



1 October 2013

Mr. Niwattumrong Boonsongpaisan
Deputy Prime Minister and Minister of Commerce
Ministry of Commerce
44/100 Nonthaburi 1 Road
Amphur Muang
Nonthaburi 11000, Thailand

Comments on the Proposed Amendments to Thailand's Copyright Act B.E. 2537

About the Asia Internet Coalition

The Asia Internet Coalition (the "AIC") is an industry association formed by eBay, Facebook, Google, LinkedIn, Salesforce and Yahoo. The AIC seeks to promote the understanding and resolution of Internet policy issues in the Asia Pacific region.

Artists and entrepreneurs use the Internet to create fantastic new things and to reach global markets to sell their products. Popular Internet services have helped entrepreneurs from around the globe, including Thailand, launch successful businesses and careers by providing them a huge global audience. The Internet has not only opened up opportunities for existing artists, publishers, and entrepreneurs, but also leveled the playing field for new creators and small business owners

Summary

The AIC believes that the Amendments to the Copyright Act B.E. 2537 (the "Copyright Act") was proposed with good intentions to strengthen intellectual property rights ("IPR") Protection in Thailand.

The AIC, while supportive of the Ministry of Commerce's ("MOC") efforts to further IPR protection, thinks that such an Act, if not crafted clearly with a balanced and practical understanding of Online Service Providers operations, may place an undue burden on Internet companies. A Copyright Act, without a balanced view, will fail to curb the abuse of copyright infringement online effectively, and would also hinder the daily operations of legitimate Online Service Providers.

Specific Comments and Suggestions

As an industry association representing global Internet players, the AIC is a relevant partner to the Thai authorities as they review the Copyright Act. It is from this perspective that the AIC offers its comments on the Copyright Act Amendments so that it will strengthen IPR protection online while ensuring that online intermediaries' responsibilities are appropriately limited.

1) Target the enforcement of the Copyright Act in a smart and tailored manner

It is understood that the Copyright Act is proposed to be amended to define "Service Provider" in the same terms as the Computer Crimes Act, where a "Service Provider" is defined as:

1. A person who provides services to others regarding the provision of access to the Internet or any other connectivity through a computer system, whether such services are provided in their own name or in the name or for the benefit of other persons.
2. A person who provides computer data storage services for others.

The broad definition of “Service Provider” in the proposed amendments effectively holds online intermediaries liable (such as in the case of many of our member companies), even in the absence of any evidence of active participation in IPR infringements by the intermediaries. It also seems to assume that simply by allowing electronic access, somehow any “Service Provider” is complicit in the online merchant’s database of infringing electronic material.

The AIC believes that the *Copyright Act should limit the scope defined by “Service Provider”, to those who are also directly involved in procuring or offering goods for sale via the Internet or a computer system.*

The AIC stresses that while Online Service Providers take active steps to encourage the protection of IPRs, and have policies to prevent the abuse of IPR through their platforms, they often have no knowledge of the IPR infringement taking place, or little pre-emptive ability to stop users from circumventing safeguards and using their platforms to infringe IPR laws. Accordingly, placing the bulk of the liability for IPR infringements on the shoulders of Online Service Providers is not only unduly burdensome but more importantly, an ineffective way of tackling IPR infringements.

2) Ensure injunctions and the responsibilities of online intermediaries’ are appropriately limited

The AIC is particularly concerned about the viability of the proposed Notice and Take-down framework proposed in Section 32/3, opens Online Service Providers to the risk of periodically being dragged into unnecessary legal disputes. If abused, such as system will disrupt the daily operations of Online Intermediaries and impose significant administrative burdens on Online Intermediaries.

The AIC strongly believes that Online Intermediaries should not be held legally responsible for Copyright infringing content created by Internet users, so long as they take the specifically identified infringing content down within a reasonable timeframe after receiving a valid notice from a content owner. We recommend intermediaries be safeguarded from injunctions, to provide legal certainty.

A review of the US Digital Millennium Copyright Act (DMCA) may be helpful. The DMCA has notable safe harbour provisions which protects Internet Service Providers from the consequences of their users’ actions, but at the same time legitimately addresses copyright infringement.

Conclusion

We reiterate our support for the protection of IPRs but stress our concern that the proposed amendments to the Copyright Act place an undue burden on Online Service Providers to the degree that it will likely hinder daily operations.

We believe that the key to well-crafted regulation is open dialogue with a wide range of stakeholders, including industry players from the Internet industry through associations such as the AIC. The companies on board of the AIC are dialogue partners with government on wide-

ranging regulations across various regional and global jurisdictions. As committed industry players in Thailand, AIC members will be happy to share observations from around the world.

We hope that this will help policy-makers from the Ministry of Commerce, as you mull over regulations that can help Thailand grow its Internet industry and leapfrog ahead of other countries, to be a technology giant on the world stage.

Accordingly, we respectfully request for an opportunity to meet with the **Director General of Department of Intellectual Property (DIP)** and discuss our views on the proposed amendments to the Copyright Act. Please do not hesitate to reach out to us at director@asiainternetcoalition.org if you have any queries, or would like further information on the contents of this letter.

Many thanks for your attention.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'John Ure', with a horizontal line underneath.

Dr. John Ure
Executive Director
Asia Internet Coalition