



SOUTH-EAST ASIA



# Virtual Technical Meeting on Enhancing Copyright Protection in Thailand

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# Speaker's bio

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Franck is current chairman of EABC (“Eurocham”) Intellectual Property Working Group and Managing Partner of Ananda Intellectual Property, one of Thailand’s Top Tier IP firms.

His practice includes patent and trade mark prosecution, anti-counterfeiting and IP litigation (notably trade mark and copyright infringement) in Thailand and throughout Asia.

Franck is recognized as one of Thailand’s leading IP professional. He has authored numerous articles, expert studies and guides such as the EABC Guidebook on Intellectual Property. He is a former President of the Franco-Thai Chamber of Commerce, a current Foreign Trade Advisor for the French Government and a regular WIPO expert on trade mark and copyright issues.



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INTELLECTUAL PROPERTY

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# 1) Scope of Copyright Protection in Thailand

- Copyright Act B.E. 2537 (AD 1994) and subsequent revisions
- The Berne Convention for the Protection of Literary and Artistic Work
- WTO – TRIPs Agreement
- Computer Crime Act B.E. 2560 (2017)

Foreseen:

- 5th revision to Copyright Act
- MOU between IP owners and online platform sellers
- WIPO Copyright Treaty (WCT)
- WIPO Performances and Phonogram Treaty (WPPT)

# 1) Scope of Copyright Protection in Thailand

- Literary works
- Musical works
- Dramatic works
- Artistic works
- Cinematographic & Audiovisual works
- Sound recordings
- Software
  
- Databases ? Protected under Section 12 (compilation of data) or 4 (literary work)?  
Sui generis protection may be need in the future.

# 1) Scope of Copyright Protection in Thailand

## What is excluded from copyright protection in Thailand

- Excludes from protection: ideas, procedures, processes, systems, methods, concept, principles, discoveries, scientific or mathematical theories
- Requirements for a work to be protected under copyright in Thailand:
  - For an owner of original works only (**originality** of the work)
  - Physical expressions of ideas (**fixation** requirement)

# 1) Scope of Copyright Protection in Thailand

Often overlooked but there are significant advantages of recording copyright in Thailand:

- Not compulsory (copyright can be granted without recordation)
- Free of charge (no official fees) and quick (formality check used to be performed on same day as submitting application at DIP- new e filing system in place raises some questions though)
- Establishes ownership
- Establishes place and date of creation and publication and reverses in part the burden of proof on “infringer”= save litigation costs.
- Constitute a recorded right for future licenses or assignment
- International protection (Berne Convention)

## 2) Procedure & Timeframe of Recordation (old)

File the application form

Approx. 1-3 months

Obtain  
Recordation  
Certificate



Form for filing an application for recordation of a trademark. The form includes fields for the applicant's name, address, and contact information. It also includes a section for the trademark itself, including a drawing and a description. The form is marked with a 'COPY' stamp.



Recordation Certificate. The certificate is issued by the Trademark Office of the Ministry of Commerce. It certifies that the trademark has been recorded in the Trademark Register. The certificate includes the name of the trademark owner, the date of recordation, and the date of issuance.



## 2) Procedure & Timeframe of Recordation (new)

New e-filing system implemented during COVID



<https://copyright.ipthailand.go.th/>

## 2) Procedure & Timeframe of Recordation

Three questions about the new e-filing system:

- Will the certificate of recordation be the same?
- Only in electronic format and will a direct URL link be available to inform ISPs?
- Is it correct that no original documents would need to be provided to DIP but only electronic copies?

## 2) Procedure & Timeframe of Recordation

The Certificate 'issue': « *This Certificate is not a legal proof of ownership* »



(Signature)

(Mr. Pratchaya Pairojkulmanee)

Acting Director of Copyright office  
for the Director of Copyright office

### Notes:

- (1) This certificate is not a legal proof of ownership
- (2) Amendment of any above information will appear on back page (if any).

## 2) Procedure & Timeframe of Recordation

Required supporting documents - A significant burden for applicants:

1) Copy of the created work + description of work

2) Power of Attorney:

Thai applicant: to be signed only in Thai version.

Foreign applicant: to be signed and notarized and provided in Thai (and English) language

3) Certificate of Ownership:

Thai applicant: to be signed only in Thai version.

Foreign applicant: to be signed and notarized and provided in Thai (and English) language

## 2) Procedure & Timeframe of Recordation

- 4) Deed of assignment (if any) can be signed and notarized in English version only
- 5) Company Affidavit (needs notarization by notary public that it is a true copy of an original) – in case that it is the applicant is company
- 6) Signed copy of passport or ID card of signatories of above documents
- 7) Employment agreement (some clarity required on whether this is needed as some applications seem to be accepted without by listing the company as author)

## 2) Procedure & Timeframe of Recordation

- Statistics of Copyright recordation from 2010-2018

ปี	รวม	วรรณกรรม	นาฏกรรม	ศิลปกรรม	ดนตรีกรรม	โสตทัศนวัสดุ	ภาพยนตร์	สิ่งบันทึกเสียง	แพร่เสียงแพร่ภาพ	อื่น ๆ
	Total	Literary	Dance	Artistic	Musical	Audiovisual	Cinematographic	Sound Recording	Broadcasting	Others
2561 / 2018	10,779	2,031	4	3,546	4,438	708	14	29	0	9
2560 / 2017	12,094	1,847	3	3,963	5,411	758	14	41	0	57
2559 / 2016	15,012	2,169	4	4,413	7,208	1004	54	128	0	32
2558 / 2015	15,909	2,517	0	5,840	6,324	1054	54	102	0	18
2557 / 2014	16,423	2,659	11	5,658	6,806	1133	74	63	0	19
2556 / 2013	16,317	3,494	8	4,267	7,637	693	49	145	0	24
2555 / 2012	17,199	3,323	14	4,811	8,447	376	31	159	0	38
2554 / 2011	16,849	4,317	14	4,625	6,688	484	29	401	1	290
2553 / 2010	21,836	4,283	23	6,776	9,427	639	61	216	0	411

QUESTION: How to explain relative drop in number of copyright recordations in Thailand?

## 3) Challenges

### IP awareness Issue

- 63% of Thai citizen chooses to buy counterfeited/pirated products due to the cheaper price\*
- 53.7% of Thai people become aware of IP rights in these 2 years\*
- 89.7% of Thai creator gave up on creating new works due to the copyright problem\*

\*Bangkok Poll 2016

### 3) Challenges

#### Worldwide IP ranks

- 2018 – Overall scores of **12.55** out of 40 scores in the Provision and enforcement of IP rights: Given by Global Intellectual Property Centre (GIPC) **Rank as 41<sup>st</sup> out of 50 countries**

[http://www.theglobalipcenter.com/wp-content/uploads/2018/02/GIPC\\_IP\\_Index\\_2018.pdf](http://www.theglobalipcenter.com/wp-content/uploads/2018/02/GIPC_IP_Index_2018.pdf)

- 2019 – Overall score of 16.98 Ranked as 45<sup>th</sup> out of 53 countries due to digital piracy and software piracy and incomplete digital piracy regime.

<https://www.theglobalipcenter.com/ipindex2020-details/?country=th>

- Rated as Special 301 Priority Watch List to the Watch List on December 2017, Lower Watch List in 2018



### 3) Challenges

Numbers of copyright infringement cases brought before IPIT Court

Year/Cases	Copyright	Trademark	Patent	TOTAL
2015	923	1,038	4	1,965
2016	990	782	5	1,777
2017	832	788	3	1,623
2018	663	-	-	-

### 3) Challenges

Enforcement agencies

### Suppression of counterfeit products (2016-2017)

No.	Agencies	2016 (Year)		2017 (Jan-Jun)		Compared to the average of 6 months in 2016	
		Cases	Counterfeited products	Cases	Counterfeited products	Cases	Counterfeited products
1	Royal Thai Police Headquarters						
	Trademark Act	5,012	2,646,258	2,580	1,180,294	2.95%	(10.80%)
	Copyright Act	1,504	130,492	779	43,863	3.59%	(32.77%)
	Patent Act	158	10,882	27	21,402	(65.82%)	293.35%
		6,674	2,787,632	3,386	1,245,559	1.47%	(10.64%)
2	Department of Special Investigation (DSI)						
	Trademark Act	23	1,545,055	14	269,601	21.74%	(65.10%)
	Copyright Act	0	0	0	0	0%	0%
	Patent Act	0	0	0	0	0%	0%
		23	1,545,055	14	269,601	21.74%	(65.10%)
3	Thai Customs Department	814	1,213,454	399	534,137	(1.97%)	(11.96%)
		7,511	5,546,141	3,799	2,049,297	1.16%	(26.10%)

### 3) Challenges

### Enforcement agencies

### Report of counterfeited products as suppressed (2019-2020)

No.	Agencies	2019		2020 (Jan-Apr)		Compared to the average of 2019 (Jan-Apr)	
		Cases	Counterfeited products	Cases	Counterfeited products	Cases	Counterfeited products
1	Royal Thai Police Headquarters						
	Trademark Act	2,786	354,015	658	60,268	(29.15%)	(48.93%)
	Copyright Act	1,079	35,410	156	6,817	(56.63%)	(42.25%)
	Patent Act	5	271	0	0	(100%)	(100%)
	Total	3,870	389,696	814	67,085	(36.90%)	(48.36%)
2	Department of Special Investigation (DSI)						
	Trademark Act	4	732,747	1	99,964	(25%)	(59.07%)
	Copyright Act	0	0	0	0	0%	0%
	Patent Act	0	0	0	0	0%	0%
	Total	4	732,747	1	99,964	(25%)	(59.07%)
3	Thai Customs Department	1,006	527,195	294	11,202,232	(12.33%)	6274.62%
	All in Total	4,880	1,649,638	1,109	11,369,281	(31.82%)	(1967.60%)

## 4) EABC Comments and Recommendations

- The EABC fully supports current initiatives and amendment to Thai Copyright Act to strengthen the legal framework for online infringement (as proposed for example under the proposed amendments to new Copyright Act of Thailand to be completed by specific regulations- not adopted yet);
- The EABC fully supports the initiative of asking ISPs (in particular market places) to enter into MoUs that would allow for higher co-operation with IP enforcement authorities and IPR owners;
- The EABC welcomes a closer co-operation of IPR owners and private sector in general with newly established online IP infringement enforcements bodies such as the online infringement suppression division of the Thai Department of Intellectual Property;

## 4) EABC Comments and Recommendations

- The EABC welcomes DIP efforts to implement a true online copyright recordation system (eventually using blockchain technology);
- The EABC strongly recommends however:
  - (i) easing requirements for copyright recordation in Thailand and
  - (ii) would like to suggest a revision of wording in Copyright certificate;
- The EABC recommends to continue to build awareness education activities though business groups of how using unauthorized versions is economically unattractive;
- The EABC would welcome some information/study to be performed about protection of databases in Thailand/SEA so as, to provide some information to IPR owners about protection of databases under Thai law.



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