

THAILAND

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2021 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Thailand remain on the Watch List in 2021.¹

Executive Summary: Thailand continues to struggle with the fight against piracy. Though amendments to the Computer Crime Act (CCA) establishing a no-fault judicial remedy to disable access to infringing content gave rights holders hope of improving rampant online piracy in Thailand, the mechanism has faced difficulties resulting from unclear procedures and spotty implementation. Late 2018 actions taken by the Department of Special Investigations (DSI) against sites like *doo4k* and *movie2free*, and further raids carried out in October 2020, disrupting the *Sakkarinsai8* piracy network, and November 2020, seizing three movie/TV/live broadcast piracy websites *Skyhdbox.com*, *Kingiptv.info*, and *Hdlive.site*, also signaled the potential for positive change in the fight against piracy. Unfortunately, these raids and CCA actions have not resulted in significant reductions in piracy or needed deterrence, and Thai-language piracy sites continue to dominate the online ecosystem, unfairly competing with legitimate rights holders. Unauthorized camcording of motion pictures continues to damage the market for audiovisual works.² The Department of Intellectual Property (DIP) proposed protocols to improve implementation of CCA orders going forward, but is now under new leadership, and it is yet to be seen whether these protocols will be implemented or whether they will provide a needed panacea to the piracy dilemma in Thailand.

In 2018, the government embarked on some important copyright law reform efforts, the latest draft of which now sits with the House of Representatives. Unfortunately, the most recent draft amendments to the Copyright Act do not include some needed developments, for example, a CCA-type remedy devoted solely to copyright piracy and key provisions needed to comply with the obligations in the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (together, WIPO Internet Treaties) related to technical protection measures (TPMs).³ IIPA urges the House of Representatives committee that will be reviewing the latest draft to also address the shortfalls with respect to intermediary liability, revert to the 2018 version on TPMs, and make other modernizing changes (such as extending copyright term in line with current international best practices); in this regard, it will be helpful if an appropriate creative industry representative can serve on the committee.

Moreover, certain 2019 amendments to the copyright law in the name of Marrakesh Treaty implementation created new problems by the erroneous inclusion of sound recordings in the scope of certain exceptions. In order to address the continued operation of rogue collective management organizations (CMOs) that undermine music rights holders and users, the Royal Thai government should promulgate legislation in line with the draft guidelines on CMO governance and greater transparency developed by stakeholders, with dispute resolution and enforcement measures to bring order to music collecting societies that are distorting the market.

The Royal Thai government should also remove market access barriers, including screen quotas in the amendments to the Motion Picture and Video Act, and refrain from imposing any new barriers in over-the-top (OTT) regulations.

¹For more details on Thailand's Special 301 history, see previous years' reports, at <https://iipa.org/reports/reports-by-country/>. For the history of Thailand's Special 301 placement, see <https://iipa.org/files/uploads/2021/01/2021SPEC301HISTORICALCHART.pdf>.

²Camcording statistics for 2020 are anomalous due to the wide-scale closure of theaters and limited releases due to COVID-19.

³In those amendments, the government had made a number of constructive proposals, including proposed strong protections against the act of circumventing, and the trafficking in, devices and technologies (including hacking code/software and false authentication code) intended to circumvent technological protection measures used by rights holders in the digital and online environment to protect their content from unauthorized access, copying and distribution. The government is strongly encouraged to revert to the draft published in 2018 and enact provisions that grant safe harbor exemptions, which are in keeping with international norms, i.e., that service providers would be excluded from liability for monetary relief only, and not exempt from all liability for copyright infringement.



PRIORITY ACTIONS REQUESTED IN 2021

Enforcement

- Bring effective enforcement actions against: illegal distribution of copyright materials over social media platforms, including live-streaming; piracy streaming devices and applications (apps) that make it impossible for legitimate services to compete; illegal camcording activities; and large-scale pirate operators in Thailand, ensuring that these services stay offline and the operators receive appropriate punishment under the law that will carry a deterrent message through the broader community.
- Take action against rogue CMOs and combine this enforcement action with regulatory reforms to change the criteria for CMO registration.
- Ensure proper implementation and application of the CCA regarding actions to combat pirate websites, including ensuring expeditious and non-burdensome procedures, and full and fast compliance by the Internet service providers (ISPs) in Thailand.

Legislative

- Address shortfalls on intermediary liability and protection of TPMs in the proposed amendments to the Copyright Act through promulgation of effective legislative amendments that: (i) provide adequate incentives for passive and neutral online intermediaries to cooperate with rights holders and implement international best practices to combat infringement, such as establishing a clear legal basis for the liability of ISPs and appropriately delineating the proposed safe harbor liability privilege regime, while imposing adequate conditions for eligibility thereto, including effective notice and takedown mechanism; (ii) provide adequate protection against the act of circumvention of TPMs; (iii) prohibit trafficking in circumvention technologies, devices, components, and services; and (iv) ensure that the TPM provisions do not permit overly broad exceptions.
- Amend the Copyright Act to: (i) ensure that measures addressing camcording effectively prohibit possession of an audiovisual recording device in an exhibition facility with the intent to make or transmit an audiovisual work, in whole or in part, and provide that exhibition facilities have standing to bring complaints; (ii) ensure copyright offenses are non-compoundable; and (iii) extend the term of copyright protection consistent with international best practices to 70 years from the death of the author, or for sound recordings (and performances) or other subject matter calculated from publication, at least 70 years from publication.
- Promulgate legislation that reduces the number of, and bring order to, the multitude of CMOs currently active in the market to protect rights holders and users from rogue CMOs, including measures addressing the establishment and governance of CMOs.

Market Access

- Formally remove market access barriers impacting foreign audiovisual content, including:
 - Remove foreign ownership restrictions like the National Broadcasting and Telecommunications Commission (NBTC) rules restricting media mergers, acquisitions and cross-media ownership.
 - Delete Section 9(5) (and the related Section 68) of the 2008 Motion Picture and Video Act (MPVA) which, on paper, allows the Film Board to establish ratios and quotas against foreign films, and amend the MPVA to avoid onerous film censorship and classification provisions.
 - Remove the NBTC approved “must carry” provisions, since they could, if improperly interpreted or misunderstood, restrict the companies’ contractual freedom to license.
 - Avoid onerous OTT regulations, e.g., that could require streaming operators to set up a local presence or to require foreign e-commerce services to register for VAT payments.

PIRACY AND ENFORCEMENT UPDATES IN THAILAND

Prior IIPA reports on Thailand contain a more detailed discussion of piracy and enforcement issues. This report serves only as an update to those and is not to be considered an exhaustive review of issues.⁴ Overall, piracy in Thailand, especially online piracy, continued to cause damage to legitimate rights holders and licensees in 2020. Rights holders continued to have good cooperation with Thai authorities, who were proactive in rights protection, albeit raids and actions to disable access to flagrantly infringing sites have not resulted in significant overall reductions in piracy or needed deterrence.

Online Piracy: Notwithstanding the expanding availability of legitimate services for music and audiovisual materials,⁵ the increasing access to broadband Internet, particularly on mobile devices, has led to escalating piracy of recorded music, motion pictures and television content, video games, published materials, and broadcasts. Legitimate services find it difficult or impossible to compete with pirate offers, and some longtime licensed operators have stopped doing business as a direct result of intractable piracy. Both U.S. producers and distributors, as well as local Thai producers and services, are profoundly harmed by Internet pirate platforms, which specifically target Thai users with Thai-language sites. Streaming unauthorized content is the most popular form of piracy, whether through streaming websites, apps, Piracy Devices, circumvention devices or software, or even through social media. Many websites serve as portals that allow users to download apps that provide access to pirated content, including the latest theatrical run motion pictures, television content, sporting events, and live streamed pay-per-view events and concerts. BitTorrent indexing and tracker sites, cyberlockers, and BBS/forums also remain problematic. The popularity of peer-to-peer networks, including BitTorrent (e.g. *thepiratebay.org*, *Siambit.me*, *dedbit.com*, and *tt-torrent.com*), has declined for piracy of music, but has been replaced by a considerable increase in the use of stream-ripping services, which is now the primary problem for the music industry in Thailand. Popular stream-ripping services include *youtubeto.com*, *y2mate.com*, *ytmp3.cc* and *x2convert.com*. Some of these services have been subject to website blocking orders or other litigation in some jurisdictions, yet, no action has been taken in Thailand.

For the music industry, problematic linking sites such as *2sh4sh.com*, *4sh.xyz* (formerly *4shworld.com*), *mp34u.cc* and *olozmp3.xyz* remain popular in Thailand. Illegal apps on smartphones, readily available from Apple and the Google Play stores, are popular among Thai users to access vast amounts of pirated content either for free or at a very low cost. Piracy continues to take its toll on the market for legitimate creative content. Increasingly, piracy websites are using content delivery networks and cloud services such as Google Drive, making identification of website operators and server locations very difficult. This said, in April 2018, music rights holders obtained a blocking order from the criminal court under the CCA provisions related to pirate site *4shworld.com*, however they noted bureaucratic problems in the process, and following the block the site started redirecting to new domains. Similarly, court orders to block pirate sites *kakzmuzik.com* and *olozmp3.net* were obtained. Most of the criminal investigations launched out of these cases remain pending and, unfortunately, after the sites were blocked, some began redirecting to new domains and/or changed their functionality to become different kinds of infringing websites.

The motion picture industry has reported that many of the top 500 most accessed sites in Thailand are piracy sites, according to Alexa and SimilarWeb rankings. These sites specifically target Thai Internet users, and include Thai, as well as foreign, motion picture and television content. These include *doomovie-hd.com*, *037hdmovie.com*, *123-hd.com*, *Siambit.me*, *newmovie-hd.org*, *TT-Torrent.com*, *Nanamovies.com*, and *fwiptv.cc*. The local motion picture industry succeeded in March 2018 with the first-ever site blocking order under the CCA against a site called *nungmovies* and succeeding in getting the first variant blocked, as well, but the Thai system does not have a dynamic blocking mechanism. In late 2018, a major set of raids and criminal referrals resulted in the disruption of several key Thai piracy sites, including *Doo4K*, which provided subscription piracy Video-on-Demand to Thai users. In November

⁴See, e.g., IIPA, *Thailand*, 2020 Special 301 Report, February 6, 2020, at <https://www.iipa.org/files/uploads/2020/02/2020SPEC301THAILAND.pdf>; 2019 Special 301 Report, February 7, 2019, at <https://iipa.org/files/uploads/2019/02/2019SPEC301THAILAND.pdf>; and 2018 Special 301 Report, February 8, 2018, at <https://iipa.org/files/uploads/2018/02/2018SPEC301THAILAND.pdf>.

⁵Legitimate services in Thailand for content include iTunes, Google Play Store, Hollywood HDTV, Prime Time, iFlix, HOOQ, Doonung, ZABMOVIE, Deezer, KKBox, Spotify, YouTube, AIS, GTH Movie Store, AIS Movie Store, HTV (from True Visions), and Clickplay TV, among others.

2019, the DSI took enforcement action resulting in the notorious Thailand piracy site *movie2free.com*, which was ranked the 20th most accessed website in Thailand, ceasing operations and the site administrator being placed under arrest. *Movie2free.com*, which launched in 2014, was reported to have had ten million page views per day with up to a million different IP addresses connected daily to the site and was globally ranked at 1,700 with 27 million monthly visits. This action was possible due to industry efforts working with the DSI. The DSI is continuing its investigation into a network of individuals associated with the operation of the site. Industry has informed the government of the severity of piracy on all of the other sites, and the government is supportive of addressing industry's concerns.

In October 2020, DSI conducted raids at multiple locations following a lengthy investigation of an infringing network, *Sakkarinsai8*. *Sakkarinsai8* provided content and servers for multiple websites involved with online gambling and piracy content. The raids included one at Chiang Mai (location of the website owner of sites *iptvhero*, *ufoiptv*, *xtream4k*), Nonthaburi (location of the website owner of *biggapp.tv*), Phitsanulok (location of a live broadcast website administrator), and three data centers in Bangkok. In total, 11 servers were seized and several websites were taken offline. The investigation is ongoing. Following the raids, the DSI expanded its operation and additional raids were executed at four locations in Bangkok, comprising a server system for transmitting live signals and feeding a range of piracy websites. Three key piracy domains providing movies, live broadcasts and TV programs, namely, *Skyhdbox.com*, *Kingiptv.info*, and *Hdlive.site*, were seized and the investigation is ongoing.

IIPA is encouraged by actions the government has taken in an effort to improve the copyright ecosystem in the online and mobile environments to support legitimate entertainment services, particularly the amended CCA, which permits disabling of access to infringing websites. Although a promising reform, the mechanism has met with mixed results, with court processes leading to orders to disable access to infringing websites, but sometimes spotty implementation as ISPs claim to have technical hurdles to properly comply with orders. In August 2020, the DIP announced the introduction of a new site blocking process. The previous administrative procedure, albeit sanctioned by court, was largely ineffective. In October 2020, after the announcement of the Ministry of Digital Economy & Society (MDES) with the support of DIP, ten more sites were blocked. An additional site was blocked in November 2020 and eight actions remain pending. The new website blocking process will hopefully address many of the failings of the previous process, but it is important that the MDES facilitates the progression of the eight pending actions. While law enforcement authorities are able to investigate IP related crimes, enforcement against piracy operators remains very challenging given the scale of the problem, lack of familiarity in investigating and handling digital forensic evidence, and the ease with which pirates use anonymizing software and infrastructure to continually evade detection.

Camcorder Piracy Traced to Thailand Continues to Harm Motion Picture Market: Thailand continues to represent a risk for illicit camcording in the region, particularly in relation to the illegal sourcing of Thai audio tracks. In 2019, 13 audio files and three video files of MPA member titles were forensically traced to theater locations in Thailand. Increasing broadband Internet and higher-speed mobile connections in Thailand mean faster uploads to the Internet of motion pictures illegally camcordered. In addition, the rise of live-streaming content over the Internet has contributed to the growing camcording problem. If strongly implemented (and ultimately improved), the Copyright Act provision that deems camcording an infringement of copyright could help.

Retail and Hard Goods Piracy Still Prevalent: Physical piracy is decreasing, mainly due to the shift to online and mobile platforms. Nonetheless, physical piracy remains a concern, harming local and foreign creators alike. The Royal Thai government has designated many of the pirate markets "Red Zones" and "Yellow Zones" to indicate that it views these markets as vulnerable to piracy activities. Pirated music, video games, and published materials remain available.

Piracy Devices and Apps Represent a Growing Problem: Piracy Devices include media boxes, set-top boxes or other devices that allow users, through the use of piracy apps, to stream, download, or otherwise access unauthorized content from the Internet. These devices have emerged as a significant means through which pirated motion picture and television content is accessed, and they have become an increasing problem in Thailand. China is a hub for the manufacture of these devices and the deployment of middleware and apps used to access infringing

materials. Piracy Devices are part of a sophisticated and integrated online ecosystem facilitating access to pirated audiovisual materials. The devices are either pre-installed with apps that facilitate infringement or include instructions for users to easily obtain apps to access unauthorized motion picture and television content. These apps allow users to connect to a supporting online infrastructure, including foreign piracy sites that provide users with instant access to infringing audiovisual content. Piracy Devices are sold on e-commerce websites such as *Lazada.co.th*, but are also made available through traditional retailers found in popular malls, and are often promoted and/or advertised to enable infringement of copyright or other illegal activities. The website *fwiptv.cc* and related sites are portals that allow users to subscribe to an “Internet Protocol Television (IPTV) package” and download apps. The apps allow users to access illegally the latest run movies, television content, sporting events, and live streamed on-demand or pay-per-view events. These sites are extremely popular in Thailand. The *fwiptv.cc* site averages around 200,000 visitors a month, which only serves as a way to download the file to install the app. Consequently, Royal Thai authorities should increase enforcement efforts, including cracking down on Piracy Device vendors or those that market piracy apps, or pre-load the devices with apps that facilitate infringement or offer them as an aftersales service, and take action against key distribution points for devices and apps that are being used illegally. Thailand should also amend its legal framework to specifically address this problem. The Royal Thai government has taken some action against an IPTV/Piracy Device service called *ThaiExpat.tv*, and in December 2019, the Central Intellectual Property and International Trade (IP&IT) Court ordered damages of THB 15 million (US \$480,000) and suspended sentences against two key operators in Thailand.

Reforming the Market for the Collective Management of Rights: The music industry is concerned that many operators of restaurants, bars, shops and other commercial establishments have been harassed by “rogue” entities, despite having obtained licenses from legitimate CMOs and paid royalties for the use of sound recordings played on their premises. A proliferation of these “rogue” entities has caused serious market disruption, directly harming music rights holders, as well as users in Thailand.

COPYRIGHT LAW AND RELATED LEGISLATIVE UPDATES

CCA Amendment: In a significant development, the 2016 Amendment to the Computer Crime Act B.E. 2550 (2007) added IP infringement as a predicate crime in Section 20, permitting injunctive relief against ISPs to disable access to infringing websites hosted outside of Thailand. The Amendment entered into force in July 2017. In November 2018, DIP had received 62 requests for blocking or disabling access to IPR infringing content or activities, and 48 of those requests were forwarded to the MDES for further action. The IP&IT Court and the Criminal Court have issued 26 court orders to block or disable access to copyright infringing content, totaling 634 URLs (however, in most of these cases, the orders were to disable access to specific content identified in the URLs, not entire websites). As indicated above, as of October 2020, ten more sites were blocked, an additional site was blocked in November 2020, and eight actions remain pending. IIPA encourages the Court to finally adjudicate the remaining cases, so that it can be determined whether the CCA is having the desired effect of reducing online infringement in Thailand.

Copyright Act Revisions Approved by Cabinet Prior to Presentation to the House of Representatives: The Copyright Act amendment bill was approved by the Cabinet on September 29, 2020, and is now set for second review under a House of Representatives committee. Unfortunately, there is no creative industry representative on the committee and one should be added. The amendments are aimed at improving Thailand’s copyright laws and focus mainly on online intermediary liability and TPMs. Thailand’s National Assembly has already approved the WCT accession, which now depends on appropriate Copyright Act amendments also being promulgated, with accession to the WPPT planned thereafter within the next five years. However, IIPA is very concerned that the government has deleted a number of comprehensive amendments it had proposed in 2018.⁶ The following are critical issues with the

⁶In those amendments, the government had made a number of constructive proposals, including proposed strong protections against the act of circumventing, and the trafficking in, devices and technologies (including hacking code/software and false authentication code) intended to circumvent technological protection measures used by rights holders in the digital and online environment to protect their content from unauthorized access, copying and distribution. Those amendments, put forward in 2018, would have immediately prepared Thailand to join the WIPO Copyright Treaty. We would strongly encourage the government to revert to the draft published in 2018 and enact provisions that grant safe harbor exemptions that are in keeping with international norms.

Copyright Act and the draft amendments that should be addressed to ensure that the Royal Thai government achieves its stated goals of modernizing its copyright law, complying with its international obligations, and implementing and adhering to the WCT and WPPT.

- **Infringement a Non-Compoundable Offense:** IIPA urges the Royal Thai government to amend the Copyright Act to ensure that intellectual property infringement becomes a non-compoundable state offense, thus enabling the police to act on their own initiative without any requirement of a formal complaint from rights holders. In the age of online piracy, this ability for authorities to take ownership of investigations and cases is critically important.
- **Service Provider Liability Amendments:** Originally, the amendments had retained from previous drafts the four types of online intermediaries that may be eligible for the copyright infringement liability limitation privileges (Section 43/1), but the provisions in relation to the conditions and eligibility, as well as the notice procedures, were substantially cut down. It was IIPA's understanding that these details would be moved to the administrative regulations, which are to be promulgated after the amendments of the Copyright Act have been passed—a move which is concerning to rights holders. The proposed liability exemption provisions in Section 43/1 are defective and fail to fulfil the modernizing aims of the law. First, they appear to provide a full exemption from liability for the qualifying service providers, instead of a limitation of liability by which, for example, a service provider may still be subject to injunctive relief. Second, they fail to clarify that the eligible service providers will only enjoy the liability privileges in respect of their activities which are of passive and neutral nature, and when the service providers have neither knowledge nor control over the information which is transmitted and stored by them. These clarifications are essential to ensure that the liability privileges are appropriately delineated so as to avoid the market distortions that occur when such privileges are applied beyond their intended scope. Additionally, the amended law should clearly establish the liability of the relevant service providers as the condition precedent for the introduction of the safe harbor.
- **Technological Protection Measures:** TPMs are critical for the success of services that are providing legal content to users in Thailand today, and they need to be protected. The amendments should improve the law to cover access controls and prohibit trafficking. Most critically, the TPM provisions should close the loophole of permitting circumvention of a TPM for the purpose of benefiting from a specified copyright exception. IIPA members welcome the amendment in the approved bill that any service, manufacture, sale or distribution of a service, product, or device that affects any function of a technological protection measure is now an act of copyright infringement. IIPA also welcomes the proposed amendment to Section 53/4 to the effect that "*any act that results to the technological measures for controlling an access to be ineffective shall be deemed infringement of technological measures,*" but recommends that this be clarified expressly to refer to acts of circumventing a copy control TPM. However, certain exceptions to TPM infringement are still overly broad and should be narrowed. Broad exemptions for such entities, instead of exemptions for certain specific and narrow acts, is inconsistent with treaty requirements. IIPA is also concerned with the newly proposed section 53/5(1), which would grant Ministerial powers to publish exceptions to TPM protections; although the proposed deletion of the existing section 53/5(1) is welcome, any exceptions to TPM protections should be subject to the full legislative process and must at all times comply with the three-step test. As weak copyright and TPM protections create *de facto* barriers to trade, efforts to strengthen such protections effectively reduce such barriers.
- **Camcording Provision Should Be Revised:** Thailand enacted anti-camcording legislation in 2014. However, the anti-camcording provision falls short because it requires a link between the act of camcording and a copyright infringement, instead of simply criminalizing the camcording act itself. Criminalizing the act of camcording including audio, without requiring a link to copyright infringement, would empower law enforcement to intercept illegal recordings before they enter the online pirate ecosystem. Preferably, these provisions will be revised to ensure that the possession of an audiovisual recording device in an exhibition facility with the intent to copy or transmit a whole or part of an audiovisual work (including the video, the soundtrack, or both) is prohibited, and that exhibition facilities are given standing to bring complaints. Those engaging in the act proscribed should be subject to

interdiction by cinema employees and the police, immediate seizure and forfeiture of the equipment used and any unlawful copies made, as well as civil and criminal penalties.

- **Collective Management Provisions:** The current collective management and collection system for music is unwieldy and remains unclear, with many collecting bodies operating in the market. We welcome indications from DIP that it is keen to resolve this issue. However, the DIP proposal at this stage is only to introduce a voluntary code of conduct for CMOs, which is not a sufficient response to the long-standing challenge in the Thai market. The Copyright Act should therefore be amended to include provisions setting out certain principal conditions for CMOs to operate in Thailand, such as complying with a code of conduct that requires good governance, transparency, fair and accurate distribution, and of course actually representing the right holders it claims to represent. In respect of the latter point, it is recommended that the Copyright Act be amended to provide that an entity wishing to act as a CMO must be registered with the Ministry of Commerce and must comply with the code of conduct. Registration criteria shall be fair, objective, transparent, and reasonable and include the requirement for the CMO to operate in a transparent and non-discriminatory manner and in accordance with principles of good governance. In deciding whether to grant permission to a CMO to operate (i.e. register a CMO), the Ministry should consider the number of members, as well as the size of the catalogue of titles and rights under management, and should be entitled to refuse any application for registration or revoke any registration if the CMO does not satisfy such conditions.
- **Exception for the Visually, Hearing, Intellectually, or Learning Impaired:** Copyright Act Number 4 B.E.2561 (2018) was published in November 2018 and went into effect in March 2019. The Act permits persons with disabilities who do not have access to copyrighted work due to impairment in vision, hearing, movement, intellect or learning or other deficiencies to have equal opportunities to other persons to access, make copies, modify, or distribute the copyrighted work. DIP has issued a Ministerial Regulation on the details of authorized or recognized entities and how such copies may be distributed. The Thai exception goes well beyond the mandate of *The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled* which creates a limitation and exception for the benefit of the blind, visually impaired and otherwise print disabled. That exception will be mandatory for individual WIPO members that ratify the Treaty. From the music industry's perspective, in accordance with the Marrakech Treaty, sound recordings should not be covered by the exception at all, and in the alternative, the exception should be properly defined and restricted in scope to apply solely to specific acts in respect to specific works, for the benefit of specific individuals, with adequate safeguards, and with equitable remuneration payable to rights holders. This exception should be amended or implemented in such a way that it faithfully implements the Marrakech Treaty and does not conflict with the Berne Convention, WTO TRIPS and WIPO Internet Treaties "three-step test."
- **Inadequate Term of Protection:** Thailand should extend its term of copyright protection to be in line with the international trend of 70 years after the death of the author, or, in cases in which term is calculated based on publication, to at least 70 years. Unfortunately, the amendment to section 21 in the current draft of proposed amendments does not change the term of protection, which remains at 50 years. There are now 67 countries worldwide providing for a term of protection of 70 years or more. Further, if the term of protection is not extended in time, some Thai classics from the 1970s—the classics of Soontaraporn, Suraphol Sombatcharorn and Paiboon But—will soon fall out of copyright protection, despite the fact that they are still widely consumed by the public. This will have a negative effect on local artists' income, especially those who have retired and rely on the royalties for a living. Further, Thailand should be urged to catch up with the new international standard of protecting sound recordings for at least 70 years; otherwise the development of the Thai music market will lag behind a vast number of countries in North America, Europe and APAC.
- **Section 32 and Fair Use Guidelines:** IIPA also continues to call for a narrowing or clarification of Articles 32(6) and (7) of the Copyright Act, and to ensure administrative guidance on fair use is kept within the legal bounds of existing exceptions and that affected publishers and stakeholders are afforded the opportunity to provide input into the guidelines.

MARKET ACCESS UPDATES IN THAILAND

Screen Quota and Film Classification: Section 9(5) of the 2008 MPVA allows the Film Board to establish ratios and quotas against foreign films. If implemented, such restrictions would create new barriers to foreign film distribution, discourage cinema infrastructure investments, and reduce consumer choice. Since 2017, the Ministry of Culture has been in the process of considering amendments to the MPVA. The motion picture industry continues to urge the Ministry to delete Section 9(5) and the related Section 68, as such limitations, if implemented, could adversely affect Thai distributors and exhibitors, impede the development of the local film industry, limit the variety of entertainment available to Thai consumers, and exacerbate piracy. The MPVA also imposes onerous classification (ratings) requirements on films, music videos, and live performances, as well as censorship requirements on films, audiovisual products, and video games. Thailand should remove onerous ratings requirements, including the 15-day period for obtaining ratings and censorship approval, the associated high costs for film ratings, and the severe penalties for failure to comply. As countries today are moving towards self-classification for audiovisual products across all distribution formats, IIPA encourages Thailand to do the same. In a positive development in 2019, the film industry was encouraged when the Film Ratings Office removed the requirement for submissions of Digital Cinema Packages with open encryption keys, which would have otherwise raised significant content security risks.

Must Carry Requirements: In 2012, the NBTC hastily approved “must carry” provisions requiring all platforms to carry public and commercial free-to-air television channels nationally, on an equal basis. The regulations, which have not been clearly drafted, raise important intellectual property rights issues, i.e., they call into question the ability of rights holders to enter into exclusive distribution arrangements in Thailand.

OTT Regulations: The NBTC is in the process of considering policies on OTT services, including requiring streaming operators to set up a local presence to respond to government requests around content that the government finds objectionable (a form of mandatory content filtering). Thailand is also proposing amendments to its Revenue Code that will require foreign e-commerce services to register for VAT payment. A tax rate of 10% is being proposed on non-resident business operators who employ electronic payment for e-commerce services, including digital online services. Under the existing VAT guidelines implemented in 1992, any person or entity supplying goods or providing services in Thailand with an annual turnover exceeding 1.8 million baht (US \$55,000) is subject to VAT. Such regulations, if extended to OTT services, would impose burdensome requirements on foreign content providers, stifle innovation and raise costs, particularly in the absence of a robust content protection regime to protect digital delivery of content.

Investment/Ownership Restrictions in Media Sector: In January 2015, the NBTC issued rules governing media mergers, acquisitions and cross-media ownership. The rules require prior NBTC approval when a television license holder seeks to invest more than 25% directly, or more than 50% indirectly, in another licensed company. This rule severely limits investment and creates unnecessary barriers to entry for U.S. companies.

COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES

Many of the deficiencies in Thailand’s enforcement framework described above—including inadequate efforts to combat piracy, burdensome and inefficient civil and criminal procedures, and inadequate and non-deterrent civil and criminal remedies—run afoul of Thailand’s obligations under the TRIPS enforcement provisions, including Articles 41, 42, 45, and 61.