

**CONVENTION BETWEEN THE GOVERNMENT OF THE KINGDOM OF
THAILAND AND
THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION
OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

The Government of the Kingdom of Thailand and the Government of the United Kingdom of Great Britain and Northern Ireland; Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

Have agreed as follows:

**Article 1
Personal Scope**

This Convention shall apply to persons who are residents of one or both of the Contracting States.

**Article 2
Taxes Covered**

1. The existing taxes which are the subject of this Convention are:

(a) in the United Kingdom:

- (i) the income tax;
 - (ii) the corporation tax;
 - (iii) the capital gains tax;
 - (iv) the development land tax; and
 - (v) the petroleum revenue tax;
- (hereinafter referred to as "United Kingdom tax");

(b) in Thailand:

- (i) the income tax; and

(ii) the petroleum tax;
(hereinafter referred to as "Thai tax").

2. The Convention shall also apply to any tax *which* is subsequently imposed by either Contracting State in addition to, or in place of, the existing taxes provided that it is agreed by the competent authorities of the Contracting States to be identical or substantially similar to the taxes existing at the date of signature of the Convention. The competent authorities of the Contracting States shall notify each other of any changes which are made in their respective taxation laws.

Article 3

General Definitions

1 In this Convention, unless the context otherwise requires:

(a) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea-bed and subsoil and their natural resources may be exercised;

(b) the term "Thailand" means the Kingdom of Thailand and any area adjacent to the territorial waters of the Kingdom of Thailand which by Thai legislation, and in accordance with international law, has been or may hereafter be designated as an area within which the rights of the Kingdom of Thailand with respect to the sea-bed and subsoil and their natural resources may be exercised;

(c) the term "nationals" means:

(i) in relation to the United Kingdom, citizens of the United Kingdom and Colonies and British subjects not possessing that citizenship or the citizenship of any other Commonwealth country or territory, provided in all cases they are patrial within the meaning of the Immigration Act 1971, and all legal persons, partnerships, associations or other entities deriving their status as such from the law in force in the United Kingdom;

(ii) in relation to Thailand, all individuals possessing the nationality of Thailand and all legal persons, partnerships and associations deriving their status as such from the law in force in Thailand;

(d) The term "tax" means United Kingdom tax or Thai tax, as the context requires;

(e) the terms "a Contracting State" and "the other Contracting State" mean the United Kingdom or Thailand, as the context requires;

(f) the term "person" comprises an individual, a company and any body of persons which is treated as an entity for tax purposes;

(g) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(h) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

CHAPTER 1 COPYRIGHT

PART 1 COPYRIGHT WORK

Section 6.

Copyright works by virtue of this Act mean works of authorship in the categories of literary, dramatic, artistic, musical, audiovisual, cinematographic, sound recording, sound and video broadcasting work or any other works in the literary, scientific or artistic domain, whatever may be the mode or form of its expression.

Copyright protection shall not extend to any idea or procedure, process or system or method of use or operation or concept, principle, discovery or scientific or mathematical theory.

Section 7.

The followings are not deemed copyright works by virtue of this Act:

(1) news of the day and facts having the character of mere information which is not a work in literary, scientific or artistic domain;

(2) constitution and legislation;

(3) regulations, rules, announcements, orders, explanations and official correspondence of the Ministries, Departments or any other government or local units;

(4) judicial decisions, orders, rulings and official reports;

(5) translation and compilation of those in (1) to (4) made by the Ministries, Departments or any other government or local units.

PART 2 ACCUSITION OF COPYRIGHT

Section 8.

The author is the owner of copyright in the work of authorship subject to the following conditions:

(1) In the case of unpublished work, the author must be a Thai national or reside in Thailand or be a national of or reside in a country which is a member of the Convention for the protection of copyright of which Thailand is a member, provided that the residence must be at all time or most of the time spent on the creation of the work;

(2) In the case of published work, the first publication must be made in Thailand or in a country which is a member of the Convention for the copyright protection of which Thailand is a member, or in the case the first publication is made outside Thailand or in a country which is not member of the Convention for the copyright protection of which Thailand is a member, if the publication of the said work is subsequently made in Thailand or in a country which is member of the Convention for the copyright protection of which Thailand is a member within thirty days as from the first publication, or the author has the qualifications as prescribed in (1) at the time of the first publication.

In case the author must be a Thai national, if the author is a juristic person, it must be established under the Thai law.

Section 9.

Copyright in the work created by the author in the course of employment vests in the author

unless it has been otherwise agreed in writing; provided that the employer is entitled to communicate such work to public in accordance with the purpose of the employment.

Section 10.

Copyright in the work created in the course of commission vests in the employer, unless the author and the employer have agreed otherwise.

Section 11.

Copyright in the work which is an adaptation of a copyright work by virtue of this Act done with the consent of the owner of copyright vests in the person who makes such adaptation but without prejudice to the owner of copyright in the work, created by the original author, which is adapted.

Section 12.

Copyright in the work which is a compilation or a composition of copyright works by virtue of this Act done with the consent of the owners of copyright or a compilation or a composition of data or the materials which are readable, or conveyable by a machine or other apparatus vests in the person who makes the compilation or the composition; provided that he has done so by means of selection or arrangement in the manner which is not an imitation of the work of another person but without prejudice to the owners of copyright in the works or data or other materials, created by the original authors, which are compiled or composed.

Section 13.

Section 8, Section 9 and Section 10 shall apply *mutatis mutandis* to the acquisition of copyright under Section 11 or Section 12.

Section 14.

Ministries, Departments or other government or local units are the owners of copyright in the works created in the course of employment, order or control unless it is otherwise agreed in writing.

PART 3 COPYRIGHT PROTECTION

Section 15.

Subject to Section 9, Section 10 and Section 14, the owner of copyright has the exclusive rights of:

- (1) reproduction or adaptation;
- (2) communication to public;
- (3) letting for hire of the original or the copies of a computer program, an audiovisual work, a cinematographic work and a sound recording;
- (4) giving benefits accruing from the copyright to other persons;
- (5) licensing the rights mentioned in (1), (2) or (3) with or without conditions, provided that the said conditions shall not unfairly restrict the competition.

Whether the conditions as mentioned in sub-section (5) of paragraph one are unfair restrictions of competition or not shall be considered in accordance with the rules, methods and conditions set forth in the Ministerial Regulation.

Section 16.

The authorization by the owner of copyright by virtue of this Act to a person to exercise the right according to Section 15(5) shall not restrict the owner of copyright from granting such authorization to another person, except that the restriction is specified in a written authorization.

Section 17.

Copyright is assignable.

The owner of copyright may assign the copyright in whole or in part and may assign it for a limited duration or for the entire term of copyright protection.

The assignment of copyright by other means, except by inheritance, must be made in writing with signatures of the assignor and the assignee. If the duration is not specified in the assignment contract, the assignment shall be deemed to last for ten years.

Section 18.

The author of a copyright work by virtue of this Act is entitled to identify himself as the author and to prohibit the assignee or any person from distorting, shortening, adapting or doing anything with the work to the extent that such act would cause damage to the reputation or dignity of the author. When the author is dead, the heir of the author is entitled to a litigation for the enforcement of such right through the term of copyright protection, unless otherwise agreed in writing.

PART 4 TERM OF COPYRIGHT PROTECTION

Section 19.

Subject to Section 21 and Section 22, copyright by virtue of this Act endures for the life of the author and fifty years after the death of the author.

In the case of a work of joint authorship, copyright endures for the life of the joint-authors and fifty years as from the death of the last surviving joint-author.

If the author or all joint-authors is or are dead prior to the publication of the work, copyright endures for fifty years as from the first publication of the work.

In the case of the author being a juristic person, copyright endures for fifty years as from the authorship; provided that if the work is published during such period, copyright endures for fifty years as from the first publication.

Section 20.

Copyright by virtue of this Act in a work which is created by a pseudonymous or anonymous author endures for fifty years as from the authorship; provided that if the work is published during such period, copyright endures for fifty years as from the first publication.

If the identity of the author becomes known, Section 19 shall apply *mutatis mutandis*.

Section 21.

Copyright in a photographic work, an audiovisual work, a cinematographic work, a sound recording or an audio and video broadcasting work endures for fifty years as from the authorship; provided that if the work is published during such period, copyright endures for fifty years as from the first publication.

Section 22.

Copyright in a work of applied art endures for twenty- five years as from the authorship; provided that if the work is published during such period, copyright endures for fifty years as from the first publication.

Section 23.

Copyright in a work which is created in the course of employment, instruction or control in accordance with Section 14 endures for fifty years as from the authorship; provided that if the work is published during such period, copyright endures for fifty years as from the first publication.

Section 24.

The publication under Section 19, Section 20, Section 21, Section 22 or Section 23 which is the commencement of the term of copyright protection means the publication of the work with consent of the owner of copyright.

Section 25.

When the term of copyright protection expires during a year and the expiry date is not the last calendar day of the year or the exact date of expiration is not known, copyright endures until the last day of that calendar year.

Section 26.

The publication of a copyright work after the expiration of the term of copyright protection shall not cause anew the copyright in such work.

PART 5 INFRINGEMENT OF COPYRIGHT

Section 27.

Any of the following acts against a copyright work by virtue of this Act without authorization in accordance with Section 15(5) is deemed an infringement of copyright:

- (1) reproduction or adaptation;
- (2) communication to public.

Section 28.

Any of the following acts against an audiovisual work, a cinematographic work or a sound recording copyrightable by virtue of this Act without authorization in accordance with Section 15(5) whether against the sounds or images is deemed an infringement of copyright:

- (1) reproduction or adaptation;
- (2) communication to public;
- (3) letting for hire of the original or copies of the work.

Section 29.

Any of the following acts against a sound and video broadcasting copyrightable by virtue of this Act without authorization in accordance with Section 15(5) is deemed an infringement of copyright:

- (1) making an audiovisual work, a cinematographic work, a sound recording or a sound and video broadcasting work whether in whole or in part;
- (2) rebroadcasting whether in whole or in part;
- (3) making a sound and video broadcasting work to be heard or seen in public by charging money or other commercial benefits.

Section 30.

Any of the following acts against a computer program copyrightable by virtue of this Act

without authorization in accordance with Section 15(5) is deemed an infringement of copyright:

- (1) reproduction or adaptation;
- (2) communication to public;
- (3) letting for hire of the original or copy of the work.

Section 31.

Any person who knows or should have known that a work is made by infringing the copyright of another person and commits any of the following acts against the work for profit is deemed to infringe the copyright:

- (1) selling, occupying for sale, offering for sale, letting for hire, offering for letting for hire, selling by hire purchase or offering for hire purchase;
- (2) communication to public;
- (3) distribution in the manner which may affect prejudicially the owner of copyright;
- (4) self-importation or importation by order into the Kingdom.

PART 6 EXCEPTIONS OF INFRINGEMENT OF COPYRIGHT

Section 32.

An act against a copyright work by virtue of this Act of another person which does not conflict with a normal exploitation of the copyright work by the owner of copyright and does not unreasonably prejudice the legitimate right of the owner of copyright is not deemed an infringement of copyright.

Subject to paragraph one, any act against the copyright work in paragraph one is not deemed an infringement of copyright; provided that the act is each of the followings:

- (1) research or study of the work which is not for profit;

- (2) use for personal benefit or for self benefit together with the benefit of other family members or close relatives;
- (3) comment, criticism or introduction of the work with an acknowledgement of the ownership of copyright in such work;
- (4) news reporting through mass media with an acknowledgement of the ownership of copyright in such work;
- (5) reproduction, adaptation, exhibition or display for the benefit of judicial proceedings or administrative proceedings by authorized officials or reporting such proceedings;
- (6) reproduction, adaptation, exhibition or display by an instructor for the benefit of instruction provided that the act is not for profit;
- (7) reproduction, adaptation in part of a work or abridgement or making a summary by an instructor or an educational institution so as to distribute or sell to students in a class or in an educational institution provided that the act is not for profit;
- (8) use of the work as part of questions and answers in an examination.

Section 33.

A reasonable recitation, quotation, copying, emulation or reference in part from a copyright work by virtue of this Act with an acknowledgement of the ownership of copyright in such work is not deemed an infringement of copyright; provided that Section 32 paragraph one is complied with.

Section 34.

A reproduction of a copyright work by virtue of this Act by a librarian in the following cases is not deemed an infringement of copyright; provided that the purpose of such reproduction is not for profit and Section 32 paragraph one is complied with:

- (1) reproduction for use in the library or another library;
- (2) reasonable reproduction in part of a work for another person for the benefit of research or study.

Section 35.

An act against a computer program which is a copyright work by virtue of this Act in the following cases is not deemed an infringement of copyright; provided that the purpose is not for profit and Section 32 paragraph one is complied with:

- (1) research or study of the computer program;
- (2) use for the benefit of the owner of the copy of the computer program;
- (3) comment, criticism or introduction of the work with an acknowledgement of the ownership of the copyright in the computer program;
- (4) news reporting through mass media with an acknowledgement of the ownership of copyright in the computer program;
- (5) making a reasonable quantity of copies of a computer program by a person who has legitimately bought or obtained the program from another person so as to keep them for maintenance or prevention of loss;
- (6) reproduction, adaptation, exhibition or display for the benefit of judicial proceedings or administrative proceedings by authorized officials or reporting such proceedings;
- (7) use of the computer program as part of questions and answers in an examination;
- (8) adapting the computer program as necessary for use;
- (9) making copies of the computer program so as to keep them for reference or research for public interest.

Section 36.

The public performance, as appropriate, of a dramatic work or a musical work which is not organized or conducted for seeking profit from such activity and without direct or indirect charge and the performers not receiving remuneration for such performance is not deemed an infringement of copyright; provided that it is conducted by an association, foundation or another organization having objectives for public charity, education, religion or social welfare and that Section 32 paragraph one is complied with.

Section 37.

A drawing, painting, construction, engraving, moulding, carving, lithographing, photographing, cinematographing, video broadcasting or any similar act of an artistic work, except an architectural work, which is openly located in a public place is not deemed an infringement of copyright in the artistic work.

Section 38.

A drawing, painting, engraving, moulding, carving, lithographing, photographing, cinematographing or video broadcasting of an architectural work is not deemed an infringement of copyright in the architectural work.

Section 39.

A photographing or a cinematographing or a video broadcasting of a work of which an artistic work is a component is not deemed an infringement of copyright in the artistic work.

Section 40.

In case another person apart from the author jointly owns the copyright in an artistic work, the subsequent creation by the same author of the artistic work in such a manner that a part of the original artistic work is reproduced or the printing pattern, sketch, plan, model or data derived from a study which has been applied in the creation of the original artistic work is used is not deemed an infringement of copyright in the artistic work; provided that the author does not reproduce or copy the significant part of the original artistic work.

Section 41.

A restoration in the same appearance of a building which is a copyright architectural work by virtue of this Act is not deemed an infringement of copyright.

Section 42.

When the term of protection for a cinematographic work expires, the communication to public of the cinematographic work is not deemed an infringement of copyright in the literary work, dramatic work, artistic work, musical work, audiovisual work, sound recording or any work previously used to make such cinematographic work.

Section 43.

A reproduction of a copyright work by virtue of this Act for the benefit of government

service by an authorized official or by an order of such official which is in the possession of the government is not deemed an infringement of copyright; provided that Section 32 paragraph one is complied with.

CHAPTER 2 PERFORMERS' RIGHTS

Section 44.

A performer has the following exclusive rights with respect to the acts concerning his performance of:

- (1) sound and video broadcasting or communication to public of the performance, except sound and video broadcasting or communication to public from a recording material which has been recorded;
- (2) recording the performance which has not been recorded;
- (3) reproducing the recording material of the performance which has been recorded without consent of the performer, or the recording material of the performance with consent of the performer for different purposes, or the recording material of the performance which has been done pursuant to the exceptions of the infringement of performer's rights by virtue of Section 53.

Section 45.

Any person who directly uses a sound recording of a performance, which has been published for commercial purposes or the copies thereof in a broadcast or a communication to public, is bound to pay an equitable remuneration to the performer. In case the parties can not agree upon the remuneration, the Director-General shall stipulate the remuneration by taking into account the normal rate of remuneration in such specific business.

A party may appeal against the order of the Director-General according to paragraph one to the Board within ninety days as from the date of the receipt of the letter informing the order of the Director-General. The decision of the Board shall be final.

Section 46.

Where there are more than one performer involved in a performance or an audio recording of

a performance, those performers may appoint a joint agent to monitor or administer their rights.

Section 47.

A performer has the rights in his performance according to Section 44, provided that the following conditions are met:

- (1) the performer has Thai nationality or has a habitual residence in the Kingdom or;
- (2) the performance or the major part of the performance takes place in the Kingdom or in a country which is a member of the Convention for the protection of performers' rights of which Thailand is also a member.

Section 48.

A performer is eligible to a remuneration according to Section 45, provided that the following conditions are met:

- (1) the performer has Thai nationality or has a habitual residence in the Kingdom when the audio recording of the performance takes place or when he exercises a claim of his rights or;
- (2) the audio recording of the performance or the major part of the audio recording of the performance takes place in the Kingdom or in a country which is a member of the Convention for the protection of performers' rights of which Thailand is also a member.

Section 49.

The performer's rights according to Section 44 last for fifty years as from the last day of the calendar year in which the performance takes place. In case the performance is recorded, the performer's rights last for fifty years as from the last day of the calendar year in which the recording of the performance takes place.

Section 50.

The performer's rights according to Section 45 last for fifty years as from the last day of the calendar year in which the recording of the performance takes place.

Section 51.

The performer's rights according to Section 44 and Section 45 are assignable, whether in

whole or in part, and may be assignable for a fixed duration or for the whole term of protection.

In case there are more than one performer involved, each performer is entitled to assign the mere portion of his rights.

The assignment of rights by other means except by inheritance must be made in writing with signatures of the assignor and the assignee. If the duration is not specified in the assignment contract, the assignment is deemed to last for three years.

Section 52.

Any person who acts as specified in Section 44 without consent of the performer or without paying remuneration in accordance with Section 45 is deemed to infringe the performer's rights.

Section 53.

Section 32, Section 33, Section 34, Section 36, Section 42, and Section 43 shall apply *mutatis mutandis* to the performer's rights.

CHAPTER 3 USE OF COPYRIGHT IN SPECIAL CIRCUMSTANCES

Section 54.

A Thai national who may wish to seek a copyright license for a work, which has already been communicated to public in the form of printed materials or other analogous forms pursuant to this Act, for the benefit of study, teaching or research without a profit-seeking purpose may submit an application to the Director-General together with an evidence showing that the applicant has previously sought from the copyright owner a license to translate the work into Thai or to reproduce the copies of the translation published in Thai but his request has been denied or after a reasonable period of time has elapsed the agreement can not be concluded; provided that at the time of submitting the application:

(1) the copyright owner has not translated or authorized any person to translate the work into the Thai language for publication within three years after the first publication of the work; or

(2) the copyright owner has published the translation in the Thai language but, beyond three years after the last publication of the translation, no further publication is made and all editions of the published translation are out of print.

The application according to paragraph one shall follow these rules, methods and conditions:

(1) the Director-General shall not grant the license for the application according to paragraph one if the time specified in paragraph one (1) or (2) has elapsed not exceeding six months;

(2) in case the Director-General grants the license, the grantee shall be solely entitled to translate or publish the licensed translation provided that the Director-General shall not permit another person to make the Thai translation from the same original copyright work if the time specified in the license has not elapsed or has elapsed not exceeding six months;

(3) the grantee is prohibited from assigning the granted license to another person;

(4) if either the copyright owner or the licensee can convince the Director-General that he has made the Thai translation or has published the translated version in Thai, the content of which is identical to that of the printed materials which are the subjects of license according to Section 55 and has distributed the printed materials at reasonable price comparable with that of related works being sold in Thailand, the Director-General shall order that the license granted to the grantee be terminated and shall inform the grantee of such order without delay; The grantee may distribute the copies of the printed materials which have been made or published prior to the order of termination by the Director-General until they are out of stock.

(5) the grantee is prohibited to export copies of the printed materials of the licensed translation or publication in Thai, except for the following conditions:

(a) the recipient abroad is a Thai national;

(b) the printed materials are used for the purposes of study, teaching or research;

(c) the delivery of the printed materials is not for commercial purposes; and

(d) the country to which the printed materials are delivered allows Thailand to deliver or distribute the printed materials to or within that country.

Section 55.

Upon receiving the application according to Section 54, the Director-General shall arrange an agreement between the concerning parties as to the remuneration and the conditions of the license. In case the parties can not reach the agreement, the Director-General shall give an order stipulating an equitable remuneration by taking into account the normal rate of remuneration in such business and may stipulate conditions for the license as he deems appropriate.

When the remuneration and conditions have been stipulated, the Director-General shall issue the certificate of license to the applicant.

Each party may appeal against the order of the Director-General according to paragraph one to the Board within ninety days as from the date of the receipt of the letter informing the order of the Director-General. The decision of the Board shall be final.

CHAPTER 4 COPYRIGHT BOARD

Section 56.

There shall be a Copyright Board consisting of the Permanent-Secretary for Commerce as Chairman and qualified members not exceeding twelve persons appointed by the Council of Ministers in which not less than six persons are appointed from representatives of the associations of owners of copyright or performers' rights and representatives of the associations of users of copyright or performers' rights.

The Board may appoint any persons secretary and assistant secretaries.

Section 57.

A qualified member shall hold office for a term of two years. A member who vacates office may be reappointed.

In the case where a member vacates office before the expiration of term or where the Council of Ministers appoints additional members while already appointed members still hold office, notwithstanding that it is an additional or replacing appointment, the appointee shall hold office for the remaining term of the members already appointed.

Section 58.

A qualified member vacates office upon:

- (1) death;
- (2) resignation;
- (3) being removed by the Council of Ministers,
- (4) being a bankrupt,
- (5) being an incompetent or quasi-incompetent person;
- (6) being imprisoned by a final judgement inflicting imprisonment, except an imprisonment for the offence which has been committed by negligence or for a petty offence.

Section 59.

At a meeting of the Board, the presence of not less than one-half of the total number of the members is required to constitute a quorum. In the case the Chairman is not present at the meeting or is unable to perform the duty, the members present shall elect one among themselves to preside over the meeting. A decision of a meeting shall be by a majority of votes.

In casting votes, each member shall have one vote. In the case of an equality of votes, the person presiding over the meeting shall have an additional vote as a casting vote.

Section 60.

The Board shall have the powers and duties as follows:

- (1) to give advice or consultation to the Minister with regard to the issuance of Ministerial Regulations under this Act;
- (2) to decide an appeal against an order of the Director-General according to Section 45 and Section 55;

(3) to promote or to support the associations or organizations of authors or performers with respect to the collection of royalties from users of the copyright work or the performer's rights and the protection or the safeguard of the rights or any other benefits under this Act;

(4) to consider other matters as entrusted by the Minister.

The Board may appoint a sub-committee for considering or performing any matters as entrusted by the Board, and Section 59 shall apply to the meeting of the sub-committee *mutatis mutandis*.

In performing the duty, the Board or the sub-committee has the power to issue a written order summoning any person to give statements or furnish documents or any materials for consideration as necessary.

CHAPTER 5 INTERNATIONAL COPYRIGHT AND PERFORMER'S RIGHTS

Section 61.

A copyright work of an author as well as the rights of a performer of a country which is a member of the Convention for the protection of copyright or the Convention for the protection of performer's rights of which Thailand is also a member or a copyright work of an international organization of which Thailand is a member shall be protected by this Act.

The Minister shall have the power to proclaim the names of member countries of the Convention for the protection of copyright or the Convention for the protection of performer's rights in the Government Gazette.

CHAPTER 6 LITIGATION WITH RESPECT TO COPYRIGHT AND PERFORMER'S RIGHTS

Section 62.

It shall be presumed in a litigation with respect to copyright or performer's rights, no matter it is a civil or criminal case, that the work in dispute is a copyright work or the subject of performer's rights by virtue of this Act and the plaintiff is the owner of copyright or

performer's rights in such work or subject, unless the defendant argues that no one owns the copyright or the performer's rights or disputes the plaintiff's right.

As for a work or a subject bearing a name or a substitution for name of a person claiming to be the owner of copyright or performer's rights, the person who owns the name or the substitution for name shall be presumed to be the author or the performer.

As for a work or a subject bearing no name or no substitution for name, or bearing a name or a substitution for name but ownership in copyright or performer's rights is not raised therein and having a name or a substitution for name of a person claiming to be the printer or the publisher or the printer and publisher, the person who is the printer or the publisher or the printer and publisher shall be presumed to be the owner of copyright or performer's rights in such work or subject.

Section 63.

No action of copyright infringement or performer's rights infringement shall be filed after three years as from the day the owner of copyright or performer's rights becomes aware of the infringement and of the identity of the infringer; provided that the action shall be filed not later than ten years as from the day the infringement of copyright or performer's rights takes place.

Section 64.

In the case of infringement of copyright or performer's rights, the court has the authority to order the infringer to compensate the owner of copyright or performer's rights with damages the amount which the Court considers appropriate by taking into account the gravity of injury, including the loss of benefits and the expenses necessary for the enforcement of the right of the owner of copyright or performer's rights.

Section 65.

In case there is an explicit evidence that a person is doing or about to do any act which is an infringement of copyright or performer's rights, the owner of copyright or performer's rights may seek a judicial injunction to order the person to cease or refrain from such act.

The judicial injunction according to paragraph one does not prejudice the owner of copyright or performer's rights to claim damages under Section 64.

Section 66.

The offence in this Act is a compoundable offence.

CHAPTER 7 OFFICIALS

Section 67.

For the purpose of performing duties under this Act, a competent official shall be an official under the Penal Code and shall have the powers and duties as follows :

(1) to enter a building, office, factory or warehouse of any person during sunrise and sunset or during working hours of such place or to enter a vehicle for the purposes of searching for the merchandise or examining, when there is a reasonable doubt that an offence pursuant to this Act is committed,

(2) to seize or to attach documents or materials relating to the offence for the purpose of proceeding a litigation, when there is a reasonable doubt that an offence pursuant to this Act is committed,

(3) to order any person to give statements or to furnish accounts, documents or other evidences when there is a reasonable ground to believe that such statements, accounts, documents or evidences shall be useful for the finding of evidence or the use as evidence for proving the offence pursuant to this Act.

Any person concerned shall provide suitable assistance to the competent official on duty.

Section 68.

The competent official shall produce to the persons concerned their identification.

The identification shall be in accordance with the form prescribed by the Minister.

CHAPTER 8 PENALTIES

Section 69.

Any person who infringes the copyright or the performer's rights according to Section 27,

Section 28, Section 29, Section 30 or Section 52 shall be liable to a fine from twenty thousand Baht up to two hundred thousand Baht.

If the offence in paragraph one is committed with commercial purposes, the offender shall be liable to imprisonment for a term from six months up to four years or to a fine from one hundred thousand Baht up to eight hundred thousand Baht, or to both.

Section 70.

Any person who commits a copyright infringement according to Section 31 shall be liable to a fine from ten thousand Baht up to one hundred thousand Baht.

If the offence in paragraph one is committed with commercial purposes, the offender shall be liable to imprisonment for a term from three months up to two years or to a fine from fifty thousand Baht up to four hundred thousand Baht, or to both.

Section 71.

Any person who fails to give statements or to furnish documents or materials in compliance with the order of the Board or the sub-committee issued according to Section 60 paragraph three shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding fifty thousand Baht, or to both.

Section 72.

Any person who obstructs or fails to provide assistance to a competent official who performs his duty according to Section 67 or defies or ignores the order of the official who issues the order according to Section 67 shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding fifty thousand Baht, or to both.

Section 73.

Any person who has committed an offence and has been punished by virtue of this Act and subsequently commits an offence pursuant to this Act within five years after being discharged from the penalty shall be liable to twice as much penalty as that provided for such offence.

Section 74.

In case a juristic person commits an offence pursuant to this Act, it shall be deemed that all directors or managers of the juristic person are joint offenders with the juristic person, unless

they can prove that the offence committed by the juristic person is beyond their knowledge or consent.

Section 75.

All things made or imported into the Kingdom which constitute an infringement of copyright or performer's rights by virtue of this Act and the ownership of which still vests in the offender pursuant to Section 69 or Section 70 shall devolve on the owner of copyright or performer's rights; provided that all things used for committing the offence shall be forfeited.

Section 76.

One half of the fine paid in accordance with the judgement shall be disbursed to the owner of copyright or performer's right; provided that the right of the owner of copyright or performer's rights to bring a civil action for damages for the amount which exceeds the fine that the owner of copyright or performer's rights has received shall not be prejudiced.

Section 77.

The Director-General shall have the power to settle the offence by imposing the fine for the offence pursuant to Section 69 paragraph one and Section 70 paragraph one.

TRANSITORY PROVISION

Section 78.

The existing copyright works by virtue of the Act for the Protection of Literary and Artistic Works B.E. 2474 or the Copyright Act B.E. 2521 on the day this Act comes into force shall be protected by this Act.

The works which have been made before this Act comes into force and which are not copyright works by virtue of the Act for the Protection of Literary and Artistic Works B.E. 2474 or the Copyright Act B.E. 2521 but become copyright works by virtue of this Act shall be protected by this Act.

Countersigned by :

Chuan Leekpai

Prime Minister

NOTE :- The reason for the promulgation of this Act is as follows:

Whereas the Copyright Act B.E. 2521 has long been in force, the provisions therein become inconsistent with the changing internal and external circumstances particularly the development and expansion of domestic and international economy, trade and industry, the copyright protection measures therefore should be improved to be more efficient so as to accommodate those changes and to promote the increasing creation of work in literary and artistic domain and other relevant fields. This Act so be enacted.

Ministerial Regulation* (B.E. 2540)
Issued under the Copyright Act B.E. 2537

By virtue of Section 5 and Section 15 paragraph 2 of the Copyright Act B.E. 2537, the Minister of Commerce hereby issues the Ministerial Regulation as follows:

Clause 1.

Whether any licensing condition pursuant to Section 15(5) is of the manner of unfair restriction of competition or not must be considered on a case by case basis by taking into account the purposes or the intent to cause the unfair restriction of competition as well as the result which occurs or may occur from such condition.

Subject to the foregoing paragraph, licensing conditions pursuant to Section 15 (5) of the following manners shall be deemed the conditions that unfairly restrict competition.

(1) A condition binding the licensee to obtain materials used in the production of the licensed work in whole or in part from the copyright owner or from the seller specified by the copyright owner either with or without remuneration, unless the condition is necessary to make the copies fulfill the standard as set by the copyright owner, or the materials are not available from other sources within the territory and the remuneration is not higher than the price of materials of equal quality which are obtainable from other persons.

(2) A condition prohibiting the licensee to obtain materials used in the manufacture of the licensed work in whole or in part from one or several sellers specified by the copyright owner, unless the omission of the condition would make the produced copies fail to fulfill the

standards set by the copyright owner, or the materials are not obtainable from other sources in the territory.

(3) A condition or restriction binding the licensee concerning the employment of persons to produce the copies of work under the license, unless it is necessary to make the copies fulfill the standard as set by the copyright owner or to keep the trade secret of the copyright owner or to render necessary technical service.

(4) A condition stipulating a royalty rate for the copyright license which is unfair when compared to the rate stipulated by the copyright owner in another license for the same copyright work in which the said licensee has similar relationship or status and the license takes place at the same period of time.

(5) A condition or restriction binding the licensee concerning the research or study of the licensed copyright work.

(6) A condition binding the licensee to assign the copyright in the work adapted or developed from the licensed copyright work to the copyright owner or to any other person, or to authorize the copyright owner or another person to hold exclusively the right with respect to the adapted or developed work unless the copyright owner or the said person shall pay reasonable remuneration to the licensee.

(7) A condition in favor of the licensor to terminate the license arbitrarily and without reasonable cause.

Clause 2.

Licensing conditions pursuant to Section 15 (5) of the following characteristics shall be deemed the conditions that are in the manner of unfair restriction of competition.

(1) A condition binding the licensee to use other copyright works of the copyright owner with remuneration for such use, unless it is necessary to use those copyright works together or to connect a technology work system or to make the copies of work fulfill the standard as set by the copyright owner.

(2) A condition prohibiting the licensee to use a copyright work of another person, unless it is necessary to lay down such condition in order that the utilization of the licensed work would generate a result as set by objectives or goals, or to connect a technology work system.

Given on 14th February B.E. 2540

Narongchai Akaraseranee

Minister of Commerce

Thailand Law Forum