

FACT SHEET
ON IP PROTECTION AND ENFORCEMENT IN THAILAND
(as of October 2021)

Developments at Policy Level

- IP Policy

• Thailand's IP policy has consistently been carried out under the auspices of the National Committee on Intellectual Property Policy. The 20-year Intellectual Property (IP) Roadmap consisting of six areas; (1) IP creation (2) IP protection (3) IP commercialization (4) IP enforcement (5) Geographical indications (GIs) and (6) Genetic Resources (GRs), Traditional Knowledge (TK), and Traditional Cultural Expressions (TCEs) has persistently continued to serve as the direction for developments of the national IP system.

- Cabinet's Resolution

• Following the Cabinet resolution in May 2019 instructing all government agencies to ensure uses of legitimate software in procuring computers and relevant appliances, the Copyright Committee initiated and contemplated the Government Procurement Guidelines on the Acquisition of Legitimate Software drafted by its Sub-committee and approved it in August 2020. The said Guidelines were circulated on 5 November 2020 to all Ministries to be used and implemented as appropriate. To ensure use of the Guidelines, the Cabinet, on 29 June 2021, had a resolution instructing all Ministries to implement the Guidelines, which help concretize the Cabinet Resolution of May 2019.

COVID-19 Response

The DIP issued the following Notifications and Practical Guidelines in response to the COVID-19:

- The Notification & Practical Guidelines on requests for extension of the time periods & proceedings according to the laws under supervision of the DIP in the situation of coronavirus disease (COVID-19)
- The DIP's Notification on methods & requirements of applications for electronic certification and identity confirmation for e-filing in the situation of coronavirus disease (COVID-19)
- The Practical Guidelines for applicants in relation to requests for extension of the time periods & proceedings according to the Licensing Facilitation Act B.E. 2558 during the situation of coronavirus disease (COVID-19).
- The DIP's Notification on the extension of time periods for submission of documents and request for amendment of patent and petty patent applications during the new wave of the coronavirus disease (COVID-19) outbreak (*applicable to the deadlines that fall between 12 July – 31 August 2021*)
- In addition to the said Notifications and Practical Guidelines, the DIP also compiles collective management organizations' measures for helping copyright users affected by the COVID-19 and makes them available on the DIP website.
- Due to the COVID-19 situation in Thailand, the DIP has partially provided in-person IP registration services and planned to provide the full service when the COVID-19 situation becomes much less severe. During this period, actions regarding IP registrations can be made via e-filing, e-payment, e-certificate, e-mail, and mail. IP applicants can contact DIP officials via the "1368" hotline for further information.

Legislative Developments and Accession to International Agreements

• Patent Act: Thailand is in the process of amending the Patent Act B.E. 2522 (1979), which covers both the patent section and the industrial design section. The amendments of the said two sections were previously separated in different bills. With the suggestion of the Council of State on combining the said two bills, the DIP prepared the single draft

amendment to ensure the efficiency and consistency and made it available for public comments in October 2020. All received comments have been taken into account. The DIP has already proposed the said draft amendment to the Cabinet in June 2021, and then the Secretary of the Cabinet will put this matter on the agenda for the Cabinet's consideration, depending on the priority of all issues brought to the Cabinet's consideration.

- Copyright Act: Thailand is in the process of amending the Copyright Act B.E. 2537 (1994), which is divided into two phases.

- The first phase aims at enhancing mechanisms to protect copyright in the digital environment and preparing for Thailand's accession to the WIPO Copyright Treaty (WCT). The draft amendment of the Copyright Act in this phase was approved by the Cabinet in September 2020 and by the government whip in November 2020 respectively. On 27 January 2021, the House of Representatives also approved the draft amendment and set up an ad-hoc committee to consider the bill. The ad-hoc committee held a public consultation in July 2021, completed its consideration on 18 August 2021, and recently made the report to the House of Representatives. Then, the bill will be forwarded to the Senate for further consideration, which is the final stage, leading to the Parliament's approval on the bill. Upon the completion of the amendment of the Copyright Act, Thailand will be ready to join the WCT as approved by the National Legislative Assembly on 21 December 2018.

- The second phase covers Thailand's preparation for the accession to the WIPO Performances and Phonograms Treaty (WPPT). The DIP is currently developing the draft amendment of the Copyright Act for this phase. The preliminary draft amendment will be finished by the end of this year and then be tailored and developed for being a better draft. After that, the bill will be available for public comments to ensure that all stakeholders can engage and contribute to the improvement of the bill.

Smart DIP

- The DIP has continued to facilitate IP applications by making available an electronic filing (e-filing) system as an alternative channel for submitting applications. In addition, the DIP has consistently improved the effectiveness and efficiency of the e-filing system with an aim of making it a real paperless facility for the applicants and the examiners. In doing so, electronic authentication (e-authentication), electronic portal (e-portal) and electronic payment (e-payment) have been put in place.

- To provide the public with more convenience on our IP services, the DIP recently launched the "Smart DIP" project consisting of three schemes.

- The three schemes are as follows;

- The E-certificate: The DIP will issue the e-certificate in addition to the paper certificate. With regard to patent in particular, right holders will be able to receive the patent e-certificate within 15 days from the registration date, compared with 60 days to receive the paper certificate. The e-certificate is planned to be extended to trademark and copyright at later stage.

- The Online Dispute Resolution (ODR): The DIP provides an online channel for IP dispute resolution via video call, which will facilitate disputing parties in terms of time, costs, and need to travel to the DIP. On 7 December 2020, the DIP and the Thai Arbitration Center (THAC) signed the "MOU on Cooperation for the Development of IP Dispute Resolution" to ensure that mechanisms of the ODR would be put in place efficiently and attractive to disputing parties. Since the running of the system from January 2021 to August 2021, four cases were already settled through this channel; two were related to copyright and two were related to trademark.

- Analysis on Technology Trends and Utilization of Patent Big Data & Patent Database: This scheme comprises two sub-schemes that are; (a) “Patent Expiration Date Early Warning” aims at promoting and facilitating research and development (R&D) by making use of the availability of patent big data including patent expiration date. (b) “Patent Opposition Database” aims at alerting opposition periods of both invention and design patent applications.

Efficiency Enhancement of IP Examination & Registration

- Trademark

- On 30 September 2020, the DIP established the “ Working Group on Administration of Quality of Trademark Examination and Registration.” One of its tasks is to find the ways to enhance the efficiency and quality of trademark examination and registration. At present, the working group is in the process of revising the “ Guidelines on the Trademark Examination” which trademark examiners can use as a direction. The draft revised Guidelines was available for public comments in March 2021 and has currently been developed before its finalization.

- On 5 April 2021, the DIP issued the Notification on Accelerated Issuance of Trademark First Action (First Action Fast Track) and the Notification on Accelerated Consideration on the Request of Trademark Renewal (Fast Track) in order to facilitate the registration and renewal of trademarks for businesses and the public. The Notifications provide for the accelerated issuance of trademark first action (from 12 months to 6 months) and the accelerated consideration on the request of trademark renewal (from 60 days to 60 minutes) for applications/requests that meet the specified criteria.

- Patent

- The DIP has taken several measures to enhance the efficiency of patent examination. Such measures include the establishment of the “Working Group on Driving the Development of the Patent Office’s Operations” , which consists of four Sub-working groups dealing with four different areas that are; (1) patent quality management (2) classification symbols of patent applications (3) academic matters, and (4) information technology

- It is noted that the Sub-Working Group on Patent Quality Management meets regularly and has brought about some concretized works including the checklist for preliminary examination and the unified format of Office Action. In addition, the Working Group has currently been developing the quality control standard form, which will be used as a checklist for substantive examination.

- Copyright

- To enhance the efficiency of the copyright database and make it more user-friendly and correspond to the need of users, in February 2021, the DIP set up the Working Group on the Development of Copyright Database whose duty includes providing recommendations on possible developments of copyright database and then held the consultation meeting on 22 February 2021 with the digital music providers and CMOs to discuss aspects of copyright database and its possible developments. As a result, the DIP has made available on its website the new set of data including the name list of CMOs and their music and royalty rate, the list of music by alphabetical order, the list of foreign music.

- In addition, the DIP provides the accelerated track for copyright notification from 30 days to 3 days. The said time reduction is for a copyright notification containing no more than ten copyright works that is filed via the e-filing system with all required documents and not subject to office action

- In order to further streamline the copyright notification procedure, the DIP has amended the copyright notification application form, the request for the amendment, and the certificate of copyright notification to make them more user-friendly. The amendment also aims to ensure the accuracy of the information provided in the application form by updating the section on applicant's declaration.

Code of Conduct for CMOs

- Since November 2020, the Code of Conduct for Collective Management Organizations, whose aim is to promote transparency, accountability, and good governance among CMOs, has been released and distributed to CMOs and relevant stakeholders, including those in the music industry.

- The DIP organized the “Workshop on The Way Forward: Next Steps of CMOs in Thailand” on 25 November 2020 to raise awareness and provide information contained in the Code of Conduct for CMOs. The workshop also served as a forum for exchanging views on how to improve the royalty collection system in Thailand. During the workshop, a number of CMOs indicated their intentions to follow the Code of Conduct.

- Recognizing the growth of digital music industry, the DIP held a consultation meeting with the digital music providers such as Joox, Believe Digital and Fungjai, and the relevant CMOs on 19 January 2021 to exchange information on digital collective management and discuss an appropriate approach for utilizing the Code of Conduct.

Enforcement Efforts

- Enforcement in Physical Markets

- Despite the COVID-19 outbreak, enforcement agencies have consistently monitored shopping areas with a history of counterfeiting and piracy. Notably, the pandemic has rendered such several shopping areas and markets inoperable. Moreover, market surveillance conducted by the DIP, the Royal Thai Police, and the IP right holders has identified exceptionally low infringing activities or none in most areas and markets during the COVID-19 period.

- It shall be noted that the enforcement effort in the physical market also extends to the storages and warehouses. On 14 February 2021, for example, the Department of Special Investigation (DSI) and the local police conducted searches of two warehouses used for storing and distributing counterfeit goods in Nakhon Sawan province. More than 20,000 counterfeited goods such as handbags, wallets, glasses, watches, and scarfs bearing trademarks of luxury brands, having the market value of over 100 million baht, were seized.

- In certain circumstances, the physical enforcement at the storages and warehouses is resulted from the investigation expanded from the online infringement. For instance, on 28 August 2021, the Royal Thai Police, after receiving a complaint from a representative of trademark owner about sale of goods infringing the trademark on online platforms, expanded the investigation and executed a search warrant at a warehouse in Nakhon Pathom province. In this case, the police could seize more than 20,000 items of garments and cosmetics, with estimated damages of 2 million baht.

- Enforcement against Online Infringement

- Since the revised Computer Crime Act entered into force in 2017, rights owners have made use of site blocking mechanisms under the Act to combat online infringement. Courts have issued orders to block or disable access to copyright infringing contents more than 1,500 URLs.

- In addition to the legal measure stipulated in the Computer Crime Act, the DIP has supported the voluntary cooperation between IPR owners and Internet platforms in fighting against online IPR infringement, thereby initiating a draft MOU on the Protection of IPRs on the Internet, aimed at setting up a voluntary mechanism to effectively stop online IPR infringement. The said draft MOU was sent to the Internet platforms and right holders for comments, which could ensure stakeholders engagement and transparency. The stakeholder consultation meetings were also held by the DIP to discuss the MOU in details and provide opportunities to exchange information and views particularly on practicability aspects. The signing of the MOU, which was followed by a press conference presided by the Deputy Prime Minister and Minister of Commerce (H.E. Mr. Jurin Laksanawisit), took place on 11 January 2021 at the Ministry of Commerce. At present, the signatories include 24 representatives of IPR owners, major e-commerce platforms (Lazada, Shopee and JD Central), and relevant government agencies under the Ministry of Commerce that are the Department of Intellectual Property (DIP), the Department of Business Development (DBD), and the Department of International Trade Promotion (DITP).

- On 5 March 2021, the DIP sent the letter to Facebook, Inc. in California, inviting Facebook to join the MOU as well as exploring the possibility to jointly organize the outreach activities regarding the promotion of channels for IPR owners to notify online IPR infringement.

- To review and ensure efficiency of the implementation of the MOU on the Protection of IPRs on the Internet, a meeting with the signatories is scheduled every three months. Since 11 January 2021, the DIP has already held such meetings twice in March and July 2021. During the meetings, the three signatory e-commerce platforms informed that they already set up channels for receiving reports on sales of IPR-infringing goods in accordance with the MOU. From March to June 2021, 449 items were reported by IPR owners through such channels.

- On 8 February 2021, the DSI reported its raids at premises used for operating an illegal streaming website in Nonthaburi and Nakhon Pathom and arrested the perpetrators. The raids also resulted in the seizure of equipment such as receivers, decoders, satellite dishes, computers, hard disks and mobile phones; and the shutdown of *fwiptv.cc*, which was a large pirated website in Thailand. The website had over 700,000 views per month and charged its subscribers 300 baht per month.

- Border Enforcement

- Under the Customs Act B.E. 2549 (2006) and the Export and Import of Goods Act B.E. 2522 (1979), customs officers have *ex officio* authority to intercept pirated copyright and counterfeit trademark goods destined for import or export and such goods in transit.

- The Customs Department and other enforcement agencies have continued to work relentlessly to intercept counterfeit trademark and pirated copyright goods at more than 50 customs checkpoints throughout the country to prevent the smuggling of IPR-infringing items into the country.

- To facilitate border enforcement, the Customs Department, in collaboration with the DIP, has continued to develop, update, and make use of its trademark database which is accessible by relevant customs officers stationed at customs checkpoints throughout the country. In addition, the DIP has helped coordinate with trademark owners or their representatives to inspect seized items.

- The revised Customs Act B.E. 2560 (2017) notably sets higher penalties for importation, transit and transshipment of counterfeit goods to a maximum of 10 years imprisonment and/or a fine of up to 500,000 Baht. Such penalties are also extended to those who attempt to conduct the said actions.

- To enhance the efficiency of IPR enforcement at the border, the DIP, together with the Customs Department and the Department of Foreign Trade (DFT), has currently

reviewed the secondary legislation pertaining to IPR enforcement at the border under the Export and Import of Goods Act B.E. 2522 (1979) so that it reflects current circumstances and can ensure effective border enforcement. The DFT notably made the draft Ministry of Commerce's Notification on the prohibition of export, import, and transit of counterfeit goods and pirated goods available for public comments in July 2021 and has currently been in the draft-improvement process.

- Recently, the DIP, the Customs Department, and the relevant agencies participated in the *Thailand Workshop on Customs Enforcement of IPRs* organized by the EUIPO's IP Key South East Asia on 21-22 September 2021. The workshop aims to open a forum for Thai and EU custom agencies to exchange information and views on aspects of IPR enforcement at border including practical challenges and ways forward.

- Destruction of IPR Infringing Goods

- To ensure that IPR infringing goods are removed from channels of commerce, all pirated and counterfeit goods are subject to destruction. The DIP, in collaboration with the Internal Security Operations Command (ISOC), the Royal Thai Police, the Thai Customs Department, the Department of Special Investigation, and IPR owners, organizes a ceremony on the destruction of IPR infringing goods on a yearly basis.

- The 2021 IPR Infringing Goods Destruction Ceremony took place on 13 September 2021 in the virtual format at the Office of the Permanent Secretary, Ministry of Commerce. The ceremony featured a live broadcast of the destruction from Saraburi and Chonburi provinces. The destruction ceremony was witnessed by several groups of stakeholders from both public and private sectors, including the USPTO, the US Embassy in Bangkok, AMCHAM Thailand, and US-ASEAN Business Council.

- Apart from the said destruction ceremony, the Customs Department also destroys IPR infringing items on a regular basis.

Awareness and Educational Activities

- Due to the COVID-19, IP awareness and educational activities have been more carried out via online and social media including Facebook and Youtube. The DIP has consistently released several infographics and VDO clips on its Facebook page and Youtube channel to raise IP awareness and disseminate knowledge of IP including the VDO clips titled "IP Progress and Development in Thailand", "Protection of Thai IP in the Global Trade", and "Process for Checking Trademark Status by the General Public." In addition, the DIP in cooperation with the Agency for Cultural Affairs, Government of Japan, and the Content Overseas Distribution Association has recently released the VDO clips and cartoons in the theme of "Hello Kitty" to build respect for copyright and avoid copyright piracy.

- On 5 November 2020, the DIP in cooperation with the Royal Thai Police organized the Law Enforcement Seminar: Preparation for Suppression of IPR Infringement in the Digital Era, aiming to enhance enforcement officers' knowledge and understanding on suppression of IPR infringement on the Internet. Over one hundred participants from the Royal Thai Police, the DSI, and the Internal Security Operations Command (ISOC), and the DIP joined the said seminar.

- The DIP in cooperation with the Content Overseas Distribution Association (CODA) 2021 held the 2021 Japan-Thailand Copyright Forum: Copyright and Cosplay aiming to discuss aspects of copyright related to cosplay and the relevant licensing on 15 March 2021 in Bangkok.

- The DIP, in collaboration with partners including the USPTO, MPA, JETRO, True Visions, brand owners, and leading Thai schools and universities jointly carried out

the “Go for Real” campaign to encourage IPR awareness among high school and university students. This campaign consists of activities including a series of virtual seminars on IP protection and the harms of IP infringement, a video clip contest, and coaching on how to produce a quality video clip that can be used as a tool to raise public awareness on this subject. The award-giving ceremony for a video clip contest was held on 26 March 2021 in Bangkok.

- The DIP and the IP Key South-East Asia jointly organized “Webinar on the Protection and Enforcement of IP Rights in Online Platforms” on 25-26 May 2021 in response to the increasing business activities operated in the online environment.

- Recognizing the advent of changes caused by the COVID-19, the DIP organized “*Webinar on Digital Content & IP in New Normal*” on 12 July 2021 to discuss various IP paradigms particularly on protection of digital content and necessary adaptations.

- On 18-19 August 2021, the DIP organized the *IP Enforcement: Virtual Seminars in the New Normal*, aiming to enhance enforcement officers’ knowledge and understanding on suppression of IPR infringement particularly in the current situation of COVID-19 outbreak. Over one hundred participants from the Royal Thai Police, the Internal Security Operations Command (ISOC), the Customs Department and the DIP joined the said seminar.

IP Commercialization

- The DIP organizes an annual contest called IP Champion to foster commercialization and stimulate creativity among the public. *The 2021 IP Champion awards* have been categorized in five fields; copyright, trademark, geographical indication, design, and patent. Applications for the 2021 IP Champion contest were open from 15 June to 30 July 2021. The awards ceremony was held during the opening ceremony of the 2021 IP Fair on 15 September 2021.

- To continue with its annual IP Fair, the DIP held *the 2021 IP Fair in an entirely virtual format* at www.thailandipfair.com on 15-19 September 2021, which featured IP exhibition, IP mart, IP advisory service, IP-related seminars, GI market, and business matching. The main objective of the event is to raise awareness on the IP creation, protection and commercialization and to promote the role of IP in enhancing competitive advantage to businesses, innovators, researchers and the general public.

- The Intellectual Property Innovation Driven Enterprise Center (IP IDE Center) of the DIP has recently changed its name to *the IP Advisory Center (IPAC)*. The name change reflects the Center’s broader range of services, which include encouraging and assisting entrepreneurs and SMEs to use innovation, technology, and findings from research and development to improve their competitiveness, and providing IP consultation services to various business sectors. In addition, to help enhance the capacity of small businesses for their IP commercialization, the Center launched *the “Intellectual Property for Businesses” or “IP4B” project*, whereby a number of small businesses have been chosen to participate in the incubation program so that they can learn to develop and promote their products effectively.

- In order to facilitate access to IP information and develop collaborative networks with relevant institutions within the country, the DIP is running the Technology and Innovation Support Center Program (TISC Program). The TISC program seeks to establish Technology and Innovation Support Centers within academic institutions, research institutions, and IP-related agencies. In addition to providing information about IP, the centers will also offer services such as technology search, patent trend analysis, and trainings. To strengthen the collaborative networks, *the DIP has signed an MOU on*

Technology and Innovation Support Center with 10 higher education institutions across the country on 13 August 2021.

- The DIP took part in the celebration of the *World IP Day 2021* by organizing an online panel discussion on “IP & SMEs: Taking Your Ideas to Market” on 26 April 2021. The event was aimed at promoting innovation and creativity among SMEs and encouraging use of IP as a business tool to improve their competitiveness.

Stakeholder Engagement

- The DIP organizes consultation meetings with IP rights holders on a yearly basis to provide updates on IP situations in Thailand. Such meetings have served as fora for relevant government agencies and the IP rights holders to discuss all IP-related issues to ensure that views and concerns expressed by IP-related industries are taken into consideration.

- The most recent consultation meeting was held on 30 March 2021 at the Sukosol Hotel, Bangkok. Due to the COVID-19 pandemic, another consultation meeting planned to be organized in August 2021 could not be held. In this regard, the DIP sent the fact sheet on intellectual property protection and enforcement in Thailand to all stakeholders for views and comments.

- To ensure right holders’ engagement in the cross-cutting issues such as the process of determining median price of medicines, the DIP also opened a forum for stakeholders to discuss the said issue by holding the online meeting on 13 January 2021, which was actively participated by representatives from pharmaceutical companies, the Thai FDA, PReMA, and the DIP.

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