 Meeting	August 17, 2006	The Prevention and Suppression of Intellectual Property Infringement Committee (PSIP)	The PSIP which include MPA met the Commissioner of Provincial Police, Region 7 to discuss the current situation, problems and obstacles of copyright infringement.
Performer Right Seminar	August 25, 2006	Department of Intellectual Property	Over 100 performers attended/to provide a basic knowledge and understanding of performer's right as afforded by the copyright act and an understanding how industry can administer their rights more efficiently. MPA representative provide a presentation entitled "Standard Contract of Performer Right"
Seminar on Governmental and Private Sector Cooperation in the Suppression and Prevention of IP Infringement	September 13-14, 2006	DIP and International Trade Litigation (Office of The Attorney General) in cooperation with private sector "IP Protection and Infringement Suppression Committee"	50 Public Prosecutors attended (focused on tightening cooperation between public prosecutors and right owners, and included discussions on Internet piracy, and specifics in prosecuting IP cases). MPA provided a presentation.
Internet Anti-Piracy Training	September 20-22, 2006	IFPI Secretariat	Focused on situation of Internet piracy worldwide, how to collect evidence and other technical issues
WCT and WPPT meeting	November 16-17, 2006	Department of Intellectual Property	80 people attended/to improve and analyze the draft copyright amendment to be consistent with WCT and WPPT. MPA invited to join committee.
Symposium to Commemorate the 9th Anniversary of the CIP&IT court	November 30-December 1, 2006	Central Intellectual Property and International Trade Court	Approximately 100 persons attended to discuss update information concerning intellectual property and international trade law
IP Talks Seminar	December 15, 2006	the Intellectual Property Association of Thailand	35 attendees including lawyer, academy and Supreme Court Justice attended. MPA provided an overview of film piracy .