

Copyright Act (No. 5): Further Changes and Additions to Copyright Act B.E. 2537

The Copyright Act (No. 5) B.E. 2565 on amendments to the Copyright Act B.E. 2537 was published in the Royal Gazette on 24th February 2022 and will become effective on and from 23rd August 2022, 180 days after the publication date. The reasons behind these amendments are to bring the copyright law of Thailand in line with the WIPO Copyright Treaty (WCT) and to improve the effectiveness of copyright protection in light of the changing nature of digital technology related to online copyright infringement. We summarized the key provisions of the amendments below.

(1) Extension of the Term of Copyright Protection for Photographic Works

The amended term of protection for photographic works is the lifetime of the author and the subsequent 50 years after the death of the author. This is to be in line with the term of protection specified in the WCT. Thailand is in the process of becoming a member of the WCT.

(2) The Definition of Service Providers and Service Users

Under the new extensive definition of "Service Provider", there are 4 types of internet service providers (ISPs) as follows:

1. Intermediary ISPs (e.g. TRUE, TOT, 3BB);
2. Caching ISPs (e.g. Akamai, Cloudflare);
3. Hosting ISPs (e.g. Facebook, Youtube); and
4. Search engine ISPs (e.g. Google, Yahoo!).

As a result, the definition of "Service User" is revised to refer to a user of a Service Provider, regardless of the payment required.

(3) ISPs' Safe Harbors

The amendments provide new provisions on the safe harbor. ISPs are exempt from being liable for copyright infringement committed by service users. The general rules for being qualified for the safe harbor's protection are that ISPs of all types must explicitly announce and enforce their repeat infringer policies (e.g. suspension or termination of the infringer user account). In addition, each type of ISPs has their own relevant regulatory compliance requirements under Sections 43/2, 43/3, 43/4, and 43/5 added to the Copyright Act by the Act No. 5.

(4) Private Notice-and-Takedown System

The amendments repealed the provisions of the Copyright Act on the court takedown notice procedure. As a result, a court order is no longer required to make ISPs block or remove infringing contents. A copyright owner now can send a takedown notice directly to the ISP for the latter to remove or disable the access to such infringing content. After the ISP receives the notice, they shall promptly comply with the copyright owner's request and notify the relevant service user who is being accused of copyright infringement. The alleged infringing user may exercise his/her right to submit a counter-notice. The ISP must notify the copyright owner on whether the ISP will remove or maintain the alleged infringing content.

(5) Technological Protection Measures (TPMs)

The Act No. 5 broadens the definition of TPMs and TPM violations, i.e. any action causing ineffectiveness of TPMs for access control. Each type of violation can fall under the certain exemptions. The Act also imposes liabilities on several parties, including manufacturers, sellers or distributors of services or products or equipment who intend to cause TPMs ineffective.



Kowit Somwaiya
Managing Partner
kowit.somwaiya@lawplusltd.com



Rinrada Jongthawornsatit
Associate
rinrada.jongthawornsatit@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

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