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No. 56009 / 122

February 26, 2010

Ms. Jennifer Choe Groves
Senior Director for Intellectual Property and Innovation and
Chair of the Special 301 Committee
Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508
(Via electronic mail: www.regulations.gov)

**Re: 2010 Special 301 Review: Identification
of Countries Under Section 182 of the Trade Act of 1974
Docket Number: USTR-2010-0003**

Dear Ms. Groves,

Pursuant to the Office of the United States Representative's (USTR) January 12, 2010 requesting comments for the identification of countries under section 182 of the Trade Act of 1974, the Office of Commercial Affairs, Royal Thai Embassy in Washington, DC is submitting this comment on behalf of the Royal Thai Government (RTG), as attached, in response to the above reference request.

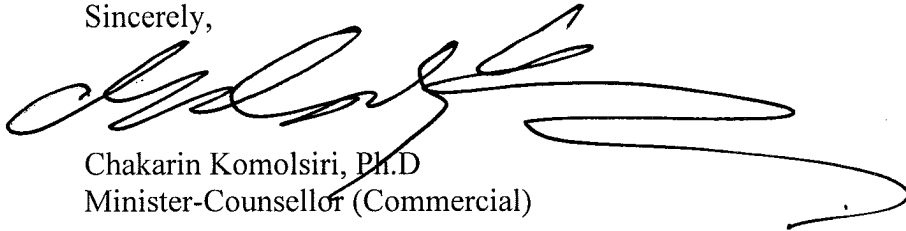
The written submission specifically illustrates Thailand's unyielding political determination in making intellectual property a national agenda which resulted in key achievements including the first ever National IP Strategy and Proactive Plan on Prevention and Suppression of IPR Violations. It reports on the recent progress and developments of major legislative reforms including the introduction of the Anti-Camcorder Law, landlord liability provisions, amendments to the Copyright Law and Optical Disk Law.

The RTG has taken various measures and efforts to continuously ensure that intellectual property rights are effectively enforced and well protected through strengthened law enforcement, proactive actions to combat piracy, and awareness raising campaigns, especially in the areas of software, cable TV, and book piracy. It also addresses the active engagement of stakeholders through close dialogue and consultations amongst all affected parties to achieve a satisfactory agreement and mutually beneficial outcome for all, especially with the US pharmaceutical industry. Most importantly, it reiterates Thailand's firm commitment to meet the demands of our trading partners and our international obligations.

In this light, we hope the United States Trade Representative recognizes Thailand's unprecedented efforts and significant successes in its intellectual property rights protection and enforcement which warrants Thailand to be **removed from the Special 301 Priority Watch List**. It is our understanding that an out-of-cycle review (OCR) may be used as a mechanism to demonstrate Thailand's progress.

The Office of Commercial Affairs avails itself of this opportunity to renew to the Office of the United States Representative the assurances of its highest consideration.

Sincerely,

A handwritten signature in black ink, appearing to be 'Chakarin Komolsiri', with a long, sweeping horizontal stroke extending to the right.

Chakarin Komolsiri, Ph.D
Minister-Counsellor (Commercial)

THAILAND'S REPORT ON SIGNIFICANT PROGRESS IN PROTECTING AND ENFORCING INTELLECTUAL PROPERTY RIGHTS

Executive Summary

Under the current administration led by Prime Minister Abhisit Vejjajiva, 2009 marked a year of significant achievements and improvements in the Royal Thai Government's continued efforts on the prevention and suppression of intellectual property violation. The initiatives, activities, and successes have raised Thailand's intellectual property rights protection, enforcement, and promotion to an unprecedented level.

[1.] Unyielding Political Determination

The National Committee on Intellectual Property Policy, which is chaired by the Prime Minister, was established in January 2009 to formulate policies on combating intellectual property rights (IPR) violation and be an effective coordinator among different agencies concerning IPR issues. This, for the first time, made intellectual property a national agenda. Key achievements included

- The first ever **National IP Strategy** was devised with the objective of basing Thailand's future economic development on creativity.
- **The Proactive Plan on Prevention and Suppression of IPR Violations** was drafted in close consultations with relevant agencies that prescribe actions to be taken in six areas – law enforcement, enhancement of judicial process, improvement of patent registration process, curtailing rights infringement over the internet, legislative changes, and cooperation with the private sector.
- The government is currently focusing on pursuing a **Creative Economy Policy** with the goal of (1) promoting Thailand as a hub of creative industries in South East Asia and (2) boosting the economic contribution of national creative industries from the current 12 per cent to 20 per cent of GDP within 2012. This initiative has been welcomed by Assistant USTR for Southeast Asia and the Pacific, Barbara Weisel, as part of further discussions to strengthen US-Thai trade and investment relations.

[2.] Major Legislative Reforms

- **Anti-Camcorder Law:** The Department of Intellectual Property (DIP) is finalizing a specific law on Anti-Camcorder Piracy and is expected to be submitted to the Cabinet in April 2010.

- **Landlord Liability:** The Copyright Law and Trademark Law are being amended to include landlord liability which will hold liable the person who provides physical or digital spaces for infringing activities. The amendment will be submitted to the Cabinet for approval in March 2010 and is expected to pass into law by April of this year.
- **Copyright Law Amendment:** Thailand is modernizing the Copyright Act of 1994 to better protect the rights of owners of copyright and related rights particularly in the digital and networking environment based on international standards under the WIPO Copyright Treaty (WCT) and WIPO Performance and Phonograms Treaty (WPPT) with the inclusion of provisions that will address protection on internet piracy and promote internet service provider (ISP) liability. The draft of the Copyright Act is currently under active consideration of the Council of State and is expected to pass into law in the near future.
- **Optical Disk Law Amendment:** Since its enactment in 2005, the Optical Disk (OD) Production Act B.E. 2548 has proven to be a useful tool for the authorities to control and monitor domestic production of infringing ODs. On a positive note, the government remains receptive to the industry's request that the law be reviewed to eliminate burdensomeness on the part of the rights holders.
- **Enhanced Border Enforcement:** The Thai Customs Department is drafting amendments to the Customs Act which will empower custom officers to initiate **ex officio** inspection of transshipped goods and goods in-transit and allows on-the-spot confiscation should there be adequate proof of actual violation. On December 14, 2009 the Legislative Counsel Committee convened a meeting to deliberate on process and recommended expeditious passage into law.

[3.] Strengthened Law Enforcement

- **Enhanced Coordination and Cooperation on Suppression:** Law enforcement agencies in cooperation with the rights owners have pursued aggressive raids, arrests, and seizures of infringing goods at borders and behind borders. The Customs Department has created an **Intellectual Property Rights Coordination Center** to enhance coordination amongst various law enforcement agencies. The Center and the Department of Special Investigation are establishing a private **network linking databases** to enable instant access to information to assist the investigations.
- **Seizure and Arrests of Infringing Goods:** The statistics on suppression for the year 2009 for the period of January-November illustrates remarkable achievements.
 - **Some 7,271 arrests of IPR offenders and confiscation of 5.1 million IP infringing items were made** and targeted large-scale infringers.
 - **Customs officials at the borders seized 350,000 items between January-November 2009** which represents a reduction of more than 2/3 in confiscated items.

- **DIP in collaboration with the Royal Thai Police, the Customs Department, and the Department of Special Investigation (DSI) have destroyed confiscated products on a regular basis.** In 2009, a total of 1.6 million items worth approximately 2,200 million Baht (US\$ 66 million) were destroyed. Most recently, in February of this year, the enforcement agencies destroyed 200,000 items worth approximately 44 million Baht (US\$ 1.4 million).
- **Judiciary Process:** The Intellectual Property and International Trade Court places great emphasis on tough penalties to deter rights violation. In 2009, the Court **imposed prison terms** in 119 cases. In addition, the issuance of **search warrants** and arrest warrants are now becoming more standardized through the High Court's Regulation on document requirements. In 2009, 895 search warrants were requested by the police. A total of 532 warrants were granted by the Court or approximately 60 per cent.

[4.] Proactive Actions to Combat Piracy

- **Software Piracy: Business Software Alliance (BSA)** reports that the software piracy rate in Thailand has continuously declined over the past three years from 80 per cent in 2006 to 78 per cent and 76 per cent in 2007 and 2008 respectively. To further improve the situation of software piracy, the DIP, Royal Thai Police, and BSA has launched various campaigns aimed at tackling corporate and business use of illegal software in order to reduce software piracy in the country and create awareness amongst companies.
- **Cable TV Piracy:** The National Telecommunications Committee enacted Temporary Regulations on Issuing of License to Cable TV Operators with comments of the **Cable and Satellite Broadcasting Association of Asia (CASBAA)**. In parallel, the TV and Radio Broadcasting Act enacted last year has authorized competent authorities to revoke and/or suspend the operation license if the cable TV operator is found guilty of copyright infringement by the court.
- **Book Piracy:** The Thai law firm which represents the **Association of American Publishers (AAP)** met several times with the related Thai government agencies during 2009 resulting in the completion of 5 cases, while 1 case remains under further investigation. Furthermore, the DIP has introduced the **Fair Use Guidelines** for News Report, Computer Program and for **Education** to clarify the exceptions and limitations to exclusive right of the copyright owners and has organized 4 seminars to promote these Guidelines.

[5.] Active Engagement with US Pharmaceutical Industry

- **Close Dialogue and Consultations:** The DIP has maintained close dialogue with **PREMA**, which is the sister organization of PhRMA in Thailand, on several issues to identify constructive ways and means to ensure continued supply and access to medicines. PREMA is actively involved with the DIP in the **Patent Law Amendment Working Group**. Furthermore, PREMA is now represented and have seats in subcommittees under the Committee on the Drafting of Action Plan in accordance with the National Strategy on Universal Access to Essential Medicines by the Thais.

- ***Data Protection and Patent Linkage:*** Thai laws and regulations on patent and data protection are consistent with the requirements of the TRIPS Agreement. In response to concerns raised by the US pharmaceutical industry, the Thai Food and Drug Administration and the DIP plan to establish a **joint database** on patented pharmaceuticals and registered drugs. Also, to improve coordination between patent issuance and marketing approval, DIP has requested the **USPTO's** technical assistance on the establishment of the database which all relevant agencies will have access.
- ***Counterfeit Pharmaceuticals:*** Thailand's laws on counterfeiting of pharmaceuticals are stringent and impose severe criminal penalties on those who sell fake or unregistered pharmaceuticals, including those that bear a counterfeit trademark. Furthermore, Thai law enforcement agencies maintain continuous efforts on arrests, confiscations, and investigations.
- ***Patent Examination Delays:*** The government has allocated a significant budget of US\$ 700,000 to be disbursed over 2009-2010 to upgrade the patent system including increasing the number of patent examiners.
- ***Accession to Patent Cooperation Treaty (PCT):*** Thailand submitted its instrument of accession to the PCT which became effective on December 24, 2009. This marks another major movement to accelerate the patent application process.

[6.] Awareness Raising

- Various public awareness campaigns have been conducted throughout the year amongst the general public and youth. Other initiatives include the following:
 - A Subcommittee on Education was created to oversee the creation of an IP curriculum for different levels of education.
 - Trial programs have been offered in 40 schools across the country before further expansion nationwide.
 - Cooperation between the Ministry of Commerce and Ministry of Education on promoting IP awareness in educational institutions.
 - Coordination efforts between the Ministry of Education and the Kenan Institute of Asia to create text books and learning materials on Creative Economy and IP.

[7.] Conclusion

- In conclusion, the RTG would like to reiterate our firm commitment and determination to continue efforts to ensure effective protection and enforcement of intellectual property rights at all levels. **This should constitute adequate grounds for the removal of Thailand from the Special 301 Priority Watch List with a possibility of an out-of-cycle review (OCR) as a mechanism to demonstrate Thailand's progress.**

1. INTRODUCTION

In 2009, the Royal Thai Government continued to increase efforts on prevention and suppression of intellectual property violation.

The profile of intellectual property has consistently been raised to a new plane as the administration led by Prime Minister Abhisit Vejjajiva commits itself to the vision of turning the country into a creative and knowledge driven economy.

This document is an update of Thailand's implementation on intellectual property rights in 2009 up to the beginning of 2010, a compilation of initiatives, activities and successes of Thailand in combating intellectual property rights violations. It is also Thailand's response to the comments by US industries submitted to the USTR regarding the intellectual property rights situation of the country in the past year.

2. DEVELOPMENTS AT THE POLICY LEVEL

2.1 The Work of the National Committee on Intellectual Property Policy

In the 2009 report, mention was made about the National Committee on Prevention and Suppression of Intellectual Property Rights Violation having been established upon the Council of Ministers' approval at the first Council meeting on 13 January 2009.

The Committee later changed its name to the National Committee on Intellectual Property Policy to reflect the broad based nature of intellectual property, not singularly confined to enforcement.

The body is chaired by the Prime Minister and has the Deputy Minister of Commerce, Mr. Alongkorn Ponlaboot, as Vice-Chair. It now comprises top-level representatives from 11 agencies namely, the Ministry of Commerce, the Ministry of Culture, the Ministry of Education, the Ministry of Finance, the Ministry of Information and Communication Technology, the Ministry of Foreign Affairs, the Ministry of Science and Technology, the Ministry of Public Health, the Royal Thai Police, the Office of the Attorney General and the National Broadcasting and Telecommunication Commission. The responsibilities of the Committee include formulating policies and strategies for promoting intellectual property, fighting against rights violations at all levels and improving the intellectual property laws and their application.

On 9 July 2009, the Cabinet approved 3 important IP related documents submitted by this Committee.

They are (1) the National IP Strategy (2) the proactive plan on prevention and suppression of intellectual property rights violation and (3) the renaming of the Policy Committee on Prevention and Protection of Intellectual Property to the Committee on National Intellectual Property Policy.

2.1.1 The National IP Strategy

The National Committee on Intellectual Property was able to secure the Cabinet's approval for the first ever National IP Strategy for resolute implementation by the line agencies.

The objective is to base the country's future economic development on creativity, by being able to rely on its own creative wealth and compete at the international level within 2010. The Strategy is sub-divided into six policy areas.

- Creation and rights ownership;
- Utilisation and commercialisation of intellectual property;
- Development of intellectual property protection system on par with international standards and practices and resilient to changes in technologies;
- Prevention and suppression of intellectual property rights violation;
- Awareness raising and public education; and,
- Finance.

2.1.2 The Proactive Plan on Prevention and Suppression of Intellectual Property Rights Violation

The Proactive Plan on Prevention and Suppression of Intellectual Property Rights Violation, drafted in close consultation with relevant agencies, was endorsed by the Cabinet on 9 July 2009. The Plan prescribes actions to be taken within 2-6 months by different agencies (e.g., Royal Thai Police, Department of Special Investigation, Customs Department) in six areas as follows:

- Law enforcement – promoting consistent suppression of rights violation and integrated coordination between law enforcement agencies;
- Enhancement of judicial process;
- Improvement of patent registration process;
- Curtailing rights infringement over the internet;
- Legislative changes; and,
- Cooperation with the private sector.

(See [Annex 1](#))

2.2 The Setting Up of the National Committee on Creative Economy

Closely interrelated with the National IP Strategy is the current government flagship policy -- Creative Economy Policy. Creative Economy has gained policy ground through the full and visionary articulation in the Eleventh Social and Economic Development Plan and the eventual establishment of the National Committee on Creative Economy as a high-level, interagency coordinating mechanism.

It has gained publicity from media and press and strong industry support particularly since the official launch of Creative Thailand at the Government House in August 2009.

The scope of the Creative Economy Policy covers 4 clusters of altogether 15 industries. They include (1) **Cultural Heritage** (comprising crafts; historical & cultural tourism; Thai foods; and, Thai traditional medicine industries); (2) **Arts** (comprising performing arts; and, visual arts industries); (3) **Media** (comprising film; publishing; broadcasting; and music industries)

and (4) **Functional Creation** (comprising design; fashion; architecture; advertising; and software industries).

The Government has pledged to deliver 12 commitments at the official launch of Creative Thailand Scheme on 31 August 2009 and set goals to make Thailand the hub of creative industries in South East Asia and boost the economic contribution of national creative industries from the current 12 per cent to 20 per cent of GDP within 2012.

The commitments are grouped under 4 themes, namely, Creative Infrastructure; Creative Education and Human Resources Development; Creative Society and Inspiration; and, Creative Business Development and Investment. (See [Annex 2](#))

Successful delivery of many of the commitments requires better and stronger IP regime as the incentives to continue creating and investing by creative individuals and enterprises depend much on the framework of intellectual property rights particularly on the ways in which it addresses the use of intellectual property, access, control and choice to rights holders.

3. MEASURES AND ACTIVITIES TO ENHANCE THE ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

3.1 Enhanced Coordination and Cooperation on Suppression

The Sub-Committee on Prevention and Suppression of Intellectual Property Rights Violation, was set up under the National Committee on Intellectual Property Policy to focus on suppression activities. The Sub-Committee is chaired by Deputy Minister of Commerce, Mr. Alongkorn Ponlaboot and comprises senior representatives from Customs Department; Department of Special Investigation; Government Public Relations Department; National Telecommunication Commission; National Culture Board; Royal Thai Police; Department of Intellectual Property; Ministry of Education; Ministry of Information and Communication Technology; and the Internal Security Operations Command.

Under this Sub-Committee, six working groups have been established to deal with key aspects of suppression. They include (1) Working Group on Investigation and Suppression, (2) Working Group on Education, and, (3) Working Group on Public Relations, (4) Working Group on Internet Piracy, (5) Working Group on Book Piracy, and, (6) Working Group on Follow-up and Expansion of Arrest Results.

The law enforcement agencies namely the Department of Special Investigation, the Royal Thai Police and Customs Department have pursued aggressive raids, arrests, and seizures of infringing goods at borders and behind borders. The law enforcement agencies submit a daily report to the Chair of the Sub-Committee. The Sub-Committee reports to the Cabinet on a monthly basis.

The Customs Department has created an Intellectual Property Rights Coordination Centre in the Investigation and Suppression Bureau to enhance coordination amongst various law enforcement agencies. The Centre and the Department of Special Investigation are establishing a private network linking databases to enable instant access to information to assist the investigations.

The government is determined to curb corruption in government services. A list of 41 police officers who took part or assisted in the violation of intellectual property rights has been submitted to the Deputy Prime Minister responsible for national security affairs. The case is under active investigation by the Royal Thai Police.

In December 2009, the Department of Intellectual Property opened *HOT LINE 1368* as a new channel for direct reporting of suspicious activities or problematic situations which could involve IP infringement. Information boards were given to the Royal Thai Police for display in the red zone areas in order to promote public participation in the fight against all forms of IP infringement.

3.2 *Legislative Reforms*

Modernisation of intellectual property laws is on the government agenda. Several IP laws are under active revision. There has been significant progress towards necessary legislative changes.

3.2.1 *Second Liability*

After wide consultations with stakeholders conducted by the Department of Intellectual Property in different configurations, and a public hearing held on ...2009. The proposed amendment to Copyright Act B.E. 2537 (1994) and Trademark Act B.E. 2534 (1991) on landlord liability would hold liable the person who provides physical or digital spaces for infringing activities. The amendment will be submitted to the Cabinet for approval in March 2010 and is expected to pass into law by April. Landlords, owners of retail spaces and ISPs will face a jail term if there is a reason to believe that they actively participate in the commission of a crime although they take no part in the actual offense.

3.2.2 *Large Scale Infringers*

The Anti-Money Laundering B.E. 2542 (1999) will be amended to make large scale (minimum threshold of 3,000 items) IPR violation a predicate crime. The amendment to Article 3 of the Anti-Money Laundering Act proposes to include manufacturers and wholesalers of trademark and copyright infringing products into the definition of predicate crime. The Anti-Money Laundering Prevention and Suppression Office will submit the proposed amendment to the Money Laundering Control Committee for further consideration.

3.2.3 *Enhanced Border Enforcement*

The Customs Department has proposed a draft Customs Act B.E. ... which contains a definition of “an infringing product” to include trademark and copyright infringing products independent of country origin of registration. The amendment empowers customs officers to initiate *ex officio* inspection of transshipped goods and goods in-transit and allows on-the-spot confiscation should there be adequate proof of actual violation. The draft Act is currently with the Secretariat of the Cabinet. On 14 December 2009 the Legislative Counsel Committee convened a meeting to deliberate on process and recommended expeditious passage into law, recognising that customs

intervention measures and measures at borders have played a significant role in combating counterfeit and pirated goods.

3.2.4 *Introduction of Anti-Camcorder Law*

The Department of Intellectual Property commissioned Bryan Cave (Thailand) Co., Ltd. to conduct a thorough study on the pros and cons of a possible legislation on camcorder piracy. The findings were publicised to solicit views from stakeholders on 23 November 2009. The study suggests the making of a new *sui generis* law. A drafting committee has been set up at the Department of Intellectual Property to supervise the process. The first draft is expected to come out by the end of February 2010 for further submission to the Cabinet in April. The draft will be made available on the Department of Intellectual Property's official website for public consultation in March 2010.

3.2.5 *Internet piracy*

The Subcommittee on Prevention and Suppression of Intellectual Property Rights Violation on 29 October 2009 tasked the ICT Ministry to extend the coverage of the Computer Crime Act B.E. 2550 (2007) to Internet piracy and delegate power to officers to use discretion in taking down unauthorised data or close illegitimate websites. On top of that, a provision on illegitimate reproduction would be added to close the current loophole.

3.2.6 *The Revision of the Prime Minister Office's Regulation on the Enforcement of Intellectual Property Related Laws*

Recognising that the fight against intellectual property rights violations involves various government agencies, the revision of the 1993 Prime Minister Office's Regulation on the Suppression of Copyright Violation was initiated in 2008 as it becomes obsolete.

The main objective of the revision is to pool together all existing legislations which contain provisions on rights infringements and penalisation so that not only copyright law but also other related laws can be applied for effective punishment. This is another concrete example of the government's attempt to ensure that future application by the Court is more integrated and the final decision on penalties is proportionate to actual misconduct.

Thirty-three pieces of legislations have been identified as containing provisions on infringements and penalties including, *inter alia* the Revenue Code, Drug Law, Factory Law, and Import and Export Law. It should be noted however that the revised Regulation does not authorise the Department of Intellectual Property to take over the administration of those laws. The role of the Department is more to oversee the effective implementation of intellectual property related provisions.

The revised 1993 Regulation was approved in principle by the Cabinet on 22 December 2009. The Cabinet instructed the Committee (attached to the

Secretariat of the Cabinet), responsible for examining draft bills of law and draft organic laws, to incorporate comments by different agencies into the revision before eventual publication in the Royal Gazette.

3.3 Judiciary Process

The Intellectual Property and International Trade Court places greater emphasis on tough penalties to deter rights violation.

Most of the cases filed to the Central Intellectual Property and International Trade Court (CIPIT) are criminal even though the Court also has jurisdiction over civil cases including intellectual property cases. During January – December 2009, 6,612 intellectual property rights infringement cases were filed. Most cases involved the trademark counterfeiting and copyright infringements activities (2166, and 2,145 cases respectively). Only 10 cases involved patent violation. (See [Annex 3](#))

From January to December, 2009, The Court imposed prison terms in 119 cases. In the case of repeated guilty, the penalties were accumulated.

In 2009, 895 search warrants were requested by the police. A total of 532 warrants were granted by the Court or approximately 60 per cent. (See [Annex 4](#))

3.4 Awareness Raising

In line with the country's Creative Economy Policy, promotion and protection of intellectual property have become central to economic policy making. It is believed that protecting the interests of local and foreign rights holders would promote investor confidence, stimulates invention, innovation and creation of original works.

The Department of Intellectual Property has launched "STOP PIRACY" campaign as part of the efforts in response to the policy initiative by Deputy Minister Alongkorn. The main objective is to raise awareness amongst the general public and youth so that they understand the importance of respect for other people's rights, by, for example, not selling, buying nor using infringing products.

The Department of Intellectual Property had brooches made to order, with the inscription "STOP PIRACY" in the Thai and the English languages and distributed them during different campaign activities:

- "Stop Piracy Activity" participated by local artists and movie stars who helped distributing the "STOP PIRACY" brooches to Members of the Council of Ministers on 20 January 2009 and subsequently, to the Senate on 21 January 2009.
- A "STOP PIRACY" walk rally on 14 February 2009 in Siam Square commercial district.
- A "STOP PIRACY" walk rally on 25 June 2009 in Patong Beach, Phuket Province.

Other awareness-raising activities include:

- Organisation of weekly seminars/trainings by the Department of Intellectual Property free of charge for public and private sectors e.g., police officers and

academics to promote IP creation, enforcement, protection, and commercialisation;

- “IP SPY” project engages general public including students to provide information on suspicious act of IP violation to the authorities through the Department of Intellectual Property’s official website www.ipthailand.org
- Distribution of notice signs campaigning against purchasing of infringing goods to the City of Bangkok. The signs are placed in the districts which are vulnerable to infringement activities.
- Launching of “Rak (Love) Thai, Buy Genuine” awareness campaign on 14 February 2009. The event was participated by artists, movie stars and rights holders from the private sector.
- Setting up of Sub Committee on Education to oversee creation of IP curriculum for different levels of education e.g., elementary, secondary and higher education.
- Coordination with the Ministry of Education and Kenan Institute of Asia to create text books and learning materials on Creative Economy and Intellectual Property. Trial programme has been offered in 40 schools across the country before expand it nation wide.
- Letter signed by Deputy Minister of Commerce (Alongkorn Ponlaboot) to Minister of Education seeking cooperation on IP awareness in educational institutions.
- Launching of “Think before Selling Fakes” and “Think before Buying Fakes” campaigns in December 2009. Distribution of information boards for public display to 19 department stores, shopping complexes and retailers; Bangkok Metropolitan Administration, customs checkpoints along borders in Nong Kai, Ubonratchathani, Chiang Rai and Tak provinces.

3.5 Seizure and Arrest of Goods Infringing Intellectual Property Rights

The Department of Intellectual Property has maintained close dialogue with relevant agencies (the Royal Thai Police, the Department of Special Investigation and the Customs Department). Interagency cooperation has been strengthened over the years in monitoring and tracking illicit activities, raiding, arresting and seizing infringing goods.

The operations by the police authorities have targeted large scale manufacturing and wholesale trade in an attempt to root out violations at the beginning of the supply chain.

Table 1 exhibits 7,271 arrest cases from January to November 2009. The figures continue to suggest that large-scale infringers are successfully targeted in raids as the average confiscated items per case is higher.

Table 1: The arrests and seizures of intellectual property infringing items produced and sold in Thailand (See Annex 5)

Year	Arrest Cases	Confiscated items	Average Confiscated items per case
2009 (Jan.-Nov.)	7,271	5,151,887	708.55

2008	5,923	3,416,316	576.78
2007	7,118	3,746,036	526.28
2006	9,575	2,823,588	294.89

Source: The Royal Thai Police, ECOTECH, DSI, Metropolitan Police Bureau, and Provincial Police Region 1-9

Turning to Table 2, the total of 615 cases were reported and 346,527 items were seized by the customs officers between January to November 2009. Compared with the previous years, the figures suggest significant reduction in infringement activities across borders in terms of scale. It can be inferred that Thai ports have been less vulnerable to transshipped and in-transit infringing goods.

Table 2: The arrests and seizures of intellectual property infringing items by the customs officials at borders (See Annex 6)

Year	Arrest Cases	Confiscated items	Average Confiscated items per case
2009 (Jan.-Nov.)	615	346,527	563.45
2008	540	1,328,975	2,461.06
2007	628	1,332,319	2,121.53
2006	222	826,607	3,723.45

Source: Customs Department, Ministry of Commerce

3.6 *Destruction of Goods Infringing Intellectual Property Rights*

In the past year, the Royal Thai Police and the Customs Department carried out routine destruction of all confiscated products to prevent them from reentering the market.

In 2009, the DIP in collaboration with the Royal Thai Police, the Customs Department and the DSI organised twice a destruction ceremony of confiscated IPR infringing goods.

- 27 March 2009: destruction of 1,070,170 confiscated items, weighing 173 tons and worth approximately 1,582 million baht;
- 29 September 2009: destruction of confiscated 557, 876 items, weighing 120 tons and worth approximately 621 million baht;

The recent destruction ceremony took place on 8 February 2010 in Phuket where 200,000 confiscated items, worth approximately 44 million baht were destroyed.

The destruction was witnessed by the representatives of the right holders and members of diplomatic corps.

3.7 *Optical Disc Piracy*

As a matter of fact, most pirated ODs in the marketplace are produced in the neighbouring countries and smuggled into Thailand.

The Optical Disk Production Act B.E. 2548, since its enactment in 2005, has proven to be a useful tool for the authorities to control and monitor domestic production of infringing ODs.

The Department of Intellectual Property positively responds to the industry request that the law be reviewed. The Department conducted a focus group meeting to solicit views from stakeholders on 19 February 2010 before setting up a task force to supervise the review process. Provisions on the requirements of the copyright owner's code are subject to scrutiny¹ with a view to eliminate burdensomeness on the part of the rights holders and the administrative costs incurred.

3.8 *Camcorder Piracy*

Thailand is aware that unauthorised camcording of films in movie theaters has caused considerable harm to right holders, both Thais and foreigners, as it leads to the chain of other illegal activities, such as pirated OD and Internet file sharing affecting entire legitimate industries.

The Department of Intellectual Property commissioned Bryan Cave (Thailand) Co., Ltd. to conduct a thorough study on ways and means to effectively and appropriately prevent and suppress unauthorised camcording activities in movie theaters. The results of the study in November 2009 support an introduction of a *sui generis* law on camcorder piracy. The Department of Intellectual Property is in the process of setting up a special task force to draft the anti-camcorder law with an aim to pass into law within 2010.

In the past year, the Thai authorities and the film industries continue to work together closely to raise public awareness that camcorder piracy is a criminal offense. Posters and Video clips are shown in almost all movie theatres across the country to convey the message.

Installation of CCTVs to detect infringement activities and inspection of bags before entry have become routine in major movie theatres.

3.9 *Software Piracy*

The situation of the software piracy in Thailand has been significantly improved during the past year.

The Department of Intellectual Property, in cooperation with the Royal Thai Police and the industry (the Business Software Alliance--BSA) continues with the campaign called "Cooperation on Using a Genuine Software" in order to encourage businesses and end users to refrain from using pirated software. A short while after the campaign was launched, extensive raids against software infringers commenced in full force. In August 2009 alone, a total of 15 raids were conducted in which illegitimate software worth 54.5 million Baht was confiscated.

The Central Investigation Bureau's Economic and Cyber Crimes Division (ECD), in close cooperation with the BSA, has compiled a list of 1,000 companies from various industries such as manufacturing, real estate, automobile, shipping, design and engineering established in

¹ Section 1, Articles 5, 6, 8, 9, 11, 12, 15 and Section 4, Articles 23 and 27.

Thailand, suspect of using pirated and unlicensed software. The investigation already commenced in October 2009. The government aims to tackle corporate and business use of illegal software in order to reduce software piracy in the country and create awareness amongst companies.

The BSA has reported that the software piracy rate in Thailand has been decreasing over the past three years from 80 per cent in 2006 to 78 per cent and 76 per cent in 2007 and 2008 respectively.

The proposed amendments to the Copyright Act include a provision on circumventing technological protection measures (TPMs) used by copyright owners to control access to, and/or copying of, digital material which prohibits making a circumvention device for someone else, and supplying a circumvention device or service.

3.10 Cable TV Piracy

The current Constitution of Thailand requires only one body to regulate the telecommunications and broadcasting sectors. The Office of the Prime Minister is amending the Act on the Organisation to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunication Services B.E. 2543 (2000) to reflect this policy change. At present, the draft amendment has passed the first reading of the Parliament.

The passage will initiate the selection process of the National Broadcasting and Telecommunication Commission (NBTC)—an independent regulator with delegated authority to suspend or revoke licenses of the operators found guilty of infringement in accordance with the Broadcasting and Public Media Act B.E. 2551 (2008)

In the meantime, the National Telecommunication Commission, as an interim regulator of broadcasting business, has enacted a regulation on license issuance to cable TV operators in Thailand since December 2009 taking into account comments made by CASBAA, particularly the suggestion to expand on IP provision. It requires the applicant to submit related intellectual property information to the NTC as part of the licensing requirements. The NTC is setting up an advisory board to further discuss about effective administration of the regulation, including how to best address the issue of signal piracy.

As for the protection of encrypted TV programmes, the Act also imposes severe penalties to those engaged in secretive sales, production, importation or provision of installation services of decryption devices.

Moreover, the TV and Radio Broadcasting Act enacted last year has authorised the competent authorities to revoke and/or suspend the operation license if the cable TV operator is found guilty of copyright infringement by the court.

3.11 Book Piracy

As mentioned earlier, a Working Group on Book Piracy has been set up under the Sub-Committee on the Prevention and Suppression of Rights Violation to carry an in-depth investigation on book piracy. The Department of Intellectual Property, the Department of Special Investigation, the Customs Department, the Royal Thai Police and Rouse & Co. International (Thailand) which represents the Association of American Publishers (AAP) met several times in 2009 to discuss progress made on the investigation.

Progress has been made on six major cases. Four cases have been successfully closed. The remaining two await a more in-depth investigation by the authorities.

At the same time, awareness raising activities were organised throughout the year on and off campuses to combat illegal photocopying and unauthorised translations of educational materials. The Department of Intellectual Property also organised altogether 4 seminars in 2009, participated by teachers, educators and librarians, to promote their understanding of fair use.

3.12 Counterfeiting of Pharmaceuticals

Thailand recognizes fully that counterfeiting of pharmaceuticals is against the law and poses dangerous public health risks.

Laws on counterfeiting of pharmaceuticals are stringent. The Medicine Act B.E. 2510 (1967), for instance, imposes severe criminal penalties on those who sell fake or unregistered pharmaceuticals, including those that bear, amongst other things, a fault or counterfeit trademark.

The recent cases on counterfeiting of pharmaceuticals

Date	Place	Confiscated Items	Charges	Current Status
12 Feb 09	Bang Khun Tien, Bangkok	7,400 unregistered and trademark counterfeiting erectile dysfunction medicine	- Possess for sale of trademark counterfeiting products - Selling medicine without authorisation - Selling fake and/or unregistered pharmaceuticals	Under ECOTEC's investigation
2 Jun 09	Sampanthawongse, Bangkok	150 fake Viagra pills	- Possess for sale of trademark counterfeiting products - Selling medicine without authorisation - Selling fake and/or unregistered pharmaceuticals	Under ECOTEC's investigation
20 Aug 09	Sukhumvit 15, Bangkok	392 fake Viagra pills, 98 empty boxes	- Possess for sale of trademark counterfeiting products - Selling medicine without authorisation	Under ECOTEC's investigation

Date	Place	Confiscated Items	Charges	Current Status
			- Selling fake and/or unregistered pharmaceuticals	
12 Oct 09	The Mall Department Store, Ramkhamhang, Bangkok	3,376 fake Viagra pills, 800 empty boxes	- Possess for sale of trademark counterfeiting products - Selling medicine without authorisation - Selling fake and/or unregistered pharmaceuticals	Under ECOTEC's investigation

4. RESPONSES TO THE US CONCERNS ON COMPULSORY LICENSING, DATA PROTECTION, PATENT LINKAGE AND DELAY IN PATENT EXAMINATION

Since the announcement of the compulsory licensing for four cancer treatment medicines by the Ministry of Public Health in early 2008, only two have been enforced and the list has not been expanded since. The current administration has made it clear in various occasions that Thailand attaches high importance to close dialogue between stakeholders including the pharmaceutical industry, patients and government agencies to identify constructive ways and means to ensure continued supply and access to medicines.

Thailand would like to underscore the fact that IP also has a social dimension which sometimes could be less compatible with market principles. The case of compulsory licensing in Thailand is highly sensitive as it relates to the public health and access to medicines by patients suffering from life threatening diseases such as HIV/AIDS and cancer. The government has been handling this issue with great caution to ensure that any measures taken are in conformity with Thailand's rights and obligations under the international agreements.

In response to this, a four-party meeting was held at the Ministry of Foreign Affairs in September 2009 to discuss a possible confidence building mechanism to enable constructive and regular exchanges between relevant government agencies and the pharmaceutical industry. The meeting was attended by representatives from the Department of Intellectual Property, the Ministry of Public Health, the Ministry of Foreign Affairs and PReMA.

The Department of Intellectual Property itself has maintained close dialogue with PReMA. In the recent meeting on 24 December 2009, several issues were discussed such as CL, counterfeit drugs and trademarks, parallel imports.

PReMA is represented in the Sub-Committee on Promotion of Domestic Pricing in line with the Living Costs and the Sub-Committee on Development of Domestic Pharmaceutical Industry, Drug Research and Development. Both Sub-Committees work under the Committee on the Drafting of Action Plan in Accordance with the National Strategy on Universal Access to Essential Medicines by the Thais.

Thailand would like to reaffirm that, as a WTO Member, the Thai laws and regulations on patent and data protection including the Regulations of the Ministry of Public Health enacted on 30 January 2007 are consistent with the requirements of the TRIPS Agreement.

The TRIPS Agreement does not require Members including Thailand to maintain patent linkage which would prevent the Food and Drug Administration from granting market approval to generic medicines before the protection of the originator reference product expires. However, the Food and Drug Administration and the Department of Intellectual Property are considering establishing a joint database on patented pharmaceuticals and registered drugs for transparency reason. In this connection, cooperation from the pharmaceutical rights holders is important because at present patent is granted to the application of chemical compounds, not the pharmaceutical product itself. Hence, it is difficult to check from the patent database the patent status of the originator reference product.

On the issue of patent examination delays, Thailand has been trying to build institutional capacity in bringing its examination procedures in line with international standards. It should be borne in mind that time required to complete the application varies from case to case depending on the complexity of the case. The government has earmarked a budget of 666,666 USD to be disbursed over 2009-2010 to upgrade the patent system.

5. MAJOR SUCCESS CASES

Date	Place	Confiscated Items	Charges	Current Status
21 Jan 09	Truck (plate no. 80-3630 Chumporn) on highway no. 41 kms.20-21, Nakhon Sri Thammarat	52,760 DVDs, MP3s	Production for sale of copyright infringing products	Under Highway Police Division's investigation
23 Jan 09	The Mall Department Store, Nakhon Ratchasima	16,689 DVDs, MP3s	Possess for sale of copyright infringing products	Under Economic Crime Division's investigation
24 Jan 09	Unidentified townhouse, Patong, Phuket	7,050 pieces of clothes	Possess for sale of trademark counterfeit products	Under Kratoo Provincial Police Station's investigation
28 Jan 09	Pratunam Centre	9,530 scarves	Possess for sale of trademark counterfeit products	Under Economic Crime Division's investigation
3 Feb 09	Unidentified house, Tamuang, Kanchanaburi	140,253 exhibits incl. CD writers, DVDs, VCDs, covers	Possess for sale of copyright infringing products	Under Economic Crime Division's investigation
11 Feb 09	Bangkok	115,110 exhibits incl.	Possess for sale of	Under

Date	Place	Confiscated Items	Charges	Current Status
		shirts, fake labels, sewing machines	trademark counterfeit products	Economic Crime Division's investigation
12 Feb 09	Warehouse 1/3, Bang Khunthien, Bangkok	23,842 exhibits incl. watches, counterfeit drugs, glasses, CDs	Possess for sale of trademark counterfeit products	Under Economic Crime Division's investigation
26 Feb 09	US Games, Saphanlek Market, Bangkok	34,938 exhibits incl. Memory DVD, playstations	Possess for sale of trademark counterfeit products	Under Economic Crime Division's investigation
28 Mar 09	Ratchaburi	84,325 exhibits incl. pirated CDs, VCDs, DVDs, MP3s	Possess for sale of copyright infringing products	Under Economic Crime Division's investigation
28 Mar 09	Pathumthani	42,903 trademark infringing items (watches, glasses, calculators)	Possess for sale of trademark counterfeit products	Under Provincial Police Region 1's investigation
30 Apr 09	Talingchan, Bangkok	75,800 pirated DVDs, CDs	Possess for sale of copyright infringing products	Under the Royal Thai Police's investigation
5 Jun 09	Nonthaburi	4,590 counterfeit Levi's jeans	Possess for sale of trademark counterfeit products	Under Provincial Police Region 1's investigation
17 Jun 09	Nonthaburi	28 CD writers, 320 laser heads (capacity: 30,000 CDs/hr.), 40,000 pirated CDs	Possess for sale of copyright infringing products	Under Provincial Polices investigation
18 Jun 09	Nakornpathom	19 CD writers, 183 laser heads, 520 pirated CDs, 403 clean CDs and 210,000 CD covers	Possess for sale of copyright infringing products	Under Economic Crime Division's investigation
1 Jul 09	Bang Bon Bangkok	15,855 exhibits incl. shirts, pants, sewing equipment	Production of trademark counterfeit products	Under Economic Crime Division's investigation
18 Jul 09	Bangkok	8,005 CDs, DVDs karaoke, MP3s	Possess for sale of copyright infringing products	Under Metropolitan Police Bureau's investigation
10 Aug 09	Prajinburi	982 patent infringing	Possess for sale of	Under

Date	Place	Confiscated Items	Charges	Current Status
		fire extinguishing balls, 37,469 films	patent infringing products	Economic Crime Division's investigation
11 Aug 09	Bang Bon Bangkok	30,000 counterfeit t-shirts (Armani, Puma and Levi's), 500 print blocks	Possess for sale of trademark counterfeit products	Under the police Special Division's investigation
27 Aug 09	Samutprakarn	7 print blocks, 38,923 yards of printed textiles that violate copyrighted artwork	Possess for sale of copyright infringing products	Under Economic Crime Division's investigation
28 Aug 09	Samudsakorn	2,100 counterfeit pants (Adidas, FBT, Umbro, Grand Sport), 12,500 fake labels	Possess for sale of trademark counterfeit products	Under Economic Crime Division's investigation
9 Sept 09	Bangkok	Camcorder, video equipped mobile phone, camera devices	Unauthorised camcording	Under the Royal Thai Police's investigation
24 Sept 09	Nonthaburi	4,388 pirated DVDs, 21 laser writers, 16 molds, 416 stampers and 81,729 exhibits	Possess for sale of copyright infringing products	Under the Royal Thai Police's investigation
6 Oct 09	Golden World Indochina Co., Ltd. Bangkok	86,577 exhibits incl. fake drugs, unregistered drugs (Viagra, Cialis, Kamagra, Caverta, Keto etc.)	Possess for sale of trademark counterfeit products	Under the Department of Special Investigation's investigation
9 Oct 09	Bang Bon, Bangkok	58,004 exhibits incl. Levi's jeans, buttons and fake labels	Possess for sale of trademark counterfeit products	Under Economic Crime Division's investigation
9 Oct 09	Bang Khunthien, Bangkok	17,692 Ajinomoto's seasoning products and 129,614 Tiparos fishsauce	Possess for sale of trademark counterfeit products	Under Economic Crime Division's investigation
20 Nov 09	Sukhumvit 33/1 Bangkok	14,782 pirated movie and music CDs, DVDs	Possess for sale of copyright infringing products	Under Special Operation Division's investigation
1 Dec 09	Unidentified video rental store Sukhumvit 24	112,000 DVDs and 18 computer equipment	Possess for sale of copyright infringing products	Under Metropolitan Police Bureau's investigation

Date	Place	Confiscated Items	Charges	Current Status
	Bangkok			
5 Dec 09	Bangkok	46,320 DVD & CVD movies	Possess for sale of copyright infringing products	Under Economic Crime Division's investigation

6. CONCLUSION AND WAY FORWARD

The multifaceted nature of intellectual property has posed a challenge and an opportunity for Thailand’s social and economic development. Pursuant to the national agenda of the current administration and in line with the country’s international obligations, the Royal Thai Government will continue its efforts to ensure effective enforcement of intellectual property rights, promote public awareness, preserve basic human rights, and encourage innovation and creativity.

PROACTIVE PLAN ON PREVENTION AND SUPPRESSION OF INTELLECUTUAL RIGHTS VIOLATION

Measure	Action	Timeframe		Latest Developments
1. <u>Law enforcement</u> 1.1 Consistent suppression through cohesive coordination and exchanges of information between agencies	<ul style="list-style-type: none">• Submit the National Strategy on Intellectual Property for Cabinet approval• Devise a proactive scheme on suppression of rights violation	1 month	Done	<ul style="list-style-type: none">- The Cabinet approved the National Strategy on Intellectual Property submitted by the National Policy Committee on Intellectual Property Chaired by the Prime Minister.- In October, 2009, Customs Department and Department of Special Investigation have submitted their action plan on prevention and suppression of IPR violation to the Sub-Committee on Protection and Suppression of Intellectual Property Right Violation chaired by the Deputy Minister of Commerce.- The DSI is developing software and infrastructure to collect database on IPR infringement cases.- The Sub-Committee assigned the Royal Thai Police, the Customs Department and the DSI to harmonise the format of data collections to facilitate inter-agency use.
	<ul style="list-style-type: none">• Develop a database and report on suppression efforts	2 months		
		6 months		
1.2 Problem solving for unauthorised camcording	<ul style="list-style-type: none">• Conduct a study on preventive measures to curb unauthorised camcording in movie theatres	6 months	Done	<ul style="list-style-type: none">- The DIP commissioned Bryan Cave (Thailand) Co., Ltd. to conduct a thorough study on how to effectively and appropriately prevent and suppress unauthorised camcording activities in movie theaters.- The DIP and Bryan Cave jointly organized a focus group meeting on 9 November 2009, and a study result was presented on 23 November 2009. The participants to the meeting included various stakeholders such as cinema owners, movie copyright owners, academics and enforcement agency representatives.- The study suggests Thailand to have an Anti – Camcording legislation that prevent an audience from unauthorised camcording in the theater without prohibiting the possession of camcording devices into the theater.

Measure	Action	Timeframe	Latest Developments
1.3 Problem solving for cable piracy	<ul style="list-style-type: none"> Expedite the passage of amendment of the Act on the Organisation to Assign Radio Frequency and to Regulate the Broadcasting and Telecommunication Services B.E. 2543. Expedite the implementation of NTC Temporary Regulation on Issuing of Licences to Cable TV Operators 	<p>1 year</p> <p>6 months</p> <p>Done</p>	<ul style="list-style-type: none"> The Draft is now under the consideration of the ad-hoc committee established by the Parliament chaired by the Minister of the Office of the Prime Minister. It will soon be forwarded to the Parliament for consideration. The NTC's Temporary Regulations on Issuing of License to Cable TV Operators entered into force on 9 November 2009. During the drafting process, the comments from stakeholders including CASBAA were taken into account.
1.4 Problem solving for book piracy	<ul style="list-style-type: none"> Investigate and prevent exports of pirated books Raise awareness amongst students, faculties and personnel in academia Cooperate with rights holders for better access to low priced textbooks 	<p>Immediately</p> <p>Done</p> <p>Immediately</p> <p>Done</p> <p>immediately</p> <p>Done</p>	<ul style="list-style-type: none"> The DG of the DIP raised this concern in the follow up meeting with the Royal Thai Police chaired by the Deputy Police Commissioner and requested for immediate action against this type of piracy. The Sub-Committee established a working group to coordinate the enforcement against exportation of pirated books chaired by the Deputy DG of the DIP. The working group have met two times last months and assigns the text book copyright owner representatives to obtain power of attorney from the right holders and to work closely with the DSI and ECOTEC Police to take legal actions against the infringers by the end of this year. The Ministry of Education has issued a formal letter to educational institutions requesting them to raise awareness amongst their students, faculties and personnel to respect IPR particularly copyright. The Ministry of Education has recommended educational institutions to buy text books in large quantities to lower the price. The DIP is requesting for the cooperation from the text book right owners to provide a cheaper version of text books to be used by students.

Measure	Action	Timeframe	Latest Developments
	<ul style="list-style-type: none"> • Improve the quality and speed of the examination process • Surveillance of infringing activities over digital networks 	<p>3 months</p> <p>3 months</p>	<p>December 2009. Thailand is the 142nd contracting state of the PCT that facilitates the filing of patents in multiple countries.</p> <ul style="list-style-type: none"> - The DIP is reviewing its internal practice to reduce time used in granting a patent and clarify some problem issues. - A special working group under the Ministry of Information and Communication Technology has been set up to survey infringing activities over the digital network and channels for public intervention and suggestion will be opened soon. - The National Policy Committee on Intellectual Property chaired by the Prime Minister assigned the Ministry of ICT to amend the Computer Crime Act to cover the IPR infringement over the digital network. - The Ministry of ICT is revising the aforementioned act before submitting the draft amendment to the cabinet for its approval. - The DIP is amending the Copyright Act and Trademark Act to criminalise the landlord who facilitates the producing, selling and warehousing intellectual property right violation goods. This includes the ISP whose network is used in such activities. The DIP will resubmit the amendment draft to the cabinet for its consideration in due course.
4. <u>Curtailing rights infringement over digital networks</u>			
5. <u>Legislation</u>			
5.1 Amendment of copyright law	<ul style="list-style-type: none"> • Expedite the reading of the draft copyright law and submit the draft to the Cabinet 	4 months	<ul style="list-style-type: none"> - Since 11 August 2009, the Council of State has organised a special meeting every week to speed up the consideration of the draft Copyright Act.
5.2 Enhancement of Optical Disk Production Act B.E. 2548 enforcement	<ul style="list-style-type: none"> • Draw up guidelines for enforcement agencies to send pirated CDs to forensic science institute to support traceback 	2 months <p>Done</p>	<ul style="list-style-type: none"> - The Sub-Committee laid a principle that all seized pirated OD must be forensically examined. And the result must be reported to the Deputy Minister of Commerce.

Measure	Action	Timeframe	Latest Developments
5.3 Amendment of patent law	<p>investigation</p> <ul style="list-style-type: none"> Expedite the amendment of the Patent Act B.E. 2522 and submit it to the Cabinet for approval 	6 months	<ul style="list-style-type: none"> A public hearing on the draft patent law amendment was held in 25 November 2009.
5.4 Expedite the passage of law amendments criminalising buyers, possessors of infringing goods, and landlords who facilitate infringing activities; and, counting IPR violation as a predicate crime under the anti-money laundering law	<ul style="list-style-type: none"> Expedite the amendments of the copyright law and trademark law taking into accounts comments received from stakeholders and secure approval by the Cabinet Expedite the amendment of the anti-money laundering law 	<p>2 months</p> <p>2 months</p>	<ul style="list-style-type: none"> Further in-depth study on criminalising IPR infringing goods buyers will be conducted while the draft amendment to the criminalise landlords and ISPs who facilitate selling and distributing of IPR infringing goods/content will be resubmitted to the cabinet within March 2010. The DIP has recently proposed the amendment of Anti Money Laundry Act to the Anti-Money Laundering Commission to incorporate the large scale IPR infringement (more than 3,000 items) as a predicate offense under the Act.
6. <u>Cooperation with the private sector</u>	<ul style="list-style-type: none"> Organise regular exchanges on intellectual property between the government and private sectors including independent organisations 	8 months	<ul style="list-style-type: none"> The National Policy Committee on Intellectual Property has assigned the Ministry of Foreign Affairs to organise a meeting amongst public and private stakeholders to find the most appropriate method to increase access to medicines of the Thai people. The aforesaid meeting hosted by the Ministry of Foreign Affairs was conducted in September 2009. The DIP organised a series of meetings amongst IPR stakeholders in January 2010 to receive comments and exchange views on IPR situation in Thailand.

CREATIVE THAILAND

POLICY GOALS

- 1. Promote Thailand as a hub of creative industries in South East Asia.
- 2. Boost the economic contribution of national creative industries from the current 12 per cent to 20 per cent of GDP within 2012.

CREATIVE THAILAND COMMITMENTS (4 THEMES)

Creative Infrastructure

- | | |
|--------------|---|
| Commitment 1 | The Government will establish a “Creative Economy Agency” within 6 months to oversee the implementation of Creative Economy Policy. |
| Commitment 2 | The Government will enhance the efficiency of the entire intellectual property management system within 6 months. |
| Commitment 3 | The Government will develop ICT infrastructure to support creative industries such as 3G system, Fiber Optics, Broadband and WiMax. |

Creative Education and Human Resources Development

- | | |
|--------------|---|
| Commitment 4 | The Government will enhance creative learning in the national curriculum. Educational institutions will provide courses and textbooks on Creative Economy and intellectual property by the next academic year in order to cultivate creative thinking in the Thai education system. |
| Commitment 5 | The Government will support specialisation in the areas of design and other forms of art. The Government will systematically increase the number of personnel and expand creative workforce. |

Creative Society and Inspiration

- | | |
|--------------|--|
| Commitment 6 | The Government will promote Creative Economy at the regional and community levels in order to create added value of traditional knowledge and generate income to the local people. |
| Commitment 7 | The Government will enhance the professional standing of creative Thais whose accomplishments earn international recognition. The Government will support initiatives/projects in order to create wave of “Thailand, the Land of Thinkers” and popularise Thai art and culture in the world community. |

Commitment 8 The Government will provide spaces for activities and exhibitions related to creativity (creative zone), such as visual art zone, performing art zone. The spaces will be open for creative thinkers and creators to express their ideas or exhibit their works free of charge.

Creative Business Development and Investment

- Commitment 9 The Government will establish Creative Economy Fund and support other funding sources to enable new entry and value creation of business operators particularly SMEs.
- Commitment 10 The Government will undertake new investment promotion measures to support creative industries including legislative changes and enactment of a new law to promote and support Creative Economy, private sector investment and value-added.
- Commitment 11 The Government will promote marketing and commercial activities and promote exports of creative products to the global marketplace.
- Commitment 12 The Government will allocate a budget of 20,000 million Baht from the Strong Thailand Stimulus Plan, to be disbursed over 3 years (2010-2012), to lay the groundwork and push the agenda forward.

Central Intellectual Property and International Trade Court

Case Statistics between 1 January - 31 December 2009

Intellectual Property

Civil Case

	Carry Over	New Submission	Value (Baht)	Total (case)	Case Closed	Case Pending
1. Trademark infringement	30	11	641,006,749	41	24	17
2 Request for withdrawal of Trademark Board's decision	88	21	-	109	66	43
3. Withdrawal of Trademark registration	28	9	2,000,000	37	20	17
4. Copyright infringement	36	12	194,573,060	48	30	18
5. Request for withdrawal of Patent Board's decision	-	1	-	1	-	1
6. Patent and utility model (petty patent) violation	18	14	282,269,712	32	9	16
7. Breach of licensing agreement	45	15	93,455,251	60	31	29
8. Trade secret violation	2	3	81,056,981	5	1	4
9. Other	38	25	83,861,341	63	27	36
Total	285	111	1,378,223,094	396	208	188

Intellectual Property

Criminal Case

	Carry Over	New Submission	Total (case)	Case Closed	Case Pending
1. Criminal Code Articles 271-275	18	56	74	62	12
Total	18	56	74	62	12

	Carry Over	New Submission	Total (case)	Case Closed	Case Pending
2. Trademark Act B.E. 2534					
- Trademark counterfeiting (Article 108)	48	1,641	1,689	1,653	36
- Trademark imitation (Article 109)	13	157	170	160	10
- Importing, distributing, stock-piling (Articles 108&109)	4	368	372	365	7
- Provision of services or solicitation (Articles 108&109)	-	-	-	-	-
Total	65	2,166	2,231	2,178	53

	Carry Over	New Submission	Total (case)	Case Closed	Case Pending
3. Copyright Act B.E. 2537					
- Copyright infringement (Article 27)	-	1	2	1	-
- Infringement of copyright works: audiovisual, cinematographic, sound recording (Articles 28, 29)	2	3	5	5	-
- Infringement of computer programme (Article 31)	-	-	3	3	-
- selling or occupying for sale of infringing work (Art. 31)	387	2,145	2,532	2,233	299
Computer programme					86
Literary work					23
Cinematographic work					652
Sound recording					6
Artistic work					350
Musical work					681
Audiovisual work					8
Broadcasting work					30
- Performer's rights infringement re. Art. 27 -31 (Article 69)	2	-	2	2	-
Total	391	2,149	2,540	2,241	299

	Carry Over	New Submission	Total (case)	Case Closed	Case Pending
4. Trade Secret Act B.E. 2545	2	1	2	2	1
Total	2	1	3	2	1

	Carry Over	New Submission	Total (case)	Case Closed	Case Pending
5. Patent Act B.E. 2522	11	10	21	11	10
Total	11	10	21	11	10
Total criminal cases	488	6,247	6,735	6,353	440
Total intellectual property cases	773	6,358	7,131	6,561	628
Total intellectual property and int'l trade cases	1,091	6,612	7,703	6,815	946

The Central Intellectual Property and International Trade Court
Total Applications as Opposed to Actual Issuance of Search Warrants

1 January - 31 December 2009

Agency	Number of Application	Issuance		
		No. of warrants requested	Access Granted	Access Denied
1. Department of Special Investigation	20	56	28	28
2. Investigation Subdivision, Metropolitan Police Division 2	1	1	0	1
3. Registration Division	2	2	0	2
4. Tourist Police Division	10	10	10	0
5. Metropolitan Police Division 1	1	1	1	0
6. Economic Crime Investigation Division	486	758	461	297
7. Patrol and Special Operation Division (191)	1	3	3	0
8. Metropolitan Police Bureau	5	10	2	8
9. Crime Suppression Division	4	10	5	5
10. Investigation Subdivision, Provincial Police Region 1	1	1	0	1
11. Talingchan Metropolitan Police Station	1	1	0	1
12. Bang Rak Metropolitan Police Station	31	35	21	14
13. Bung Kum Metropolitan Police Station	1	1	0	1
14. Plabplachai 1 Metropolitan Police Station	2	2	0	2
15. Saladaeng Metropolitan Police Station	1	1	1	0
16. Somdej Chao Phraya Metropolitan Police Station	1	1	0	1
17. Raj Deva Provincial Police Station	2	2	0	2
Total 17 agencies	570	895	532	363

STATISTICS ON SUPPRESSION OF INTELLECTUAL PROPERTY RIGHTS VIOLATION

OFFENCE under	2006		2007		2008		Jan.-Nov. 2008		Jan.-Nov. 2009		Total	
	Case	Item seized	Case	Item seized	Case	Item seized	Case	Item seized	Case	Item seized	Case	Item seized
Copyright Act B.E. 2537	6,459	1,704,970	4,614	2,228,348	3,215	2,465,679	2,973	2,322,505	3,584	3,001,212	20,845	11,722,714
Trademark Act B.E. 2534	3,100	1,105,629	2,465	1,472,813	2,697	946,262	2,349	871,510	3,681	2,100,619	13,657	6,864,017
Patent Act B.E. 2535	4	5,208	4	10,045	1	1	1	1	5	46,461	15	66,553
The Act Controlling the Cassette Business and Television Devices B.E. 2530	12	7,781	35	34,830	10	4,374	5	3,849	1	3,595	63	81,478

Source: Royal Thai Police; Metropolitan Police Bureau; Economic and Technological Crime Suppression Division; Provincial Police Regions 1-9; Department of Special Investigation (Ministry of Justice)

By Office of Prevention and Suppression of Intellectual Property Rights Violation
Department of Intellectual Property
January 2010

STATISTICS ON BORDER ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

OFFENCE under Customs Act B.E. 2569	2006		2007		2008		Jan.-Nov. 2008		Jan.-Nov. 2009		Total	
	Case	Item seized	Case	Item seized	Case	Item seized	Case	Item seized	Case	Item seized	Case	Item seized
	222	862,607	628	1,332,319	540	1,328,975	521	1,299,024	615	346,527	2,304	5,169,452

Source: Customs Department

By Office of Prevention and Suppression of Intellectual Property Rights Violation
Department of Intellectual Property
January 2010

SPECIAL 301 COMMITTEE PUBLIC HEARING

Oral Statement of Dr. Chakaran Komolsiri, Ph.D (Minister-Counsellor)

The Royal Thai Government

March 3, 2010

My name is Dr. Chakaran Komolsiri: I am Minister-Counselor (Commercial) at the Royal Thai Embassy. I wish to thank the Special 301 Subcommittee for an opportunity to appear before it to present the comment of the Royal Thai Government. Today, I would argue before you that since January of 2009 under the leadership of Prime Minister Abhisit Vejjajiva, Thailand has launched an unprecedented effort in its intellectual property rights protection with significant success in many dimensions. Given that, Thailand should be removed from the Special 301 Priority Watch List for the following reasons:

1. There has been an unyielding political determination to elevate intellectual property protection as a national agenda. This is illustrated by the establishment of the National Committee on IP Policy, chaired by Prime Minister. Arising out of this body is the National IP Strategy and the Proactive Plan on Prevention and Suppression of IPR Violations. Above and beyond that, the Thai Government has marshaled the Creative Economy Policy to create Thailand as a hub of knowledge-based society in the year of 2012 aiming to have 1/5 of its GDP in creative sectors. This endeavor has been praised by Barbara Weisel, Assistant of USTR.
2. Major legislative reforms are now in progress. This includes Anti-Camcorder Law, Landlord Liability, enhanced border enforcement, and amendments to Copyright and Optical Disk Laws.
3. Along with the major legislative reforms, comes strengthened law enforcement regime. The Customs Department's Intellectual Property Rights Coordination Center has been empowered to create a network linking database to coordinate inter-agency efforts and investigations.
4. Seizures and raids in 2009 also demonstrate remarkable achievement in IP violation suppression. Close to 8,000 arrests of IP violators with 5.1 million IP infringing goods were recorded. The enforcing agencies destroyed US\$ 66 million worth of infringing goods.
5. Record of criminal sanctions by the Intellectual Property and International Trade Court point to tough penalties to deter rights violation resulting in imprisonment terms in 119 cases. As a result of the Supreme Court's regulation the issuance of warrants have become more standardized. A total of 532 warrants were granted in 2009.

6. Due to proactive actions to combat piracy there has been a decline in cases of software piracy from 80 per cent in 2006 to 76 per cent in 2008 as reported by the Business Software Alliance (BSA).
7. With collaborative efforts from the Cable and Satellite Broadcasting Association of Asia (CASBAA), the National Telecommunications Committee (NTC) enacted Temporary Regulations on Issuing of License to Cable TV Operators. The government also enacted the TV and Radio Broadcasting Act which authorizes enforcing agencies to revoke or suspend the operation license if found guilty of copyright infringement by the court.
8. The DIP coordinated with the Association of American Publishers (AAP) to discuss progress made on investigations resulting in the completion of 5 cases and 1 pending case. The DIP also introduced the Fair Use Guidelines to clarify the exceptions and limitations to exclusive right of the copyright owners.
9. The government actively recruited participation of US pharmaceutical industry such as PReMA, which is the sister organization of PhRMA, in Thailand to identify constructive ways and means to ensure continued supply and access to medicines. PReMA is now represented and actively involved in both the Patent Law Amendment Working Group and subcommittees led by the Ministry of Public Health.
10. In response to concerns raised by the US pharmaceutical industry, the Thai FDA plan to establish a joint database on patented pharmaceuticals.
11. The government realizes the importance of expedited patent examination and has allocated a significant budget of US\$ 700,000 to upgrade the patent system and to increase the number of patent examiners.
12. To further exemplify Thailand's commitment to accelerate the patent application process, Thailand has acceded to the Patent Cooperation Treaty (PCT) which has been in effect since December 24, 2009.
13. The government realizes the IPR protection must be inculcated at a very young age. IP curriculum is being created for all levels of education. This includes trial programs in 40 schools before nationwide expansion and other coordination efforts with the Ministry of Education and Kenan Institute of Asia to create learning materials.
14. In conclusion, the Thai Government hereby submits that with our firm commitment, sustained efforts, and significant successes in IPR protection, **Thailand should be warranted to be removed from the Special 301 Priority Watch List. This is with the understanding that an out-of-cycle review may be used as a mechanism to demonstrate Thailand's progress.**

I would be pleased to answer any questions that the Special 301 Committee may ask. Thank you again for your time and consideration in this matter.