

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2008 SPECIAL 301 REPORT

### THAILAND

**Special 301 Recommendation:** Thailand should remain on the Priority Watch List, with an out-of-cycle review (OCR) to determine whether Thailand has made or continues to make sufficient progress with respect to the Priority Actions identified below to warrant it moving to the Watch List.

#### EXECUTIVE SUMMARY

In 2007, copyright owners experienced mixed results in copyright protection and enforcement in Thailand. On the one hand, the government took a series of vigorous actions against piracy, especially during the first three quarters of the year, in major retail piracy hotspots. The record industry in particular highlights the high level of cooperation and support that it has received from law enforcement authorities. Enforcement raids, indictments and criminal convictions were all sharply up. On the other hand, all copyright industries continue to suffer due to piracy in the marketplace and for some, pirate production for export. The book publishing industry, in particular, reports a disturbing surge of exports of high quality academic and professional books. Domestically, piracy of business software has seriously compromised the businesses of resellers and distributors of genuine software for years. Finally, there are several copyright-related pieces of legislation pending before Parliament, some of which would prove beneficial, such as cable licensing legislation and revisions to the Customs Act, but others of which, like the bill mandating collective management, have copyright owners deeply concerned.

#### PRIORITY ACTIONS REQUESTED IN 2008

- **Continue Raids and Prosecutions in a Sustained, Coordinated Manner, with Deterrent Sentences Imposed and Publicized:** The Royal Thai government should continue taking raids and seeking prosecutions in copyright cases, focusing in 2008 on owners of manufacturing plants and burner labs, key pirate warehouses, distribution hubs, and retailers (of all kinds of pirate materials), end-user software pirates (the rate of software piracy still remains too high), cable pirates, and pirate book producers. Publicizing key results, especially higher fines and imprisonment sentences actually served, will send the right message and ultimately lead to deterrence.
- **Close Notorious Piracy Markets and Hold Mall Owners Accountable:** In 2008, the government's campaign against "Red Zone" and "Yellow Zone" targets<sup>1</sup> should focus not only on seizures but on closures and accountability of those who control the malls or otherwise facilitate infringement.
- **Effectively Curtail Pirate Imports and Exports:** The industries continue to report increasing imports into Thailand from China and elsewhere in Southeast Asia and pirate exports from and transshipments through Thailand. New worrisome developments indicate a substantial and sophisticated book piracy syndicate operating in the country and exporting high quality pirated academic books to the U.S. Royal Thai Customs should increase efforts at curtailing the importation of pirated products in 2008 and augment its efforts to stop infringing product from leaving the country.

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<sup>1</sup> Red Zones include: in Bangkok – Klong Thom, Sapan Lek and Baan Mor shopping areas, Patpong and Silom shopping areas, Mah Boon Krong (MBK) Center, Sukhumvit area (Soi 3 – 19), Panthip Plaza; Chiangmai Province; Phuket Province; Koh Samui District in Surattani Province; Pattaya in Chonburi Province; Haad Yai District in Songkla Province; Ao Nang area in Krabi Province; Hua-Hin in PrajuaBKirikan Province. Yellow Zones include: in Bangkok – Nom Chit shopping area, Lad Prao, Pata Pin Klao shopping area, Fortune shopping area, Taladmai Don Muang shopping area, Tawanna shopping area, Pratumnam shopping area, Jae Leng shopping area, Kao San Road shopping area, Sapan Bhud shopping area; Patumtani Province; Nonthaburi Province; Nakornrachasima Province; Konkan Province; and Ratchaburi Province.

Customs should also work with express mail carriers to establish mechanisms to inspect express shipments for contraband.

- Investigate Key Book Pirate Exporters and Otherwise Legitimize Usage of Published Materials:** As noted, the past year has seen a disturbing development in the fight against book piracy in Thailand. Highly sophisticated syndicates have been producing high-quality pirated academic and professional books for export. This well-developed web of pirate activity must be stopped, and IIPA requests the cooperation of both the investigative and Customs authorities in ferreting out and arresting those responsible for this activity. Other forms of book piracy, including illegal photocopying for the domestic market and print piracy for export, continue to thrive in Thailand. Exceptions in the copyright law regarding educational uses of copyright works, which have been interpreted by courts in a TRIPS-incompatible way, must be amended or clarified. IIPA applauds actions by the Royal Thai government to enhance understanding about the harms of piracy of published materials in schools, including 2007's "Stop Book Piracy" campaign. These efforts should continue and should be enhanced to address the core misunderstandings about "fair use" in the educational context. Furthermore, universities need to take a role in ensuring legitimate uses of textbooks and other published materials in schools and universities.
- Modernize Copyright and Related Laws and Join WCT and WPPT:** IIPA is disappointed that legislation to implement the WIPO Treaties, the WCT and WPPT, has fallen behind in the queue to other legislation. Instead, the government is close to passage of Copyright Act amendments which would weaken criminal penalties overall by removing minimum sentences and would impose mandatory collective management in a potentially broad brush manner that is likely ultimately to damage the copyright marketplace. IIPA strongly urges that the Bill be postponed for future consideration, since it is industry's view that collective management of the sort called for in the bill must be voluntary. The Royal Thai government should, however, pass the Customs Act amendment Bill, and should also enact laws intended to address book piracy, signal theft (cable and satellite piracy), and illegal camcording of movies.
- Address Corrupt Practices:** The industries have long known or suspected, and in 2007, the Royal Thai government made representations suggesting they agree, that corrupt practices have had a diminishing effect on intellectual property rights protection and enforcement in Thailand. IIPA commends those who have brought such corrupt practices to light and encourages the government to support courageous officials who are interested in upholding the rule of law.

<b>THAILAND</b>										
<b>Estimated Trade Losses Due to Copyright Piracy</b>										
<b>(in millions of U.S. dollars)</b>										
<b>and Levels of Piracy: 2003-2007<sup>2</sup></b>										
INDUSTRY	2007		2006		2005		2004		2003	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
<b>Records &amp; Music</b>	21.7	50%	20.7	50%	21.9	45%	24.9	45%	26.8	41%
<b>Business Software<sup>3</sup></b>	211.0	79%	253.0	80%	155.0	80%	100.0	78%	84.0	80%
<b>Entertainment Software<sup>4</sup></b>	91.4	77%	NA	82%	NA	75%	NA	76%	NA	82%
<b>Books</b>	37.0	NA	35.0	NA	30.0	NA	30.0	NA	28.0	NA
<b>Motion Pictures</b>	NA	NA	NA	NA	149.0	62%	30.0	60%	28.0	60%
<b>TOTALS</b>	<b>361.1</b>		<b>308.7<sup>5</sup></b>		<b>355.9</b>		<b>184.9</b>		<b>166.8</b>	

<sup>2</sup> 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](http://www.iipa.com/pdf/2007spec301methodology.pdf). For more details on Thailand's Special 301 history, see IIPA's "History" Appendix to this filing at <http://www.iipa.com/pdf/2008SPEC301HISTORICALSUMMARY.pdf>, as well as the previous years' country reports, at <http://www.iipa.com/countryreports.html>.

<sup>3</sup> BSA's 2007 statistics are preliminary. They represent the U.S. software publishers' share of software piracy losses in Thailand, and follow the methodology compiled in the Fourth Annual BSA and IDC Global Software Piracy Study (May 2007), available at <http://w3.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 2006 piracy statistics were preliminary at the time of IIPA's February 12, 2007 Special 301 filing and were finalized in June 2007 (see <http://www.iipa.com/statistics.html>) as reflected above.

<sup>4</sup> ESA's reported dollar figures reflect the value of pirated product present in the marketplace as distinguished from definitive industry "losses." The methodology used by the ESA is further described in Appendix B of this report.

## **PIRACY UPDATES IN THAILAND**

Notwithstanding the recent efforts of the Thai Government, high levels of piracy persist and continue to claim victims. The largest music store in Thailand, known as “CD Warehouse,” closed its doors, in large part because of piracy. Sales of international music products dropped 13% (19% across the board) in 2007 (compared with 2006). Physical music sales continue to decline while Internet sales have not picked up enough of the slack in Thailand. The story is the same for other industries, for retail sales as well as video rental shops. Anecdotal estimates indicate that approximately 10% of rental shops in Thailand (which also offer sell through products) went out of business in 2007.<sup>6</sup> In March 2007, local and international industry representatives joined together to protest the government’s lack of action against piracy and to remind them that local interests are at stake. At that time, a group of 1,000 IP right owners including those from recording companies, film makers, software developers, and trademark right owners presented a letter to the Chief Commissioner of the Police Bureau, Police General Sereepisut Temeeyavej, urging him to declare war against piracy. This protest likely contributed to the Royal Thai government’s more aggressive anti-piracy actions over much of 2007. The Royal Thai Police’s Economic and Technological Crime Suppression Division, Central Investigation Bureau (ECOTEC), has been particularly helpful, running many raids on an *ex officio* basis.

**Optical Disc Pirate Production (Factory and Burned):** Optical disc piracy (CDs, VCDs, DVDs, CD-ROMs) remains widespread in Thailand, with a marked move in 2007 away from factory-pressed discs to burned discs produced in local “burning” facilities. There are now 38 registered plants in Thailand (see Appendix A). Thai authorities conducted plant visits and began collecting exemplars in 2006, 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.<sup>7</sup> In 2007, the plant visit program continued, with 19 plant visits between February 8 and 27, 2007. Visits to the other 19 registered plants were to have been scheduled by the end of 2007, but due to the national elections, the visit program was postponed until 2008. Pirate optical discs manufactured in Thailand were exported in 2006 to the United Kingdom, Belgium, South Africa, Taiwan, Sweden, and other parts in the EU, the U.S., and countries in Latin America, and in 2007 exported discs showed up in Europe and South America.

**Retail Piracy in Thailand:** Despite stepped up enforcement actions by the Royal Thai government in 2007, retail piracy in Thailand remains rampant, whether in otherwise legitimate malls, malls catering to those looking for pirated materials (and/or counterfeits), or established or makeshift street stalls or at night markets.<sup>8</sup> The concept of “Red Zones” and “Yellow Zones,” which includes whole

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<sup>5</sup> 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.

<sup>6</sup> *Pirates Destroying Local Trade*, The Nation, May 9, 2007. This article reported that 80% of sales of VCDs and DVDs annually, or Bt40 billion (approximately US\$1.3 billion) is lost due to piracy, essentially costing the Royal Thai government Bt5 billion (approximately US\$160 million) in tax revenues. It also reported that “major retailers of VCDs and DVDs, who have been severely hurt by unabated piracy, have begun shutting down branches that fail to make profits so that they can improve their bottom lines and maintain their fight against the illegal industry.” The Mangpong retail chain started closing outlets in early 2006, dropping from 370 outlets in 2006 to about 200 outlets in 2007. Another chain, Tsutaya, shut down 10 of 260 stores, and recorded a 12% decrease in gross sales, and the Senior VP indicated “the impact of worsening piracy had driven the company’s sales down by almost 28 per cent in the first quarter of [2007].” It has shut down about 10 outlets over recent months. He also said that between 85% and 90% of local rental stores have pirated products. Rose Video Vice President Jirath Pavaravadhana indicated declines of 20% in sales and said that “In some provinces, we’ve found outlets selling pirated products in front of police stations and even schools,” noting also increased downloading of illegal content from the Internet, and that consumers often chose pirated product since it was not subject to the authorities’ strict censorship of legal copyright programs. Rose Video has about 120 retail outlets around the country.

<sup>7</sup> In preparation for the establishment of the Optical Disc forensic laboratory in Thailand, which was deployed in late 2006, 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 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”).

<sup>8</sup> In the July 2007 edition of *Lookeast Magazine* (which claims to be “Thailand’s Leading Travel Publication for 36 Years”), at least two out of the “12 Things to do in Bangkok” involve shopping for pirated and counterfeit merchandise. The number 1 thing to do in Bangkok (as listed) is to shop at Chatachuk Weekend Market:

provinces targeted for enforcement activity due to piracy, indicates the commercial and geographic scope of the problem. All kinds of pirated product, from optical discs, (increasingly those “burned” onto recordable discs and mobile devices), containing movies, music, entertainment software,<sup>9</sup> business software, or published materials, cartridge-based videogames, and books can all be found at retail. Pirate DVDs often contain movies still in the theaters in Thailand or not yet released (and hence, uncensored). A recent phenomenon is the “4-in-1” or even “6-in-1” DVD containing multiple titles. Pirate music CDs in Thailand often contain the entire repertoire of a particular artist (e.g., the Beatles, Peter Gabriel) and can be found for Bt40-60 (US\$1.35 to \$2). Pirate game cartridges containing 50 games on one cartridge are not uncommon, and sell for Bt 299 (US\$9), as do many of the latest games, all in pirate versions. The color packaging including fake holographs with the brand can only fool the trained eye. Worse yet, piracy of local Thai music and other copyright material can be found anywhere, and compilations of hundreds of songs will sell at retail or at street stalls for a mere Bt40-60 (US\$1.35 to \$2).

**Book Piracy:** Over the past year, Thailand has unfortunately become one of the few pirate book exporters in the world. Massive shipments of high-quality pirated versions of academic and professional books from Thailand have been seized in what has been perhaps the most disturbing global book piracy development in several years. Evidence indicates that the production operations are highly sophisticated, networked and difficult to detect. The book publishing industry needs the earnest and immediate cooperation of the Department of Special Investigation and Royal Thai Customs in detecting these operators and bringing them to justice.

Domestically, illegal photocopying joins with unauthorized translations, adaptations and compilations to inflict significant damage on the educational market. Unauthorized photocopies abound in and around university campuses.<sup>10</sup> Photocopy shops routinely make copies without question or consideration of copyright laws. Lecturers are unfortunately culpable, too, compiling “course packs” of works without permission from publishers and even translating works and marketing them as their own publications. In past reports, IIPA had noted decisions by the Thai courts which seemed to endorse the copying of complete books or substantial portions thereof under its interpretation of Article 32 of the Copyright Act. The Department of Intellectual Property (DIP) has taken notice of this issue, and states in its latest report, *Thailand's Implementation on Intellectual Property Rights (May-October 2007)*,<sup>11</sup> that “the Supreme Court has also made decision in 2001 which specifies that the copying of text books by photocopy services for sale without authorization is a copyright infringement.” Thus, there is every reason to expect the Royal Thai government to take effective action against unauthorized photocopying of entire books in Thailand.

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“Sweat it out at the world’s biggest weekend market ... Chatachuk Weekend Market ... Chatachuk is overflowing with ... fake merchandise. ... Be prepared to bargain with the best of them and you’ll be rewarded with some unbeatable deals. This shopper’s paradise is a MUST for anyone in Bangkok who has shopping on their agenda. ...”

The number 9 activity listed is to shop at Patpong’s night market:

“Shop after dark at Patpong’s night market ... You’ll find everything on Patpong including ... knock-off designer bags, the latest pirated DVDs, counterfeit watches. ...”

<sup>9</sup> Pirated video games on optical discs are primarily either locally burned (now the predominant form of pirated video games in the market) or factory replicated imports from either China or Malaysia (often imprinted with Chinese characters or in Bahasa).

<sup>10</sup> Photocopying, especially of English language teaching materials, plays a significant role in primary and secondary schools as well.

<sup>11</sup> Department of Intellectual Property, Ministry of Commerce, Thailand, *Thailand's Implementation on Intellectual Property Rights (May-October 2007)*.

IIPA applauds several recent moves by DIP to try to improve the book piracy situation, including the launch of a seminar on November 2, 2007, the “Stop Book Piracy” initiative (including public and private agencies, a leading university, a writer’s association and related business entities), and a training program “in order to raise the levels of understanding and responsibility of photocopy services providers on copyright infringement.” The DIP also mentions a publication (“Fair Use Guidelines for Education” issued by the Copyright Committee) on “the scope of the fair use of copyrights that covers both copyrighted books and software,” which it says was distributed to students, professors, and the general public in early November 2007, noting that “the Department was informed by the Association of American Publishers that most of violations take place during the beginning of an academic year.” IIPA and the publishers are open to these initiatives to the extent they can achieve a reduction in the level of piracy and thus an increase in publishers’ opportunities to enjoy a legal market for U.S. books in Thailand, but would like to have had input prior to its issuance, given the important interests at stake for copyright owners in general and publishers in particular.

**Entertainment Software Piracy:** Piracy of entertainment software remains prevalent in Thailand, whether through sales of optical discs (factory or “burned”) or cartridge-based games, use of Internet game rooms (IGR) or cafés,<sup>12</sup> or use of consoles modified to play pirate games.<sup>13</sup> Malls serve as the primary retail channel for pirated entertainment software products, both pirate video game discs and counterfeit video game cartridges. Vendors typically only have binders of game covers or empty boxes in their stands (unlike their prior practice of hiding a stash of pirated products in a closet or an adjacent store).<sup>14</sup> ESA member companies continue to conduct “mall sweeps” in cooperation with local law enforcement, with raids against some 300 vendors in 2007. As vendors typically keep little pirate products on hand, most seizures involved less than 100 discs (although there have been a couple of raids in which several thousand discs were found). Also, even where a raid reveals several hundred pirate discs at one location, police only seize the products of those right holders who are involved in the raid, leaving behind large stacks of pirate product. It is also rather unfortunate such mall sweeps are only undertaken at the behest of the right holder. The police should be encouraged to undertake these actions on their own initiative. ESA members report some convictions for copyright piracy but note that in the main, penalties and fines are rarely imposed. Fines are typically only imposed in cases where 100 or more discs are seized (which, given the above described police practice of leaving behind pirated product) is extremely difficult to achieve). In some cases, community service is the only penalty, and in others, not even that.

**Signal Piracy (Cable and Satellite) and Unauthorized Public Performances of Audiovisual Works:** Piracy of cable and satellite broadcasting signals in Thailand (the unauthorized

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<sup>12</sup> Over the years, ESA member companies have had some success in turning IGRs into legitimate operations through licensing arrangements with the café owners. The support of law enforcement remains critical to ensure continued improvement in this market.

<sup>13</sup> In this unique form of console piracy, in several locations throughout Thailand, a modified console (rendered capable of playing pirated video games by the insertion of a circumvention device) is housed inside an arcade-type shell and is operated by depositing tokens or coins into the machine.

<sup>14</sup> When a customer, after browsing the shop “catalogues,” requests a specific title, a runner is sent to meet a backpacker (whose function is to roam the mall carrying a number of pirated discs in a bag) to retrieve the requested product.

transmission of U.S. programming over systems from original cable or satellite transmissions)<sup>15</sup> remains rampant, causing revenue losses estimated at US\$180 million (the second highest losses in the Asia-Pacific region),<sup>16</sup> notwithstanding that legal connections increased in 2007 to 662,000. Illegal decoder boxes and smart cards are widely available in Thailand. The cable industry notes that as of mid-2007, there were over 1.32 million pirate cable hook-ups, compared with 662,000 legitimate subscribers to the major pay television operators in Thailand. Unfortunately, as discussed below, the Royal Thai government, while taking more actions in 2007 against pirate cable operations, has yet to establish a truly effective regulatory system to license and regulate broadcast and cablecasting facilities, including the authority to revoke licenses and take other actions that will deter illegal broadcasters.

A new problem emerged in Thailand in 2007, involving individuals who apply for a legitimate pay television subscription service, and then use the Internet to share the smart card with others, collecting a monthly fee from users of the pirate service. This new dangerous piracy phenomenon is not confined to individuals, but is at times conducted by full-scale pirate enterprises, which use Internet servers to distribute the codes to a large number of users. Thus, Internet card-sharing could have serious repercussions for the legitimate industry as well as direct-to-home pay television services. DIP reports that the Royal Thai Police's Economic and Technological Crime Suppression Division, Central Investigation Bureau (ECOTEC) arrested one violator and filed a case against him, and also reports that it is in the process of expanding the investigation so as to monitor the usage of related devices. This is a positive development, and IIPA encourages the government to address this problem immediately and effectively. Another development is the inclusion in the new Broadcasting Act (Section 70) of a provision that punishes manufacturers, importers, sellers and those who service pirate decoders aimed at decrypting Thai-licensed services. While IIPA hopes that this change will stimulate the police to launch additional cases when the new Act comes into effect, we are disappointed that the international industry's recommendation to the Council of State that the legislation be broadened to encompass pirate decoders of international program providers' signals was not accepted.

**Public Performance Piracy:** Public performance piracy continues to damage copyright owners, especially the motion picture industry. In particular, hotels 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. The copyright law, but also business license laws, should be employed to ensure that public spaces are not being used to abuse copyright in motion pictures, other audiovisual works, or other copyright materials.

**End-User Piracy of Business Software/Government Legalization:** The greatest source of losses to the business software industry is the use of unlicensed or pirate software in the workplace. The rate of unauthorized uses of business software in business settings remains unacceptably high, and revenue losses continue to increase year-on-year. While the business software industry has been able to get full cooperation from enforcement authorities in conducting end-user raids and retail raids (see discussion below), these raids do not seem to be having a significant deterrent effect on the overall piracy rate in Thailand. IIPA notes that the Royal Thai government's latest report indicates that a manual on "the fair use of copyrighted software for computer programs ... so as to enhance the knowledge and understanding on the method and scope to use computer program without violating software copyright" has been posted on DIP's website, and "has also been disseminated to students, academic institutions, and related private agencies in order to gain greater access to target groups." While IIPA has not reviewed the manual, to the extent it sets forth that unauthorized use of software in a business setting is subject to civil and criminal remedies and should be reported by private citizens, we would view that as a positive development. To the extent it does not, it should be amended to do so.

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<sup>15</sup> Cable piracy and signal theft in Thailand involves not only major channels, but also the feed by many unlicensed cable operators, particularly in provincial areas outside of Bangkok, of continuous, unauthorized motion pictures on dedicated movie channels operating on their systems.

<sup>16</sup> 2007 revenue loss estimate were taken from The Cable & Satellite Broadcasting Association of Asia (CASBAA), *The Cost of Piracy: Asia-Pacific Pay-TV Industry Study*, October 2007 (prepared by Standard Chartered).

In addition, regarding government legalization of software usage, IIPA is pleased that, according to the Royal Thai government's latest report, it has requested the cooperation of all government sectors to abide by the decision of the Cabinet in 1999, which stipulates that all government sectors are to strictly use legitimate software.

**Internet Piracy Has Grown:** Thailand now boasts almost 8.5 million Internet users, representing a 13% penetration rate, and 105,000 broadband subscribers, or a 1.6% broadband penetration rate, and an astounding 974,000 separate Internet web hosts.<sup>17</sup> Given this growth compared with previous years (e.g., in 2006, IIPA reported 7 million Internet users overall), it is not surprising that Internet piracy is a growing phenomenon in Thailand. The Business Software Alliance (BSA) noted a huge increase in the number of software infringements in Thailand, from 358 per month in 2006, to 949 per month in 2007. In addition, recent statistics suggest that mobile Internet penetration in Thailand is extremely high, at well over 50%.<sup>18</sup> The industries report that, although there is no legislation related to the liability of Internet service providers (ISPs) for copyright infringements occurring over their services (see discussion below), ISPs in Thailand have thus far been cooperative in taking illegal websites down.

**Mobile Device Piracy:** Illegally "ripping" music and storing music on mobile devices, on thumb drives, or on MP3 players, has become a more prevalent piracy phenomenon in Thailand in 2007. The proliferation of cheap MP3 storage and playback devices is spawning this rapidly growing form of music piracy in Thailand, especially among youth. In addition, many mobile phones are now being sold with a feature to store music files. As a result, former retailers of pirate CDs are now offering digital download services to consumers on to these devices. These operators maintain an in-store hard drive containing literally thousands of audio files which can be purchased and then loaded onto any device with an MP3 storage and playback capability. Industry anticipates that this form of piracy will continue growing significantly in 2008.<sup>19</sup> The file transfers, done as a service by sellers, clearly constitute copyright infringement, and industry's surveys reveal that mobile shops in the Red and Yellow Zone areas, i.e. Pantip Plaza, Klongtom and Saphan Lek, Koa Sarn Road, Fortune Center and Sear Department Store, all offer "pre-downloaded" music files to customers on such devices as a service.

**Camcorder Piracy:**<sup>20</sup> 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 already 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.

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<sup>17</sup> See The World Factbook, Thailand, at <https://www.cia.gov/library/publications/the-world-factbook/geos/th.html>. See also Internet World Stats, at <http://www.internetworldstats.com/stats3.htm>. These statistics are up-to-date as of November 30, 2007, are based on Census Bureau data, while usage numbers come from various sources, mainly from data published by Neilsen/NetRatings, ITU, and other trustworthy sources. See also Internet World Stats, Thailand, at <http://www.internetworldstats.com/asia.htm#th> (reporting that there were 8,465,800 Internet users as of September 2007, representing a 13% penetration rate, according to the International Telecommunications Union); and 105,000 broadband subscribers as of September 30, 2007, according to the International Telecommunications Union).

<sup>18</sup> According to <http://www.budde.com.au/publications/annual/asia/asia.html?r=51>, the mobile Internet penetration rate in Thailand stood at 57% in 2006.

<sup>19</sup> IFPI and the local recording industry association TECA undertook market surveys of MP3 devices in several retail outlets where investigators were able to purchase players with infringing pre-loaded tracks or received offers from shop staff to load extra tracks upon purchase of the devices. This practice is widespread and growing, and affects other industries as well. For instance, book and journal publishers report downloading of reference books and dictionaries in similar manner.

<sup>20</sup> 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.

**Organized Crime in Piracy – Link:** Evidence of organized crime involvement in piracy in Thailand continued to mount in 2007. Threats to right holders and their representatives are commonplace, and right holder representatives were physically attacked and injured on several occasions in 2006.<sup>21</sup> In 2007, a number of articles in major local newspapers investigated the links between the factories and retailers. In October 2007, at the Tanwanna shopping mall, a scene between two rival gangs involved in pirate optical disc businesses erupted in violence, resulting in one death and another serious injury. It is clear that the piracy business in Thailand remains a dangerous one. Another enforcement action in May 2007 involved two pirate optical disc manufacturing and distribution facilities in central Bangkok suspected of belonging to a single organized crime group.

## **ENFORCEMENT UPDATES IN THAILAND**

Notwithstanding the difficult and politically dynamic political environment in Thailand in 2007,<sup>22</sup> it is encouraging that the responsible agencies of the Royal Thai government managed to keep copyright enforcement as a front-burner issue and make some incremental progress in some areas. The bright spots in 2007 included some significant raids against optical disc factories, pirate “burning” operations, pirate warehouses, and some major pirate retail markets, resulting in significant seizures and arrests of pirate operators. Other bright spots included the increased numbers of criminal raids against end-user piracy of business software.

It is particularly noteworthy that some key officials in the government have not only recognized the severity of the piracy problems in Thailand, and called out their colleagues for not doing more. For example, the Royal Thai Police's Economic and Technological Crime Suppression Division, Central Investigation Bureau (ECOTEC) Head, General Wisuth Wanichabutra held a press conference on November 18, 2007, at which he told the press that, since starting in February 2007, his unit seized more than 4 million illegal discs, but that he believes there are still more than 10 million pirated discs available in the market. Such candor is welcome and we believe is a first sign that the Royal Thai government is rightly taking responsibility for the piracy problem it faces in country.

**DIP Statistics:** The Royal Thai government's Department of Intellectual Property report, *Thailand's Implementation on Intellectual Property Rights (May-October 2007)* (DIP Report),<sup>23</sup> indicates that the government is taking “an integrative approach” to intellectual property rights enforcement, including the necessary involvement of the Royal Thai Police and its Economic and Technological Crime Suppression Division, Central Investigation Bureau (ECOTEC), the Department of Special Investigation in the Ministry of Justice, the Customs Department, the Office of the Attorney General, the Central Intellectual Property and International Trade Court, the Government Public Relations Department in the Ministry of the Prime Minister, and the Office of the Council of State. The DIP's latest statistics on enforcement claim 4,360 raids from January through November 2007 under the Copyright Act B.E. 2537, resulting in seizures of over 2.1 million infringing items.<sup>24</sup> The statistics also indicate that since January 2007, 247 illegal warehouses and manufacturing facilities have been shut down with 1,878,715 seized items.

The DIP Report also notes a remarkable number of criminal copyright cases brought anew or ongoing – over 2,000 criminal copyright cases – with over 1,800 of those cases resulting in court

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<sup>21</sup> 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.

<sup>22</sup> In particular, after the September 2006 coup d'état which resulted in the overthrow of Prime Minister Thaksin Shinawatra, on December 23, 2007, a little more than a year later, Parliamentary elections resulted in the People's Power Party (PPP) regaining a majority of the lower house. Thailand's newly-elected Parliament convened on January 21, 2008 for the first time.

<sup>23</sup> See *supra* note 11.

<sup>24</sup> Department of Intellectual Property, The Office of Prevention and Suppression of Intellectual Property Rights Violation, *Statistics on Suppression of Intellectual Property Rights Violation*, November 30, 2007. The report also indicates that an additional 35 raids under the Act Controlling the Cassette Business and Television Devices B.E. 2530 resulted in seizure of almost 35,000 illegal items.

verdicts.<sup>25</sup> If nothing else, this indicates that the Royal Thai government, and DIP, have recognized that criminal procedures and remedies are key in the battle against piracy in the country. Regarding border enforcement, the government reported 592 cases between January and November 2007, resulting in seizure of almost 1.3 million goods, although there is no breakout by copyright or trademark so it is unclear to what extent copyright infringing goods were seized at the border.<sup>26</sup> The government also reported the results of Mobile Task Forces, established under the cooperation of DIP and made up of Royal Thai Police and right holders, included a total 135 cases involving 131 suspects between January and November 2007, resulting in seizure of almost 47,000 pirate items.<sup>27</sup>

**Key Indicators and U.S. Industry Anecdotes:** Of course, not all of the cases highlighted above (and certainly not all the Customs statistics) relate to the U.S. copyright industries, but many important actions for the U.S. industries from the year are reflected in those statistics. They include actions on optical disc factories, with seizures of pirate discs being produced therein and equipment being used to manufacture those discs, actions on pirate “burning” operations,<sup>28</sup> and business software end-user piracy raids and seizures (although they report only four retail raids and no *ex officio* raids).<sup>29</sup> Industry also indicates that of the criminal convictions cited by DIP, the Central Intellectual Property and International Trade Court (CIPIT) issued 15 sentences which included jail terms not suspended, although industry notes a general lack of deterrent sentencing in other cases.<sup>30</sup>

Industry worked with enforcement authorities throughout 2007 in effectuating some significant raids on both CD-R/DVD-R production, as well as major pirate distribution channels, retail locations and warehouses in 2007.<sup>31</sup> In one raid, on April 25, 2007, officers from ECOTEC with MPA assistance raided an optical disc manufacturing facility and two distribution warehouses in the Bangkok suburb of Nondhaburi, arresting 11 suspects and seizing 140 DVD-R burners (the burners were capable of producing 7.5 million discs a year) and 213,000 pirated movie DVD-Rs. ECOTEC also seized artwork for

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<sup>25</sup> DIP reports that, while there were no criminal cases from 2006 or 2007 under Sections 27-30 of the Thai Copyright Act (dealing with exclusive rights of works, audiovisual, cinematographic, sound recordings, computer programs), there were a huge number of cases brought under the prohibition against sale or possession for sale of infringing products prescribed in Sections 27-30 (pursuant to Section 31). The report indicates there were 209 criminal copyright cases carried over from 2006, and 1,859 new cases, for a total of 2,070 criminal copyright cases in 2006-07. Of these, 89 related to computer programs; 109 to literary works; 756 to cinematographic works; 40 to sound recordings; 256 to artistic works; 597 to musical works; and 12 to audiovisual works. An additional 2 cases relate to performer's rights under Section 69. DIP does not discuss or break down the verdicts in these cases, or sentences imposed. DIP also reports that during the period January to August, 2007, there were a total of 66 civil copyright infringement cases, with 53 ongoing from 2006 and 13 new cases; of those DIP reported that 16 cases reached judicial decision. As with the criminal statistics, there is no discussion of breakout of the court decisions and damages awarded, although DIP does report that the total claims involved in these cases is Bt201,552,454.62 (approximately US\$6.4 million). See *supra* note 11.

<sup>26</sup> Department of Intellectual Property, The Office of Prevention and Suppression of Intellectual Property Rights Violation, *Statistics on Border Enforcement of Intellectual Property Rights Violation*, November 30, 2007.

<sup>27</sup> *Id.* The Mobile Task Force was most active from July through October 2007, when 105 out of the 135 cases were taken. By contrast, there were only 5 total Mobile Task Force copyright raids between February and May 2007, and only 3 copyright raids between November and December 2007.

<sup>28</sup> In the aggregate, in 2007, the motion picture industry representatives participated with Thai authorities on 11 cases resulting in the seizure of 1,282 CD “burners.”

<sup>29</sup> According to the Business Software Alliance, enforcement statistics from February to September 2007 show that the use of illegal software in the workplace permeates through all categories of industry, as a total of 88 corporations have been caught running 3,737 counterfeit software programs on 1,568 personal computers, with a value of more than Bt187 million (approximately US\$6 million), which is an increase of 50 per cent from last year. Before the end of the year, ECOTEC planned to conduct raids all over Thailand and over 40 companies had already been short-listed for such raids. See Business Software Alliance, *Economic and Technological Crime Suppression Division Showcases 50% Increase in Successful Crackdown on Illegal Software*, January 4, 2008, at [http://w3.bsa.org/thailand/press/newsreleases/ECOTEC\\_showcases\\_successful\\_crackdown.cfm](http://w3.bsa.org/thailand/press/newsreleases/ECOTEC_showcases_successful_crackdown.cfm). The business software industry group principally works with the Royal Thai Police's Economic and Technological Crime Suppression Division, Central Investigation Bureau (ECOTEC) for business software end-user piracy raids, and with ECOTEC and the Bangkok Metropolitan Police for retail raids.

<sup>30</sup> For example, the Motion Picture Association reported that in 2007, twelve cases resulted in distributors and retailers being sentenced to jail (without suspension) for up to two years and to fines of up to US\$22,000. In one case, possession of as little as 78 infringing CD-Rs resulted in a three-month jail sentence. This new spate of convictions is unprecedented, as previously, the Central Intellectual Property and International Trade Court of Thailand had only sentenced a Taiwanese national to jail for two years for owning a factory that produced pirated discs. However, it must still be pointed out that the deterrent effect of these cases is limited by the fact that they are only a few out of the hundreds of cases in which U.S. copyright owners are involved (for example, MPA is involved in over 200 cases). See Motion Picture Association, *Piracy Carries Threat Of Jail In Thailand*, November 1, 2007.

<sup>31</sup> These include actions carried out as part of the Motion Picture Association's “Operation Tripod,” a regional enforcement sweep from April to June 2007, as well as actions carried out by the recording industry group TECA.

more than one million discs.<sup>32</sup> In another raid and an example both of the organized nature of piracy operations in Thailand, but also of the brazen nature of the pirates' activities, on May 23, 2007 officers from the Royal Thai Police, assisted by MPA representatives, raided two optical disc manufacturing and distribution facilities in central Bangkok suspected of belonging to a single organized crime group. The raids yielded 180 CD-R burners, 10,000 pirated CD-Rs, 10,000 blank CD-Rs and 250,000 printed sleeves for pirated optical discs. Two men were arrested.<sup>33</sup> Remarkably, seizures included large quantities of pirated copies of the Thai film *King Naresuan*, a percentage of the proceeds of which were being donated to a charity associated with Thailand's King Bhumibol Adulyadej. Such brazen piratical activity involving this film was apparently unexpected by Royal Thai authorities. The burners seized in the two raids were capable of producing well more than nine million pirated CD-Rs in one year. The facilities were found to be a feeder for pirated discs to retail outlets in Bangkok's Klongtom and Patpong districts. A vehicle containing thousands of pirated CD-Rs, including more than 1,000 copies of *Spiderman 3*, was also intercepted leaving one of the facilities and was seized by the police. These and other key raids are noted in Appendix B.

**Retail Piracy – Progress Made But Challenges Remain to Sustain Results:** Industry noted a reduction in retail piracy levels<sup>34</sup> due to significant raiding of the retail malls, especially the so-called “Red Zone” areas in Bangkok,<sup>35</sup> and the instruction of General-Commissioner Police General Sereepisuth Taemeeyaves to his subordinates to impose disciplinary punishment if piracy was found in their responsible areas. The enforcement was largely spearheaded by the Head of ECOTEC, General Wisuth Wanichabutra who took his post in February 2007. Unfortunately, the piracy situation in markets such as Klongtom, Baan Mor and Saphan Lek worsened in the fourth quarter 2007, due in large part to inactivity among local Police; this inactivity, fueled by charges of local police corruption and bribery, led to protests by hundreds of Thai actors and artists on November 17, 2007, demanding that the Head of the Plabplachai Local Police Station act against piracy or resign from his post.

The DIP Report indicates that the Royal Thai government would like to commence criminal prosecutions against piracy through proof of mere displaying of the cover pictures or artwork. The reason they desire this authority is that in many instances, the authorities find pirates hawking pirate CDs through displaying only the covers, and then retrieving discs from a different location or “burning” discs to order. In such cases, there is no proof of illegal copying (or selling) of the discs themselves. Industry agrees with this approach and is prepared to assist the authorities in such cases; however, it should be noted that in many instances, such underground practices as displaying only covers should lead authorities to investigate up the distribution chain to locate pirate warehouses, distribution hubs, and production sites.

**Border Enforcement:** Pirated video game products continue to be imported into the country but entertainment software publishers are not aware of any game seizures effected by Royal Thai Customs authorities in 2007. It appears, however, that the bulk of pirated products are now entering the country through couriers and perhaps no longer primarily through shipping containers. An ESA member company reports that budget flights between China and Malaysia have made it economical for pirate suppliers and vendors to fly to the source country and return to Thailand with their luggage full of pirate products. As Customs officers at airports appear to be inspecting only a limited percentage of inbound passengers, pirate products enter the country unimpeded.

**Enforcement Results Against Optical Disc Production Facilities:** The Royal Thai government reports that since September 2005, it has undertaken inspections of all 38 of the registered optical disc 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.<sup>36</sup> In 2007, industry and government

<sup>32</sup> See Motion Picture Association, *Thai Police Seize 140 DVD-R Burners In Massive Bangkok Movie Piracy Haul*, April 26, 2007.

<sup>33</sup> See Motion Picture Association, *Thai Police Seize 180 CD-R Burners, Thousands Of Pirated Discs In Bangkok Piracy Raids*, May 25, 2007.

<sup>34</sup> Many shops and stalls closed down in the Red and Yellow Zones in Bangkok, and at least one industry group, TECA, reported a temporary 70% reduction in piracy.

<sup>35</sup> See *supra* note 1.

<sup>36</sup> 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).

reports seem to indicate that several optical disc factories were the subjects of investigations in 2007. Industry also confirms that optical disc production machines smuggled into Thailand were intercepted and seized in Chiang-Rai Province (which borders Myanmar and Laos); the total value of the seized machines was Bt10 million (approximately US\$319,000).

The local copyright industry association TECA reports three specific optical disc plant actions:

- **Cyber Planet:** On April 10, 2007, ECOTEC aided by industry raided Cyber Planet Disc Company Limited in Bangkok, having 1 DVD line and 1 VCD line along with 1 printing machine. The plant was charged with violating the Thai optical disc statute for not informing DIP about production.
- **Unregistered Plant:** On October 19, 2007, Central Investigation Bureau police raided a property in North Bangkok, revealing two optical disc lines and one printing machine disassembled, packed and ready to be transported. The unusually high electric bill suggests the machines were being shipped out (after being used) as opposed to being shipped in. Illegal discs were discovered in a nearby house on the same property, lending support to this theory. The police charged the property keeper for not registering his property as an optical disc plant under the Optical Disc Law, and copyright charges were filed against the home owner and two employees, nationals of China and Myanmar. The DIP reported that officials seized two optical disc production machines from this unregistered plant.
- **307 Plant (Now “Million Silver Gold”):** The Royal Thai Police’s ECOTEC with industry assistance executed a search warrant on June 20, 2007 against the licensed optical disc plant “307.” The inspection revealed a single production line operating in the middle of the night which was producing pornographic discs. Two local Thai males believed to be operators of the plants were arrested, and further inspection led to the discovery of approximately 13 stampers and about 5,000 pressed discs consisting of pornography, as well as local and international movies and music. In an office opposite the plant an additional 120 stampers and various documents were found and subsequently seized. The mastering source identification code (LBR code) on the pornographic discs discovered at “307” were identified and matched to Chai Rung Enterprise Co. Ltd., a licensed mastering plant that was situated right above the 307 plant. As a result, Chai Rung Enterprise’s operations and plant were sealed pending further investigation. Industry understands from the Public Prosecutor that all the infringers including the Managing Director and the Company (Million Silver Gold, the former 307) are being prosecuted under the copyright law and the Optical Disc Manufacturing Act, with testimony scheduled to be heard by the IP&IT Court on November 20-23, 2008. Unfortunately, despite the link in the mastering code to Chai Rung, the Chief Public Prosecutor decided not to file charges against Chai Rung, determining that there was no concrete evidence to support an accusation of unauthorized copying.

As was reported last year, on August 7, 2006 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 Royal Thai government for its enforcement activities related to optical disc piracy in Thailand. The Royal Thai government has indicated that, since that time, 41 lots of pirated optical disc have been sent for testing by the Royal Thai Police, and 57 lots have been sent for testing by the Department of Special Investigation, Ministry of Justice. The results of these tests led to further investigation against three production plants involved in such pirated activities, and legal actions have been brought against two of the three.

**Additional Enforcement Problems to be Addressed in 2008:** Copyright owners still face a number of major challenges and hurdles in seeking to enforce their rights in Thailand. For example,

- **Investigative Irregularities:** Investigative irregularities, including substitution of low-level defendants for major ones after raids, delays in post-raid inquiries, and leniency of police officers during raids, all prevent deterrent enforcement results.

- **Corruption and Cronyism:** In November, copyright owners protested the stoppage of enforcement by the Plubplachai Local Police Station and its head unit – the Metropolitan Police Division 6. Information regarding possible payments from pirates to the police surfaced and were supported by ECOTEC in public. On top of possible or alleged corruption, some who are closely related to authorities, high ranking officers and politicians have been known to get involved in piracy.<sup>37</sup> There are some other obvious connections between piracy and politics, one involving an ex member of Parliament and an optical disc plant which forensics has indicated is providing pirated discs to street stalls.
- **Mall Piracy:** During the third quarter of 2006, the Memorandum of Understanding on “Prevention and Suppression of the Distribution of IPR Infringing Products” was signed between government representatives, industry, and shopping mall owners. Yet, to date, the piracy situation in malls remains serious, and mall owners skate by without any liability. The Royal Thai government should take steps to hold mall owners accountable for piracy occurring in their malls, to force the issue and clean up the piracy hot spots in Thailand.
- **Untenable Enforcement Approach to Cable Piracy and Signal Theft:** While IIPA expressed satisfaction with action taken in 2006 against cable piracy in some regions,<sup>38</sup> the Royal Thai government’s approach to the problem of signal theft has been anything but comprehensive or effective. The DIP Report mentions a “Short-term Approach”:

For the 77 licensed operators, the Government Public Relations Department will adopt the Ministerial Regulation Number 14 (B.E. 2537) under the Radio and Television Broadcast Act B.E. 2498 that empowered the Government Public Relation Department to control broadcast programs and to terminate programs which are inappropriate. Public and private agencies have worked closely on the suppression of unauthorized broadcasting. Under the cooperation, from January – October, 2007, the Royal Thai Police conducted 81 raids on the infringement of copyright by unauthorized broadcasting. Six of the cases were brought to the court where they were fined 50,000 Baht each. The other cases have been settled out of the court since the broadcasting operators agreed to execute broadcasting agreements with the copyright owners.

The DIP’s “Long Term Approach” is as follows:

The Department of Intellectual Property and related agencies have agreed that the present Draft Broadcasting Act, B.E...., which contains important provisions relating to the authorization and the regulation on radio and television broadcast can be adapted so as to increase the efficiency in combating intellectual property violation on radio and television broadcast. The Council of State has amended the draft legislation proposed by the Government Public Relation Department by specifying in Article 78(3) that the National Broadcasting and Telecommunication Commission may consider to temporary or permanently suspend or revoke the license of the operator with the final judicial decision that it has conducted the infringement of copyright by unauthorized broadcasting as stipulated under the Copyright Act. The

<sup>37</sup> Industry reports that piracy levels are generally increased during general elections as means to generate campaign funds.

<sup>38</sup>IIPA noted in the 2007 Special 2301 report on Thailand, “Industry is pleased at action taken in April 2006 in which 25 officers from Thailand’s Central Investigation Bureau, led by General Eakarat Meepreecha and accompanied by industry representatives, raided four cable operators suspected of illegally broadcasting MPA member company movies.” IIPA also noted,

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.

fact that the final judicial decision of the court is needed before a license can be suspended or revoked is to prevent wrongful incrimination and trivial complaints with the intent to reach a compromise between the two parties. In this regard, once the license has been revoked, the operator will not be able to apply for a new license for a period of 3 years thereafter.

Unfortunately, to date, under the “short-term approach,” there has been no effort to control the status of even the licensed cable companies by the Royal Thai government. Second, IIPA notes that DIP left out the 400 unlicensed (pirate) broadcasters. In fact, the record reflects that administrative sanctions have not been imposed, including in the case of 10 operators convicted of piracy by the intellectual property courts last year. As suggested by the raiding activity in 2007 and the commencement of cases against signal theft operations, IIPA contends that more can be done to eradicate cable piracy, both licensed and unlicensed, even in the short term.

The long term approach suffers from major flaws. First, by requiring a “final judicial decision that it has conducted the infringement of copyright by unauthorized broadcasting” to “prevent wrongful incrimination and trivial complaints with the intent to reach a compromise between the two parties,” the government takes a weak approach to this issue, which is contrary to the approach taken in other markets where respect for IP is a precondition to obtaining a license.<sup>39</sup> Even then, upon a final judicial decision, there is no mandatory suspension (“may consider”). The DIP Report somewhat conveniently omits Section 64, which provides, “[t]he order suspending the license ... shall not be more than thirty days for each suspension.” The approach and the presumptions of DIP in this case are wrong, and therefore the solutions proposed are also wrong. IIPA encourages DIP to sit down with right holders and affected parties to work out a more effective strategy to beat back what is becoming a massive signal theft problem in Thailand.

- **Obtaining Search Warrants:** For some industries, obtaining search warrants from the IP&IT court has become problematic, with some judges rejecting search warrant applications from copyright owners without 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.<sup>40</sup> Industry has tried to address the problem of arbitrarily refusing to issue warrants by engaging in dialogue with the judges through formal meetings and seminars.

## **TRAINING, TECHNICAL ASSISTANCE, PUBLIC AWARENESS**

**Numerous Industry and Government Trainings in 2007:** Copyright owners once again organized and engaged in numerous trainings and public awareness activities in 2007 to assist the Royal Thai government to achieve its mission of eradicating piracy.<sup>41</sup> The chart in Appendix C highlights some of the key trainings IIPA has been made aware of, either by the Royal Thai government or industry.

## **COPYRIGHT LAW AND RELATED ISSUES**

**Troubling Copyright Law Revision Should be Set Aside and Reconsidered:** In Thailand, copyright protection is governed chiefly under the Copyright Act, B.E. 2537 (A.D. 1994), which was last revised in 1995. The Royal Thai government has examined several times over the past few years appropriate ways to improve the law, and the latest comprehensive amendments appeared in 2005.

<sup>39</sup> For example, in Korea, a cable operator has to show legitimate supply contracts before it can obtain a license.

<sup>40</sup> The motion picture industry, by contrast, reports no difficulties in obtaining warrants.

<sup>41</sup> The Royal Thai government’s Department of Intellectual Property reports that it organized nine seminars from May to October, 2007, with a total number of 1,180 college professors, researchers, business operators, OTOP producers (“One Town One Product” producers of local traditional products), SMEs, and community enterprises in the Central and regional provinces, to raise understanding and awareness on the importance of intellectual property rights.

Those draft amendments would have made some important improvements to copyright protection in Thailand.<sup>42</sup> Included in them were provisions to strengthen civil remedies by allowing courts to award compensatory and punitive damages and lost profits, make it an offense for a photocopy shop to provide infringing copies of works, clarify that temporary copies are covered as reproductions under the Thai Act, distinguish between “disposal” (sale or other transfer), rental, and “communication to the public,” attempt to deal with the WIPO treaties’ requirements to prohibit the circumvention of technological protection measures (TPMs), and prohibit the unlawful tampering with rights management information (RMI), strengthen criminal penalties in certain respects, and establish voluntary collective management of copyright. While by no means perfect, the 2005 draft amendments were a step in the right direction toward bringing the copyright law in Thailand up-to-date with some of the latest international standards and trends.

The Royal Thai government has chosen a different path and proposed a draft Copyright Law amendment which would generally take Thailand in a less favorable direction, among other things, by weakening criminal penalties and imposing an unclear mandatory collective management regime in Thailand. While the Copyright Law amendment Bill may have been drafted with good intentions, to curtail what is perceived to be over-zealous collection by some local right holders (essentially, karaoke and bar owners in Thailand have complained of both double-dipping and harassment by local performers), the Bill does so by establishing mandatory collective management at least for performers, but which is unclear in its scope.

The Bill would require those wanting to collect royalties for performers to incorporate their businesses into a limited company known as “collecting company[ies]” and to seek a permit for such operation from a regulatory committee set up under the Bill. Those who collect royalties without complying with procedures under the new law would, if the Bill passes, be subject to criminal penalties, including a maximum jail term of two years or a fine of Bt800,000 (US\$25,500), or both. Even more troubling is the Bill’s vague and ambiguous scope which may snare other copyright owners, other works, and give rise to mandatory collective management of rights other than the public performance right. In part due to its vague nature, and also because collecting royalties should be left to voluntary arrangements, IIPA is opposed to the Bill as drafted.<sup>43</sup> If adopted as drafted, this provision could cause marketplace chaos, and present opportunities for abuse, in part by users who could presume unfettered use of copyright works for a *de minimus* collective management payment.

The translation IIPA has obtained of the Bill suggests that all copyright owners and all copyright works and rights of a performer are covered. Section 53/1 of the Bill defines “Owner of Right” as “the owner of copyright or rights of a performer.” Section 53/2 stipulates,

Any copyrighted work or rights of performer for which the fee collection of such work type must be licensed under this Agreement and as determined by the ministerial regulation.

Section 53/3 then provides,

The collection of fees for any type of copyrighted work or rights of performer as stipulated by the ministerial regulation pursuant to Section 53/2 shall be allowed only in form of a limited company in accordance with the Civil and Commercial Code whereas it must be licensed by the Registrar under an approval of the Regulatory Board.

This circuitous set of provisions leaves it ambiguous as to which right holders are affected, and which works are affected. Even if the Bill is aimed only at performers, it seems clear that multiple rights, including public performance, would be administered by a “collecting company” under a strict reading of this Bill. Exclusive rights of public performance are best left to the control of individual copyright owners –

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<sup>42</sup> A fuller description of the improvements and problems with previous drafts has appeared in previous IIPA Special 301 country reports on Thailand, which can be found at <http://www.iipa.com/countryreports.html>.

<sup>43</sup> Local performers who administer their own rights and the local Thai record companies that collect for themselves are vehemently opposed to the Bill.

who may still opt for a voluntary collective management approach – and, within modern legal frameworks, only public performance of music is typically subject to mandatory collective management requirements. To the extent rights other than public performance are included, possibly inadvertently, the drafters should rework the language to narrow its scope. A further problem with the Bill involves the makeup of the Collecting Society Board. The Bill would bar representation by copyright owners on the Board but would allow “users” to serve on the Board.

IIPA also objects to the removal of all minimum fines and minimum imprisonment (in cases where infringement was done “by way of trade”), replacing the current penalty structure with only maximum fines.<sup>44</sup> Since there would be no mandatory minimum penalties, judges would have discretion to award no fine whatsoever in any cases.

Regarding the status of the Bill, IIPA understands that the Bill was approved by the Cabinet and submitted to the National Assembly on November 21, 2007. The Bill then moved to a hearing process of an Ad-hoc Committee chaired by the Secretary-General of the Office of the Narcotics Control Board (Mr. Kitti Limchaikij), and one report indicated the hearings had been completed on December 18, 2007.<sup>45</sup> IIPA is ascertaining the schedule for consideration of the Bill, but in any event, IIPA recommends that the Bill be set aside and reconsidered.

**Customs Act Revision Should be Enacted:** According to the DIP Report, “the Customs Department, which is the lead agency on import and export control of Thailand, is in the process of amending the Customs Act.” The amendment would, according to DIP, “empower customs officers with the authority to inspect and confiscate goods entering the country for transit and transshipment.” IIPA understands the draft legislation is awaiting Cabinet approval prior to being sent to the Council of State for consideration. IIPA fully supports these changes to the Customs Act and hopes they will increase the effectiveness of customs officials in tracking and preventing copyright infringements.

**Organized Crime Prevention Legislation:** IP violations still have not been included in various organized crime statutes, such as the Money Laundering Prevention and Suppression Act B.E 2542 (MLPSA).<sup>46</sup> 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 of State concluded that copyright should be removed as a predicate offense.<sup>47</sup> 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. The Royal Thai government should address the issue of organized criminal syndicate involvement in piracy and counterfeiting operations, by adopting anti-

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<sup>44</sup> Current Section 69 reads,

Any person who infringes copyright or performers' rights under Section 27, 29, 30 or 52 shall be liable to a fine of between 20,000 baht and 200,000 baht. If the offense referred to in the first paragraph is committed by way of trade, the offender shall be liable to imprisonment of between six months and four years or a fine of between 100,000 baht and 800,000 baht or both imprisonment and fine.

Under the Bill, Section 69 would be replaced by,

Any person who infringes the copyright according to Section 27(1) or (2), Section 28(1) or (2), Section 29(1), (2) or (3), Section 30(1) or (2), Section 31(2) or infringes the rights of performer pursuant to Section 52 shall be liable to a fine not exceeding four hundred thousand Baht.”

New Section 70/1 would result in increased maximum penalties but again, no minimum penalties:

... the offender shall be liable to imprisonment for a term up to four years or to a fine not exceeding one million and six hundred thousand Baht, or to both.

<sup>45</sup> Sinfah Tunsarawuth, Thailand Moves To Amend Copyright Law To Regulate Royalties, Intellectual Property Watch, December 19, 2007, at <http://www.ip-watch.org/weblog/index.php?p=876>.

<sup>46</sup> 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\$6,400).

<sup>47</sup> 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>.

organized crime legislation, and legislation on asset freezing, which would include intellectual property rights violations as predicate offenses.

**Computer Crime Act of 2007:** The Computer Crime Act B.E. 2550 (2007) was passed in 2007, and went into effect on July 18, 2007. The law, while essentially an anti-cybercrime statute, could be used to protect copyright in limited circumstances. For example, Section 14 of the Act makes it a crime to use a computer system to disseminate illegal, fraudulent or obscene data. The law also covers limited cases of circumvention, i.e., it makes it illegal to circumvent an access control measure to avail oneself of a specific computer system, or to “uncover” or disclose a circumvention method. The law places potential liability on ISPs for contributing to such computer crimes as well.

**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.<sup>48</sup> While the Act is by no means ideal legislation, it does provide a basis for enforcement against licensed facilities. The DIP Report also mentions other laws under which optical disc production factories are governed, for example, the operator of an optical disc plants must hold a factory license under the Factory Law, must prepare a separate accounting for the production of optical discs under the Revenue Code and must register its businesses at the Department of Business Development under the Commercial Registration Law.

IIPA is pleased to learn from the DIP Report that the Royal Thai government is considering amendments to the Optical Disc Production Act B.E. 2548 to make it even more effective. They reportedly plan to open the process for comments from all sectors. In IIPA's view, the law is missing some essential tools necessary for a first-class law:

- **“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) SID Code (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 in that it requires copyright owners, if they wish to produce their copyrighted work in an optical media 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. By requiring an application for and affixation of a code to all legitimate discs, Thailand may have inadvertently created a formality that runs afoul of Thailand's international obligations.<sup>49</sup>
- **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\$6,400) 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.
- **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,

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<sup>48</sup> Act of the Production of OD Products, B.E. 2548 (2005, effective August 29, 2005).

<sup>49</sup> 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.

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 be enacted to provide for this.

- **No Mandatory Minimum Criminal Penalties:** The Act contains no mandatory minimum fines and no mandatory imprisonment.

**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, the Act on Organizations Allocating Frequency Waves and Supervising Radio/Television Broadcasting and Telecommunication Business B.E. 2543 (2000), went into force in early 2000, but the National Telecommunication Business Commission (NTBC), responsible for implementing the provisions of that law, still has not been established after more than seven 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.

**DIP/Chulalongkorn University Study:** IIPA is aware that the Department of Intellectual Property commissioned a study on competition policy and intellectual property rights. IIPA member organizations have considerable expertise in this area, and we hope that DIP will honor the requests of those organizations for participation in the process if DIP decides to take the study's recommendations forward. Of course, it is IIPA's expectation that nothing will be done that would be detrimental to local or foreign innovators and creators doing business in Thailand. Any such move would of course create a serious risk of putting Thailand out of step with its international obligations at a time when piracy-related challenges in the country remain severe.

**Fair Use Guidelines:** The DIP has issued three guidelines on fair use, namely, the "Fair Use Guidelines for New Report," the "Fair Use Guidelines for Education," and the "Fair Use Guidelines for Software." The DIP has indicated in its Report that these guidelines are intended to serve as manuals for users of copyright works, e.g., the education guidelines are intended "to reduce risk of copyright infringement in books and other copyright works." IIPA appreciates the good intent of DIP, and only requests that the affected stakeholders, such as the publishers and software industry, be permitted to weigh in in the formation of such guidelines, given their experiences in creating similar rules for the road in other countries.

**Camcording Legislation:** IIPA and the motion picture industry are very interested in formulating anti-camcording legislation. Such legislation would prohibit the unauthorized operation of audiovisual recording equipment in motion picture theaters while a motion picture is being exhibited. We urge the Royal Thai government to take whatever steps necessary as a matter of urgency to ensure that adequate protection against camcording piracy is reflected in its national legislation.

**Legislation to Address Cable Piracy:** A law dealing with cable piracy would be a welcome addition to the anti-piracy laws. The DIP Report indicates that a Television and Broadcasting Draft law was proposed so as to provide framework for radio and television broadcasting business operations with or without the use of frequencies, as well as the qualifications of licensed operators and the duties and functions of the National Broadcasting and Telecommunication Commission. The DIP Report indicates that this draft law is intended to enable the authorities to effectively control illegal broadcasting of copyrighted works and prevent copyright violations on cable television. As discussed in the report above, government proposals should empower the commission with the authority to temporary or permanently suspend or revoke the licenses of the operators involved in unauthorized broadcasting, without requiring a final judicial decision. The law must also not impose undue restrictions on the ability of legitimate broadcasters and content owners to freely contract, i.e., it must not force them to negotiate with the cable pirates or grant those previously engaged in cable piracy with non-exclusive licenses.

## **MARKET ACCESS ISSUES IN THAILAND**

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 Should be Scrapped:** The Ministry of Culture and Ministry of Tourist and Sport recently proposed amendments to the Film Act, Section 9(4) of which would allow the Film Board to establish a ratio between local and foreign film, i.e., quotas. The Bill reportedly passed a first reading and is now under the consideration of an Ad-hoc Committee within the Parliament. IIPA is ascertaining the schedule for passage, but urges that the Bill be set aside and reconsidered.

**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.

**Television Advertising Restrictions:** Advertising is currently prohibited on pay television systems under the 1992 amendments to the Radio Communications Act of 1955. The draft “Act on Broadcasting and Television Business Operations” contemplates the establishment of criteria within which business operators may seek advertising income, but would require that 5% of received advertising income be deposited in a proposed National Broadcasting Business and Television Business Commission. 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.” During the first 11 months of 2007, \$3.55 billion worth of Thai goods (or 17.1% of Thailand’s total exports to the U.S. from January to November 2007) entered the U.S. under the duty-free GSP code.

<b>APPENDIX A: List of Registered Plants in Thailand</b>		
	<b>Name of Plant</b>	<b>Location of Plant</b>
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 Plaspac 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: Anecdotal Account of Certain Key Industry Enforcement Actions in 2007			
Date of Action	Location	Enforcement Authority	Key Seizures/Arrests
April 25, 2007	Bangkok suburb of Nondhaburi	ECOTEC	Officers from ECOTEC with MPA assistance raided an optical disc manufacturing facility and two distribution warehouses in the Bangkok suburb of Nondhaburi, arresting 11 suspects and seizing 140 DVD-R burners (the burners were capable of producing 7.5 million discs a year) and 213,000 pirated movie DVD-Rs. ECOTEC also seized artwork for more than one million discs. <sup>50</sup>
April 25, 2007	Tambon Wat Chalor and Tambon Bang Kruay	ECOTEC	ECOTEC led simultaneous raids on three houses located in nearby locations, arresting four suspects at the first house (in Tambon Wat Chalor) and seizing 100 CD-R burners and 20,000 pirate CDs; arresting three more suspects and seizing 500,000 pirate CDs at the second house (also in Tambon Wat Chalor), and arresting another four suspects and seizing 1,000,000 pirate CD covers in the third house (in Tambon Bang Kruay). The seized pirate CDs included music records and movies from Thai and foreign companies and a number of pornographic films. Several others were arrested, since no one would come forward to identify the owners of the houses, and all claimed to be mere "employees."
May 10, 2007	Bangkok suburb of Nondhaburi	Royal Thai Police	Officers from the Royal Thai Police with MPA assistance raided an optical disc manufacturing and distribution facility in the Bangkok suburb of Nondhaburi, arresting one suspect and seizing 126 CD-R burners and approximately 20,000 blank CD-Rs. <sup>51</sup>
May 12, 2007	Klongtom area in Bangkok	Royal Thai Police	Officers from the Royal Thai Police with MPA assistance raided a pirate optical disc manufacturing and distribution facility in Nondhaburi, seizing 42 CD-R burners and an estimated 20,000 pirated optical discs, and arresting one suspect. The facility was suspected of distributing pirate discs to retail outlets in Bangkok's notorious Klongtom area. The burners seized in the May 10 and May 12 raids were capable of producing as many as nine million pirated CD-Rs in one year. <sup>52</sup>
May 23, 2007	central Bangkok	Royal Thai Police	Officers from the Royal Thai Police, assisted by MPA representatives, raided two optical disc manufacturing and distribution facilities in central Bangkok suspected of belonging to a single organized crime group. The raids yielded 180 CD-R burners, 10,000 pirated CD-Rs, 10,000 blank CD-Rs and 250,000 printed sleeves for pirated optical discs. Two men were arrested. <sup>53</sup> Remarkably, seizures included large quantities of pirated copies of the Thai film <i>King Naresuan</i> , a percentage of the proceeds of which were being donated to a charity associated with Thailand's King Bhumibol Adulyadej. Such brazen piratical activity involving this film was apparently unexpected by Royal Thai authorities. The burners seized in the two raids were capable of producing well more than nine million pirated CD-Rs in one year. The facilities were found to be a feeder for pirated discs to retail outlets in Bangkok's Klongtom and Patpong districts. A vehicle containing thousands of pirated CD-Rs, including more than 1,000 copies of <i>Spiderman 3</i> , was also intercepted leaving one of the facilities and was seized by the police.

<sup>50</sup> See Motion Picture Association, *Thai Police Seize 140 DVD-R Burners In Massive Bangkok Movie Piracy Haul*, April 26, 2007.

<sup>51</sup> See Motion Picture Association, *Thai Police Seize 168 CD-R Burners In Pair Of Movie Piracy Raids In Bangkok Suburb*, May 16, 2007.

<sup>52</sup> *Id.*

<sup>53</sup> See Motion Picture Association, *Thai Police Seize 180 CD-R Burners, Thousands Of Pirated Discs In Bangkok Piracy Raids*, May 25, 2007.

APPENDIX B: Anecdotal Account of Certain Key Industry Enforcement Actions in 2007			
Date of Action	Location	Enforcement Authority	Key Seizures/Arrests
July 15, 2007	Klongtom Market in Bangkok	ECOTEC	ECOTEC conducted an <i>ex officio</i> raid in Klongtom Market in Bangkok, arresting four suspects and seizing a total (according to ECOTEC) of one million discs worth Bt10 million (approximately US\$319,000). The stalls in the areas had apparently been raided more than 30 times in the previous five months.
July 16, 2007	Nonthaburi Province	ECOTEC	ECOTEC conducted an <i>ex officio</i> raid at a private home in Nonthaburi Province, seizing 50,000 pirate discs and three sets of DVD-R writers (30 drawers in total) worth Bt5 million (approximately US\$480,000). The suspect who owned the house confessed that he reproduced pirated discs for sale through mail order and through the Internet.
August 8, 2007	Nonthaburi Province	Royal Thai Police	Police conducted an <i>ex officio</i> action at an apartment at Nonthaburi Province, seizing 60,000 pirate discs and 12 sets of CD-R writers (98 drawers in total). Five suspects were arrested and charged with violating the copyright law, and two cars loaded with pirate products were also seized.
August 14, 2007	Bangkok	ECOTEC	ECOTEC raided a condominium in Bangkok, seizing 70,000 pirate discs found inside the room, almost all of which was pirate international music repertoire (sound recordings), and arresting two suspects. The stock was being supplied to pirate shops in the Patpong and Lumpini areas.
November 18, 2007	Klongtom Market in Bangkok	ECOTEC	ECOTEC held a press conference to announce the arrest of two suspects for allegedly selling pirated discs at Klongtom Market in Bangkok, and the arrest led to a raid the same day on a warehouse stocking 80,000 pirate discs found inside the 7 stockpile locations. The discs were worth more than Bt16 million (approximately US\$510,000).
January 7, 2008	Banmor area in Bangkok	ECOTEC	A team of 22 officers from ECOTEC headed by Commander General Wisuth Wanichabutra as well as MPA representatives raided two distribution centers and eleven retail outlets located in the Banmor area in Bangkok. <sup>54</sup> During the raid, over 25,000 optical discs were seized. Of these, 6,000 infringing MPA member company titles were seized, including "Alien vs. Predator 2," "American Gangster," and "I am Legend." Five arrests were made, but unfortunately, more suspects escaped when lookouts blew whistles to warn pirate operators, while others blocked the police from moving forward in this crowded area renowned for being a haven of pirates dealing in all sorts of pirated products.

<sup>54</sup> See Motion Picture Association, *New Year Clean Up By Thai Police Nets Five Arrests And 25,000 Pirated Discs*, January 10, 2008 (the raids were part of The police raids were part of the MPA's "Operation Blackout" that ran through the holiday season until the end of January 2008).

<b>Appendix C: Thailand Representative List of Training in 2007</b>			
<b>Topic</b>	<b>Date</b>	<b>Organized by</b>	<b>Participants/Purpose</b>
Seminar on the Protection of IP and Suppression of Violations	January 19, 2007	Department of Intellectual Property	200 inspectors of the Provincial Police, Region 5 attended/provided training on relevant IPR legislation and regulations as well as training on IPR violations and illegal activities. An MPA representative participated/presented.
Innovation and Copyright Content Management	January 25, 2007	TECA and Innovation College of Thammasart University	Mr. Yanyong Paungraj, Deputy Permanent Secretary-General of Ministry of Commerce, GMM Grammy, TECA and others.
Importance of Copyright in the Digital Age	February 8, 2007	Department of Intellectual Property and Chulalongkorn University	Guest Speaker from WIPO spoke on the topic of copyright in the digital age.
How to Identify Pirated Products	February 15, 2007	Metropolitan Police Office	TECA representative gave presentation for around 50 police officers.
WIPO Training	February 28, 2007	The World Intellectual Property Organization (WIPO) and the Government of Sweden, at Chulalongkorn University	TECA representative gave a presentation on "piracy" to participants attending the training. There were around 30 participants from 15 countries.
CD Plant Visits	April 4, 2007	TECA	TECA representative led Mr. Yongyoot Srisattayachon, the Director of Bureau of Intellectual Property Crime and 15 high-ranking officers from DSI to visit the Dyntec Disc CD plant in Nakorn Patom Province.
Encouraging Creativity Roundtable	April 26, 2007	The United States Patent and Trademark Office and the Commercial Section of the Embassy of the United States of America	Speakers from DIP and private sector sharing knowledge and information on IPR issues. There were around 60 invited participants to the Roundtable including TECA representative.
IP in FTA: a Chance for Thai Entrepreneur	May 3, 2007	Department of Intellectual Property and copyright owners such as MPA, TECA and many music labels	TECA representative presented as a guest speaker on "IP in FTA: a Chance for Thai Entrepreneur" Seminar in Chonburi Province.
Distance Learning General Course on Intellectual Property	May 3, 2007	Department of Intellectual Property, in coordination with the World Intellectual Property Organization	387 students, of which 169 persons took the examination (142 passed). The curriculum is based on the course DL-101 in Thai, which has the same standard as the course DL-101 offered by the World Intellectual Property Organization. The second class is currently open for enrollment.
"IP in FTA: a Chance for Thai Entrepreneur I" On the topic of "FTA and the development of IP Culture".	May 18, 2007	Department of Intellectual Property	TECA representative was a guest speaker on "IP in FTA: a Chance for Thai Entrepreneur" Seminar in Chonburi Province
Seminar on the Protection of IP and Suppression of Violations	May 18, 2007	Department of Intellectual Property	200 inspectors of the Provincial Police, Region 7 attended/provided training on relevant IPR legislation and regulations as well as training on IPR violations and illegal activities. An MPA representative participated/presented.
The Importance of Rule of Law in Economic Freedom	May 21, 2007	The Friedrich Naumann Foundation, the Economic Freedom Network Asia	This seminar looked at the role of Rule of Law in safeguarding the proper and efficient functioning of market economics. Approximately 200 people attended.
Inauguration of the Korean Copyright Commission	May 29, 2007	The Korean Copyright Commission	TECA representative was invited to witness the inauguration of the Korean Copyright Commission in Bangkok along with other special guests from the DIP and the universities.
IP Judicial Summit	June 1-3, 2007	Central Intellectual Property and International Trade Court and MPA	40 judges attended this summit to update the current status of IP violations in Thailand, provide a legislation update on IP laws in Thailand and the Asia Pacific region, and identify common obstacles and problems that judges encounter when hearing IP cases. MPA and BSA representatives gave presentations as well. BSA's presentation was entitled "Trends in Software Piracy."

<b>Appendix C: Thailand Representative List of Training in 2007</b>			
<b>Topic</b>	<b>Date</b>	<b>Organized by</b>	<b>Participants/Purpose</b>
Seminar on Digital Piracy	June 6, 2007	TECA and the Department of Special Investigation (DSI)	Around 20 DSI Officers attend the seminar. The Seminar aimed to raise awareness of Internet piracy as well as to strengthen cooperation between TECA and DSI.
"Innovation Forum Thailand 2007"	June 8, 2007	The Ministry of Commerce, The Ministry of Science and Technology in cooperation with Microsoft Thailand.	TECA representative attend this seminar which gathered experts from governmental and private sector to exchange views, information and researches on innovative advancement.
IP in FTA: a Chance for Thai Entrepreneur III On the topic of "FTA and the development of IP Culture".	July 16, 2007	Department of Intellectual Property	TECA representative was invited to be a guest speaker in "IP in FTA: a Chance for Thai Entrepreneur III" Seminar in Khonkaen Province.
ASEAN-USPTO "Workshop on Digital Copyright and Copyright"	July 16-19, 2007	The US Embassy and USPTO	Guest speakers included IFPI, London, TECA, and IIPA. Attendees included copyright officials from nearly all ASEAN member countries.
Panel Discussion on Horror Show: How piracy Kills the Movie Industry/Bangkok International Film Festival	July 26, 2007	Tourist Authority of Thailand	This seminar will exchange ideas of preventing film piracy with the experts. About 100 people attended.
Reception on "IP Rights and the Future of Film"	August 6, 2007	The Motion Picture Association, 20 <sup>th</sup> Century Fox studio and the US Embassy	TECA representative was invited to attend a reception on "IP Rights and the Future of Film." The purpose of this reception was to raise awareness on IP protection in foreign and domestic film industry in Thailand.
Seminar "Computer Crime and Preparation for New Law"	August 8, 2007	National Electronics and Computer Technology (NECTEC), National Science and Technology Development Center and the Ministry of Science and Technology	TECA representatives attended a seminar on Computer Crime and Preparation for New Law. This seminar purpose was to educate the public on new law and proper practice concerning this law.
No IP Infringement Campaign	August 24, 2007	Department of Intellectual Property and IP Copyright Owners, to name it – TECA, MPA, BSA and Local recording labels.	TECA representative attended the "No IP Infringement Campaign 2007" at Cholkalaynukul School, Chonburi Province. There were activities, such as a lyric-writing and music-composition competitions.
Copyright Enforcement Training Program	August 28, 2007	IP & IT Court	TECA representative, on behalf of TECA, was invited to be a guest speaker in this seminar on the topic of "Copyright Enforcement: Problem, Solving Obstacles by the Private Sector"
Seminar on "IP in FTA: Opportunity for Thai Entrepreneur IV" On the topic of "FTA and the development of IP Culture"	September 7, 2007	Department of Intellectual Property	TECA representative was a guest speaker in the seminar "IP in FTA: Opportunity for Thai Entrepreneur" at Chiangmai Province.
Project SILK seminar	September 10-13, 2007	The Thai-Italian Chamber of Commerce	This seminar presented the results of Project SILK-Strengthening EU-Thai fight against counterfeiting and focused on the strategies and practices that both public institutions and private organizations should implement in order to fight back against IPRs violations. MPA representative spoke on the topics of "Improving public-private cooperation in Thailand" and "IPRs infringement case from Motion Picture Association." TECA representative spoke as well.
Public Forum on "Participate in the Treaty on Preservation on the Intangible Cultural Heritage"	September 20, 2007	The Ministry of Culture	TECA representative was invited to attend a public discussion forum on "Participate in the treaty on Preservation of the Intangible Cultural Heritage." This forum purpose was to discuss on the possibility of Thailand to ratify the UNESCO treaty and the effect to Thai national law.

**Appendix C: Thailand Representative List of Training in 2007**

<b>Topic</b>	<b>Date</b>	<b>Organized by</b>	<b>Participants/Purpose</b>
Study Visit on IP Enforcement	September 24-25, 2007	CIP&IT Court and the EC-ASEAN Intellectual Property Rights Co-Operation Programme (ECAP II)	Objective was to disseminate and share knowledge about intellectual property of Thailand to Asian judges. Topics included establishing a special IP court, litigation units and enforcement units on IPR. The attendees were judges from Thailand, Cambodia and Laos, approximately 35 people in all. MPA representative gave a presentation on IPR Enforcement in Thailand.
Seminar on "Who is the copyright owner: Writer, Translator, Publishing"	October 26, 2007	Department of Intellectual Property	The objective of this seminar was to disseminate the knowledge of the copyright law including to understand the importance, worth and benefit of copyrighted works, making license contracts and using the copyrighted work legitimately. Approximately 100 people attended.
Seminar on Audiovisual Services and Concerned Business	October 26, 2007	NECTEC	Approximately 200 experts attended a government-led seminar intended to set strategy for free trade on audiovisual services and concerned businesses and accept advice from experts on opening free trade for audiovisual services and concerned business.
Technical Training on Software Piracy and Systems Check	October 2007	BSA	Training for ECOTEC police officers including a presentation on software piracy and its various forms and software systems check. The agents were taught how to identify software installed in computers and how to capture product keys.
IP Talk Seminar	November 16-17, 2007	MPA	50 prosecutors of IP&IT Litigation Department participated in/provided information on overviews on piracy, optical disc piracy, illegal drug trafficking and organized crime, and motion picture piracy. MPA representative gave a presentation for this event.
Seminar on Audiovisual services and concerned business (2 <sup>nd</sup> )	November 23, 2007	NECTEC	Approximately 200 experts attended a government-led seminar intended to set strategy for free trade on audiovisual services and concerned businesses and accept advice from experts on opening free trade for audiovisual services and concerned business.
Symposium on Intellectual Property and International Trade Laws in the Next Decade	November 29-30, 2007	Central Intellectual Property and International Trade Court, JETRO, BSA	300 lawyers, academics, prosecutor, judges, customs, police, law enforcement, and other officials attended this symposium to exchange and update each other on information on the administration of justice, the enforcement and the advancement of IP and international trade law and technology. Foreign and Thai experts were invited to speak.
Seminar on "Who is the copyright owner: Writer, Translator, Publishing"	October 26, 2007	Department of Intellectual Property	The objective of this seminar was to disseminate the knowledge of the copyright law including to understand the importance, worth and benefit of copyrighted works, making license contracts and using the copyrighted work legitimately. Approximately 100 people attended.
Initiative on Building Copyright Conscience 2007	Year-round 2007	Commission for Basic Education	The Initiative was intended to raise awareness of high-school students on the importance of intellectual property rights, especially copyright. The aim of this initiative was also to induce students to think about creating intellectual works, refrain from intellectual property rights violations, as well as campaign to build conscience in not purchasing, selling, or using infringing products. The activities under this initiative included a song contest, mini concerts, question and answer games, and exhibitions. Over 2,000 students participated in this initiative, with over 230 works submitted for the contests.

**Appendix C: Thailand Representative List of Training in 2007**

Topic	Date	Organized by	Participants/Purpose
Capacity Building for Enforcement Agencies	Year-round 2007	Department of Intellectual Property, together with the Royal Thai Police	<p>Various training seminars on the prevention and suppression of intellectual property violations were carried out by DIP in conjunction with the Royal Thai Police. These trainings targeted police officers at the level of inspector and deputy inspector, who are responsible for intellectual property enforcement nationwide. Five training seminars were held in 2007:</p> <ul style="list-style-type: none"> <li>• for officers in Provincial Police Region 1, in Bangkok;</li> <li>• for officers in Provincial Police Region 2, in Pattaya, Chonburi;</li> <li>• for officers in Provincial Police Region 5, in Chiang Mai;</li> <li>• for officers in Provincial Police Region 7, Nakornprathom; and</li> <li>• for officers in Provincial Police Region 8, in Suratthani.</li> </ul> <p>In total, around 1,000 police officers participated in the seminars in 2007. The purpose of the training seminar is not only to enhance the knowledge and understanding of police officers on the laws and regulations relating to intellectual property but also to increase their capacity to investigate cases of intellectual property violations as well as their ability to identify authentic goods from pirate goods.</p>