

COPYRIGHT ACT (No. 5),

B.E. 2565 (2022)

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HIS MAJESTY KING MAHA VAJIRALONGKORN PHRA VAJIRAKLAOCHAOUYUHUA;

Given on the 23<sup>rd</sup> Day of February B.E. 2565;

Being the 7<sup>th</sup> Year of the Present Reign.

His Majesty King Maha Vajiralongkorn Phra Vajiraklaochaoyuhua is graciously pleased to proclaim that:

Whereas it is expedient to amend the law on copyright;

Whereas this Act contains certain provisions in relation to the restriction of rights and liberties of persons, in respect of which section 26 in conjunction with section 37 and section 40 of the Constitution of the Kingdom of Thailand so permits by virtue of provisions of law;

Whereas the reasons and need for the restriction of rights and liberties of persons under this Act lie in the enhancement of efficiency in the protection of copyrighted works in conformity with technological change and the implementation of the WIPO Copyright Treaty to which Thailand intends to be a party, and, in this regard, the enactment of this Act duly complies with the conditions provided in section 26 of the Constitution of the Kingdom of Thailand;

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 (No. 5), B.E. 2565 (2022)”.

**Section 2.**<sup>1</sup> This Act shall come into force after the expiration of one hundred eighty days from the date of its publication in the Government Gazette.

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\* Translation by Professor Dr. Pinai Nanakorn for the Department of Intellectual Property.

<sup>1</sup> Published in Government Gazette, Vol. 139, Part 13 a, dated 24<sup>th</sup> February 2022.

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**Section 3.** There shall be added definitions of “service provider” and “user” between the definitions of “publication” and “rights management information” in section 4 of the Copyright Act, B.E. 2537 (1994):

““service provider” means a person who provides services, as an intermediary, of transmitting computer data or otherwise allowing communications via a computer system and shall also include a person who provides services of temporary storage of computer data, a person who provides services of storage of computer data and a person who provides services of computer data location tools, whether the provision of services is carried out in his own or another person’s name or for the benefit of another person;

“user” means a user of services of a service provider, irrespective of payment of charges therefor.”

**Section 4.** The provisions of the definition of “technological measure” in section 4 of the Copyright Act, B.E. 2537 (1994) as amended by the Copyright Act (No. 2), B.E. 2558 (2015) shall be repealed and replaced by the following:

““technological measure” means technology used for protecting a copyright owner’s rights or a performer’s rights under this Act or technology used for controlling access to copyrighted works or recordings of performances, in an effective manner”.

**Section 5.** The definition of “circumvention of a technological measure” in section 4 of the Copyright Act, B.E. 2537 (1994) as amended by the Copyright Act (No. 2), B.E. 2558 (2015) shall be repealed.

**Section 6.** The provisions of section 21 of the Copyright Act, B.E. 2537 (1994) shall be repealed and replaced by the following:

“**Section 21.** Copyright in 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.”

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**Section 7.** Section 32/3 of the Copyright Act, B.E. 2537 (1994) as amended by the Copyright Act (No. 2), B.E. 2558 (2015) shall be repealed.

**Section 8.** The following provisions shall be added as Part 7, Exemptions of Liability of Service Providers, section 43/1, section 43/2, section 43/3, section 43/4, section 43/5, section 43/6, section 43/7 and section 43/8, of Chapter 1, Copyright, of the Copyright Act, B.E. 2537 (1994):

**“PART 7**

**EXEMPTIONS OF LIABILITY OF SERVICE PROVIDERS**

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**Section 43/1.** A service provider eligible for exemption of liability for copyright infringement in consequence of the provision of his services must be the service provider who has expressly declared a measure for terminating the provision of services to users repeatedly infringing copyright and has implemented such measure as well as provides services in a manner as specified in section 43/2, section 43/3, section 43/4 or section 43/5, as the case may be.

**Section 43/2.** A person who provides services, as an intermediary, of transmitting computer data or otherwise allowing communications via a computer system must, in order to be eligible for the exemption of liability under section 43/1, provide services on the following conditions:

- (1) the service provider does not initiate the transmission of the computer data;
- (2) the service provider transmits the computer data through an automatic technical process without selection of such computer data;
- (3) the service provider does not select the recipients of the computer data except as a response by an automatic system;
- (4) the service provider transmits the computer data without modification of their content; and

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(5) the service provider does not maintain a copy of the computer data, as reproduced in the course of transient storage thereof, on the computer system or network in a manner ordinarily accessible to others and does not maintain such copy of the computer data for a longer period than is necessary.

**Section 43/3.** A person who provides services of temporary storage of computer data must, in order to be eligible for the exemption of liability under section 43/1, provide services on the following conditions:

(1) the service provider carries out the temporary storage of the computer data through an automatic technical process;

(2) the service provider transmits the computer data without modification of their content;

(3) the service provider carries out the regular updating of the computer data on the computer system or network;

(4) the service provider does not interfere with the use of technology widely recognised and used amongst service providers for obtaining data on the use by users;

(5) the service provider complies with conditions on access to the computer data as specified by the originating website; and

(6) the service provider expeditiously removes the computer data temporarily stored from the computer system or network or disables access to such computer data upon obtaining knowledge that the originating website has removed such computer data from the computer system or network or has disabled access to such computer data or upon obtaining knowledge that the court has ordered the originating website to carry out such act.

**Section 43/4.** A person who provides services of storage of computer data must, in order to be eligible for the exemption of liability under section 43/1, provide services on the following conditions:

(1) the service provider provides services of storage of computer data at the direction of a user without knowing, or having a reasonable ground to know, that the computer

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data which infringe copyright reside on the computer system or network provided by him and expeditiously removes the computer data claimed to have infringed copyright from the computer system or network or disables access to such computer data upon obtaining knowledge or notification of such copyright infringement;

(2) the service provider does not receive a financial benefit directly from the copyright infringing activity if the service provider has the right and ability to control such copyright infringing activity; and

(3) the service provider makes available a means for receiving notifications, and provide details as to the name, address, telephone number and electronic mail address, for contacting purposes, of the service provider or the person designated to receive notification, in a location easily accessible.

**Section 43/5.** A person who provides services of computer data location tools must, in order to be eligible for the exemption of liability under section 43/1, provide services on the following conditions:

(1) the service provider provides services of locating computer data on the internet without knowing, or having a reasonable ground to know, that the computer data are infringing and expeditiously removes the reference or link to the computer data claimed to be infringing from the computer system or network or disables access to the reference or link to such computer data upon obtaining knowledge or notification of such copyright infringement;

(2) the service provider does not receive a financial benefit directly from the copyright infringing activity if the service provider has the right and ability to control such copyright infringing activity; and

(3) the service provider makes available a means for receiving notifications, and provide information on the name, address, telephone number and electronic mail address, for contacting purposes, of the service provider or the person designated to receive notification, in a location easily accessible.

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**Section 43/6.** In the case where a copyright owner has reasonable evidence to justify the belief that there exists copyright infringement on the computer system or network of the service provider under section 43/4 or section 43/5, the copyright owner may give a notification to the service provider for removing the computer data claimed to be infringing or the reference or link to such computer data from the computer system or network of the service provider or disabling access to such computer data or reference or link thereto.

In giving the notification under paragraph one, the copyright owner shall have regard to the provisions of Part VI, Exceptions to Copyright Infringement. In this regard, the notification shall be made in writing or via an electronic system, with at least the following details:

(1) the name and surname or the name of the juridical person, address, telephone number and electronic mail address, by which the copyright owner can be contacted;

(2) the copyrighted work claimed to have been infringed;

(3) the computer data claimed to be infringing and the location thereof, with such reasonably sufficient details as to permit the service provider to remove such computer data from the computer system or network of the service provider or disable access to such computer data, except that in the case of the notification to the service provider under section 43/5, in which case identification shall be made only of the reference or link to the computer data claimed to be infringing as well as such reasonably sufficient details as to permit the service provider to locate such reference or link;

(4) the confirmation that the information notified is true;

(5) the signature or electronic signature of the copyright owner.

Upon receipt by the service provider of the notification under paragraph one, the service provider shall expeditiously remove the computer data claimed to be infringing or the reference or link thereto from the computer system or network of the service provider or disable access to such computer data or such reference or link thereto, and notify the user

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alleged to have carried out the infringing activity for an opportunity to give a counter notification.

In the case where the notification contains incomplete details under paragraph two but already contains the details under (1), (2) and (3), the service provider shall expeditiously contact the copyright owner or acts otherwise for obtaining complete details. In this regard, the service provider shall not be deemed to know or have a reasonable ground to know of the infringement occurring on the computer system or network of the service provider if the notification contains incomplete details.

The service provider who has acted in good faith shall not be liable for any loss arising from the activity under paragraph three.

**Section 43/7.** The user who has received the notification under section 43/6 paragraph three has the right to give the service provider, in writing or via an electronic system, a counter notification, with at least the following details:

(1) the name and surname or the name of the juridical person, address, telephone number and electronic mail address, by which the user can be contacted;

(2) the computer data which have been removed from the computer system or network of the service provider or access to which has been disabled and the location of such computer data before they were removed from the computer system or network of the service provider or access to them was disabled, except that it is the case of the counter notification to the service provider under section 43/5, in which case identification shall be made only of the reference or link which has been removed from the computer system or network of the service provider or access to which has been disabled;

(3) a statement that the removal of the computer data or the reference or link thereto from the computer system or network of the service provider or the disabling of access was carried out as a result of mistake or misidentification; and

(4) the signature or electronic signature of the user.

Upon receipt by the service provider of a counter notification which contains complete details under paragraph one, the service provider shall promptly forward a copy of

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the counter notification to the copyright owner and inform that the computer data or the reference or link thereto will be replaced to the computer system or network of the service provider or the disabling of access to such computer data or such reference or link thereto will be ceased at the expiration of thirty days as from the date of receipt by the service provider of the counter notification.

At the expiration of the period of time under paragraph two, the service provide shall replace the computer data or the reference or link thereto to the computer system or network of the service provider or cease the disabling of access to such computer data or such reference or link thereto within fifteen days, unless the service provider receives a notification, supported by evidence from the copyright owner that an action has been filed in order to initiate a trial against the user.

**Section 43/8.** Any person who gives the service provider a notification or counter notification, with the knowledge or a reasonable ground to know that such information is false, and thereby causes the service provider to remove computer data or the reference or link thereto from, or replace the same to, the computer system or network of the service provider or disable, or cease the disabling of, access to such computer data or such reference or link thereto shall be liable for any loss arising from such false notification or counter notification.”

**Section 9.** The provisions of section 53 of the Copyright Act, B.E. 2537 (1994) as amended by the Copyright Act (No. 4), B.E. 2561 (2018) shall be repealed and replaced by the following:

“**Section 53.** Section 32, section 32/2, section 32/4, section 33, section 34, section 36, section 42 and section 43 of Part 6, Exceptions to Copyright Infringement, and section 43/1, section 43/2, section 43/3, section 43/4, section 43/5, section 43/6, section 43/7 and section 43/8 of Part 7, Exemptions of Liability of Service Providers, shall apply to rights of performers *mutatis mutandis*.”

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**Section 10.** The provisions of section 53/4 of the Copyright Act, B.E. 2537 (1994) as amended by the Copyright Act (No. 2), B.E. 2558 (2015) shall be repealed and replaced by the following:

“**Section 53/4.** Any act committed in any manner rendering ineffective a technological measure used for controlling access shall be deemed to be an infringement of a technological measure.”

**Section 11.** The provisions of (1) of section 53/5 of the Copyright Act, B.E. 2537 (1994) as amended by the Copyright Act (No. 2), B.E. 2558 (2015) shall be repealed and replaced by the following:

“(1) the act which is necessary for an act against a copyrighted work in respect of which an exception to a copyright infringement is granted, as prescribed and published by the Minister in the Government Gazette.”

**Section 12.** The following provisions shall be added as section 53/6, section 53/7 and section 53/8 of Chapter 2/1, Rights Management Information and Technological Measures, of the Copyright Act, B.E. 2537 (1994) as amended by the Copyright Act (No. 2), B.E. 2558 (2015):

“**Section 53/6.** Any person who provides, manufactures, sells or supplies any service, product or device with the knowledge or with a reasonable ground to know that such service, product or device is primarily for the purpose of rendering a technological measure ineffective, or promotes in a sale that such service, product or device is capable of rendering a technological measure ineffective, shall be deemed to commit an infringement of a technological measure.

For the purpose of this section, a product also includes a computer program.”

**Section 53/7.** An act under section 53/6 for the purpose of enabling another person’s use for rendering ineffective a technological measure used for protecting rights in the following cases shall not be deemed to be an infringement of a technological measure:

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(1) for analysing necessary elements of a computer program to achieve interoperability with other computer programs;

(2) for enabling officials with legal authority to carry out law enforcement, an act necessary for national defence, the maintenance of national security or for any other similar purpose, provided that the officials shall produce reasonable evidence of the operation for such purposes.

**Section 53/8.** An act under section 53/6 for the purpose of enabling another person's use for rendering ineffective a technological measure used for controlling access in the following cases shall not be deemed to be an infringement of a technological measure:

(1) for analysing necessary elements of a computer program to achieve interoperability with other computer programs;

(2) for the purpose of research, analysis and finding flaws of encryption technologies, where the person performing the act lawfully obtained the copyrighted work or a copy thereof and made a good faith effort to obtain authorisation from the copyright owner;

(3) solely for the purpose of testing, investigating or correcting a security system of a computer, computer system or computer network with the authorisation of the owner of the computer, computer system or computer network, as the case may be.

(4) for enabling officials with legal authority to carry out law enforcement, an act necessary for national defence, the maintenance of national security or for any other similar purpose, provided that the officials shall produce reasonable evidence of the operation for such purposes.”

**Section 13.** The following provisions shall be added as paragraph three of section 57 of the Copyright Act, B.E. 2537 (1994):

“At the expiration of the term in paragraph one, if new members have not yet been appointed, the members who vacate office at the expiration of the term shall remain in office for continuing the performance of duties until new members are appointed.”

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**Section 14.** The provisions of section 70/1 of the Copyright Act, B.E. 2537 (1994) as amended by the Copyright Act (No. 2), B.E. 2558 (2015) shall be repealed and replaced by the following:

“**Section 70/1.** Any person who infringes rights management information under section 53/1 or section 53/2 or infringes a technological measure under section 53/4 or section 53/6 shall be liable to a fine not exceeding 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 not exceeding two years or to a fine not exceeding four hundred thousand baht or to both.”

**Section 15.** The provisions on the term of protection for photographic works as amended by this Act shall not apply to photographic works for which the term of protection has expired prior to the date on which this Act comes into force.

**Section 16.** All cases or any actions which have been proceeded with under section 32/3 prior to the date on which this Act comes into force and which have not yet become final shall further be proceeded with in accordance with the Copyright Act, B.E. 2537 (1994) as in force on the date prior to the date on which this Act comes into force.

**Section 17.** The Minister of Commerce shall have charge and control of the execution of this Act.

Countersigned by:

General Prayut Chan-o-cha  
Prime Minister

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**Note:-** The reasons for the promulgation of this Act are as follows. As Thailand will become a Contracting Party to the WIPO Copyright Treaty for enhancing efficiency of the protection of copyrighted works in prompt response to technological change and revising the provisions on the protection of technological measures in the implementation of the said Treaty, including the revision of the provisions on exemptions of liability of service providers to facilitate efficient enforcement of law and create co-operation between service providers and copyright owners on the resolution of copyright infringement on the Internet, and also bringing the protection of copyrighted works into greater efficiency and responsiveness to technological change as well as consumers' behaviours, it is therefore necessary to enact this Act.

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