

**Updated Version**  
**Of**  
**Thailand's Implementation on Intellectual Property Rights**  
**(November 2007 – February 2008)**

**Department of Intellectual Property,**  
**Ministry of Commerce**  
**Thailand**

# Thailand's Implementation on Intellectual Property Rights (November 2007 - February 2008)

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## **Thailand's Implementation on Intellectual Property Rights (November 2007 - February 2008)**

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### **1. Introduction**

Since the publication of Thailand's Implementation on Intellectual Property Rights (May – October 2007) in early November 2007, there has been a significant development in the intellectual property system in Thailand. This includes not only the related enforcement agencies have stepped up their efforts and activities to suppress the intellectual property violation but also the government has successfully secured the National Legislative Assembly's approval for Thailand to join the Paris Convention and the Patent Cooperation Treaty (PCT).

In addition, the recently taking office Cabinet leading by Prime Minister Samak Sundaravej, also confirmed in its policy statement presented to the National Assembly on 18 February 2008 that the intellectual property continues to be among the issues of importance. Recognizing that innovation as well as research and development, particularly in the fields of science and technology are among the essential factors contributed to the nation's competitiveness and living standard, the government will continue promoting the creation of intellectual property and increasing the efficiency of intellectual property management.

This document is thus an update of Thailand's Implementation on Intellectual Property Rights (May – October 2007) and a compilation of initiatives and activities that Thailand has undertaken during the past year, particularly from November 2007 to February 2008, to enhance the enforcement of intellectual property rights and ensure a sustainable development of the intellectual property system in Thailand.

### **2. Measures and Activities to Enhance the Enforcement of Intellectual Property Rights**

#### **2.1 Seizure and Arrest of IP Infringing Goods**

During the past year, the Department of Intellectual Property (DIP), as a lead agency responsible for the development of intellectual property system in Thailand, has cooperated closely with the related agencies in both public and private sectors, namely the Royal Thai Police, the Department of Special Investigation, the Customs Department to raid, arrest and seize pirated and infringing goods.

The operations have been focused on the wholesalers and manufacturers, particularly on a large commercial scale as it is one of the best ways to cut down the supply chain. However, the success of the operations depends very much on the cooperation from the right owner to identify the infringing items and file the complaint with the police.

As a result, 7,118 arrests and 3,746,036 confiscated items were reported in 2007. For the nationwide operation, the average confiscated items per case in 2007 were much higher than the ones in 2005 and 2006. This was due to the fact that the Royal Thai Police and the Department of Special Investigation (DSI) had given greater emphasis on suppressing major violators such as producers, wholesalers and warehouses rather than on small retailers. In addition, the value of IP violated goods seized in each case had also increased significantly.

**The arrest and seizure of intellectual property infringing items produced and sold in Thailand.**

<b>Year</b>	<b>Arrest Cases</b>	<b>Confiscated items</b>	<b>Confiscated items per case</b>
2007	7,118	3,746,036	526.28
2006	9,575	2,823,588	294.89
2005	7,689	2,261,567	294.13

In addition, 628 cases and 1,332,319 infringing items were also arrested and seized by the Customs officials in 2007. The amount, which was much higher than the ones in 2005 and 2006, demonstrated the serious intent of the Customs officials to crack down on the violation of intellectual property. However, the infringing goods that had been seized were imported into Thailand rather than exported out of the country.

**The arrest and seizure of intellectual property infringing items by the Customs officials at the border.**

<b>Year</b>	<b>Arrest Cases</b>	<b>Confiscated items</b>	<b>Confiscated items per case</b>
2007	628	1,332,319	2,121.53
2006	222	826,607	3,723.45
2005	193	765,438	3,966.00

## **2.2 Destruction of Infringing Goods**

As the destruction of confiscated products as a result of intellectual property violation is one of the most important means to ensure that the infringing goods will not reenter the market, the authorized agencies, namely the Royal Thai Police and the Customs Department have carried out the destruction activities on a regular basis.

Lately, on 29 February 2008, the Customs Department destroyed in Bang Pa-In around 6,542 kilograms of IP infringing products confiscated at the Suvarnabhumi Airport, accounting for around 14 million Baht.

## **2.3 Optical Disc Piracy**

On the suppression of optical discs piracy, the government has not only focused on seizure of pirated optical disc but also on closure of piracy shops by seeking cooperation from the owners of the shopping malls that rent spaces to retailers.

The memorandum of understanding (MOU) signed among the Department of Intellectual Property, the Royal Thai Police, the Department of Special Investigation, the Bangkok Metropolitan Administration, the representatives/ owners of intellectual property such as the Motion Picture Association (MPA) and the owners of 11 major shopping malls in August 2006 aiming to stop retailers from selling the IPR infringing goods on the premises of the Malls has produced a positive result.

This has led to the issuing of the warning on 37 retailers found to be selling infringing goods, mainly the OD piracy, for the first time and the termination of the lease of 15 retailers repeating the offenses as the MOU obliged the owners of the shopping malls to monitor the activities of the retailers that rent their spaces and keep record of the offenders.

<b>Department Store</b>	<b>Action Taken</b>	<b>No. of Cases</b>
Seri Center	Terminate the lease	9
	Issue the Warning	4
Secon Square	Terminate the lease	5
	Issue the Warning	14
Zears	Issue the Warning	12
Pantip Plaza	Terminate the lease	1
	Issue the Warning	3
The Mall Bang Kapi	Issue the Warning	2
Future Park Rangsit	Issue the Warning	2

Recently, the Economic and Technological Crime Suppression Division (ECOTEC) on 19 February 2008 also raided a large optical disc manufacturing facility, arrested 6 suspects and seized 20 DVD-R burners and a large number of pirated optical disc (around 45,000 pirated movie DVD-Rs and 20,000 DVD covers), an estimated value of 10 million Baht. The seizures included pirated copies of Thai films as well as foreign films which were still in the cinemas. The Police are in the process of tracing back the real owner of the facility in an effort to turn the small guy into the big guy.

As for the utilization of the forensic testing machine, the Royal Thai Police has indicated that the machine is very useful in helping the police identify the actual source of pirated ODs and take legal action against the pirated production. Until December 2007, the Royal Thai Police has tested 250 suspected ODs from 42 cases and found 112 ODs pirated. There were around six production plants involving in such pirated activities and the police have forwarded the cases on three plants to the Office of Public Prosecutor. Nevertheless, further investigations on all of them are being undertaken.

#### **2.4 Signal Piracy**

In an effort to reduce and suppress signal piracy, the Department of Public Relation has launched awareness campaign and warned the cable TV operators across the country that they could face legal action against unauthorized or appropriate broadcast.

The problem of infringement of copyright by local cable TV operators is also declined, from 19 arrest cases in 2004 to 3 arrest cases in 2007, as the local cable TV operators have been successful in acquiring cheaper licenses from new suppliers abroad, including in Cannes, Korea and Japan where their films are becoming popular among the Thai audiences.

#### **2.5 Book Piracy**

Since the publication of Thailand's IP Implementation Report in early November 2007, the Thai authorities, in particular the Department of Intellectual Property (DIP), have conducted a number of activities to combat book piracy and enhance copyright awareness as follows:

On 2 November 2007, the DIP organized a seminar on how to legitimately utilize a copyright work for educational propose. The seminar was successfully attended by approximately 200 University lecturers, staffs, researchers and students.

Subsequently, the DIP produced and distributed the booklets on the fair use of copyrighted books to students, professors, and the public in general and “Stop Book Piracy” stickers and posters to photocopy shops and bookstores around and nearby campuses across the country in order to discourage students and photocopy shops from photocopying copyrighted works. The DIP also encourages the right owners to take legal action against unauthorized photocopying of the copyrighted book.

On 3 December 2007, the DIP signed the MOU with the Commission on Higher Education with a view to carrying out suppression of book piracy activities in universities and academic institutions, helping Thai professors understand how to protect their copyrights and incorporating the intellectual property subject into the University courses.

The DIP and the Commission on Higher Education are now in the process of establishing a working group to implement the activities agreed under the MOU, namely educating the university lecturers and student about the fair use of copyrighted books, setting the IP management centre in the universities, organizing campaigns to promote the IP protection in the universities.

The DIP, in cooperation with the Commission on Higher Education and the Association of American Publishers, Inc. (AAP) also plans to organize “NO BOOK PIRACY” campaigns at various universities around Bangkok in June 2008 to enhance students’ awareness of copyright protection. In this connection, the AAP will also provide a list of its distributors in Thailand where the educational institutes and students can legally gain access to mandatory text books.

In addition, as requested by a number of Universities and agencies, the DIP also sent the representatives to speak about the fair use of copyrighted book at various forums organized by educational institutes, namely Assumption University of Thailand and Kanchanaburi Rajabhat University. The DIP also organized a number of training for the representatives of universities lecturers around the countries so that these representatives can further educate their own colleagues and students on the fair use of copyrighted books.

The DIP is also surprised to learn that the International Intellectual Property Alliance (IIPA) in its 2008 Special 301 report of Thailand mentions Thailand as the exporter of high quality academic and professional books. The DIP hopes to receive more details on this matter including the specification of the shipping containers believed to be carried the violated products in order to cooperate with the Customs Department and the related agencies to further investigate the matter. In addition, this information is somewhat new and the DIP is not convinced that Thailand has a capacity to produce and export such products.

## **2.6 Software Piracy**

At the end of 2007, the Economic and Technological Crime Suppression Division (ECOTEC) reported that it had successfully increased its enforcement activities against corporate end user software piracy by 50% over the previous year. The ECOTEC will continue working closely with the Business Software Alliance (BSA) to exchange information on infringing activity and enhance its enforcement against software piracy.

The DIP, in cooperation with the Business Software Alliance (BSA) and the ECOTEC also plans to spearhead campaign on “National Software and Intellectual Property Promotion and Protection” with a view to encouraging the business end users to refrain from using pirated software.

The campaign will start with the launch of the “National Software IP Week” in mid March 2008 to enhance the public, in particular students’ and business’ respect for the other people’s intellectual property and encourage them to use legitimate software, including providing advice to business entities on how to manage their software assets, namely through software audit program and software IP validation.

In addition, the DIP has been working with Microsoft Thailand to organize the IP Expo in 2009 aiming to encourage the use of legitimate software.

## **2.7 Counterfeit Pharmaceuticals**

The problem of counterfeit pharmaceuticals has become a concern within the Thai society. The problem has not only adversely affected the economy and international trade but also could have serious repercussion on life, health and welfare of the public consumers. Although Thailand is not a major producer of counterfeit pharmaceuticals, but the transshipment from neighboring countries and the sale and distribution through internet, (particularly Erectile Dysfunction medicines) have contributed to our concerns.

As a result, the DIP has signed the MOU with the other 4 agencies, namely the Royal Thai Police, the Department of Special Investigation (DSI), the Customs Department and the Pharmaceutical Research and manufacturers Association (PREMA) on 14 February to prevent and suppress counterfeit pharmaceuticals.

The DIP also plans to expand the MOU participants to and seek further cooperation from other agencies and stakeholders including the Ministry of Public Health as it believes that the joint efforts and serious collaboration from related agencies will improve the government efficiency in tackling the problem. At the same time, the Ministry of Public Health and related public agencies also works closely with the drug companies to raise public awareness on the danger of counterfeit pharmaceutical, which includes organizing workshops and seminars for officials and healthcare providers concerned on how to distinguish genuine from counterfeit medicines.

## **3. Progress in the IP and Related Laws Reform**

### **3.1 Copyright Law Amendment**

The DIP is in the process of amending the Copyright Act B.E. 2537 to make it more effective, in line with international standard. This includes establishing the collective management organization (CMO), providing sufficient protection to the works in digital environment, including the establishment of the technological protection measures (TPM) and providing protection for right management information (RMI). In this connection, the Cabinet decided to consider two priority issues in order to correct the current copyright enforcement problems that affect the relevant stakeholders most, namely the issues of CMO and penalty. The Council of States has completed its consideration on these two issues and forwarded the draft copyright Law amendment to the cabinet. This draft amendment is under the consideration of the Parliament.

However, due to the General Election held in December 2007 and the new Cabinet took office in February 2008 the new Cabinet will have to reconfirm the submission of this draft amendment on the two priority issues to the Parliament within 60 days.

In the meantime, the remaining issues are still pending the Council of State's consideration.

### **3.2 Trademark Law Amendment**

The proposed amendment of the Trademark Law aiming to improve the procedures on trademark registration and to provide flexibility to better serve the trademark applicants and correspond to the rapid changes of trading environment is still under the fast-track consideration of the Council of State, which holds a meeting twice a week.

### **3.3 Patent Law Amendment**

Since the previous cabinet suspended the consideration of the draft amendment of the Patent Law and returned it to the DIP for reconsideration, the DIP has been consulting with various stakeholders to revise the proposed amendment with a view to improving the patent registration process and implementing the flexibilities of the Doha Declaration on TRIPS and Public Health. After the draft Law is finalized, it will be resubmitted to the Cabinet and the Parliament for consideration respectively.

### **3.4 Customs Law Amendment**

Since the previous cabinet suspended the consideration of the draft amendment of the Customs Law and returned it to the Customs Department for reconsideration, the Customs Department is in the process of reviewing the draft law which aims at authorizing the customs officers to take legal action against transit and transshipment of intellectual property infringing goods. After the draft Law is finalized, it will be resubmitted to the Cabinet and the Parliament for consideration respectively.

### **3.5 The Draft Television and Radio Broadcast Law**

The draft Television and Radio Broadcasting Law which aims at setting up the National Broadcasting Committee (NBC), providing framework for broadcasting business operators and authorizes the NBC to revoke the licenses of the operators that the court finds guilty of copyright infringement by unauthorized broadcasting gained the approval of the National Legislative Assembly in December 2007 and is now waiting for the Royal assent before publishing in the Royal Gazette and entering into force accordingly.

### **3.6 The Optical Disc Production Act**

The DIP does not plan to amend the Optical Disc Production Act at this juncture as it is fully occupied with several IP laws that are now pending amendment. However, it recognizes the need to protect the copyright owners and establish the measures to effectively prevent an unauthorized OD production. The DIP thus welcomes valuable inputs from various stakeholders regarding improvement of the Act.

#### **4. Compulsory Licensing on Pharmaceuticals**

The Royal Thai government is convinced that the compulsory licensing issued on pharmaceutical products at the end of 2006 (Efavirenz, Lopinavir + Ritonavir and Clopidogrel) and in early January 2008 (Docetaxel, Letrozole, Erlotinib and Imatinib) is fully in conformity with Thailand's obligation to the WTO as confirmed by the WHO, a number of academics and international organizations and even the US Congressmen in their letter to the USTR in January 2007.

The Social Venture Network Asia (Thailand), which established eight years ago in the U.S. aiming to solve social and environmental problems locally and globally, also granted the SVN award to Dr. Mongkol Na Songkla, the Minister of Public Health at the time of the CL exercise, and his team on 24 January 2008 for their dedication to the HIV/AIDS and cancer patients.

The rationale for issuing compulsory licenses lies in the mandate to achieve universal access to essential medicine for all Thais under the National Health Security Act 2002 as well as the commitment to provide universal access to anti-retroviral drugs (ARVs) for AIDS patients. The government responded to these national commitments through several means, including raising the public health budget such as the budget to ARVs to more than ten folds in six years as well as reviewing the necessity of CL.

The National Health Security Board in April 2006 established the Subcommittee to Implement the Government Use of Patent on Drug, chaired by the Secretary General of the National Health Security Office to consider whether it is necessary to issue CL.

The detailed explanation of the CL exercise on the four anti-cancer drugs can be found in the Ministry of Public Health website ([www.moph.go.th](http://www.moph.go.th)) in "The 10 Burning Questions on the Government Use of Patents on the Four Anti-Cancer Drugs in Thailand" section.

However, the present Minister of Public Health announced when he took office in early February 2008 that he would consult with the Minister of Commerce and Minister of Foreign Affairs on a review of the compulsory licenses issued previously to ensure the transparency and due process of the exercise and take into account the impacts on the country as a whole. The three Ministers thus assigned their Permanent Secretaries to come up with the key facts and figures that would be useful for their discussion. The three Ministers will meet in due course to find long term sustainable solution on CL.

With regard to the Joint Committee between the representatives of the Ministry of Public Health and the pharmaceutical industry, namely PReMA, since its establishment in January 2008, the joint committee met twice to discuss the objectives of the group, which include improvement of the access to essential medicines for low income people, reduction of the country's neglected health problems and strengthening the national health system's development capacity. As the joint committee provides a constructive opportunity for both the government and private sector concerned to exchange views on how to develop a quality healthcare system for Thailand, it is considered as a useful forum.

## **5. Moving Closer to the Paris Convention and the Patent Cooperation Treaty (PCT)**

After more ten years, the attempts to get Thailand to join the Paris Convention and the PCT, bore fruit when the National Legislative Assembly, on 10 January 2008, approved the Government's decision to apply Thailand for the treaties' membership. Thailand is thus the seventh ASEAN country to join the PCT, with only Cambodia, Burma and Brunei remain outside the pact.

For the accession to the Paris Convention, the Ministry of Foreign Affairs is now in the process of submitting the legal instrument to the WIPO. As for the PCT, the DIP is now in the process of drafting a Ministerial Regulation and setting up a receiving office to serve as an information and registration centre to assist both local and foreign inventors wishing to benefit from the PCT system. After the Council of State approves the draft Ministerial Regulation, the Ministry of Foreign Affairs will be able to submit Thailand's instrument of accession to the World Intellectual Property Organization (WIPO).

The PCT is expected to increase the number of patents registered in Thailand and reduce violation of Thai patents abroad. In 1996, only 202 patents application were filed in Thailand by Thai people. Ten years later, the number increased five-fold to 1,077 patents in 2006 and to 936 patents in the first ten months of 2007.

However, in order to fully enjoy the benefit of the PCT member, the Thai inventors, the patent applicants and the related stakeholders needs to sufficiently and adequately recognize the benefit of the PCT application process. They also need to know how to apply for the patent in the national phase of the other PCT members as it could be quite complicated and time-consuming.

The DIP is scheduled to organize a series of seminars in Bangkok and several provinces around Thailand to educate the inventors, SMEs, local entrepreneurs, private sectors, legal advisors, university lecturers and commercial counselors in the provinces on how to enjoy the benefit of the PCT system and register patents via the PCT network.

In addition, with the assistance of WIPO, and various leading IP offices such as the USPTO and European Patent Office, the DIP is also in the process of training its patent examiners on how to do their job efficiently when utilizing the PCT system.

At the same time, the DIP has adopted various measures to enhance the capacity of its patent examiners and speed up the patent examination processing, namely:

- increasing cooperation with various patent offices worldwide in order to facilitate the DIP's examiners with sufficient patent database. The DIP has recently concluded the cooperation on patent information database for patent examiners with the European Patent Office (EPOQUE Net). When fully operated, it is believed that the system will facilitate and hence accelerate the patent examination in the country.
- sending the patent examiners to attend various training courses in order to keep them technologically updated.

- improving its internal process for patent examination so as to eliminate unnecessary procedures. The DIP has been successful in shortening the period of publication processing from 30 to 15 days. It also asked the Office of the Civil Service Commission to authorize the DIP to recruit around new twenty nine patent examiners as the current work is overloaded for the existing sixteen patent examiners who have been working over-time and 7 days a week, trying to reduce the backlog. As a result, the DIP was able to reduce the backlog down by 11% from 18,388 in April 2007 to 16,980 applications by the end of 2007. The country's accession to the PCT should also facilitate the clearing up of the backlog of patent examination.
- organizing training for IP professional aiming to provide knowledge and technique needed for patent applicants or their representatives. The DIP is certain that the program will increase the efficiency of the patent application drafting which will finally result in the acceleration of patent examination process.

In addition, the DIP is now in the process of studying the pros and cons of the Madrid Protocol as becoming a member of this treaty is considered as our next step to promote the Thai IP in the international arena. The government thus welcomes comments from all stakeholders including the law firms in this regard.

**6. Conclusion and the Way Forward**

The Royal Thai Government will continue focus its future work plan on consistent basis to ensure concrete and positive outcome, both in terms of expediting legal reforms and increasing coordination among relevant agencies to effectively suppress intellectual property violations in all dimensions. Thailand firmly believes that these efforts will help to solve the intellectual property issues in the country and more importantly, assure a continual and sustainable development of the intellectual property system in Thailand.

**7. Statistics on the Enforcement of Intellectual Property Rights**

See the annex.

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## Annex 1

**STATISTICS ON SUPPRESSION OF INTELLECTUAL PROPERTY RIGHTS VIOLATION***( Copyright , Trademark , Patent , The Act Controlling the Cassette Business and Television Devices )*

OFFENCES Under	2005		2006		2007		Total	
	Arrests	Materials Seized	Arrests	Materials Seized	Arrests	Materials Seized	Arrests	Materials Seized
<b>Copyright Act B.E. 2537</b>	5,647	1,388,274	6,459	1,704,970	4,614	2,228,348	16,720	5,321,592
<b>Trademark Act B.E. 2534</b>	1,995	850,106	3,100	1,105,629	2,465	1,472,813	7,560	3,428,548
<b>Patent Act B.E. 2535</b>	3	6	4	5,208	4	10,045	11	15,259
<b>The Act Controlling the Cassette Business and Television Devices B.E. 2530</b>	44	23,181	12	7,781	35	34,830	91	65,792
<b>Total</b>	<b>7,689</b>	<b>2,261,567</b>	<b>9,575</b>	<b>2,823,588</b>	<b>7,118</b>	<b>3,746,036</b>	<b>24,382</b>	<b>8,831,191</b>

Sources : **The Royal Thai Police**

- The Metropolitan Police Bureau
  - The Economic and Technological Crime Suppression Division
  - The Provincial Police Region
- Department of Special Investigation**

By: The Office of Prevention and Suppression of Intellectual Property Rights Vi

**The Department of Intellectual Property****December 31, 2007**

## Annex 2

## STATISTICS ON BORDER ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

OFFENCES Under	2005		2006		2007		Total	
	Cases	Goods seized	Cases	Goods siezed	Cases	Goods seized	Cases	Goods seized
Customs Act B.E. 2469	193	765,438	222	862,607	628	1,332,319	1,043	2,960,364
<b>Total</b>	<b>193</b>	<b>765,438</b>	<b>222</b>	<b>862,607</b>	<b>628</b>	<b>1,332,319</b>	<b>1,043</b>	<b>2,960,364</b>

Source: Customs Department

By Office of Prevention and Suppression of Intellectual Property Rights Violation

Department of Intellectual Property

December 31, 2007

