



IPR Toolkit for the Kingdom of Thailand

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Statement from Ambassador Ralph Boyce

Welcome to U.S. Embassy Bangkok's Intellectual Property Rights Toolkit, designed to detail the nature of IPR protection in Thailand and assist the American business community to protect their rights. This toolkit contains practical information on how the Royal Thai Government registers and enforces IPR, and where rights holders can turn for additional assistance.

The U.S. and Thai governments are united in their recognition of the value of intellectual property and the role it plays in economic development. As Thailand's economy moves further toward a knowledge-based economy with new investments in information technology, intellectual property will play an ever-increasing role.

The U.S. Embassy takes IPR protection seriously in Thailand. Officials from the Departments of State, Justice, Commerce, and the U.S. Patent and Trademark Office are stationed at the Embassy to work on intellectual property issues. We work closely with Thailand's Department of Intellectual Property, Thai police and other law enforcement agencies, the local legal community and industry associations to strengthen IPR enforcement in Thailand.

We appreciate the progress that Thailand has made to date to protect the intellectual property rights for U.S. business, but recognize the long road ahead to provide genuinely adequate protection. The U.S. Embassy is committed to working with Thailand to further strengthen their intellectual property system.

I wish you success in your business in Thailand and assure you that the U.S. Embassy stands ready to assist you in any way that we can.

Sincerely,
Ralph L. Boyce

I. What is IPR?

- A. Countries with innovative local industries almost invariably have laws to foster innovation by regulating the copying of inventions, identifying symbols, and creative expressions. These laws encompass four separate and distinct types of intangible property – namely, patents, trademarks, copyrights, and trade secrets, which collectively are referred to as “intellectual property.”

II. Current IPR Framework

Thailand has passed all WTO-mandated legislation on IPR as outlined in the WTO agreement on Trade Related Aspects of Intellectual Property (TRIPS). Thailand is a signatory to the Berne Convention, but not the Paris Convention, the Patent Cooperation Treaty (PCT), or the World Intellectual Property Organization Performances and Phonograms Treaty (WPPT). Currently, Thailand is not yet a party to the Madrid Protocol. However, with the establishment of a specialized Central Intellectual Property and International Trade Court in 1997, Thailand has put in place a solid legal and administrative infrastructure for intellectual property rights (IPR) protection.

Despite a good working relationship between foreign business entities and Thai enforcement authorities, however, IPR piracy continues at high levels. U.S. copyright industries reported an estimated annual trade loss of more than US\$308 million from IPR infringement in 2005, and a majority of Thai and foreign companies operating in Thailand are estimated to use illegal software. Since November 1994, Thailand has been on the U.S. Special 301 “Watch List” of countries that deny adequate and effective protection for IPR.

Copyright

Thailand's copyright law, intended to bring Thailand into conformity with international standards under TRIPS and the Berne Convention, became effective in March 1995. The Thai government is in the process of amending the Copyright Law in order to bring it in line with two 1996 World Intellectual Property Organization (WIPO) treaties, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

The Optical Disk Manufacturing Control bill entered into force in August 2005. This legislation is designed to enhance the authority and capabilities of the Thai government to act against operators of illicit optical disk factories and to control the production materials and machines of legal

producers. U.S. copyright industries have expressed concern that the Act's penalties are not sufficiently deterrent to pirates and do not enhance the government's enforcement and oversight powers enough.

Cable piracy continues to be a major problem throughout Thailand, as pirate providers expand their reach in the provinces. In December 2003, the Thai government initiated a new policy offering amnesty to operators who agree to cease infringing actions under threat of legal action. This policy is intended as a temporary measure pending the establishment of the National Broadcasting Commission and new regulations for cable operators. Since December 2003, the Thai government, however, has missed several deadlines to initiate enforcement operations.

Book publishers are concerned that the existing copyright law is being interpreted in a manner that is allowing extensive book piracy, especially in the form of illegal photocopying, to go unchecked. According to industry group AAP, annual losses are estimated to be approximately \$30 million.

Trademarks

The Thai government amended its trademark law in 1992, increasing penalties for infringement and extending protection to service, certification, and collective marks. The Thai government also streamlined trademark application procedures. Additional amendments designed to bring Thailand's trademark law into compliance with the TRIPS Agreement were enacted in June 2000, broadening the legal definition of a mark. While these developments have created a viable legal framework and have led to some improvements in enforcement, especially for clothing, accessories, and plush toys, trademark infringement remains a serious problem. U.S. companies with an established presence in Thailand and a record of sustained cooperation with Thai law enforcement officials have had some success in defending trademarks, but the process remains time-consuming and costly. Penalties for proven trademark violations are insufficiently high to have a deterrent effect.

The Geographic Indications Act was passed by the Thai Parliament in September 2003 and went into effect in April 2004.

Trade Secrets

The Trade Secrets Act that entered into force in 2002 allows government agencies, under certain circumstances, to disclose trade secrets to protect any "public interest" not having commercial objectives, giving rise to concerns that authorities will not be required to protect approval-related data against unfair commercial use. Implementing regulations for the Act have yet to be approved.

Patents

Amendments to Thailand's patent regime designed to meet TRIPS obligations entered into effect in September 1999. Thailand's patent office, however, lacks sufficient resources to keep up with the volume of applications, and patent examinations can take more than five years. The Department of Intellectual Property is seeking to contract out some parts of patent search for novelty and preparation of application to academic institutions in order to speed up the registration process. In 2005 Thailand began preparations to accede to the Paris Convention and the Patent Cooperation Treaty.

Enforcement

Thailand has improved its enforcement of intellectual property rights over recent years, but enforcement efforts remain inconsistent. Although conviction rates are high, corruption and a cultural climate of leniency can complicate prosecution of cases. The frequency of raids compromised by leaks from police sources remains a concern. Pirates, including those associated with transnational crime syndicates, have responded to stepped-up levels of enforcement with intimidation against rights holders' representatives and enforcement authorities. The Ministry of Commerce has taken the lead in promoting interagency cooperation on IPR enforcement issues, concluding several Memorandums of Understanding between enforcement agencies (Thai police and the Thai Customs Department) and rights holders to better coordinate operations. However, the Thai government has yet to successfully sustain enforcement actions against retailers, distributors, and manufacturers of pirated and counterfeit goods.

The Thai Parliament passed legislation in the fall of 2003 to fully authorize the establishment of the Department of Special Investigations (DSI). In its work on IPR enforcement, DSI is expected to focus on major infringing production, warehousing and trafficking operations, as well as those activities associated with organized crime. In December 2003, the Thai Cabinet approved in principle draft amendments to the Anti-Money Laundering Act, one of which makes IPR crimes a predicate offense. This amendment would allow police and other law enforcement officials to seize and investigate funds and suspected bank accounts. However, in July 2004, the Council of State, which reviews pending legislation, rejected the inclusion of IPR crimes as a predicate offense, citing concerns that IPR violations are "commercial disputes."

The Thai government established a specialized intellectual property court in 1997, which has improved judicial procedures and imposed tougher penalties. Criminal cases generally are disposed of within 6 to 12 months from the time of a raid to the rendering of a conviction.

However, Thai officials generally lack sufficient resources to undertake enforcement actions apart from those initiated by rights holders. Effective prosecutions can be labor-intensive for rights holders, who often investigate, participate in raids, and assist in the preparation of documentation for prosecution.

III. Patents

A. Registration

1. Although Thailand is not a party to any international convention on patents, the new Patent Act, recognizes priority rights based upon filing dates. A patent application for an invention, which is filed in Thailand within 12 months (6 months for a product design) after a prior application has been filed abroad, will be deemed filed in Thailand on the date the foreign application was filed. Applicable application and yearly renewal fees for patents may be found under the Patent Act below.

B. What can be registered

1. Inventions and product designs

C. What can not be registered

1. Micro-organisms and any composition of a micro-organism which would be found in nature, animals, plants, or any substances extracted from animals or plants;
2. Scientific and mathematical rules and theories;
3. Computer programs;
4. Processes of diagnosis, treatment, or remedy used in curing human or animal disease; and
5. Inventions, which would be contrary to public order or good morals, or the health or safety of people.

D. Where to register

1. Ministry of Commerce Department of Intellectual Property
44/100 Sa Nam Bin Nam Road
Muang Nonthaburi 11000
Phone: (66 2) 547 4621-25
Fax: (66 2) 547 4699

E. Infringement and enforcement

1. The Copyright Act provides criminal penalties for copyright infringement. The most common form of infringement is reproduction without permission from the copyright owner. Thailand has a broad “fair use” exception, however, which may allow a limited amount of unauthorized use or reproduction without constituting infringement.

IV. Trade Secrets

- A. The Trade Secrets Act was introduced and came into force on 22 July 2002. Generally, there are two types of trade secrets protected under the Act; information and data or test results. However, there is currently no registration process for trade secrets.

B. Infringement

1. It is an infringement of trade secret if anyone, without permission of the proprietor, discloses takes or uses the trade secret in a manner contrary to the commercial practice in good faith the knowledge or awareness of such contrary manner. "Contrary to the commercial practice" is also defined to include the activities of breach of agreement, tort or wrongful act, the induction of tort or wrongful act, bribe, threat, deception, theft, receipt of stolen property, and spying by electronic or other methods.

V. Trademarks

A. Registration

1. The registration process usually takes from eight months to a year, assuming there are no unforeseen problems. The related fees vary depending on the type of mark being registered. The list of fees can be found under the Trademarks Act located below.

B. What can be registered

1. Photographs, drawings, invented pictures, brands, names, words, statements, letters, numbers, signatures, a group of colors, body or shape of objects or any or several of the foregoing combined.

C. Geographic Indications

1. Protection, through registration, for geographical indications (i.e., name, symbol, or any other things used to call, or used in lieu of, geographical origin) which are used to identify that the goods originating from such geographical origin or areas are of a quality, reputation, or specific characteristic of such geographical origin is provided through the Geographical Indicators Protection Act. Generally speaking, geographical indication refers to name or symbol of locality indicated on a product label to show to customers from where the product originated.

D. Where to Register

1. Ministry of Commerce Department of Intellectual Property
44/100 Sa Nam Bin Nam Road
Muang Nonthaburi 11000
Phone: (66 2) 547 4621-25
Fax: (66 2) 547 4699

E. Infringement and enforcement

1. The owner of a trademark not registered in Thailand can bring a criminal action against an unauthorized use of his trademark under the Penal Code. A forgery or an imitation of a trademark duly registered in a foreign country is assumed to be an offence. Likewise, the importation or distribution of goods bearing such false marks is illegal. The rationale for this assumption is that the relevant provisions in the new Trade Mark Act do not abrogate the similar provisions in the Penal

Code. If the assumption is justified, a foreign trademark owner can bring a criminal action against a person committing the offence under the Penal Code even if his trademark is not registered in Thailand.

VI. Copyright

A. Registration

1. Unlike patent and trademark protection, parties need not register to obtain copyright protection for their works. Protection is granted to works of individuals from countries belonging to the international copyright conventions or bilateral agreements of which Thailand is a member. However, A party can voluntarily register with the local copyright administration, which will examine the application and if the application is qualified, issue a certificate of copyright to the applicant. The registration of a copyright license with the local copyright administration is an administrative formality, but may be required as part of the procedure to remit license/royalty payments abroad.

B. What can be protected by copyright law

1. Creative work in the form of literary, dramatic, artistic, musical, audio-visual, cinematographic, sound records, sound and picture broadcasting work, or any other work in the literary, scientific or artistic domain of the author, irrespective of the mode or manner in which the works are expressed.

C. Where to Register

1. Ministry of Commerce Department of Intellectual Property
44/100 Sa Nam Bin Nam Road
Muang Nonthaburi 11000
Phone: (66 2) 547 4621-25
Fax: (66 2) 547 4699

D. Infringement and enforcement

1. The Copyright Act provides criminal penalties for copyright infringement. The most common form of infringement is reproduction without permission from the copyright owner. Thailand has a broad “fair use” exception, however, which may allow a limited amount of unauthorized use or reproduction without constituting infringement.

VII. Current Thai Intellectual Property Legislation

A. Legislation

1. Thai Trademarks Act 2000;
http://www.wipo.int/clea/docs_new/en/th/th004en.html
2. Copyright Act B.E. 2537;
http://www.wipo.int/clea/docs_new/en/th/th001en.html
3. Patent Act (No. 3) B.E. 2542;
http://www.wipo.int/clea/docs_new/en/th/th007en.html
4. Trade Secrets Act;
http://www.wipo.int/clea/docs_new/en/th/th018en.html

5. Geographical Indicators Protection Act
 6. Export and Import of Goods Act
 7. Customs Act B.E. 2469
 8. Plant Variety Act;
http://www.wipo.int/clea/docs_new/en/th/th016en.html
- B. International Treaties
1. ASEAN Framework Agreement on Intellectual Property Cooperation: <http://www.aseansec.org/2193.htm>
 2. Berne Convention for the Protection of Literary and Artistic Works;
http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html
 3. World Trade Organization; <http://www.wto.org/>

VIII. Reference Materials

A. US Government

1. U.S. State Department Bureau of International Information Programs:
<http://www.usinfo.state.gov/products/pubs/intelpro/index.htm>
2. United States Department of State: <http://www.state.gov/>
3. United States Department of State (Intellectual Property)
http://usinfo.state.gov/ei/economic_issues/intellectual_property.html
4. United States Department of Commerce: <http://www.doc.gov/>
5. United States Trade Representative: <http://www.ustr.gov/>
6. United States Patent and Trade Office: <http://www.uspto.gov/>
7. United States International Trade Commission:
<http://www.usitc.gov>
8. United States Strategy Targeting Organized Piracy (STOP!):
<http://www.stopfakes.gov/>
9. Department of Justice, Computer Crime and IP Section:
<http://www.cybercrime.gov/>
10. DHS/Customs and Border Protection: <http://www.cbp.gov/>
11. Copyright Office, Library of Congress:
<http://www.copyright.gov/>

B. US Industry Organizations

1. American Bar Association: <http://www.abanet.org/>
2. Association of American Publishers: <http://www.publishers.org/>
3. Biotechnology Industry Organization: <http://www.bio.org/>
4. Business Software Alliance (BSA): <http://www.bsa.org/>
5. International Federation of the Phonographic Industry (IFPI):
<http://www.ifpi.org/>
6. International Research-Based Pharmaceutical Manufacturers Association (IRPMA): <http://www.irpma.org.tw/english>
7. Motion Picture Association: <http://www.mpa.org/>
8. Music Publishers Association: <http://www.mpa.org/>
9. Pharmaceutical Research and Manufacturers of America (PhRMA): <http://www.phrma.org/>
10. IIPA - International Intellectual Property Alliance:
<http://www.iipa.com>

11. Entertainment Software Association: <http://www.theesa.com/>
12. International Trademark Association: <http://www.inta.org/>
13. International Anti-Counterfeiting Coalition: <http://www.iacc.org/>

C. International Organizations

1. World Trade Organization, TRIPS:
http://www.wto.org/english/tratop_e/trips_e/trips_e.htm
2. World Intellectual Property Organization (WIPO):
<http://www.wipo.org/>

D. Local Associations

1. Ministry of Commerce Department of Intellectual Property:
<http://www.ipthailand.org/dip/>
2. The Pharmaceutical Research and Manufacturers Association (Prema): <http://www.prema.or.th/>
3. Industrial Property Information Center, Department of Intellectual Property: <http://www.ipic.moc.go.th/>
4. Securities and Exchange Commission: <http://www.sec.or.th/>
5. Chulalongkorn University, Intellectual Property Institute:
<http://www.ipi.chula.ac.th/>

E. Enforcement Contacts

1. The Central Intellectual Property and International Trade Court
Si Ayutthaya Road
Ratchatewi District, Bangkok 10400
Tel: (662) 245-8401
Fax: (662) 245-8898
2. The Department of Intellectual Property and International Trade Litigation, The Office of the Attorney General
Thai Military Bank Building, 3rd Floor
Si Ayutthaya Road
Ratchatewi District, Bangkok 10400
Tel: (662) 246-2100
Fax: (662) 246-2622
3. The Royal Thai Police; Economic Crime Investigation Division
Central Investigation Bureau
North Sathorn Road
Bangrak District, Bangkok 10110
Tel: (662) 235-2827
Fax: (662) 234-6806
4. The Customs Department; Policy and Planning Bureau
The Royal Thai Customs Department
Ministry of Finance
Sunthornkosa, Klong Toey
Bangkok 10110
Tel: (662) 240-2617
Fax: (662) 249-4016

F. Law Firms/Consultant

5. Armstrong & Teasdale
<http://www.armstrongteasdale.com/News-Publications/LegalGuides/index.php>

6. Baker & McKenzie
<http://www.bakernet.com/NR/exeres/A3A1285A-892A-4F53-AD57-9C0AB1D32FAC.htm>
7. Coudert Brothers
http://www.coudert.com/news/client_advisory.asp?action=caby_sub&id=30
8. Dewey Ballantine
http://www.deweyballantine.com/practice.cfm?u=Intellectual%20Property%20Transactions%20and%20Technology&practice_id=57&view=publications&publication_type_id=40
9. Jones, Day, Reavis & Pogue
<http://www1.jonesday.com/pubs/pubs.asp?language=English>
10. Melveny & Myers
http://www.omm.com.cn/cniplaw/chinaiplaw_040210.htm
11. Perkins Coie
<http://perkinscoie.com/resources/groupupdates.cfm>
12. Rouse & Co International
<http://www.iprights.com/publications/newsletters.asp>
13. Tilleke & Gibbins
<http://www.tillekeandgibbins.com/index.html>

IX. Legal Disclaimer

- A. Inclusion of material in this IPR Toolkit does not constitute legal advice and is not a substitute for advice of legal counsel and is subject to change according to the laws of the Royal Thai Government. The United States Government will strive to update and improve this IPR Toolkit as information becomes available and as United States Government resources allow. Additionally, the U.S. Government, the U.S. Department of State, their employees and contractors assume no legal liability for the accuracy or completeness or usefulness of any information, resource, or process contained disclosed herein. Baker & McKenzie International and the World Intellectual Property Organization provided much of the information outlined above.

For More Information

The U.S. Commercial Service in Bangkok, Thailand can be contacted via e-mail at: Bangkok.office.box@mail.doc.gov ; Phone: 662-205-5090; Fax: 662-255-2915 or visit our website: www.buyusa.gov/thailand/en.

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