

# THAILAND

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

### 2022 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA recommends that Thailand remain on the Watch List in 2022.<sup>1</sup>

**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 efforts to combat rampant online piracy in Thailand, the mechanism has faced difficulties and has had spotty results. Enforcement remains largely non-deterrent, although cooperation with the Department of Special Investigations (DSI) has been good, resulting in effective enforcement actions against several piracy sites in the past few years, including a February 2021 enforcement action against *fwiptv.com*. Unfortunately, these enforcement actions and CCA actions have not resulted in significant reductions in piracy or needed deterrence, and Thai-language piracy sites and services continue to dominate the online ecosystem, unfairly competing with legitimate rights holders. In addition, the unauthorized camcording of motion pictures continues to damage the market for audiovisual works.

Since 2018, the Royal Thai government has been working on amending the Copyright Act to comply with the obligations in the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties). Unfortunately, the most recent draft amendments to the Copyright Act currently under consideration by the Senate, do not address certain deficiencies in Thailand's legal framework. IIPA urges the Government of Thailand to improve the legislation by addressing shortfalls regarding provisions on intermediary liability and protections of technological protection measures (TPMs), ensuring that other important provisions, such as term of protection of copyright, align with current international standards and best practices, and adding a no-fault remedy to disable access to infringing content to better address copyright piracy.

Moreover, certain 2019 amendments to the copyright law in the name of Marrakesh Treaty implementation created new problems because of the erroneous inclusion of sound recordings in the scope of certain exceptions. To address the continued operation of rogue collective management organizations (CMOs) that undermine music rights holders and users, the Royal Thai government should also promulgate legislation to bring order to music collecting societies that are distorting the market, including measures addressing the establishment and governance of CMOs.

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. IIPA welcomes recent stakeholder engagement by the Royal Thai government, particularly the Department of Intellectual Property (DIP), and looks forward to continued close coordination.

## **PRIORITY ACTIONS REQUESTED IN 2022**

### **Enforcement**

- Bring effective enforcement actions against: illegal distribution of copyright materials, including live-streaming; piracy streaming devices and applications (apps) that are a threat to this still-developing legitimate market; 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

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<sup>1</sup>For 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>.



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 a no-fault judicial remedy to disable access to infringing content 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 secondary liability of ISPs and appropriately delineating the proposed safe harbor liability privilege regime, while imposing adequate conditions for eligibility thereto; and (ii) ensure that exceptions to TPMs protections are not overly broad by requiring that any proposed exception must be subject to a full legislative process, rather than merely issued by the government or by ministers.
- Introduce further amendments to 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; (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; and (iv) add a remedy to enable courts to order online service providers to disable access to infringing websites.
- Promulgate legislation that reduces the number of, and brings 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 reports and is not to be considered an exhaustive review of issues.<sup>2</sup> Overall, piracy in Thailand, especially online piracy, continued to cause damage to legitimate rights holders and licensees in 2021. Although rights holders continued to have good cooperation with Thai authorities, who were proactive in rights protection, enforcement actions to disable access to flagrantly infringing sites have not significantly reduced piracy or

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<sup>2</sup>See, e.g., IIPA, *Thailand*, 2021 Special 301 Report, January 28, 2021, at <https://www.iipa.org/files/uploads/2021/01/2021SPEC301THAILAND.pdf>.

provided needed deterrence.

**Online Piracy:** Notwithstanding the expanding availability of legitimate services for music and audiovisual materials,<sup>3</sup> 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 offerings, and some longtime licensed operators have been driven out of business due to intractable piracy. While law enforcement authorities may investigate intellectual property (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.

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 (P2P) networks remains. Three of the top five piracy sites in Thailand were domestic BitTorrent sites: *Siambit.me* (15.3 million visits from Thailand in Q3 2021 according to SimilarWeb), *dedbit.com* (4 million visits during the same period), and *tt-torrent.com* (5.9 million visits in the same period). Stream-ripping services are also now a significant problem for the music industry in Thailand. Popular stream-ripping services include *ytmp3.cc* (over 4.1 million visits from Thailand in Q3 2021 according to SimilarWeb), *y2mate.com* (2.9 million visits in the same period), and *savefrom.net* (3.1 million visits in the same period). 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. Cyberlockers that egregiously or primarily facilitate access to infringing materials also remain a problem in Thailand.

Piracy continues to take its toll on the market for legitimate creative content. Illegal apps on smartphones, readily available from Apple and the Google Play stores, are popular among Thai users seeking to access vast amounts of pirated content either for free or at a very low cost. 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.

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*, and *Nanamovies.com*. In March 2017, the local motion picture industry succeeded in securing the first-ever site blocking order under the CCA against a site called *nungmovies* and succeeded in getting the first variant blocked.

Industry has worked well with the DSI, resulting in several notable enforcement actions. As detailed in last year's IIPA Thailand country report, DSI has taken action to disrupt several key Thai piracy sites in recent years, including in 2018 against *Doo4K*, in 2019 against *movie2free.com*, and in 2020 against *sakkarinsai8*, *Skyhdbox.com*, *Kingiptv.info*, and *Hdlive.site*.<sup>4</sup> While IIPA is encouraged by these enforcement actions, criminal investigations have been slow. In order to improve deterrence, the government should promptly bring criminal cases against the operators of these piracy sites. Illustrating the hope for better enforcement, as well as the ongoing challenges, in February 2021, DSI took down the popular website *fwiptv.cc* and related sites, which were portals that allowed users to subscribe to an "Internet Protocol Television (IPTV) package" and download apps. The apps allowed users to illegally access the latest movies, television content, sporting events, and live streamed on-demand or pay-per-view events, while the

<sup>3</sup>Legitimate 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.

<sup>4</sup>See IIPA 2021 at 169-170.

websites enabled users to download and install the app. These sites were extremely popular in Thailand. The *fwiptv.cc* site ranked 729<sup>th</sup> in Thailand and averaged around 700,000 visitors a month. Unfortunately, soon after its takedown, another infringing IPTV service called *inwitpv.com*, believed to be operated by the same operators, emerged.

The provision of the amended CCA that enables disabling of access to infringing websites has been a promising reform, although results have been mixed. Implementation has been spotty, in part, because ISPs claim to have technical hurdles that prevent proper compliance with orders, and infringers “hop” to alternate domains to evade the orders. Cases decided at the Criminal Court also often direct blocking orders towards specific URL links, which can be easily changed, as opposed to the more effective method of disabling access to the entire infringing domain. In August 2020, the DIP announced the introduction of a new site blocking process. The previous administrative procedure, which was 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 infringing site was blocked in November 2020, eight more sites were blocked in November 2021, and several actions remain pending or on hold. Unfortunately, many ISPs have not fully complied with the more recent Criminal Court orders. To further improve effectiveness, orders should be directed to disable access to domains as opposed to specific URLs, and be dynamic to address sites that immediately “hop” to another domain to circumvent the original order. New guidelines provide that blocking applications will be made directly to the Central Intellectual Property and International Trade (IP&IT) Court, but the guidelines have yet to be tested. Dynamic orders should be possible under the existing guidelines because the same court can order the ISP to block associated sites.

**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 illegal Thai audio tracks. Although 2020 and 2021 numbers were anomalous due to COVID-19-related theater closures, in 2019, 18 audio files and three video files of MPA member titles were forensically traced to theater locations in Thailand. The camcording problem is driven by criminal piracy release groups and the rise of live streaming over the Internet. If effectively implemented, the Copyright Act provision that deems camcording an infringement of copyright could help, but as discussed below, this provision should be strengthened to adequately address the problem.

**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 alert the public that these markets are vulnerable to piracy activities. Pirated music, video games, and published materials remain available.

**Piracy Devices (PDs) and Apps Represent a Growing Problem:** Piracy Devices (PDs) include media boxes, set-top boxes or other devices that allow users, through the use of installed piracy apps and software, 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. PDs are part of a sophisticated and integrated online ecosystem facilitating access to pirated audiovisual materials. PDs 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 and services that provide users with instant access to infringing audiovisual content. PDs 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.

Royal Thai authorities should increase enforcement efforts, including cracking down on PD vendors that market piracy apps or pre-load the PDs with apps that facilitate infringement or offer the installation of piracy apps or software as an aftersale 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/PD service called *ThaiExpat.tv*, and in December 2019, the 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, legitimate CMOs, as well as users in Thailand.

## **COPYRIGHT LAW AND RELATED LEGISLATIVE UPDATES**

**CCA Amendment:** In a significant development, the 2016 Amendment to the CCA 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. Since then, there have been many requests for blocking or disabling access to intellectual property rights (IPR) infringing content or activities. However, in only a dozen or so cases have the Courts issued full website blocking orders, and in the majority of other cases, the orders were to disable access to specific content identified in the URLs. IIPA encourages clarity on IP&IT Court jurisdiction (there is a guideline that provides for this) to ensure that the Court is prepared to address structurally infringing websites.

**Copyright Act Amendments:** In June 2021, the extraordinary committee of the Parliament and the DIP released the latest draft Copyright Act amendments for public comment. The amendments are aimed at improving Thailand’s copyright laws and focus mainly on ISP liability and protection of TPMs. The Senate is currently reviewing the draft amendments, which are expected to be effective on October 9, 2022. Thailand’s National Assembly has already approved WCT accession, which now depends on appropriate Copyright Act amendments also being enacted, and accession to the WPPT is planned thereafter within the next five years. The following are critical issues with the 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 IP 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:** While the latest draft amendments provide for a notice and takedown procedure, the amendments remain deficient. First, the draft does not clearly establish a basis for liability of online service providers for infringements carried out by third parties using their services. This secondary liability provides legal incentives for online service providers to cooperate with rights holders to deter the unauthorized storage and transmission of copyrighted materials on their services. Without a clear basis for secondary liability, safe harbors are unnecessary. Second, the eligibility criteria should be clarified to ensure only passive and neutral intermediaries that do not contribute to infringing activities are eligible for the safe harbors. Under Section 43/1, safe harbor eligibility is limited to intermediaries that are of “mere technical, automatic, and passive nature,” and that do not have knowledge or control over the information transmitted or stored, if the intermediary also announces a policy that it will terminate its service to users who repeatedly infringe copyright (i.e., a repeat infringer policy). This provision should be clarified to ensure that the repeat infringer policy is an *additional* condition for safe harbor eligibility, rather than a separate condition that alone gives rise to an exemption from liability. Furthermore, Sections 43/2, 43/2/1, 43/2/2, and 43/2/3 provide additional conditions for mere conduits, caching service providers, hosting service providers, and search engines, but it should be clarified that the

conditions provided in Section 43/1 also apply to each of these provisions to ensure only passive and neutral intermediaries that do not contribute to infringing activities are eligible for the safe harbors. Finally, although the draft amendments outline notice and takedown procedures, the legislation should also incorporate other measures demonstrated effective in preventing or restraining infringement.

- **Technological Protection Measures (TPMs):** TPMs are critical for the success of services that are providing legal content to users in Thailand today, and they need to be protected. Proposed sections 53/4 and 53/6 would make several improvements to TPMs protections in Thailand, including prohibiting acts of circumvention of TPMs and trafficking in circumvention technologies, devices, components, and services (e.g., enabling actions against stream-ripping websites or other such programs). However, the amendments should be revised to ensure exceptions to TPMs protections are subject to a full legislative process, rather than merely issued by the government or by ministers without proper consideration and input from stakeholders.
- **Rights Management Information:** Exceptions to protections for rights management information are overly broad and should be narrowed in the draft amendments. For example, the blanket exclusion of educational institutions, archives, libraries, and non-profit broadcasting organizations from violating the rights management information protections are inappropriate and unjustified.
- **No-Fault Injunctive Relief:** To improve the effectiveness of enforcement against online copyright piracy, the draft amendments should be amended to provide for no-fault injunctive relief in copyright piracy cases, enabling courts to order online service providers to disable access to copyright infringing websites (analogous to the CCA remedy, which applies to all IP crimes).
- **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 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. IIPA welcomes 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 rights holders it claims to represent. Regarding 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, must be authorized by rights holders, and must comply with the code of conduct. Registration criteria should 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. However, the Thai Government should resist proposals to create, by government dictate, a single collection body. While

voluntary cooperation between CMOs can be cost-effective and beneficial for participating CMOs and rights holders, experience shows that mandatory single collection bodies lead to inefficient and unaccountable structures.<sup>5</sup>

- **Exception for the Visually, Hearing, Intellectually, or Learning Impaired:** Copyright Act Number 4 B.E.2561 (2018) was published in November 2018 and entered into force 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 Marrakesh 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 regarding 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 Marrakesh Treaty and does not conflict with the “three-step test” of the Berne Convention, WTO TRIPS Agreement, and WIPO Internet Treaties.
- **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 current draft of proposed amendments does not change the term of protection, which remains at 50 years. There are now 69 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—including the classics of Soontaraporn, Suraphol Sombatcharom, and Paiboon Buth—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 because, 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 considering amendments to the MPVA. The motion picture industry continues to urge the Ministry to delete Section 9(5) and the related Section 68, because 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

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<sup>5</sup>An example of a well-functioning voluntary joint organization is MPC Music Co. in Thailand, which is a joint licensing agency formed by two collective management organizations (CMOs), Phonorights (Thailand) Co., Ltd. (PNR) (for sound recording rights) and Music Copyright (Thailand) Co. Ltd. (MCT) (for musical works rights).

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 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 IPR issues, i.e., they call into question the ability of rights holders to enter into exclusive distribution arrangements in Thailand.

**Over-the-top (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). 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 enforcement 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.