

Notice and Takedown: Bill of Amendments to the Copyright Act of Thailand

The Council of State (“**COS**”) published a draft bill (“**Bill**”) to amend the Copyright Act B.E. 2537 (1994) as amended by the Copyright Acts No. 2 B.E. 2558 (2015), No. 3 B.E. 2558 (2015) and No. 4 B.E. 2561 (2018) (“**CA**”) for public hearings from 10 to 30 September 2019.

The Bill proposes replacing the current “take-down notice” against online copyright infringement with a “notice and takedown” approach similar to that of the US Digital Millennium Copyright Act (“**DMCA**”). This new approach will reduce the current safe harbour exemption for Internet Service Providers (“**ISP**”) with respect to online copyright infringement committed by users of their platforms. ISPs will be required to undertake a greater role in the enforcement process. The proposed notice and takedown approach operates as follows:

- (1) ISPs are exempt from liability if they have implemented and published policies and practices which terminate the provision of their services to users of their platforms who repeatedly infringe copyright. This applies to four types of ISPs which provide the following types of services: (1) mediums to transfer computer data via automatic means; (2) temporary computer data storage; (3) computer data deposit; and (4) internet search.
- (2) ISPs who have been notified by copyright owners of any allegedly infringing data must promptly take down or suspend the computer data, its reference source or access point from their computer system or network and notify the user who posted the allegedly infringing material.
- (3) Users who have been notified under (2) above may raise an opposition by counter-notifying the ISP. This will then oblige the ISP to restore the allegedly infringing data within 15 days from the date of the counter-notification except in case where the copyright owner has notified the ISP that it has filed a lawsuit to prosecute the user.
- (4) Any person who falsely notifies an ISP of any alleged copyright infringing data which causes the data or its reference source or access point to be removed or suspended from the platform of the ISP or restored is liable for any damages arising out of his or her false notification or opposition.

After the public hearings, the COS may further revise the Bill, taking into account the comments, views and suggestions made by the public and then return the Bill to Government for submitting to Parliament for readings.



Kowit Somwaiya
Managing Partner
kowit.somwaiya@lawplusltd.com



Jia Xiang Ang
Coordinator
jjaxiangang@lawplusltd.com

LawPlus Ltd.

Unit 1401, 14th Fl., Abdulrahim Place, 990 Rama IV Road, Bangkok 10500, Thailand

Tel. +66 (0)2 636 0662 Fax. +66 (0)2 636 0663

www.lawplusltd.com

