

(Translation)

Unofficial Translation*

COPYRIGHT ACT

B.E.2537

BHUMIBOL ADULYADEJ, REX.

Given on the 9th Day of December B.E. 2537;

Being the 49th Year of the Present Reign

His Majesty King Bhumibol Adulyadej has the Royal Proclamation to announce that:

Whereas it is expedient to improve the law governing copyright;

Therefore, His Majesty the King Bhumibol Adulyadej has graciously been pleased to enact this Act, with the advice and consent of the Parliament, as follows:

Section 1 This Act shall be called the “Copyright Act B.E. 2537”.

Section 2¹ This Act shall come into force when a period of ninety days as from the date following the date of its publication in the Government Gazette has been elapsed.

Section 3 The Copyright Act B.E.2521 shall be repealed.

Section 4 In this Act:

“Creator” means a person who makes or creates any work which is copyrighted under this Act;

“Copyright” means the exclusive right to execute any act relating to the work produced by the Creator under this Act;

“Literature” means all types of compositions created such as books, pamphlets, writings, printed matters, lectures, sermons, addresses, speeches, and it shall also include computer programs;

“Computer Program” means instructions, programs or any other things used with a computer in order to operate the computer or to generate an output, regardless of languages of the computer program;

¹ The Government Gazette, Volume 111 Section 59A, Page 1 dated 21st December 1994

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“Dramatic Work” means the work relating to traditional dancing, dancing, acting or performance of dramatic stories, and it shall also include pantomime;

“Artistic Work” means the work with one or several characteristics, as follows:

- (1) Work of painting, including the creation of configuration consisting of any or several lines, lights or other things on one or several types of materials;
- (2) Work of sculpture, including the creation of configuration with tangible volume;
- (3) Print works, including the creation of pictures with the printing processes, and it shall also include molds or printing blocks used in printing;
- (4) Architectural work, including design of buildings or structure, interior or exterior design, as well as landscape design or the creation of models of buildings or structure;
- (5) Photographic work, including the creation of image, using image-recording device that allows light to pass through lens to the film or a piece of glass and developed with liquid chemicals of specific formula or with any process that creates images or recording of images by using other devices or methods;
- (6) Illustrative work, maps, structure, sketches or the creation of three-dimensional forms relating to geography, topography or science;
- (7) Work of applied arts, including the work using the combination of one or several works under (1) to (6) for purposes other than the enjoyment of the value of such work such as for functional use, decoration of materials or utensil items or use for commercial purposes;

Thus, regardless of the artistic value of works under (1) to (7), and it shall also include photographs and plans of such works.

“Musical Work” means the work relating to songs composed for playing or signing with melody and lyrics or with melody alone, and it shall also include arranged and transcribed musical notes or musical diagrams;

“Audio Visual Materials” means the work which consists of a series of images recorded on any type of materials and capable of being replayed with a device necessary for such material, and it shall also include the sounds accompanying such work, if any;

“Cinematographic Work” means the audio visual work which consists of a series of images which can be displayed in succession as moving pictures or can be recorded upon other materials in order to be shown in succession as moving pictures, and it shall also include the sounds accompanying such moving pictures, if any;

“Sound Recording” means the work which consists of a series of music, sounds from performance or any other sounds recorded on any kind of material and able to be replayed with a device necessary for such material, but it shall not include the sounds accompanying a cinematographic work or another audiovisual work;

“Performer” means a performer, musician, vocalist, choreographer, dancer, or a person who acts, sings, speaks, narrates or performs in along with the script or performs in any other manner;

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“Broadcasting Work” means the work which is transmitted to the public by way of radio broadcasting, sound and/or video broadcasting on television or by any other like means;

“Reproduction” shall include any technique of copying, imitating, duplicating, molding, sound recording, video recording or sound and video recording of the essential part of an original, copy or publication whether in whole or in part and, regarding computer programs, it shall mean duplicating or copying the program from any medium of the essential part with any method without a manner of creating a new work whether in whole or in part;

“Adaptation” means reproduction by transformation, improvement, modification or emulation of the essential part of an original work without creating a new work, whether in whole or in part;

(1) Regarding literature, it shall also include translation, transformation or compilation of literature by means of selection and rearrangement;

(2) Regarding computer programs, it shall also include reproduction by means of transformation, improvement or modification of the program of the essential part without creating a new work;

(3) Regarding dramatic work, it shall also include alteration of a non-dramatic work to a dramatic work or a dramatic work to a non-dramatic work, either in the original language or another language;

(4) Regarding artistic work, it shall also include alteration of a two-dimensional work or a three-dimensional work to a three-dimensional work or a two-dimensional work or the creation of a model from the original work;

(5) Regarding musical work, it shall also include rearrangement of tunes or an alteration of lyrics or melodies;

“Communication to the Public” means making the work available to the public by means of performing, lecturing, preaching, playing of music, causing perception by sound or image, constructing, distributing or by any other means;

“Publication” means the distribution of recreated copies of a work, in any form or manner, with the creators’ consent, whereas, such copies are accessible to the public with a reasonable quantity having regard to the nature of the work, but it shall not include the performance or play of a dramatic work, a musical work or a cinematographic work, the lecture or the recitation of a literary work, the sound and video broadcasting of work, the exhibition of artistic work and the construction of architectural work;

“Data of Rights Management”² means the data which indicates the creator, creative work, performers, performance, owners of copyrights or period and conditions of use of copyrighted work, as well as figures or codes used in place of such data; and such data shall be affixed on or appeared in the copyrighted work or performance recording materials;

² Section 4 Definitions of “Data of Rights Management” has been added by the Copyright Act (No.2) B.E.2558.

“Technological Measures”³ means the technology designed for prevention of reproduction or control of accesses to copyrighted work or performance recording materials; whereas, such technology shall be effectively applied to such copyrighted work or performance recording materials;

“Evasion of Technological Measures”⁴ means any action which impairs the effectiveness of technological measures;

“Competent Official” means the person appointed by the Minister for the execution of this Act;

“Director-General” means the Director-General of the Department of Intellectual Property, and it shall also include persons designated by the Director-General of the Department of Intellectual Property;

“Commission” means the Copyright Commission;

“Minister” means the Minister taking charge under this Act;

Section 5 The Minister of Commerce shall take charge under this Act and shall have powers to appoint competent officials and to issue Ministerial Regulations for the execution of this Act.

Upon their publication in the Government Gazette, such Ministerial Regulations shall come into force.

CHAPTER 1

COPYRIGHT

PART 1

COPYRIGHTED WORK

Section 6 Copyrighted works under this Act mean works of creatorship 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 copyrighted works under this Act:

³ Section 4 Definitions of “Technological Measures” has been added by the Copyright Act (No.2) B.E.2558.

⁴ Section 4 Definitions of “Evasion of Technological Measures” has been added by the Copyright Act (No.2) B.E.2558.

- (1) Daily news and facts with characteristics of mere information which is not a work in sections of literary, sciences or arts;
- (2) Constitution and laws;
- (3) Rules, regulations, announcements, orders, explanations and official correspondence of the Ministries, Departments or any other state or local agencies;
- (4) Judgments, orders, rulings and official reports;
- (5) Translations and compilation of those in (1) to (4) made by the Ministries, Departments or any other state or local agencies.

PART 2 ACQUISITION OF COPYRIGHT

Section 8 The creator is the owner of copyright in the work of creatorship subject to the following conditions:

- (1) In the case of unpublished work, the creator 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 creator has the qualifications as prescribed in (1) at the time of the first publication.

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

Section 9 Copyright in the work created by the creator in the course of employment vests in the creator unless it has been otherwise agreed in writing; provided that the employer is entitled to communicate such work to the 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 creator and the employer have agreed otherwise.

Section 11 Copyright in the work which is an adaptation of a copyrighted work under 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 creator, which is adapted.

Section 12 Copyright in the work which is a compilation or a composition of copyrighted works under 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 creators, which are compiled or composed.

Section 13 The provisions contained in Section 8, Section 9 and Section 10 shall, *mutatis mutandis*, apply 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, as follows:

- (1) Reproduction or adaptation;
- (2) Communication to the public;
- (3) Letting for hire of the original or the copies of computer programs, audiovisual work, cinematographic work and sound recording;
- (4) Giving benefits accrued from the copyright to others;
- (5) Licensing the rights mentioned in (1), (2) or (3) with or without conditions, provided that the said conditions shall not be prescribed in the manner that limits the fair competition.

Regarding the consideration of the conditions under Paragraph 1 (5) as limitation of fair competition, it shall be in accordance with the criteria, methods and conditions prescribed in the Ministerial Regulations.

Section 16 The authorization by the owner of copyright under 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.

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Section 18 The creator of a copyrighted work under this Act is entitled to identify himself as the creator 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 creator. When the creator is dead, the heir of the creator 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 under this Act endures for the life of the creator and fifty years after the death of the creator.

In the case of a work of joint creatorship, copyright endures for the life of the joint-creators and fifty years as from the death of the last surviving joint-creator.

If the creator or all joint-creators 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 creator being a juristic person, copyright endures for fifty years as from the creatorship; provided that if the work is published during such period, copyright endures for fifty years as from the first publication.

Section 20 Copyrighted work under this Act which is created by a pseudonymous or anonymous creator endures for fifty years as from the creatorship; 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 creator 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 creatorship; 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 creatorship; 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 creatorship; provided that if the work is published during such period, copyright endures for fifty years as from the first publication.

Section 24 The publication of work 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.

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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 copyrighted 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 copyrighted work under this Act without authorization in accordance with Section 15(5) is deemed an infringement of copyright:

- (1) Reproduction or adaptation;
- (2) Communication to the public;

Section 28 Any of the following acts against an audiovisual work, a cinematographic work or a sound recording copyrightable under 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 the public;
- (3) Letting for hire of the original or the copies of such work;

Section 28/1⁵ In case of unauthorized reproduction by means of sound and/or image recording from copyrighted cinematographic work under this Act in cinema under the law governing cinematographic work and video tape, in whole or in part, under Section 15(5) during the show in cinema, it shall be regarded as infringement of copyright; and the provisions contained in Section 32 Paragraph 2 (2) shall not apply.

Section 29 Any of the following acts against a sound and video broadcasting copyrightable under this Act without authorization in accordance with Section 15(5) is deemed an infringement of copyright:

- (1) Making of audiovisual work, cinematographic work, sound recording or sound and video broadcasting work, in whole or in part;
- (2) Rebroadcasting, in whole or in part;
- (3) Making of sound and video broadcasting work to be heard or seen in the public by collection of money or other commercial benefits.

⁵ Section 28/1 has been added by the Copyright Act (No.3) B.E.2558.

Section 30 Any of the following acts against copyrighted computer program under this Act without authorization under Section 15(5) shall be regarded as infringement of copyright:

- (1) Reproduction or adaptation;
- (2) Communication to the public;
- (3) Letting for hire of the original or the copies of such work;

Section 31 Any person who knows or should have known that a work is made by means of infringement of the copyright of others and commission of any of the following acts against the work for profit-making, shall be deemed to have infringed 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 the public;
- (3) Distribution in the manner which may cause damage to the owner of copyright;
- (4) Importing or making orders of such work into the Kingdom.

PART 6

EXCEPTIONS OF INFRINGEMENT OF COPYRIGHT

Section 32 An act against a copyrighted work under this Act of another person which does not conflict with a normal exploitation of the copyrighted 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 copyrighted 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;
- (9)⁶ Reproduction or adaptation for the benefits of the disabled who are unable to access the copyrighted work due to deficiency of sight, hearing, intelligence or learning or other

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deficiencies as prescribed in the Ministerial Regulations, which shall not be for profit-making; provided that the pattern of reproduction or adaptation, as may be necessary, of the disabled and organization of the provider, including the criteria and methods of reproduction or adaptation, shall be in accordance with those prescribed and announced by the Minister and published in the Government Gazette.

Section 32/1⁷ The distribution of original or copies of the copyrighted work by the lawful acquirer of copyright in original or copies of the copyrighted work, shall not be regarded as infringement of copyright.

Section 32/2⁸ Any action to the copyrighted work duly made or acquired in the computer system in the manner of necessary reproduction for the use of copies thereof for normal operation of equipment used in the computer system or process of sending of copyrighted work through the computer system, shall not be regarded as infringement of copyright.

Section 32/3⁹ In case, there is a reasonable evidence to believe that there is an infringement of copyright in the computer system of the service provider, the owner of copyright may file a petition to the Court to issue an order to the service provider for termination of such infringement of copyright.

For the purpose of this Section, the “service provider” means:

- (1) The person who has provided services to others for Internet access or for contact by other means through the computer system, no matter whether such service provision shall be on his/her own behalf or for the benefits of others;
- (2) The person who has provided service of storage of computer data for the benefits of others;

Petition under Paragraph 1 shall contain clear details of data, evidence and execution application, as follows:

- (1) Name and address of the service provider;
- (2) Copyrighted work which is claimed to be subject to infringement of copyright;
- (3) Work which is claimed to be made by infringement of copyright;
- (4) Process of detection of date and time of action, and action or circumstances, as well as evidences relating to the infringement of copyright;

⁶ Section 32 Paragraph 2 (9) has been added by the Copyright Act (No.3) B.E.2558.

⁷ Section 32/1 has been added by the Copyright Act (No.2) B.E.2558.

⁸ Section 32/2 has been added by the Copyright Act (No.2) B.E.2558.

⁹ Section 32/3 has been added by the Copyright Act (No.2) B.E.2558.

- (5) Potential damage from action which is claimed to be infringement of copyright;
- (6) Application to demand the service provider to remove the work made by infringement of copyright out of the computer system of the service provider, or to terminate the infringement of copyright by any other methods;

When the Court has received the petition under Paragraph 1, the Court shall conduct an inquest; in case, the Court has considered that the petition contained complete details under Paragraph 3, and in case of necessity to issue an order for permission as per such petition, the Court shall issue an order so that the service provider shall terminate such action which is claimed to be subject to infringement of copyright and shall remove the work which is claimed to be made by infringement of copyright out of the computer system of the service provider, as per the period prescribed by the Court; whereas, the Court's order shall be enforceable to the service provider immediately, and such order shall be notified to the service provider without delay. In such case, the owner of copyright shall take actions against the violator of copyright within the period that the Court has issued an order to terminate the action claimed to be infringement of copyright or to remove the work which is claimed to be made by infringement of copyright, out of the computer system.

In the event that the service provider had not supervised, initiated or commanded any infringement of copyright in the computer system of the service provider; and such service provider complied with the Court's order under Paragraph 4; then, the service provider shall not be liable to such action which is claimed to be infringement of copyright, occurring before the Court shall issue its order and after the court order shall expire.

The service provider shall not be liable to any damage resulting from actions as per the Court's order under Paragraph 4.

Section 33 A reasonable recitation, quotation, copying, emulation or reference in part from a copyrighted work under this Act with an acknowledgement of the ownership of copyright in such work shall not be regarded as the infringement of copyright, if such action has been in compliance with Section 32 Paragraph 1.

Section 34 A reproduction of a copyrighted work under this Act by a librarian in the following cases shall not be regarded as the infringement of copyright, if such reproduction is not for the purpose of profit-making, and such action has been in compliance with Section 32 Paragraph 1:

- (1) Reproduction for use in the library or another library;
- (2) Reasonable reproduction of some parts of a work for others for the purpose of research or study.

Section 35 An action against a copyrighted computer program under this Act in the following cases shall not be regarded as the infringement of copyright, if such action is not for the purpose of profit-making, and such action has been in compliance with Section 32 Paragraph 1:

- (1) Research or study of such computer program;
- (2) Use for the benefit of the owner of copy of such computer program;
- (3) Comment, criticism or introduction of the work with acknowledgement of the ownership of the copyright in such computer program;

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(4) News reporting through mass media with acknowledgement of the ownership of copyright in such computer program;

(5) Making a reasonable quantity of copies of a computer program by a person who has correctly bought or obtained such computer program from another person for use in maintenance or prevention of loss;

(6) Reproduction, adaptation, exhibition or display for the purpose of judicial proceedings or administrative proceedings by authorized officials or reporting of such proceedings;

(7) Use of such computer program as part of questions and answers in an examination;

(8) Adaptation of such computer program in case of necessity for use;

(9) Making copies of such computer program for storage as reference or research for public interest.

Section 36 The proper performance of a dramatic work or a musical work which is not organized or conducted for seeking profits from such activity of communication to the public and without direct or indirect charges and the performers have not received remunerations for such performance, shall not be regarded as the infringement of copyright, if it is conducted by an association, foundation or another organization having objectives for public charity, education, religion or social welfare, and such action has been in compliance with Section 32 Paragraph 1.

Section 37 A drawing, painting, construction, engraving, molding, 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 shall not be regarded as the infringement of copyright in such artistic work.

Section 38 A drawing, painting, engraving, molding, carving, lithographing, photographing, cinematographing or video broadcasting of an architectural work shall not be regarded as the infringement of copyright in such architectural work.

Section 39 A photographing or a cinematographing or a video broadcasting of a work of which an artistic work is a component shall not be regarded as the infringement of copyright in such artistic work.

Section 40 In case, another person apart from the creator jointly owns the copyright in an artistic work, the subsequent creation by the same creator of the artistic work in such a manner that a part of the original artistic work is reproduced, or the printing patterns, sketches, plans, models or data derived from a study which has been applied in the creation of the original artistic work are used, shall not be regarded as the infringement of copyright in such artistic work, if the creator has neither reproduced nor copied the significant part of the original artistic work.

Section 41 The restoration of a building in the same appearance which is a copyrighted architectural work under this Act shall not be regarded as the infringement of copyright.

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Section 42 When the term of copyright protection for a cinematographic work expires, the communication to the public of the cinematographic work shall not be regarded as the 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 copyrighted work under 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 shall not be regarded as the infringement of copyright, if such action has been in compliance with Section 32 Paragraph 1.

CHAPTER 2 PERFORMERS' RIGHTS

Section 44 Performer shall have exclusive rights in actions concerning their performances, as follows:

- (1) Sound and video broadcasting or communication to the public of the performance, except sound and video broadcasting or communication to the public from a recording material which has been recorded;
- (2) Recording of the performance which has not been recorded;
- (3) Reproduction of 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 under 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 communication to the public, shall be binding to pay an equitable remuneration to the performer. In case, the amount of remuneration may not be agreed, the Director-General shall give an order to fix the amount of such remuneration by taking account of the normal rate of remuneration in such specific business.

Either party to the case may appeal against the order of the Director-General under Paragraph 1 to the Commission within ninety days as from the date of the receipt of the written notice of order of the Director-General. The decision of the Commission shall be final.

Section 46 In case, there are at least two performers 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 Performers have the rights in performances under Section 44, if the following conditions are met:

- (1) Such performers have the Thai nationality or residences in the Kingdom or;
- (2) The performance or the major part of the performance has taken place in the Kingdom or in a country which is a member of the Convention on the Protection of Performers' Rights of which Thailand is also a member.

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Section 48 Performers shall be entitled to receive remunerations under Section 45, if the following conditions are met:

- (1) Such performers have the Thai nationality or residences in the Kingdom when the audio recording of the performance has taken place or while exercising the rights of claim, or;
- (2) The audio recording of the performance or the major part of the audio recording of the performance has taken place in the Kingdom or in a country which is a member of the Convention on the Protection of Performers' Rights of which Thailand is also a member.

Section 49 The performers' rights under Section 44 shall be valid for fifty years as from the last date of the calendar year in which the performance has taken place. In case, the performance is recorded, the performers' rights shall be valid for fifty years as from the last date of the calendar year in which the recording of the performance has taken place.

Section 50 The performers' rights under Section 45 shall be valid for fifty years as from the last date of the calendar year in which the performance has taken place.

Section 51 The performers' rights under Section 44 and Section 45 are assignable, in whole or in part, and may be assignable for a fixed duration or for the whole term of protection.

In case, there are at least two performers in a performance, each performer shall be entitled to assign the mere portion of his or her rights.

The assignment of rights by other means except by inheritance must be made in writing and signed by the assignor and the assignee. If the duration is not specified in the assignment contract, it shall be regarded that the assignment is valid for three years.

Section 51/1¹⁰ Performers shall be entitled to show that they are performers in their own performances and shall be entitled to prohibit assignees of performers or any other persons to distort, subtract, adapt or do any other things to such performances until they cause damage to reputation or prestige of performers; and upon the death of such performers, their successors shall be entitled to enter actions for execution of such rights throughout the term of protection of performers' rights, unless otherwise agreed in writing.

Section 52 Any person, who has taken any action under Section 44 without receiving permission from performers or without paying remunerations under Section 45, shall be regarded as having infringed the performers' rights.

Section 53¹¹ The provisions contained in Section 32, Section 32/2, Section 32/3, Section 33, Section 34, Section 36, Section 42 and Section 43 shall, *mutatis mutandis*, apply to the performers' rights.

CHAPTER 2/1

DATA OF RIGHTS MANAGEMENT AND TECHNOLOGICAL MEASURES¹²

Section 53/1¹³ Deletion or change of data of rights management, despite the knowledge that such action may induce the occurrence, cause, facilitate or conceal the infringement of copyright or performers' rights, shall be regarded as infringement of the data of rights management.

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Section 53/2¹⁴ In case, any person has already known that there is the deletion or change of data of rights management in such copyrighted work or copies of such copyrighted work, it shall be regarded that such person has infringed such data of rights management, if such person has taken any of the following actions to such work:

- (1) Making purchase orders or import into the Kingdom for distribution;
- (2) Communication to the public;

Section 53/3¹⁵ Any of the following actions shall not be regarded as the infringement of the data of rights management:

(1) Deletion or change of the data of rights management by the competent official under the laws for execution in accordance with the laws, necessary actions for national defence, keeping of national security or other similar objectives;

(2) Deletion or change of the data of rights management by educational institutions, archives, libraries or public broadcasting organizations with no objective of profit-making;

(3) Communication to the public relating to the copyrighted work or copies of copyrighted work of which data of rights management has been deleted or changed by educational institutions, archives, libraries or public broadcasting organizations with no objective of profit-making;

Characteristics of data of rights management under (2) and copyrighted work or copies of copyrighted work with deletion or change of data of rights management under (3) shall be in accordance with those prescribed in the Ministerial Regulations.

Section 53/4¹⁶ Evasion of technological measures or service provision causing evasion of technological measures, despite the knowledge that such action may induce or cause the infringement of copyright or performers' rights, shall be regarded as infringement of technological measures.

Section 53/5¹⁷ Actions under Section 53/4 in any of the following cases, shall not be regarded as infringement of technological measures:

(1) Such action is necessary for the copyrighted work with exceptions of infringement of copyright;

¹⁰ Section 51/1 has been added by the Copyright Act (No.2) B.E.2558.

¹¹ Section 53 has been amended by the Copyright Act (No.2) B.E.2558.

¹² Chapter 2/1 "Data of Rights Management and Technological Measures" Section 53/1 to Section 53/5 has been added by the Copyright Act (No.2) B.E.2558.

¹³ Section 53/1 has been added by the Copyright Act (No.2) B.E.2558.

¹⁴ Section 53/2 has been added by the Copyright Act (No.2) B.E.2558.

¹⁵ Section 53/3 has been added by the Copyright Act (No.2) B.E.2558.

¹⁶ Section 53/4 has been added by the Copyright Act (No.2) B.E.2558.

¹⁷ Section 53/5 has been added by the Copyright Act (No.2) B.E.2558.

(2) Action for analysis of necessary components of computer program for joint working with other computer programs;

(3) Action for the benefits of research, analysis and detection of defects of encoding technologies; whereas, the person who has taken such action shall lawfully obtain the copyrighted work or copies of the copyrighted work and has attempted in good faith to apply for permission from the owner of copyright;

(4) Action for specific purposes in testing, inspection or correction of the security system of computer, of computer system, or of computer network, with permission from the owner of computer, computer system or computer network, as the case may be;

(5) Action for suspension of work of technological measures relating to the collection or distribution of data of personal identification which reflects activities on the Internet of person who has accessed the copyrighted work; whereas, such action shall not affect the access to the copyrighted work by others;

(6) Action by the competent official for execution in accordance with the laws on national defence, keeping of national security or other similar objectives;

(7) Action by educational institutions, archives, libraries or public broadcasting organizations with no objective of profit-making, in order to access the copyrighted work which may not be accessed by other methods;

CHAPTER 3

USE OF COPYRIGHT IN SPECIAL CIRCUMSTANCES

Section 54 A Thai national who wishes to apply for permission to use copyright in a work, which has already been communicated to the public in the form of printed materials or other similar forms under 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 evidence showing that the applicant has previously sought permission from the copyright owner to translate the work into the Thai language or to reproduce copies of the translations published in the Thai language but such request has been denied or after a reasonable period of time has elapsed, the agreement cannot be concluded, if it appears 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 when the period of three years after the last publication of the translation has been elapsed, no further publication is made and no copy of the published translations is available in the market.

The application under Paragraph 1 shall be in accordance with the criteria, methods and conditions, as follows:

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(1) Regarding the application for permission under Paragraph 1, the Director-General shall be prohibited to issue an order for permission, in case, the period of time under Paragraph 1 (1) or (2) has been elapsed for not exceeding six months;

(2) In case, the Director-General has issued an order for permission, the licensee shall be solely entitled to provide translations or to publish the licensed translations; and in case, the period of time specified in the license has not been elapsed or has been elapsed for not exceeding six months, the Director-General shall be prohibited to permit another person to provide translations in the Thai language of such copyrighted work anymore;

(3) The licensee shall be prohibited to assign the granted rights to another person;

(4) If either the copyright owner or the licensee can convince the Director-General that he has provided the Thai translations or has published the translations in the Thai language with the content identical to that of the licensed printed materials under Section 55 and has distributed the printed materials at reasonable price compared to that of the similar works sold in Thailand, the Director-General shall issue an order that the license issued to the licensee shall be terminated, and shall notify the licensee of such order without delay;

The licensee shall be entitled to distribute 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 licensee shall be prohibited to export copies of the printed materials of the licensed translations or publication in the Thai language, except under the following conditions:

- (a) The recipient residing in 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 parties relating to the remuneration and the conditions of the use of copyright. In case, the parties are unable to reach an agreement, the Director-General shall give an order to fix equitable remuneration by taking account of the normal rate of remuneration in such business and may prescribe conditions for the use of copyright as he deems expedient.

When the remuneration and conditions have been prescribed, the Director-General shall issue a license to the applicant for use of copyright.

Regarding the order of the Director-General under Paragraph 1, each party may appeal against such order to the Commission within ninety days as from the date of the receipt of the written notice of order of the Director-General. The decision of the Commission shall be final.

CHAPTER 4 THE COPYRIGHT COMMISSION

Section 56 There shall be a Copyright Commission 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 Commission may appoint any persons secretary and assistant secretaries.

Section 57 An expert member shall be in office for a term of two years. A member who has vacated the office may be reappointed.

In case, a member has vacated the office before the term in office shall expire, or in case, the Cabinet has appointed additional members while the 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 An expert member shall vacate the office before the term in office shall expire upon:

- (1) Death;
- (2) Resignation;
- (3) Dismissal by the Cabinet;
- (4) Bankruptcy;
- (5) Becoming an incompetent or quasi-incompetent person; or
- (6) Having been sentenced by a final judgment to imprisonment, except for

offences committed by negligence or petty offences;

Section 59 At a meeting of the Commission, at least half of the total number of the members shall attend the Meeting to constitute a quorum. In 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 made by the majority of votes.

In casting votes, each member shall have one vote. In case of a tie, the Chairman of the Meeting shall have an additional vote as a casting vote.

Section 60 The Commission 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 under Section 45 and Section 55;
- (3) To promote or support associations or organizations of creators or performers relating to the collection of royalties from users of the copyrighted work or the performer's rights and the protection or safeguard of the rights or any other benefits under this Act;
- (4) To consider other matters as designated by the Minister.

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The Commission may appoint a sub-committee for consideration or taking any action as designated by the Commission; and the provisions contained in Section 59 shall apply to the meeting of the sub-committee *mutatis mutandis*.

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

CHAPTER 5

COPYRIGHT AND INTERNATIONAL PERFORMER'S RIGHTS

Section 61 A copyrighted work of an creator as well as the rights of a performer of a country which is a member of the Convention on the Protection of Performers' Rights of which Thailand is also a member, or a copyrighted work of an international organization of which Thailand is a member, shall be protected by this Act.

The Minister shall have the power to publish the list of member countries of the Convention on the protection of copyright or the Convention on the protection of performer's rights in the Government Gazette.

CHAPTER 6

LITIGATION WITH RESPECT TO COPYRIGHT AND PERFORMER'S RIGHTS DATA OF RIGHTS MANAGEMENT AND TECHNOLOGICAL MEASURES¹⁸

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 copyrighted work or the subject of performer's rights under 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 creator 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.

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Section 64 In 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 account of 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.

In case, there is an explicit evidence that the infringement of copyright or performers' rights has been made willfully or intentionally; as a result, the copyrighted work or performers' rights can be accessed by the public; therefore, the Court shall have powers to order the tort-feasor to pay additional damages for not exceeding two times of the damages under Paragraph 1.¹⁹

Section 65 In case, there is an explicit evidence that a person is doing or about to do any act which is 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 under Paragraph 1 shall not be prejudicing the owner of copyright or performer's rights to claim damages under Section 64.

Section 65/1²⁰ The provisions contained in Section 63, Section 64 and Section 65 shall, *mutatis mutandis*, apply to the litigation with respect to the data of rights management and technological measures.

Section 66 The offence in this Act is a compoundable offence.

CHAPTER 7 COMPETENT OFFICIAL

Section 67 For the purpose of performing duties under this Act, a competent official shall be an official under the Criminal Code and shall have the powers and duties, as follows :

(1) To enter buildings, offices, factories or warehouses of any persons during sunrise and sunset or during working hours of such places or to enter vehicles for the purposes of searching for merchandises or examining when there is a reasonable doubt that an offence under this Act has been committed;

¹⁸ Name of Chapter 6 "Litigation with respect to Copyright and Performers' Rights, Data of Rights Management and Technological Measures" has been amended by the Copyright Act (No.2) B.E.2558.

¹⁹ Section 64 Paragraph 2 has been added by the Copyright Act (No.2) B.E.2558.

²⁰ Section 65/1 has been added by the Copyright Act (No.2) B.E.2558.

(2) To seize or to attach documents or materials relating to the offence for the purpose of litigation when there is a reasonable doubt that an offence under this Act has been committed;

(3) To order any person to give statements or to send 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 under this Act.

Any related party shall provide reasonable convenience to the competent official on duty.

Section 68 The competent official shall produce the identification card to the related party.

The identification card of the competent official shall be in accordance with the form prescribed by the Minister.

CHAPTER 8 STIPULATED PENALTY

Section 69 Any person who has infringed the copyright or performers' rights under Section 27, Section 28, Section 29, Section 30 or Section 52 shall be fined for an amount of twenty thousand Baht to two hundred thousand Baht.

If the offence under Paragraph 1 is committed with commercial purposes, the offender shall be punished with imprisonment of six months to four years or fined for an amount of one hundred thousand to eight hundred thousand Baht, or both.

Section 69/1²¹ Any person who has infringed the copyright under Section 28/1 shall be punished with imprisonment of six months to four years or fined for an amount of one hundred thousand to eight hundred thousand Baht, or both.

Section 70 Any person who has infringed the copyright under Section 31 shall be fined for an amount of ten thousand Baht to one hundred thousand Baht.

If the offence under Paragraph 1 is committed with commercial purposes, the offender shall be punished with imprisonment of three months to two years or fined for an amount of fifty thousand to four hundred thousand Baht, or both.

Section 70/1²² Any person who has infringed the data of rights management under Section 53/1 or Section 53/2 or has violated the technological measures under Section 53/4 shall be fined for an amount of ten thousand Baht to one hundred thousand Baht.

If the offence under Paragraph 1 is committed with commercial purposes, the offender shall be punished with imprisonment of three months to two years or fined for an amount of fifty thousand to four hundred thousand Baht, or both.

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Section 71 Any person who has failed to give statements or to send documents or materials as ordered by the Commission or the sub-committee under Section 60 Paragraph 3 shall be punished with imprisonment for not exceeding three months or fined for not exceeding fifty thousand Baht, or both.

Section 72 Any person who has obstructed or failed to provide convenience to a competent official who has performed his duty under Section 67 or has breached or failed to comply with the order of the competent official under Section 67 shall be punished with imprisonment for not exceeding three months or fined for not exceeding fifty thousand Baht, or both.

Section 73 Any person who has committed an offence and has been punished under this Act and has subsequently committed an offence under this Act within five years after being discharged from the penalty shall be punished for two times of the punishments prescribed for such offence.

Section 74 (Unenforceable)²³

²¹ Section 69/1 has been added by the Copyright Act (No.3) B.E.2558.

²² Section 70/1 has been added by the Copyright Act (No.2) B.E.2558.

²³ In case, a juristic person has committed an offence under this Act, it shall be regarded that all directors or managers of such juristic person shall be the accomplices of such juristic person, unless it can be proved that such juristic person has committed the action without the knowledge or consent of such persons.

(As per the Decision of the Constitutional Court No.5/2556 dated 16th May 2013, it was decided that the Copyright Act B.E.2537 Section 74 has the issue relating to enforceability under the Constitution of the Kingdom of Thailand, Section 39 Paragraph 2; therefore, Section 74 shall be unenforceable under the Constitution Section 6)

Section 75²⁴ All things made or imported into the Kingdom which constitute an infringement of copyright or performers' rights and all things used for committing the offence shall be totally forfeited, or in case, the Court has deemed it expedient, the Court may issue an order that such things are unusable or may issue an order to destroy such things; and the tort-feasor shall pay expenses for such purpose.

Section 76 Half of the amount of fines paid in accordance with the judgement shall be disbursed to the owner of copyright or performers' right; provided that it may not be prejudicing the right of the owner of copyright or performer's rights to bring a civil action for damages for the amount which exceeds the amount of fines received by the owner of copyright or performers' rights.

Section 77²⁴ The Director-General shall have the power to impose fines for the offences under Section 69 Paragraph 1 and Section 70 Paragraph 1.

TRANSITORY PROVISIONS

Section 78 The existing copyrighted works under the Act for the Protection of Literature and Artistic Works B.E. 2474 or the Copyright Act B.E. 2521 on the date when this Act has come into force shall be protected by this Act.

The works which have been made before the date when this Act has come into force and which are not copyrighted works under the Act for the Protection of Literature and Artistic Works B.E. 2474 or the Copyright Act B.E. 2521 but has become the copyrighted works under this Act shall be protected by this Act.

Counter-Signature:

Mr. Chuan Leekpai

Prime Minister

Office of Justice Affairs

²⁴ Section 75 has been amended by the Copyright Act (No.2) B.E.2558.

²⁵ Section 77 has been amended by the Copyright Act (No.2) B.E.2558.

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Note:- Reason for promulgation of this Act: Whereas, the Copyright Act B.E.2521 has been enforced for a long period of time and the provisions contained therein have been inconsistent with the changing situations within and outside the country, particularly the domestic and international economic, commercial and industrial development and expansion, it is deemed expedient to improve measures of copyright protection more effectively to cope with such changes, and for promotion of creation of works on literature, artistic works and other related works; therefore, it is necessary to enact this Act.

Announcement of the Office of the Constitutional Court; Subject: the Constitutional Court has decided that the provisions of laws are contrary to or consistent with the Constitution.²⁶

The Copyright Act (No.2) B.E.2558²⁷

Section 2 This Act shall come into force when a period of one hundred and eighty days as from the date following the date of its publication in the Government Gazette has been elapsed.

Section 14 For all cases of infringement of copyright or performers' rights which have been entered with criminal actions prior to the date when this Act has come into force, and such cases have not become final, the provisions contained in Section 75 of the Copyright Act B.E.2537 as amended by this Act, shall apply to things made or imported into the Kingdom which have infringed the copyright or performers' rights.

Section 15 The Minister of Commerce shall take charge under this Act.

Note:- Reason for promulgation of this Act: Whereas, at present, the data of rights management and technological measures have been used for the protection of copyrighted works or performers' right, it is deemed expedient to prescribe the protection of the data of rights management and technological measures and to prescribe additional exceptions for infringement of copyright and performers' rights; and it is expedient to prescribe that the Court shall have powers to issue an order that the person who has infringed the copyright or performers' rights which caused the copyrighted works or performers' rights to be accessed by the public, shall pay additional damages, and it is expedient to prescribe that the Court shall have powers to issue an order to confiscate or destroy the things used in the commission of offence, and the things made or imported into the Kingdom, which has infringed the copyright or performers' rights; therefore, it is necessary to enact this Act.

The Copyright Act (No.3) B.E.2558²⁸

²⁶ The Government Gazette, Volume 130 Section 43A, Page 16 dated 21st May 2013

²⁷ The Government Gazette, Volume 132 Section 6A, Page 7 dated 5th February 2015

²⁸ The Government Gazette, Volume 132 Section 6A, Page 14 dated 5th February 2015

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Section 2 This Act shall come into force when a period of sixty days as from the date following the date of its publication in the Government Gazette has been elapsed.

Note:- Reason for promulgation of this Act: Whereas, at present, there are issues of unauthorized reproduction of Thai and foreign movies by means of sound and/or image recording from copyrighted cinematographic work during the show in cinema, and subsequent reproduction thereof in media such as CD-ROM or DVDs, etc., for distribution, which caused the tremendous economic damage to the movies industry and the related businesses, which is contrary to the seeking of benefits from the copyrighted works of the owner of copyright or the licensees, and by virtue of exceptions of the infringement of copyright under the current copyright law by claiming as reproduction for self-benefits; therefore, it is expedient to amend the Copyright Act B.E.2537 by prescribing that the infringement of copyright in such manner shall be a specific offence and shall be punished similarly to the infringement of copyright for commercial purposes; moreover, it is expedient to prescribe additional exceptions of infringement of copyright for the benefits of the disabled of sight, hearing or intelligence and other types of disabilities as prescribed in the Royal Decree to be able to access the copyrighted works as may be necessary; therefore, it is necessary to enact this Act.

Prepared by: Kritdayuth
18th February 2015

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