

THAILAND

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2014 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA acknowledges that the political climate in Thailand at present makes it difficult to predict with certainty near-term developments in Thailand. This said, IIPA members urge USTR to maintain Thailand on the Priority Watch List in 2014.¹ The list of Priority Actions below is presented as guidance once stability has been reestablished in Thailand.

Executive Summary: The market for creative content in Thailand has deteriorated in recent years due mainly to piracy, exacerbated by the lack of needed legal reforms. Online and mobile device (smart phone, tablet) piracy (estimated to have captured 80% of the Thai market) has largely replaced physical piracy, although there remain pockets of hard goods piracy (e.g., hard disk loading at IT malls). The establishment in 2012 by the Royal Thai Government (RTG) of the National Intellectual Property Committee chaired by the Prime Minister and the National IPR Center for Enforcement (NICE) under the Department of Intellectual Property (DIP) was to usher in an era of enhanced enforcement. Unfortunately, this has not happened. Reports indicate that irregularities in the Thai enforcement system remain prevalent. Courts do not view IP infringements as serious enough to warrant significant judgments, fines, or sentences. Royal Thai authorities do not investigate piracy up the chain to reveal its highly organized and criminal nature. In the online space, right holders rely largely on the voluntary cooperation of ISPs, and in the absence of legal requirements to take down or disable access to infringements, are developing Memoranda of Understanding (MOUs) with willing ISPs.

The draft copyright amendments add difficulties with respect to addressing Internet piracy through ISP liability and accountability, and the proposed protections against the circumvention of technological protection measures (TPMs) fail to address trafficking in circumvention technologies and introduce over-broad exceptions. The inclusion of piracy as a predicate offense under the Money Laundering Prevention and Suppression Act (MLPSA) went into force February 2013, but has not yet been used effectively against piracy, and the draft Computer Crimes Act would not address IP crimes. While recognizing that political instability has made it impossible to predict the way forward, the RTG's 2013 "Year of IP Protection" was a missed opportunity.

PRIORITY ACTIONS REQUESTED IN 2014

Enforcement

- Through DIP, coordinate negotiations between right holders and ISPs to foster greater immediate cooperation against both hosted and non-hosted piracy sites and services.
- Take targeted enforcement against notorious online piracy sites, including those mentioned in this filing; establish Internet piracy taskforce with dedicated expert IP officers to address Internet and mobile device piracy.
- Close notorious piracy markets ("Red Zones" and "Yellow Zones") and prosecute uncooperative mall owners.
- Continue RTG support and collaboration on campaigns focused on reducing unauthorized use of software by enterprises and Government entities, including implementing software asset management, and fully implementing the Cabinet Resolution on legal software use, procurement, and installation in the public sector.
- Use MLPSA in key cases of intellectual property infringement as a predicate money-laundering offense, enabling enhanced remedies.
- Issue and implement sentencing guidelines in criminal copyright cases to provide deterrence.

¹For more details on Thailand's Special 301 history, see previous years' reports at <http://www.iipa.com/countryreports.html>. For the history of Thailand's Special 301 placement, see <http://www.iipa.com/pdf/2014SPEC301HISTORICALCHART.pdf>. For a discussion of IIPA's 2014 Key Initiatives and Challenges, see IIPA, *2014 Special 301 Submission*, at <http://www.iipa.com/pdf/2014SPEC301COVERLETTER.pdf>.



Legislative

- Adopt legislation making it an offense to possess an audiovisual recording device in a movie theater with the intent to make or transmit an audiovisual work in whole or in part.
- Enact copyright amendments to effectively: 1) address Internet piracy and promote ISP responsibility; and 2) protect against acts of circumvention of TPMs and trafficking in circumvention technologies, devices, components, and services.
- Enact landlord liability provision, such that there will be adequate civil, administrative, and criminal remedies against those who lend their premises to people engaging in commercial infringement of copyright.
- Add IP crimes to the draft Computer Crimes Act to create a more effective remedy against online infringement.
- Amend the Evidence Law to allow the admission of digital evidence in copyright cases before the court.
- Issue clarification that exceptions in the Copyright Law do not allow the whole copying of books without permission and payment.

Market Access and Related Issues

- Fix (or withdraw) the problematic Film Act, which potentially imposes a screen quota and uncertain censorship and ratings requirements, and relax investment/ownership and advertising restrictions that impede legitimate distribution channels for audiovisual content.

PIRACY AND ENFORCEMENT UPDATES IN THAILAND

Prior IIPA reports on Thailand contain detailed discussion of piracy and enforcement issues. This report serves only as an update to those and is not to be considered an exhaustive review of issues.²

Internet and Mobile Piracy Problems Worsen in Thailand: As broadband and mobile 3G and 4G services become more widely available, with faster speeds, growing infrastructure, and lower Internet subscription fees, there are opportunities for growth of a legitimate online and mobile marketplace for copyright works in Thailand. One indicator suggests that 52 million people in Thailand are using the Internet as of early 2014.³ Fixed line broadband penetration alone exceeded 5.4 million as of December 2012, according to the International Telecommunications Union.⁴ Legal services for music and audiovisual materials are launching in Thailand, like GTH Movie Store, AIS Movie Store, and 15 legal music services including iTunes, Deezer, KKBox and AIS. Unfortunately, most Thai users are wedded to Internet piracy, including BitTorrent index and tracker sites, streaming sites, social media sites (used to locate infringing files), cyberlockers, and BBS/forums.⁵ These piracy services are being accessed both via wired and wireless broadband services on PCs, as well as on mobile devices such as smart phones and tablets, especially in cases of 3G and 4G Internet. In June 2013, 12 local sites with business models based on providing access to infringing content, were referred to NICE. However, action against these sites has not been as forthcoming as hoped.

The RTG has missed opportunities over the past couple of years to establish a suitable framework to address what is now rampant and growing online and mobile piracy in Thailand. Right holders have therefore been left seeking self-help and the good faith cooperation of ISPs. All things considered, these efforts have already borne

²See, e.g., IIPA, *Thailand*, 2013 Special 301 Report, February 8, 2013, at <http://www.iipa.com/rbc/2013/2013SPEC301THAILAND.PDF>.

³*Thailand's Internet Users to Double*, Bangkok Post, July 4, 2013, at <http://www.bangkokpost.com/breakingnews/358289/thailand-internet-users-to-double-to-52-million-in-2013>.

⁴International Telecommunication Union, *Fixed Broadband Subscriptions 2000-2012*, at http://www.itu.int/en/ITU-D/Statistics/Pages/stat/default.aspx?utm_source=twitterfeed&utm_medium=twitter, accessed on January 21, 2014.

⁵Several sites either have a nexus to Thailand, such as *siamzone.com* (the 74th most accessed site in Thailand), and *tvjaa.com* (109th), which apparently have their server located in Bangkok, or are directed at Thai users specifically, such as *thailandtorrent.com* (159th) and *siambit.org* (287th). Other sites popular in Thailand are among the most accessed sites in the world and are identified by IIPA as "Notorious Markets" in filings with the U.S. Government (including the latest filing in October 2013). In addition, in 2013, Thailand ranked 15th in the world in terms of the number of connections by peers participating in the unauthorized file sharing of select Entertainment Software Association (ESA) member titles on public P2P networks.

some fruit. Takedown rates for hosted content are relatively high (the music industry reports over 90% takedown rates with the 20 or so ISPs they work with, involving hundreds of notices). However, more should be done. The Electronic Transactions Development Agency (ETDA) (under the administration of the Information and Communication Technology Ministry) has drawn up an MOU which would put into place voluntary mechanisms to address hosted as well as non-hosted piracy situations (and other illegal activities). While some ISPs have been willing to voluntarily address such piracy challenges, no progress has been made in relation to cooperation with other ISPs, and there have been no signatories. DIP and NICE should bring together stakeholders on a more regularized basis to discuss better ways to cooperate. Without such efforts, and in the absence of strong legal reform or a dedicated government enforcement taskforce against Internet and mobile piracy,⁶ it will be much more difficult to target Internet piracy.

In the absence of a coordinated Government approach including a dedicated taskforce, IIPA members find that today, most enforcement authorities lack Internet and technological knowledge, there are no standards for computer forensics and/or electronic evidence gathering, and RTG authorities wait for court orders in respect of digital forensics involving third parties like ISPs or payment processors, rather than taking the initiative to launch their own investigations.

Addressing Retail Piracy Including “Red Zones” and “Yellow Zones”: The continued blight of blatant and open piracy in the malls and on the streets in Thailand is difficult to justify and should no longer be tolerated. In its 2013 “notorious markets” submission, IIPA singled out Panthip Plaza, Klong Thom, Saphan Lek, Baan Mor Shopping Area, Patpong and Silom Shopping Areas, Mah Boon Krong (MBK) Center, and Sukhumvit Road,⁷ and the RTG has itself listed “Red Zones” and “Yellow Zones” which it views as vulnerable to piracy activities.⁸ Pirated films, music, software, video games, and published materials remain available (although on a somewhat lesser scale due to the rising popularity of online content), while the IT malls conduct hard disk loading of content onto computers and the loading of pirate materials onto mobile devices, smart phones, and tablets. IIPA has also reported the growth of so-called “media box” piracy, in which digital drives are filled with hundreds of movies and other content or enabled to illegally download or stream content to users’ TVs or computer monitors. These boxes sell at low prices at the malls, and while the boxes themselves may be advertised for legitimate purposes, often they are used or modified for use to infringe copyright, calling into question the responsibility of those who traffic in or provide services related to them. Enforcement authorities are not taking the steps needed to shut down piracy in the malls. Industry reports that RTG authorities conducted some raids during 2013, but unfortunately, seizures were very small and are not followed by upstream investigations. To the extent mall owners are uncooperative, the RTG has indicated that, even in the absence of the planned landlord liability law, criminal action can be brought; however, we are unaware of action to date.

RTG Authorities Continue to Make Dent in Unauthorized Use of Software by Enterprises: The software industry reports good cooperation from the RTG authorities including the Economic Crime Division, in addressing software piracy in Thailand, with an increase from 187 enterprise end-user raids in 2012 to 280 raids (a 30% increase) in 2013. For the most part, the software industry has found civil and criminal penalties awarded in end-user cases to be sufficient. The latest figures, however, still indicate a 72% rate of unauthorized software usage by enterprises in 2011, with a commercial value of this unlicensed software reaching \$852 million.⁹ The software piracy rate in Thailand is well above the Asia regional average of 60% indicating that there is still much progress to be made. Beyond enterprise software piracy, the failure to fully implement the existing Cabinet Resolution on legal

⁶By contrast, we note the Korean Anti-Piracy Task Force boasts more than 30 expert officers undertaking *ex-officio* monitoring activities related to Internet piracy on a 24/7 basis, with the power to request takedowns.

⁷See IIPA Written Submission Re: 2013 Special 301 Out-of-Cycle Review of Notorious Markets: Request for Public Comments, October 25, 2013, at http://www.iipa.com/pdf/2013_Oct25_Notorious_Markets.pdf.

⁸Industry notes that physical piracy is also problematic in big cities in all over Thailand such as Hua Hin, Phuket, Samui, Pattaya, and Chiangmai.

⁹Data on software piracy rates and commercial values are taken from the 2011 BSA Global Software Piracy Study at www.bsa.org/globalstudy. This study assesses piracy rates and the commercial value of unlicensed software installed on personal computers during 2011 in more than 100 markets. The study includes a detailed discussion of the methodology used. BSA plans to release an updated study in the second quarter of 2014.

software use, procurement, and installation in the public sector remains an irritant. BSA has proposed software asset management (SAM) policy initiatives to DIP and the Software Industry Promotion Agency, and is willing to assist with the training of SAM certified personnel and the implementation of SAM procedures to reduce software piracy in the public sector.

Camcorder Piracy Traced to Thailand Continues to Harm Film Market: The problem of camcording of films in movie theaters in Thailand remains a concern of the industry in 2013. The rise in audio forensic matches in 2013 suggests that camcording remains prevalent in the country, primarily driven by domestic demand for films dubbed in Thai (there were no full-length video camcords detected in 2013). Local Thai films are camcordered within days of their release in the movie theater. Increasing broadband Internet and 3G connections in Thailand mean faster uploads to the Internet of movies illegally camcordered there. These titles are then made available to the world through various Internet piracy rings, becoming pirated hard goods within a matter of days. While the RTG has indicated it may take action against unauthorized camcording under existing laws, nothing has been done to curtail this damaging activity. In the meantime, anti-camcording legislation remains pending.

Book Piracy Problems Abound: The book and journal publishing industry continues to face print piracy, illegal photocopying, unauthorized translations, and online piracy in Thailand. Copy shops continue to photocopy books for students, primarily on a “print or copy to order” basis to avoid keeping infringing stock on site. Other pirated materials include novels, travel guides, history books and foreign language newspapers. Furthermore, RTG efforts to address the production and export of counterfeit books have not yielded any actionable results.

Pay-TV Piracy (Cable and Satellite), Public Performance Piracy: Piracy of cable and satellite broadcasting signals in Thailand, which involves the unauthorized transmission or retransmission of U.S. programming over systems from original cable or satellite transmissions, remains a major problem, especially outside of Bangkok. While the National Broadcasting and Telecommunications Commission (NBTC) was established in September 2011, and established a Broadcasting Committee to handle regulation of the broadcasting industry, there is not yet effective government supervision of pay TV content. In recent years, unlicensed new operators of satellite channels (showing DVDs of recent films not yet released in Thailand) have entered the industry with business models based on stolen content, and have achieved substantial business success without any interference by RTG authorities. These channels make stolen content available not only in Thailand but to other countries covered by satellite transponder signals as well. With support from legitimate pay TV providers and the Thai Film Federation, the motion picture industry gathered evidence and submitted a complaint to NBTC in December 2013 requesting that enforcement action be taken. Pay TV content also continues to be freely stolen and re-sold by many provincial cable operators.¹⁰ Public performance piracy continues to be a problem, with many hotels outside Bangkok retransmitting unauthorized videos over in-house movie systems, and with bars in tourist areas openly exhibiting films without authorization. A growing number of bars and restaurants have also added “private” rooms to screen motion pictures illegally.

Lack of Overall Effective Civil Remedies or Criminal Penalties in the Courts: While the establishment of the Thai IP&IT Court in 1998 encouraged great hope for a sustained workable judicial system to protect copyright, in recent years, both civil judgments and criminal convictions have failed to meaningfully deter further infringements for most of the copyright industries. Civil judicial remedies have ceased being effective for most industries because civil damage awards are far lower than costs and attorney’s fees associated with bringing the case. Further, neither additional damages, punitive damages, nor pre-established (statutory) damages are available. Civil procedures are extremely lengthy with an average pendency of three years from filing to judgment. Plaintiffs also bear all the burdens of proof, from copyright ownership to losses and damages, which becomes burdensome but critical since profits awarded in civil cases are so low in Thailand.

¹⁰The industry association CASBAA has attempted to ensure that in broadcast regulations, an explicit condition for a broadcast license includes that “the operator must not commit, permit or suffer any conduct which is an infringement of any intellectual property right,” but thus far, no such conditionality has been accepted.

Although some right holders, such as those in the software industry, have generally been satisfied with the efficacy of criminal enforcement and the support given by the IP&IT Court, either through mediation or decisions in civil cases, in general the criminal system has not provided adequate relief to many copyright sectors. In order to more effectively address the endemic piracy problem in Thailand, a credible, deterrent criminal remedy must be available. Very few raids achieve meaningful results which would, when publicized, have a deterrent effect on piracy activities in the country. Low numbers of criminal convictions leading to suspended sentences are the norm in Thailand. RTG statistics have traditionally failed to break down cases by IP type, and do not show whether investigations are being taken up the organized crime chain or result in deterrent outcomes. In fact, most cases are taken against low-level pirate distributors who are often poor and at the lower end of the organized criminal enterprise. It is no wonder that judges in such cases are reluctant to come down hard with maximum penalties. Yet, judges' attitudes toward IP in recent years have been telling, with some of them expressing to industry that they view copyright infringement as nothing more than petty theft. The MLPSA was amended in 2012 to add IP crimes as a predicate for up-the-chain money laundering investigations leading to significant criminal fines, imprisonments, and asset seizure. It is time for prosecutors and judges to recognize this, and to build key cases involving copyright infringement to test this new tool. In addition, sentencing guidelines should be issued, adopting minimum sentences that provide a real deterrent to infringement.

COPYRIGHT LAW AND RELATED ISSUE UPDATES

Recognizing that the Parliament was dissolved in December 2013, IIPA nonetheless addresses the latest status of various pieces of relevant legislation as of that time, in the hopes that, once the political situation stabilizes, the RTG can move forward swiftly with needed reforms.

Camcording Bill Should be Revamped Prior to Passage: IIPA appreciates that the RTG drafted a bill intended to address the issue of unauthorized camcording of motion pictures in Thailand. The legislation that was put forward unfortunately fell well short of the goals set out in model approaches provided to the RTG. An effective law would prohibit the possession of an audiovisual recording device in an exhibition facility with the intent to copy or transmit a whole or part of an audiovisual work (including the video, the soundtrack, or both). Those engaging in the act proscribed would be subject to interdiction by cinema employees and the police, immediate seizure and forfeiture of the equipment used in violating the law and any unlawful copies made, as well as civil and criminal remedies. Unfortunately, the latest draft IIPA has reviewed would fail to provide adequate protection in several respects:

- The draft only outlaws the actual “reproduction,” not the preparatory steps of possession or use of recording equipment, which in practice would be the basis for enforcement in many cases.
- The draft fails to authorize specific enforcement steps and spell out the conditions under which they could be taken, including: 1) entering and searching exhibition facilities; 2) searching suspects on site (and detaining them if necessary to carry out the search); and 3) seizing any audiovisual recording device or other evidence of an offense.
- The draft should create appropriate presumptions of subsistence and ownership of copyright. In case either is placed into issue by a defendant, an affidavit by the right holder should create *prima facie* proof rebuttable only by evidence to the contrary.
- The draft should empower courts to seize, forfeit, deliver up or destroy any unauthorized copy of audiovisual material and any audiovisual recording devices or other equipment in the possession of the alleged offender.
- The draft should remove the proposed exception for the visually impaired. It appears this was intended as an addition to the copyright law, but was appended to the camcording bill.

Copyright Draft Approved by Council of State, Needs Significant Rewrite Prior to Passage: IIPA is pleased that the RTG has drafted legislation attempting to modernize the Copyright Act, B.E. 2537 (1994) by addressing online piracy through ISP liability provisions, and by taking on key obligations of the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) regarding technological protection

measures (TPMs) and rights management information. In October 2012, the Cabinet provisionally approved a set of proposed amendments. Unfortunately, the draft falls short of providing effective solutions in the following areas:

- **Service Provider Liability Provisions:** Draft Section 32/3 provides a rudimentary and ultimately unsatisfactory approach to online infringements and to fostering greater responsibility and cooperation among ISPs. Rather than a direct notice and takedown approach for the hosted environment, draft Section 32/3 simply authorizes courts to issue takedown orders. Even an ISP which knows or has “red flag” (constructive) knowledge of infringing activity occurring through the use of its services, can, under the draft’s formulation, take no action to remove it and simply wait for a court order to do so. IIPA is deeply concerned that virtually all cooperation right holders currently receive from Thai ISPs will cease if this draft becomes law. Instead, a true “notice and takedown” process is needed in the hosted environment, as well as fair and effective procedures to deal with repeat infringers and with infringements that do not involve hosting, so long as there is a nexus to infringement occurring in Thailand. In addition, the drafters would be wise to heed the advice of DIP officials who have espoused a much more effective and commonsense approach through a simple amendment to the Computer Crime Law, as discussed below.
- **Technological Protection Measures Provision May Need More Detailed Treatment:** TPMs are key enablers of new legitimate business models for content distribution in the digital and online environments. Therefore, their proper protection is necessary to shape a healthy digital marketplace for Thailand. The draft unfortunately falls short of providing adequate protection and also of meeting the requirements of the WCT and WPPT (thus paving the way for Thailand to join those treaties) in critical ways.
 - **Access Controls:** First, Section 53/4 of the draft outlaws circumvention of a TPM only when carried out by someone “knowing that such act may induce or cause the infringement of copyright or performer’s rights.” The phrase “or may result in unauthorized access to a work or object of related rights” should be added. Otherwise the intention of the drafters to cover access controls in the definition in draft Section 3 will have been for naught.
 - **Copy Controls:** Second, by only mentioning “technology designed to prevent the reproduction” in the definition of a TPM, the draft fails to cover other important exclusive rights, beyond reproduction. Also, while the term “technology” may cover all devices and components, there may be concerns about the word “designed” since the TPM should be defined based on its performance (i.e., whether it controls access or whether it protects copyright or related rights), not how it was designed. We suggest altering the wording to “technology, device, or component that protects any copyright or related right designed to prevent the reproduction, or to controls an access.”
 - **Trafficking:** Third, while it is commendable that the draft contains a broad definition of “avoidance of TPMs” and that it covers circumvention services, it needs also to explicitly outlaw trafficking in circumvention devices, based on an objective definition that is consistent with global norms.¹¹
 - **Exceptions:** While some of the enumerated exceptions in draft Section 53/5 may be acceptably narrow, others need to be deleted or reworked in order to preserve the adequacy and effectiveness of protection. For example, draft Section 53/5(1), allowing circumvention for any exception to copyright under the law, is overly broad and would undermine needed protections, especially for access controls. The exception in draft Section 53/5(7) should also undergo further scrutiny, since it seems to provide blanket immunity for circumvention by educational, archival, library or public broadcasting entities.

¹¹Preferably, the draft Section would outlaw anyone who “manufactures, imports, exports, distributes, offers to the public, provides, or otherwise traffics in devices, products, or components which 1) are promoted, advertised or marketed for the purpose of circumvention, or 2) have only a limited commercially significant purpose or use other than to circumvent, or 3) are primarily designed, produced, adapted, or performed for the purpose of enabling or facilitating the circumvention of a TPM.”

Absence of Landlord Liability Provision: It is highly unfortunate that the RTG did not take the opportunity to enact a landlord liability provision, to provide adequate civil, administrative, and criminal remedies against property owners who lend their premises to those who engage in commercial infringement of copyright. While a previous draft of copyright law amendments included a landlord liability provision imposing criminal liability on one who “provides physical or digital spaces for infringing activities,” in 2011, DIP was apparently informed by the Thai Trade Representative that the provision was “redundant with the existing contributory offense of the Criminal Code.” DIP has commissioned a research team to conduct an in-depth study on this issue. In the meantime, the authorities may opt for existing provisions under the Penal Code to prosecute landlords who facilitate infringement activities if there is enough evidence of the landlords supporting the wrongdoing.¹² Such a test case would be extremely helpful, but should not ultimately substitute for a strong landlord liability provision, since in order to crack down on pervasive privacy at shopping malls, RTG authorities must have the full range of legal remedies at their disposal to combat those who benefit from, control, or contribute to the infringement of others.

Computer Crime Law: The ETDA has reportedly drafted amendments to the Computer Crime Act B.E. 2550 (2007) that do not include IP crimes. This would be most unfortunate. Intellectual property infringement should be included as an offense under the law.¹³ One change still being contemplated by MICT, in the response to a request from fellow RTG enforcement agencies, would be to draft and insert notice and takedown for computer crimes (which would include IP) into the Computer Crime Act. However, to our knowledge, to date, IP has not been included in the drafts.

Customs Law: Draft amendments to the Customs Act have been prepared to empower Royal Thai Customs to seize transshipments containing pirated goods. This would be very helpful. As of January 2014, the draft had been reworked but had not yet been re-submitted to the Cabinet for approval.

Evidence Law: IIPA recommends that the RTG amend the Evidence Law to allow the hearing and testimony of digital evidence. Conforming changes should be made to any procedural rules of evidence in the various enforcement authorities so that they too will have clarity with respect to digital evidence.

Section 32 and Fair Use Guidelines: IIPA also continues to call for a narrowing or clarification of Article 32(6) and (7) of the Copyright Act, which provides an exception to copyright protection which has been interpreted to allow wholesale copying of academic materials. Thailand should take steps to narrow the relevant provisions to ensure compliance with international norms. DIP has issued three sets of guidelines on fair use in recent years, 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 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 is appreciative of recent efforts, such as sending officers to lecture on book copyright to teachers and librarians, and to explain its *Guidelines* to universities. We request the RTG to afford affected stakeholders, such as the publishers and software industry, the opportunity to provide input into the development of such *Guidelines* given their experience in helping formulate similar rules in other countries. A Supreme Court decision (No. 5843/2543 [2000]), on appeal of a criminal copyright case brought against a photocopy shop, did provide some helpful clarification of the research or study exception under Section 32. The Court held that the defendant’s activities, photocopying books and producing unauthorized compilations of excerpts for commercial purpose, did not qualify as exempt acts under Section 32.

¹²The RTG, in its February 2012 submission to USTR, indicated that the Office of the Attorney General had concluded that “criminal prosecution is possible if there is enough evidence of the landlords supporting the wrongdoing.” See *Thailand’s Implementation on Intellectual Property Rights (February 2011-2012)*, para. 3.2.2. The report indicated DIP would be working alongside the Royal Thai Police and DSI to bring an appropriate test case in a place where “tenants are large-scale infringers, and offences are committed repeatedly to prove negligence and illicit facilitation on the part of the landlords.”

¹³DIP has indicated that an amendment to Article 14(3) of the Computer Crime Act to include all online IP crimes would “enable blocking or shutting down websites selling IP infringing goods, publicizing copyright infringement content or facilitating copying and sharing of copyrighted works.” Further, DIP notes, “[t]he ISPs will also be able to block Internet access to the domains of infringing websites.” See *id.*, para. 3.2.3.

MARKET ACCESS ISSUE UPDATES IN THAILAND

Problematic Film Act Potentially Imposes Screen Quota and Uncertain Censorship and Ratings System: The Motion Pictures and Video Act B.E. 2550 (2008) (effective July 1, 2008, but not yet implemented) potentially imposes quotas and potentially onerous censorship and ratings provisions. Section 9(5) allows the Film Board to establish a ratio between the number of local and foreign films, and film/screen time quotas. The number of screens in Thailand (nearing 1,000 as of the end of 2013) is more than enough to have a free market for theatrical releases. At a time when most other countries are removing quotas, not putting them into place, these restrictions could, if imposed, have a significant negative effect on foreign film distribution in Thailand.

The Act also imposes onerous ratings requirements on films, music videos and live performances, and censorship requirements on films, audiovisual products, music used for karaoke, and videogames. The concerns over this ratings and censorship regime include: 1) the time frame for obtaining ratings or censorship approval, which is too long (15 days), allowing pirates (who of course do not adhere to the law's requirements) to gain a head start; 2) the costs associated with rating or censorship, again, giving pirates an additional cost advantage in the market; 3) the severe consequences (including criminal liability) for failure to comply with the ratings and censorship system; and 4) the requirement that the relevant rating or censorship code be "fixed" onto the container of films or audiovisual products as well as on the packages, and that the right holder "embed" the rating or censorship code into the content of films and audiovisual products so that the rating or censorship code appears on the screen or any media when broadcasted or displayed. The Royal Thai Government should reevaluate this ill-conceived and outmoded legislation.

One positive aspect of the Film Act places responsibility on Internet cafés, distributors (shops or stalls) of films and audiovisual products, theaters, and Karaoke operators to acquire a "license to operate the business" in advance, with violators subject to criminal liability of up to BHT1 million (US\$30,000) or up to two years in jail. Industry has noted optimistically that the new law could be used to curb piracy in street stalls, shopping malls and complexes and even in Internet cafés in parallel with Copyright Law.

Ban on Investment/Ownership in Terrestrial Broadcast Networks: Foreign ownership/investment in terrestrial broadcast networks is severely limited, to 25%. This includes free to air, pay TV and channel content provider operators. Such restrictions impede the development of legitimate content in Thailand, and should be relaxed.

The Royal Thai Government Should Reduce The Film Import Tax from 5 Baht to 0 Baht.

The Royal Thai Government Should Reduce The Current 30% Hard Goods Import Tax.

Television Advertising Restrictions: Advertising is now permitted under the Act on Broadcasting and Television Operation Business, enacted in 2008, but is limited to a daily average of five minutes per hour for each channel, or a quota of six minutes in any single hour. This restriction should be lifted.