

COPYRIGHT ACT B.E. 2537 (1994)
AMENDED BY COPYRIGHT ACT (NO. 2) B.E. 2558 (2015),
COPYRIGHT ACT (NO.3) B.E. 2558 (2015)
AND COPYRIGHT ACT (NO.4) B.E. 2561 (2018)*

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 is graciously pleased to proclaim that:

Whereas it is expedient to revise the law on copyright;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1. This Act is called the “Copyright Act, B.E. 2537 (1994)”.

Section 2.¹ This Act shall come into force after the expiration of ninety days from the date of its publication in the Government Gazette.

Section 3. The Copyright Act, B.E. 2521 (1978) shall be repealed.

Section 4. In this Act:

“author” means a person who makes or creates any work, which is a copyright work by virtue of this Act;

“copyright” means the exclusive right to do any act by virtue of this Act with respect to the work created by the author;

“literary work” means any kind of literary work such as books, pamphlets, writings, printed matters, lectures, sermons, addresses, speeches, including computer programs;

“computer program” means instructions, set of instructions or any other things, which are used with a computer so as to operate the computer or to generate an output, whichever the computer language is;

“dramatic work” means a work with respect to choreography, dancing, acting or performance in dramatic arrangement, including a pantomime;

“artistic work” means a work of any one or more of the following characteristics:

(1) work of painting or drawing which means a creation of configuration consisting of either lines, lights, colors or other things or the composition thereof upon one or more materials;

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¹ Government Gazette Vol. 111, Part 59 a, Page 1, dated 21st December B.E. 2537 (1994).

(2) work of sculpture which means a creation of configuration with tangible volume;

(3) work of lithography which means a creation of picture by printing process and includes a printing block or plate used in the printing;

(4) work of architecture which means a design of building or construction, an interior or exterior design as well as a landscape design or a creation of a model of building or construction;

(5) photographic work which means a creation of images with the use of an image-recording equipment allowing light to pass through a lens to a film or a piece of glass and to be developed with liquid chemical of specific formula or with any process that creates images, or a recording of images with other equipments or methods;

(6) work of illustration, map, structure, sketch or three-dimensional work with respect to geography, topography or science;

(7) work of applied art which means a work applying one or a composition of the works mentioned in (1) to (6) for other uses apart from the appreciation in the merit of the work, such as for practical use, decoration of materials or appliances, or for commercial benefits;

Provided that, whether or not the work in (1) to (7) has an artistic value and it shall include photographs and plans of such work;

“musical work” means a work with respect to a song which is composed for playing or singing whether with melody and lyrics or only melody, including arranged and transcribed musical notes or musical diagram;

“audiovisual work” means a work consisting of a series of images recorded on any kind of materials and capable of being replayed with an equipment necessary for such material, including the sounds accompanying such work, if any;

“cinematographic work” means an audiovisual work consisting of a series of images which can be shown in succession as motion pictures or can be recorded upon other materials so as to be shown in succession as motion pictures, including the sounds accompanying such motion pictures, if any;

“sound recording” means a work consisting of a series of music, sound of a performance or any other sounds recorded on any kind of material and capable of being replayed with an equipment necessary for such material, but not including the sounds accompanying a cinematographic work or another audiovisual work;

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

“sound and video broadcasting work” means a work which is communicated to the public by means of radio broadcasting, sound and/or video broadcasting on television, or by any other similar means;

“reproduction” includes any method of copying, imitation, duplication, molding, sound recording, video recording or sound and video recording for the significant part from the original, copy or publication whether in whole or in part and, as for a computer program, means duplication or copying of the program from any medium for the significant part with any method without a manner of creating a new work whether in whole or in part;

“adaptation” means a reproduction by transformation, improvement, modification or emulation of the original work for the significant part without a manner of creating a new work whether in whole or in part;

(1) with regard to literary work, it shall include a translation, a transformation or a compilation by means of selection and arrangement;

(2) with regard to computer program, it shall include a reproduction by means of transformation, improvement or modification of the program for the significant part without a manner of creating a new work;

(3) with regard to dramatic work, it shall include the alteration of a non-dramatic work to a dramatic work or a dramatic work to a non-dramatic work, whether in the original language or another language;

(4) with regard to artistic work, it shall include the alteration of a two-dimensional work or a three-dimensional work to a three-dimensional work or a two-dimensional work or the making of a model from the original work;

(5) with regard to musical work, it shall include an arrangement of tunes or an alteration of lyrics or melody;

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

“publication” means the distribution of duplicated copies of a work in whatever form or character, with consent of the author where such copies are available to the public with a reasonable quantity having regard to the nature of the work; provided that 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 a work, the exhibition of an artistic work and the construction of a work of architecture shall not constitute publication;

“rights management information”² means the information which indicates an author, works of authorship, performer, performance, copyright owner or terms and conditions for use of the work as well as numbers or codes signifying such information on which such information is attached or appeared in connection with the copyright work or recording material of the performance;

“technological protection measure”³ means a technology designed to prevent reproduction of, or to control access to a copyright work or recording material of the performance, and such technology is efficiently utilized for that copyright work and recording material of the performance;

“circumvention of a technological protection measure”⁴ means an act in any manner whatsoever which makes a technological protection measure inefficient;

“competent official” means a person appointed by the Minister for the execution of this Act;

² Section 4 the definition of “rights management information” was added by the Copyright Act (No.2) B.E. 2558 (2015).

³ Section 4 the definition of “technological protection measure” was added by the Copyright Act (No.2) B.E. 2558 (2015).

⁴ Section 4 the definition of “circumvention of a technological protection measure” was added by the Copyright Act (No.2) B.E. 2558 (2015).

“Director General” means the Director General of the Department of Intellectual Property and shall include the persons entrusted by the Director General of the Department of Intellectual Property;

“Committee” means the Copyright Committee;

“Minister” means the Minister having charge or control of the execution of this Act.

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

Such Ministerial Regulations shall come into force upon their publication in the Government Gazette.

Chapter 1

Copyright

Part 1

Copyright Works

Section 6. Copyright works by virtue of this Act means 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, in whatever 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) rules, regulations, notifications, 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

Acquisition 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 copyright protection of which Thailand is a member, provided that the residence must be at all times 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 a 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 a 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 the case where 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 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 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 the 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 (5) of paragraph one are unfair restrictions of the 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 when 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 against the work to the extent that such act would cause damage to the reputation or dignity of the author. When the author has died, the heir of the author is entitled to litigation for the enforcement of his 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 a sound 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) shall be 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 by virtue of this Act without authorization in accordance with section 15 (5) whether against the sounds or images shall be deemed an infringement of copyright:

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

Section 28/1.⁵ A reproduction by sound or video recording or both sound and video recording of a cinematographic work by virtue of this Act in a cinema in accordance with the law on film and video, whether in whole or in part, without authorization in accordance with section 15 (5) during the display of such cinematographic work in the cinema, shall be deemed an infringement of copyright, and section 32 paragraph two (2) shall not be applied.

⁵ Section 28/1 was added by the Copyright Act (No.3) B.E. 2558 (2015).

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) shall be 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) shall be deemed an infringement of copyright:

- (1) reproduction or adaptation,
- (2) communication to the public,
- (3) letting for hire of the original or copies 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 shall be 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 the public;
- (3) distribution in the manner which may prejudice the owner of copyright;
- (4) self-importation or importation by order into the Kingdom.

Part 6

Exceptions to 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 shall not be deemed an infringement of copyright.

Subject to paragraph one, any act against the copyright work in paragraph one shall not be 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 the result of such proceedings;

(6) reproduction, adaptation, exhibition or display by a teacher for the benefit of his teaching, provided that the act is not for profit;

(7) reproduction, adaptation in part of a work or abridgement or making a summary by a teacher 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 (repealed)

Section 32/1.⁷ A distribution of an original or copies of a copyright work by any person who lawfully acquires the right of ownership in such original copyright work or copies of such original copyright work shall not be deemed an infringement of copyright.

Section 32/2.⁸ An act against a copyright work or copies of a copyright work, which has been lawfully acquired, in the computer system in the manner of reproduction, which must exist for the utilization of copies to enable the devices equipped in the computer system or the process of copyright work submission via a computer system to run normally shall not be deemed an infringement of copyright.

Section 32/3.⁹ Where there is reasonable evidence to believe that there is an infringement of copyright in the computer system of a service provider, the copyright owner may file a petition to the court in order that the court orders the service provider to suspend such infringement of copyright.

For the benefit of this section, the service provider means:

(1) A person who provides service to other persons regarding the access to the internet or other mutual communication via a computer system, whether on their own behalf, or in the name of, or for the benefit of another person;

(2) A person who provides service regarding the storage of computer data for the benefit of another person.

The petition according to paragraph one shall contain apparent details concerning the following information, evidence and relief applied:

(1) name and address of the service provider;

(2) copyright work claimed to have been infringed;

(3) work claimed to have been created by an infringement of copyright;

(4) cognizance process, date and time in finding the act, and act or behaviour as well as other evidence related to an infringement of copyright;

(5) potential damages caused by an act claimed to be an infringement of copyright; and

(6) relief applied for requiring the service provider to remove the work created by an infringement of copyright from the service provider's computer system or suspend an infringement of copyright by any other method.

⁶ Section 32 paragraph two (9) was repealed by the Copyright Act (No.4) B.E. 2561 (2018).

⁷ Section 32/1 was added by the Copyright Act (No.2) B.E. 2558 (2015).

⁸ Section 32/2 was added by the Copyright Act (No.2) B.E. 2558 (2015).

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

When the court receives the petition under paragraph one, the court shall make an inquiry. If the court considers that such petition contains all completed details as required in paragraph three and there is a necessity that the court considers it appropriate to give permission based on such petition, the court shall order the service provider to suspend such allegedly copyright infringing act or to remove the work claimed to have been created by an infringement of copyright from the service provider's computer system within a period specified by the court. The court's order shall be enforced immediately, and shall be sent to the service provider without delay. In this case, the copyright owner shall take legal proceedings against the infringer within a period specified in the court order to suspend an allegedly copyright infringing act or to remove the work claimed to have been created by an infringement of copyright from the service provider's computer system.

In a case where the service provider is not a person who controls, initiates or orders to cause an infringement of copyright in the service provider's computer system and such service provider has already acted in accordance with the court's order as specified in paragraph four, the service provider shall not be liable for the allegedly copyright infringing act occurring before the court's order and after the court's order is ineffective.

The service provider shall not be liable for any damages incurred from the execution of the court's order as specified in paragraph four.

Section 32/4.¹⁰ Any of the following acts done by an authorized or recognized entity for the benefit of persons with disabilities who are unable to access copyright works by virtue of this Act due to their impairment in vision, hearing, mobility, intelligence or learning or other impairments as prescribed by the Minister in the Government Gazette shall not be deemed an infringement of copyright, provided that the purpose of such act is not for profit and section 32 paragraph one is complied with:

- (1) reproduction or adaptation of a copyright work which has already been published or communicated to the public and has been legally obtained;
- (2) communication to the public of a copy of the copyright work which has been reproduced or adapted under (1), including a copy of the copyright work which has been obtained from another authorized or recognized entity inside or outside the country.

The authorized or recognized entities, formats of such reproduction or adaptation with respect to the necessity of persons with disabilities as well as rules and procedures for the reproduction or adaptation and communication to the public shall be in accordance with the provisions prescribed by the Minister in the Government Gazette.

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 shall not be 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 shall not be 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.

¹⁰ Section 32/4 was added by the Copyright Act (No.4) B.E. 2561 (2018).

Section 35. An act against a computer program which is a copyright work by virtue of this Act in the following cases shall not be 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 the result of such proceedings;
- (7) use of the computer program as part of questions and answer 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. A 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 shall not be 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, 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 deemed an infringement of copyright in the artistic work.

Section 38. A drawing, painting, engraving, molding, carving, lithographing, photographing, cinematographing or video broadcasting of an architectural work shall not be 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 shall not be 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 shall not be deemed an infringement of copyright in the artistic work, provided that the author does not reproduce or copy the substantial 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 shall not be deemed an infringement of copyright.

Section 42. When the term of protection for a cinematographic work expires, the communication to the public of the cinematographic work shall not be 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 shall not be deemed an infringement of copyright, provided that section 32 paragraph one is complied with.

Chapter 2

Performer's 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 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 the performance which has not been recorded;

(3) reproducing the recording material of the performance which has been recorded without the 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 to the infringement of performer's rights by virtue of section 53.

Section 45. Any person who directly used a sound recording of a performance, which has been published for commercial purposes or the copies thereof in a broadcast or a communication to the public, is bound to pay an equitable remuneration to the performer. In case the parties cannot 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 Committee within ninety days as from the date of receipt of the letter informing the order of the Director General. The decision of the Committee 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 shall have 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 shall be entitled to 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 the whole term of protection.

In case there is more than one performer involved, each performer is 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 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 three years.

Section 51/1.¹¹ A performer shall be entitled to identify himself as the performer in his performance, and to prohibit the assignee of the performer's rights or any person from distorting, shortening, adapting or doing anything against the performance to the extent that such act would cause damage to the reputation or dignity of the performer. When the performer has died, the heir of the performer is entitled to litigation for the enforcement of his right through the term of performer's rights protection unless otherwise agreed in writing.

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 shall be deemed to infringe the performer's rights.

Section 53.¹² Section 32, section 32/2, section 32/3, section 32/4, section 33, section 34, section 36, section 42, and section 43 shall apply *mutatis mutandis* to the performer's rights.

¹¹ Section 51/1 was added by the Copyright Act (No.2) B.E. 2558 (2015).

¹² Section 53 was amended by the Copyright Act (No.4) B.E. 2561 (2018).

Chapter 2/1

Rights Management Information and Technological Protection Measures¹³

Section 53/1.¹⁴ Any deletion or modification of rights management information with the knowledge that such act may induce to cause, cause, facilitate or conceal an infringement of copyright or the performer's rights shall be deemed an infringement of rights management information.

Section 53/2.¹⁵ Any person knowing that rights management information of a copyright work or copy of the copyright work has been deleted or modified, such person shall be deemed to have infringed rights management information if he or she commits either of the following acts against such work:

- (1) self-importation or importation by order into the Kingdom for distribution; or
- (2) communication to the public.

Section 53/3.¹⁶ Any of the following acts shall not be deemed an infringement of rights management information:

(1) deletion or modification of rights management information by a competent official having the authority required by law for the execution of the law, necessity of national defense, maintenance of national security and any other similar purpose;

(2) deletion or modification of the rights management information by an educational institute, archive, library or public sound and video broadcasting organization with no profit-making purpose; or

(3) communication to the public of a copyright work or copy of the copyright work whose rights management information has been deleted or modified by an educational institute, archive, library or sound and video broadcasting organization with no profit-making purpose.

The characteristics of rights management information under (2) and the copyright work or copy of the copyright work whose rights management information has been deleted or modified under (3) shall be in accordance with what has been prescribed in the Ministerial Regulation.

Section 53/4.¹⁷ The circumvention of a technological protection measure or provision of a service to cause the circumvention of a technological protection measure with the knowledge that such act may induce or cause an infringement of copyright or performer's rights shall be deemed an infringement of a technological protection measure.

Section 53/5.¹⁸ An act under section 53/4 done in the following cases shall not be deemed an infringement of a technological protection measure:

¹³ Chapter 2/1 Rights Management Information and Technological Protection Measures Section 53/1 to Section 53/5 was added by the Copyright Act (No.2) B.E. 2558 (2015).

¹⁴ Section 53/1 was added by the Copyright Act (No.2) B.E. 2558 (2015).

¹⁵ Section 53/2 was added by the Copyright Act (No.2) B.E. 2558 (2015).

¹⁶ Section 53/3 was added by the Copyright Act (No.2) B.E. 2558 (2015).

¹⁷ Section 53/4 was added by the Copyright Act (No.2) B.E. 2558 (2015).

¹⁸ Section 53/5 was added by the Copyright Act (No.2) B.E. 2558 (2015).

(1) such act is necessary for any act against a copyright work pursuant to an exception to a copyright infringement;

(2) for an analysis of necessary components of a computer system mutually used with other computer programs;

(3) for the benefit of research, analysis and finding out a defect of an encryption technology where a person performing the act has lawfully acquired a copyright work or copy of the copyright work, and made an honest effort in good faith to ask for permission from the copyright owner;

(4) for the particular purposes of testing, inspecting or remedying a security system of a computer, computer system or computer network with a permission from an owner of the computer, computer system or computer network as the case may be;

(5) for the suspension of the functioning of a technological protection measure in part of compiling or distributing personal indicating information, which shows internet activities of any person having access to a copyright work provided that such act shall not affect access to the copyright work by other persons;

(6) an act performed by a competent official having the authority required by law for the execution of the law, necessity of national defense, maintenance of national security and any other similar purpose;

(7) an act performed by an educational institute, archive, library or public sound and video broadcasting organization with no profit-making purpose in order to have access to a copyright work which may not be accessed by other methods.

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 the 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 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 cannot 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 Thai but, beyond three years after the last publication of the translation, no further publication is made and no copies of the translation are available in the market.

The application according to paragraph one shall follow these rules, procedures 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 licensee 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 licensee is prohibited from assigning the granted license to another person;

(4) if either the copyright owner or the licensee can show the Director General that he has made the Thai translation or has published the Thai translation, 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 a reasonable price comparable with that of related works being sold in Thailand, the Director General shall order that the license granted to the licensee be terminated and shall inform the licensee of such order without delay;

The licensee 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 licensee is prohibited from exporting the 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 for and the conditions of the license. In case the parties cannot 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 license certificate to the applicant.

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

Chapter 4

Copyright Committee

Section 56. There shall be a Committee called "the Copyright Committee", consisting of the Permanent Secretary of the Ministry of Commerce as Chairperson as well as 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 Committee may appoint any person to be Secretary and Assistant Secretary.

Section 57. A qualified member shall hold office for a term of two years. A member who vacates office may be reappointed.

In 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 dismissed by the Council of Ministers;
- (4) being bankrupt;
- (5) being an incompetent or quasi-incompetent person;
- (6) being imprisoned due to a final judgement to a term of imprisonment, except for the offence committed through negligence or for a petty offence.

Section 59. At a meeting of the Committee, the presence of not less than one-half of the total number of the members is required to constitute a quorum. If the Chairperson does not attend the meeting or is unable to perform the duties, 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 a vote, each member shall have one vote. In case of an equality of votes, the person presiding over the meeting shall have an additional vote as the casting vote.

Section 60. The Committee 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 Committee shall have the power to appoint a Sub-committee to consider or perform any matters as entrusted by the Committee, and section 59 shall apply to the meeting of the Sub-committee *mutatis mutandis*.

In performing their duties, the Committee 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 the 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, Performer's Rights, Rights Management Information and Technological Protection Measures¹⁹

Section 62. It shall be presumed in a litigation with respect to copyright or performer's right, 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 the publisher, the person who is the printer or the publisher or the printer and the 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.

¹⁹ The title of Chapter 6 "Litigation with respect to Copyright, Performer's Rights, Rights Management Information and Technological Protection Measures" was amended by the Copyright Act (No.2) B.E. 2558 (2015).

In case there is explicit evidence that an infringement of copyright or performer's rights has been willfully or intentionally committed, causing a copyright work or performer's rights to be widely accessed by the public, the court shall have the authority to order the infringer to pay more damages, but not exceeding twice as much for the damages specified in paragraph one.²⁰

Section 65. In case there is 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 65/1.²¹ Section 63, section 64 and section 65 shall apply *mutatis mutandis* to the litigation with respect to rights management information and technological protection measures.

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

Chapter 7 Competent Officials

Section 67. For the purpose of performing duties under this Act, a competent official shall be an official under the Penal Code and 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 under 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 in performing duties.

Section 68. In performing the duties, the competent official shall present to the person concerned his identification card.

The official's identification card shall be in accordance with the form prescribed by the Minister.

²⁰ Section 64 paragraph two was added by the Copyright Act (No.2) B.E. 2558 (2015).

²¹ Section 65/1 was added by the Copyright Act (No.2) B.E. 2558 (2015).

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 under 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 69/1.²² Any person who infringes copyright under section 28/1 shall be liable to imprisonment for a term of six months to four years or a fine of one hundred thousand baht to eight hundred thousand baht, or 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 under 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 forty hundred thousand baht, or to both.

Section 70/1.²³ Any person infringing rights management information under section 53/1 or section 53/2 or infringing a technological protection measure under section 53/4 shall be liable to a fine of ten thousand baht up to one hundred thousand baht.

If the offence under paragraph one is committed with commercial purposes, the offender shall be liable to imprisonment for a term of three months to two years or to a fine of 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 Committee 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 competent 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 74.²⁴ Where the offender is a juristic person, if the offence derives from an order or action of a director or the manager or any person responsible for its operations, or where the person has a duty to issue an order or to take an action but fails to do so and thereby causes the juristic person to commit the offence, the person shall also be liable to the punishment provided for such offence.

²² Section 69/1 was added by the Copyright Act (No.3) B.E. 2558 (2015).

²³ Section 70/1 was added by the Copyright Act (No.2) B.E. 2558 (2015).

²⁴ Section 74 was amended by the Criminal Liability of Juristic Persons' Representatives Amendment Act B.E. 2560 (2017).

Section 75.²⁵ All things made in or imported into the Kingdom which infringe copyright or performer's rights, and things used for committing an offence under this Act shall be all confiscated or, in case where the court considers appropriate, the court may order to make such things unusable or order a destruction of such things provided that the infringer shall be liable to any expense of such.

Section 76. One half of the fine paid in accordance with the judgement shall be disbursed to the owner of copyright or performer's rights, 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 77.²⁶ With regard to an offence under section 69 paragraph one, section 70 paragraph one, and section 70/1 paragraph one, the Director General shall have the power to settle the offence.

Transitory Provision

Section 78. The existing copyright works by virtue of the Act for the Protection of Literary and Artistic Works, B.E. 2474 (1931) or the Copyright Act B.E. 2521 (1978) on the day this Act comes into force shall be protected under this Act.

The works which have been made before this Act coming into force and which are not copyright works by virtue of the Act for the Protection of Literary and Artistic Works B.E. 2474 (1931) or the Copyright Act B.E. 2521 (1978) but become copyright works by virtue of this Act shall be protected under this Act.

Countersigned by:

Chuan Leekpai

Prime Minister

²⁵ Section 75 was amended by the Copyright Act (No.2) B.E. 2558 (2015).

²⁶ Section 77 was amended by the Copyright Act (No.2) B.E. 2558 (2015).