

Table on Changes & Updates in the Copyright Act B.E. 2558 (2015)

Copyright Act (2nd Edition) B.E. 2558

<i>Copyright Act B.E. 2537</i>	<i>Copyright Act B.E. 2558</i>	Details of Change/ Amendment	Reasons for the Change/ Amendment
-	<p>Section 4 now contains definitions for:</p> <p>“<u>Rights Management Information</u>” means information that specifies an author, creator of work, performer, performance, copyright owner or terms and conditions for copyright use, including a number or code that represents such information. The aforesaid information must be attached or appear to relate to the copyright work or the record of performance.</p> <p>“<u>Technology Protection Measure</u>” means technology designed to protect the reproduction or control access to the copyright work or record of performance. The abovementioned technology must be effectively used with the copyright work or record of performance.</p> <p>“<u>Technology Protection Measure Circumvention</u>” means to do any acts that cause Technology Protection Measures to be ineffective.</p>	<p><i>Copyright Act B.E. 2558</i> added the following three definitions to section 4 of the <i>Copyright Act B.E. 2537</i>:</p> <ul style="list-style-type: none"> - Rights Management Information - Technology Protection Measure - Technology Protection Measure Circumvention 	<p>These three definitions were added to the Act to provide increased protection to owners of copyright and performer’s rights. Moreover, these changes were added to keep up with changes to technology that have occurred since the old Act was passed in B.E.2537. The definition of Technology Protection Measure Circumvention has been added to provide more protection to owners of copyright and performers and to help stop people from taking actions to undermine Technology Protection Measures.</p>

-	Section 32/1: Distribution of original or copies of copyrighted work by one who legally acquired ownership of the original or copies of copyright work is not deemed as infringing copyright.		
-	Section 32/2: An act relating to a copyright work that has been legally made or acquired in a computer system that is done because such act is necessary to reproduce the copyright work in order for the computer system to function normally or such act involves the process of transmitting such copyright material that has been reproduced, shall not be deemed as infringing copyright.		s. 32/2 – This new section has been added to provide legitimate protections for those people using copyright material for certain permitted purposes on a computer system.
-	<p>Section 32/3: If legitimate evidence has been produced to prove an infringement of copyright in a computer system by a Service Provider, the copyright owner may file a motion with the Court for the Service Provider to be restrained from infringing such copyright.</p> <p>For the benefit of this section, “<u>Service Provider</u>” means:</p> <ol style="list-style-type: none"> 1. A Service Provider to others in accessing the internet or enabling others to contact one another by other means through a computer system whether the Service Provider does so under his name, or those of others or in the interests of others. 2. Service Provider for computer information storage for the interest of others. <p>The motion to be submitted to the Court according to the first paragraph of this section must contain clear</p>		s.32/3 - This section has been added to the new Act to deal with copyright infringement online and to give copyright owners a way to protect their copyright material from being infringed online, this is achieved by means of giving the copyright owners & performers the right to file a motion with the Court (along with evidence) to have a Service Provider remove such material or be stopped from having it on their computer

	<p>details specifying the following details:</p> <ol style="list-style-type: none"> 1. Name and last name of the Service Provider. 2. Details of the copyright work which is infringed. 3. Details of the copyright work which has been made by the infringer. 4. Evidence showing how the infringement of the copyright material has been found on the Service Provider's Computer system i.e. details of the investigation. 5. Details of the damage that is likely to occur as a result of the abovementioned infringement of the copyrighted work. 6. Execution request for the Service Provider to remove the infringed work from the Service Provider's computer system or such other action whereby they shall refrain from infringing the copyrighted work by other means. <p>When the Court receives the motion according to the first paragraph of the section, the Court shall conduct inquiries. If the Court finds the motion contains appropriate details according to the third paragraph and has necessary causes for it to consider issuing the motion, then it shall order the Service Provider to refrain from infringing the copyright or to remove the infringed work from the computer system of the Service Provider within a specified period of time as specified in the court order. The order of the Court is immediately executable and can be notified to the Service Provider without delay. The owner of the</p>		<p>system.</p> <p>This section provides protection to internet Service Providers (such as website owners i.e. Facebook, Google) by giving them protection/exemption from liability for breach of copyright if they comply with the Court's order within the timeframe as specified in the Court's order.</p>
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	<p>copyright material can take the Court order and serve it on the Service Provider who must comply with such order within the timeframe specified in the Court order.</p> <p>If the Service Provider does not control, initiate or command the infringement of the copyrighted material in their computer system and such Service Provider complies with the Court order according to the fourth paragraph, then they will not be liable for acts relating to the infringement of copyright that occurred prior to the Court order and after the court order is no longer effective.</p> <p>The Service Provider shall not be liable for any damage that arises due to its compliance with the Court's order according to paragraph 4.</p>		
-	<p>According to section 51/1 a performer is entitled to identify/signify their performance and can prohibit a transferee or other parties from distorting, erasing, adapting or any other acts to such performance that causes damage to the Performer's reputation or dignity. Furthermore, after the performer's death, their heir(s) are entitled to take legal action throughout the normal term of copyright protection, unless the performer provides otherwise in writing (Note: such document must be signed by the performer)."</p>		
Sections 53/1 and 53/2. 53/3, 53/4 and 53/5.	Section 53 now applies <i>mutatis mutandis</i> to section 32, 32/2, 32/3, 33, 34, 36, 42 and 43 with respect to the performer's rights.	Copyright Act B.E. 2558 added sections 32/2, 32/3 to the	

	Note: <i>mutatis mutandis</i> means with the necessary changes having been made.	<i>Copyright Act B.E. 2537</i>	
-	Sections 53/1, 53/2, 53/3, 53/4 and 53/1 have been moved to a new chapter which is chapter 2/1 which covers Rights Management Information and Technology Protection Measures.	The <i>Copyright Act B.E. 2558</i> added chapter 2/1 to the <i>Copyright Act B.E. 2537</i>	
-	Chapter 2/1 <u>Rights Management Information and Technology Protection Measure</u> Section 53/1 Knowingly erasing or altering of Rights Management Information such that it may encourage, cause, facilitate or conceal infringement of copyright or a performers right, shall be deemed as infringing Rights Management Information.		Section 53 has been added to the new Act to give greater protection to copyright owners and performers by providing that people who knowingly use copyright material where they are aware that the Rights Management Information has been deleted or changed are subject to legal penalties, provided that certain exceptions as provided under 53/3 don't apply. Moreover, they need to have imported the material into Thailand or published/communicated such material to the public
-	Section 53/2 Whoever knowingly uses copyright work or its copies where Rights Management Information has been erased or altered shall be deemed as an infringer of Rights Management Information if such act has been done in conjunction with by either of the following acts: 1. Importation or ordering of the material into Thailand for distribution; or 2. Publication/ or communication of the material to the public.		
-	Section 53/3 The following acts shall not be deemed as infringing Rights Management Information: 1. Erasure or alteration of Rights Management Information by an authorized Government official		

	<p>in order to execute compliance with the law, or to undertake necessary tasks for the purpose of national protection, national security or other similar objectives.</p> <ol style="list-style-type: none"> 2. Erasure or alteration of Rights Management Information by a nonprofit education institution, archive, library or public broadcast organization for a non-profit seeking purpose. 3. Publication/ communication to the public of copyright work or its copies where a nonprofit education institution, archive, library or public broadcasting organization has erased or altered Rights Management Information for a non-profit seeking purpose. <p>Note: The types of Rights Management Information specified in 2 and the details concerning the copyright work or its copies which are able to have Rights Management Information erased or altered in 3 are specified in the Ministerial Regulations</p>		for commercial purposes.
-	<p>Section 53/4 For Technology Protection Measure Circumvention or provision of a service that knowingly causes avoidance of Technology Protection Measures whereby such conduct encourages or causes infringement of copyright or performer rights, it shall be deemed as infringing Technology Protection Measures.</p>		
-	<p>Section 53/5 - Acts according to section 53/4 that shall not be deemed to infringe Technology Protection</p>		

	<p>Measures are as follows:</p> <ol style="list-style-type: none">1. Such acts as are necessary for using the copyright work shall be exempted from infringement of copyright;2. for the purpose of analyzing essential elements of a computer program which jointly uses other computer programs;3. For the benefit of researching analyzing and finding defects/problems in code access technology. However, such person(s) involved in such acts must have legally acquired the copyrighted work or its copies and in good faith attempted to request the permission of the copyright owner.4. For the specific purpose of testing, inspection or alteration of a security system of a computer system or computer network with permission of the computer's owner, the computer system or the computer network as the case may be.5. In order to stop/prevent the operation of Technology Protection Measures that collect or transmit distinctive personal information that reflects the internet activities of one who accesses the copyright work. Such act must not affect the accessibility of the copyright work by others.6. Actions undertaken by authorized officials to enforce the law where such actions are necessary for the protection of the nation, national security or other related purposes.7. Action by a nonprofit education institution, archive, library or public broadcasting organization in order		
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	to access copyrighted work which is unable to be accessed by other methods (for a non-profit purpose).		
Repealed title “Cases related to copyright and performer right” in chapter 6	Replaced the title of Chapter 6 to instead be “Cases related to copyright, performer right, Rights Management information and Technology Protection Measure”	<i>Copyright Act B.E. 2558</i> added Management Information and Technology Protection Measure in the title of chapter 6 of the <i>Copyright Rights Act B.E. 2537</i>	
Section 64 contains only one paragraph	Section 64; paragraph 2 “In the case of clear evidence that appears to show infringement of copyright or a performer right which deliberately or intentionally causes such copyrighted work or performer rights to be able to be widely accessed by the public, the Court is authorized to fine an offender up to double the fine (as specified in the first paragraph) for the damage that occurs”	<i>Copyright Act B.E. 2558</i> added paragraph two to the <i>Copyright Rights Act B.E. 2537</i>	
-	Section 65/1 “Apply sections 63, 64 and 65 to section 65/1 relating to prosecuting a party for infringing Rights Management Information or Technology Protection Measure <i>mutatis mutandis</i> ”. Note: <i>mutatis mutandis</i> means with the necessary changes having been made.		
-	Section 70/1 “Whoever infringes Rights Management Information according to sections 53/1 or 53/2 or infringes		

	<p>Technology Protection Measures according to section 53/4 shall be punished by a fine ranging from 10,000 – 100,000 Baht.</p> <p>However if the unlawful act according to the first paragraph is done for commercial purposes then the infringer shall be subject to the following punishment: imprisonment ranging from 3 months up to 2 years or a fine ranging from 50,000 – 400,000 Baht or both”.</p>		
<p>Repealed Section 75 All things made or imported into the Kingdom which constitute an infringement of copyright or performer's rights by virtue of this Act and the ownership of which are still vested with the offender under Section 69 or Section 70 shall belong to the owner of the copyright or performer's rights provided that the things used for</p>	<p>Section 75 All things made or imported into the Kingdom which constitute an infringement of copyright or performer's rights by virtue of this Act shall be all forfeited or if the Court deems it appropriate, it may either order such things to be made useless or destroyed at the expense of the offender”</p> <p>Remark: All criminal prosecutions cases relating to infringement of copyright or performer’s rights that were unresolved prior to this Act coming into force, shall apply section 75 of the <i>Copyright Act</i> B.E. 2537 when prosecuting persons who made or imported goods into the Kingdom that constitute infringement of copyright or performer’s right. All new prosecutions relating to infringement of copyright or performer’s rights which occur after this law came into effect must follow must adhere to the new section 75.</p>	<p>Under the old Act ownership rights to the infringing material (excluding things used to commit the offence) were vested with the owner of the copyright or the performer, however under the new Act this wording has been changed such that all such infringing materials shall forfeited or if the Court deems it appropriate, they may either order such things to be made useless or destroyed at the expense of the offender.</p>	

committing the offence shall be forfeited.			
Repealed section 77 the Director General shall be authorized to prescribe the fine for the offence according to Section 69 paragraph one and Section 70 paragraph one.	Section 77 The Director General of the Department of Intellectual Property shall be authorized to issue a fine for the offence according to sections 69 paragraph one, 70 paragraph one and 70/1 paragraph one”.	<i>Copyright Act B.E. 2558</i> added Section 70/1 paragraph one to the <i>Copyright Act B.E. 2537</i>	

Copyright Act (3rd edition) B.E. 2558

Copyright Act B.E. 2537	Copyright Act B.E. 2558	Comparison	Reason for the Amendment
-	Section 28/1 Reproduction by recording sound or picture or both from a copyrighted film according to this Act in a theater in accordance with the motion picture and video tape law whether in part or whole without permission according to section 15 (5) during the movie screening shall be deemed as infringing copyright and could not rely on section 32 paragraph two (2) in order to excuse their breach”	Section 28/1 has been added to the new Act.	Nowadays there is a major problem concerning reproduction of both foreign and Thai movies whereby copies are made without permission by recording sound or picture or both from movie theatres and then reproducing such movies on CD or DVD and distributing them commercially, thus causing extreme economic damage to the film industry and related businesses.

	Note: section 32 paragraph 2 (2) provides an excuse re use for personal benefit to himself or other family members or close relatives.		This type of conduct is very damaging to the interests of the copyright owner, hence the <i>Copyright Act B.E. 2537</i> has been amended such that the new law stipulates this particular infringement of copyright and provides a specific offence and provides that the penalty for such infringement shall be the same as infringement of copyright for commercial purposes.
-	<p>Section 32 paragraph two (9) has been added to the new Act. It provides as follows: “(9) Reproducing or adapting copyrighted work for the benefit of disabled persons who are unable to access the copyright work because of seeing, hearing, intelligence or learning or other disability shall be permitted according to the Ministerial regulations, however such acts must not for the purpose of seeking profit.</p> <p>In order to obtain this exception the copyright owner /performer must issue rules/conditions relating to how their work can be changed so that disabled persons can access it. Such rules and conditions must be in compliance with the Declaration of Ministers as proclaimed in the Government Gazette.</p>	<i>Copyright Act B.E. 2558</i> added subsection (9) to paragraph two in section 32 in the <i>Copyright Act B.E. 2537</i>	<p>Furthermore, the new law at section 32(9) provides certain exemptions concerning copyright infringement, for the benefit of disabled persons for the purpose of seeing, hearing, intelligence or learning or other disability. The Ministerial Regulations provide more guidance and detail on this particular exemption.</p>
	Section 69/1 “Whoever infringes copyright according to section 28/1 shall be subject to the following punishment: imprisonment ranging from 6 months up to 4 years or a fine ranging from 100,000 – 800,000 Baht or both a fine and imprisonment”	<i>Copyright Act B.E. 2558</i> added section 69/1 to the <i>Copyright Act B.E. 2537</i>	