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# THAILAND

## Newsletter

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## Thailand: Copyright Act Amended to Prepare for Accession to the WIPO and Improve Copyright Protections

### Introduction

On 24 February 2022, the Copyright Act (No. 5) B.E. 2565 (2022) ("the Amended Act") was published in the Royal Thai Gazette. Upon its effectiveness after the lapse of 180 days from the publication date, i.e., 23 August 2022, the Amended Act will repeal and amend several provisions of the Copyright Act B.E. 2537 (1994) (amended up to No. 4) ("the Current Act"). These amendments seek to improve the protection of copyrighted work and to prepare for the accession of Thailand to the World Intellectual Property Organization's Copyright Treaty. In this briefing, we will provide an overview of five key changes included in the Amended Act.

### Key provisions in the Amended Act

#### 1) Extension of the period of protection for copyrighted photographs

Under the Amended Act, the copyright protection period for photographic work is extended throughout the photographer's life and the subsequent 50 years after the photographer's death. However, such extension of protection is not applicable to photographic work if the copyright protection expired prior to 23 August 2022.

#### 2) Changes in the definition of Service Providers and Service Users

The definition of "Service Provider" under the Amended Act has been broadened to include internet hosting service providers and search engine internet service providers. This is in addition to intermediary internet service providers, and caching internet service providers as prescribed in the Current Act.

The definition of a "Service User" will also be added. A Service User is defined as a user of a Service Provider regardless of whether the service is free of charge or not, to be in line with the new take-down mechanisms to be discussed below.

#### 3) New take-down mechanism for copyright infringed materials on online platforms

The new mechanism prescribed under the Amended Act allows a copyright owner to take direct action against copyright work infringement on an online platform without going through traditional court proceedings.

In brief, the process starts with a copyright owner providing a takedown notice to the Service Provider to either takedown or restrict access to such infringed work, its references, or hyperlink. Upon the receipt of the notice, the Service Provider must comply with the request of the copyright owner without delay and inform the relevant Service User whom the accusation of copyright infringement is against.

In this regard, the accused Service User whose content has been taken down or whose access has been restricted may provide to the Service Provider a counternotice to have the content reuploaded or cancel the restricted access. Upon receiving such notice, the Service Provider must provide a copy of the said notice to the copyright owner and reupload or cancel the restricted access to the content, its references, or hyperlink. This is also subject to the copyright owner not filing a lawsuit against the accused Service User within 30 days from the Service Provider's receipt of the counternotice.

#### **4) Exemption of liability of Service Providers under the Safe Harbor Rules**

Under the Amended Act, a broadened concept of the safe harbor principle is introduced to exempt a Service Provider from liability for copyright infringement.

To clarify, a Service Provider is exempt from liability for copyright infringement upon: (i) an explicit announcement and actual compliance of the measures to terminate the service for the Service User who has repetitively infringed copyright; and (ii) compliance with the statutory conditions set forth specifically for each type of Service Provider.

In light of the foregoing, a Service Provider can be presumed exempt from liability for copyright infringement if the two abovementioned conditions have been fulfilled. This contrasts with the Current Act where a Service Provider is only exempt from liability if it complies with the court's injunctive relief to cease the act of infringement or take down the infringed material.

#### **5) Amendment to the infringement of technological protection measures**

The offence of infringement of technological protection measures is expanded to any action that causes technological protection measures for access control to be rendered ineffective. Such offence is also imposed on manufacturers, sellers, or distributors of services, products, or equipment that render such technological protection measures ineffective, unless exempt under the Amended Act.

#### **Key Takeaway**

Due to rapid technological change, increased protection for copyright owners and safeguarding of service providers is essential to continue encouraging the creation and lawful use of copyrighted work. In this regard, service providers are encouraged to revisit their measures to comply with the Current Act and ensure that their operations will also comply with the Amended Act. If you have any questions in relation to the issues raised in this briefing, please contact the authors in the left-hand column.

This publication is intended to highlight an overview of key issues for ease of understanding, and not for the provision of legal advice. If you have any questions about this publication, please contact your regular contact persons at Mori Hamada & Matsumoto or Chandler MHM Limited. If you should have any inquiries about the publications, or would like more information about Chandler MHM Limited, please contact [bd@mhm-global.com](mailto:bd@mhm-global.com).

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