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1. What is copyright and how is it relevant to my business?

Copyright is an intellectual property right (IPR), which entitles the owners of literary and artistic works to a set of exclusive rights over their works. These rights include copying, translating, adapting and altering, communicating and performing to the public, distributing, renting and lending copies of the copyrighted works.

Copyrights protect intellectual creations expressed in an original form and which are as a result of a creative effort on the part of the author. Three (3) conditions must be fulfilled in order for a work to be protectable by copyright:

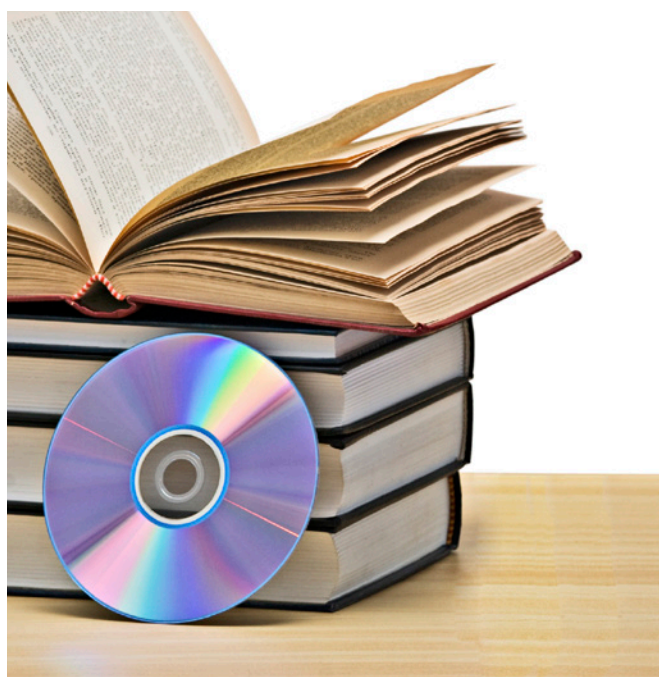
- a. **Expression in a particular form:** It is vital that the work be recorded on an appropriate medium in order to secure its protection and that it is not merely articulated verbally. Copyright protects original creative expressions that exist in a fixed medium such as on a piece of paper, an artists' canvas, an optical disc, or magnetically recorded media;
- b. **Originality:** The works must be original and are considered so only if they are the result of independent creative effort; and
- c. **Creative effort of the author:** The work must be marked by the personality of its creator, e.g. works created by a computer, even though original, cannot be copyrighted.

Copyright is relevant to almost every business across all sectors, not just those in the creative industry. Businesses in all industries should take appropriate steps to identify existing copyrights and consider registering the most important to them. Adequate copyright protection should form an integral part of a solid overall business strategy.

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Copyright is an automatic right that arises the moment a work is created, meaning that some rights may exist automatically without the need to register them formally, however, the proof of ownership SMEs obtain from registering their copyright may save them time and money later on in the event of a copyright dispute, so registration is still recommended. Works can be defined as literary or artistic creations, photographs, designs, models, databases, websites, computer software, pictures, photographs, sculptures, multimedia works and architecture. We will look at examples of what can and cannot be protected by copyright later.

Furthermore, as soon as any of these works are created in any country which is a signatory to the Berne Convention, copyright protection automatically arises in every other country which is also party to the Convention. There are currently 171 member countries of the Berne Convention for the Protection of Literary and Artistic Works, which includes all EU Member States and eight (8) of the ten (10) countries of the Association of South-East Asian Nations (ASEAN) (Cambodia and Myanmar are not party to the Berne Convention as of 2016). For more information on the Berne Convention, please visit <http://www.wipo.int/treaties/en/ip/berne/>.



For more information on the protection of copyright in any South-East Asia country, please contact our free confidential helpline on question@southeastasia-iprhelpdesk.eu or +62 21 571 1810.

The proof of ownership you obtain from registering your copyright may save you time and money later on in the event of a copyright dispute, so registration is still recommended.

2. Which works are protectable/not protectable by copyright?

Copyright protects only the tangible expression of an idea, not the idea itself. This is a very important information for SMEs to understand that ideas and concepts are not automatically protected by copyright. Other types of creations which do not meet the requirements for copyright protection include mathematical theories, algorithms, feelings, procedures, thoughts, or methods of operation. For example, a written description in a book about Albert Einstein's Theory of Relativity is protectable by copyright as an expression, but the ideas, concepts, and principles behind Albert Einstein's Theory of Relativity are not. Furthermore, legal texts, court and administrative decisions or political speeches, as well as other works created by governmental entities to inform the public (as well as their official translations), cannot be protected by copyright.

A single word is not considered to be a literary work capable of copyright protection. A passage of a literary text may be protected but it is harder, if the subject matter is only a slogan or one sentence. Finally, works which have already entered into the public domain are not eligible for copyright. The table below summarises the most common differences between protected and non-protectable works.

Protectable by copyright	Not protectable by copyright
Books, journal articles, short stories, poems, song lyrics	Names, titles, short phrases, slogans, etc.
Songs, musical scores, notated music, other music, sound recordings	Ideas, principles, concepts
Plays, television programs, radio and film scripts, dance, acrobatics and choreography	Processing methods, algorithms, operational methods
Drawings, illustrations, images, photographs, paintings, calligraphy, sculptures	Underlying news content of factual happenings or government publications
Computer programs, games, other software, websites, emails	Mathematical theories
Original and aesthetic aspects of industrial and graphic designs, architectural drawings, and 2D and 3D applied art*, models, architectural buildings and structures	Works that passed into the public domain
Databases as to the selection of content	
Original expressions to convey facts or news, layouts and compilations of select news articles or government publications	

3. What rights does copyright provide for?

In South-East Asia, as in the European Union, copyright is actually a bundle of two (2) kinds of prerogatives: **moral rights** and **economic rights**.

Moral rights are aimed at protecting a creator's reputation. Their scope varies from one country to another. Moral rights include the right of attribution of authorship, the right of publication of the work into the public domain, the right to alter the work, and the right to preserve the integrity of the work. Moral rights are personal in nature and may not be waived, licensed, or transferred by authors.

The moral rights of the author are infringed if the author is not properly identified, the work is published to the public without its permission, or the work is distorted in a way that is harmful to the company's or individual's reputation.

Economic rights give authors the exclusive right to exploit the work for economic gain. Economic rights include the right to reproduce, distribute, rent, exhibit, perform, project by visual projection, broadcast, disseminate on information networks, cinematographically produce, adapt, translate to other languages, compile the work with other works to form a new work, and use other means to exploit the work. An author has the exclusive right to exploit the work personally or license it or transfer to others in exchange for remuneration. The economic rights of the copyright holder are infringed if another exploits the work without its permission and where such exploitation is not considered 'fair use' or under a statutory license.

If you are the copyright holder, your economic rights are infringed if another exploits the work without your permission and where such exploitation is not considered 'fair use' or under a statutory license.

Fair use and statutory licenses

In South-East Asia, certain reasonable or personal use of copyrighted works without permission or remuneration is permitted where the use falls within the scope of **fair use**. Types of acts considered as fair use in South-East Asia are similar to those in Europe. For example, quoting a small portion of a work in a scholarly article and parody or use of copyrighted works for teaching purposes are considered to be fair use. The scope and list of these exceptions varies from one country to another. The copyright laws of particular countries in the region contain extensive lists of the acts which constitute fair use. Below are examples which are NOT considered an infringement of copyright in Indonesia, Thailand and Vietnam:

- **Indonesia:** The publication and/or reproduction of the symbol of the State and the national anthem in their original form.
- **Thailand:** Research or study of the work which is not for profit, reproduction or adaptation of copyright works for the benefit of disabled persons as long as it is for non-profit purposes, and reproduction of copyright works in a computer system, which is necessary for the system to operate normally.
- **Vietnam:** Duplication of works by authors for scientific research or teaching purposes.

Furthermore, copyright law in **Vietnam** permits certain types of works to be used without the owner's permission so long as statutory royalties are paid to the copyright owner. This is known as a **statutory license**. For example, in accordance with Vietnamese law, broadcasting organisations which use published works in a broadcast do not have to obtain permission but will instead have to pay royalties or remunerations to copyright holders according to government regulations. Such organisations/individuals should not affect the normal utilisation of such works or cause any prejudice to the rights of the authors and/or copyright holders. They must also indicate the name of the author, as well as sources and origins of the works. This does not apply to cinematographic works. With a new amendment to the Copyright Law in **Indonesia**, in practice, the collecting societies in Indonesia also recognize the concept of statutory license. In accordance with Indonesian law, the publication of a work by a government may be carried out without having to request express permission from the copyright holder, except in the following cases: i) if the copyright is declared to be protected by law or regulation or by a statement on the work itself; or ii) when such work is published, redistributed, communicated or reproduced.

'Fair use' of a copyright-protected work or the use of such work under a 'statutory license' does not constitute an infringement of copyright.

4. Length of copyright protection

Moral rights are perpetual. Economic rights however tend to last for the lifetime of the author plus a certain number of years - typically fifty (50) years - in each South-East Asia country after the end of year in which the author died. The duration of copyright protection for works published by anonymous authors varies in certain South-East Asia countries. In **Brunei** and **Singapore**, the duration depends on the nature of the copyright material. Collective, audio-visual (AV) and posthumous works often enjoy protection from the date of first publication. Further, the recently concluded Trans-Pacific Partnership Agreement ("TPP") provides that the term of protection will include the lifetime of the author plus seventy (70) years after the author's death. So South-East Asia countries which are members of the TPP (Brunei, Malaysia, Singapore and Vietnam) may have to make amendments in their national law accordingly. The changes might be expected with a different speed through the region.

To find out more about copyright duration in a specific country in South-East Asia, as well as tailored replies to your business, please contact the Helpdesk team on question@southeastasia-iprhelpdesk.eu with your questions.

5. Multiple protection and other types of IP

Works protected by copyright may additionally be protected as other forms of IPR, e.g. a work of applied art may be protected as an industrial design (or design patent) provided that it fulfils national requirements for design protection, e.g. is new and capable of industrial application. A distinctive sign, eligible for copyright protection, may also be protected as a trade mark as long as it fulfils the national requirements of the relevant country in South-East Asia for trade mark protection. Multiple

protection of certain works can give rights' holders additional enforcement alternatives when confronted with copyright piracy. It is recommended to consider adding layered protection when possible to improve possibility of enforcement.

How does copyright 'overlap' with industrial design protection?

Industrial design registration protects novel designs that are usually of some aesthetic value and are intended for industrial application. Protection is only available when a design is registered under the local industrial design laws. Similarly, copyright is intended to protect artistic works, but registration is not necessary. Copyright protection may still be available in the event that a product has been somehow omitted from industrial design registration; however, the right to register industrial designs is lost once the design is no longer 'novel', e.g. if it becomes known to the public through advertisement or use. It is important to keep the design confidential before an application is submitted to register the design under industrial design laws.

In **Singapore**, this dichotomy of protection is not possible as copyright protection is not available to any design that has been industrially applied, with 'industrially applied' being defined as making fifty or more articles based on the design. Under this regime, it is important to file applications for industrial design registration as soon as it is decided that the design will be industrially applied.

How does copyright 'overlap' with trade marks?

Consumer product businesses have consistently tried to get their product packaging protected because of brand value created from marketing campaigns. Although a label may be protected as a trade mark, consumer product businesses may also wish to protect the shape of packaging such as unique curves in a soda drink bottle or detergent container.

Copyright may be available to protect against exact reproduction by third parties should they try to manufacture counterfeits. **Singapore** and **Thailand** have updated their trade mark laws to include the possibility of protecting non-traditional trade marks such as the shape of products as in the case of the world famous

Coca-Cola bottle. Although copyright may be available to protect such features, the term of protection can be limited – usually up to fifty years after the death of the author. In contrast, trade mark protection can last forever provided successive renewal fees are paid.

Although trade mark protection is often preferred for uniquely shaped products, trade mark laws in some jurisdictions in South-East Asia, such as **Vietnam**, have not yet expanded their concept of trade marks beyond trade names and two dimensional logos. In Vietnam, it may still be necessary to protect the container through copyright laws.

Copyright may be available to protect against exact reproduction by third parties should they try to manufacture counterfeits.

6. Copyright ownership in South-East Asia

How do I obtain a copyright in South-East Asia?

As mentioned, copyright protection arises automatically as soon as a work is created. However, it is also possible to voluntarily register the copyright in most South-East Asia countries (exceptions are Brunei, Myanmar and Singapore). **Although registration is not required, copyright registration is helpful in proving ownership in case the need to take enforcement actions arise later.** Authorities prefer to rely on copyright registrations as evidence of ownership before accepting a case from the complainant who claims to be the copyright owner.

How is ownership of a copyright determined?

A copyright of a work generally belongs to its creator or the employer of the creator Protected creative acts include those intellectual activities that directly result in the creation of the work. **Acts of support such as rendering services or material or financial resources are not considered creative acts.** Thus, if an individual provides only managerial support to the creation of a work, he or she will not be considered an author of the work.

Where it is expected that a copyright will be licensed, transferred, or used as an in-kind contribution to registered capital for the establishment of a legal entity in an South-East Asia Member Country, SMEs should clearly determine the ownership of the copyright. **Without evidence to the contrary, the person or entity whose name appears on the work shall be deemed the copyright owner of the work.**

Commissioned works

Without an agreement stating otherwise, the copyright of a commissioned work belongs to the commissioned party. Thus, **if SMEs commission a third party to create a work, they do not own the copyright unless a relevant contract provides that the copyright belongs to them.** If SMEs seek the copyright to a commissioned work, they must include in the commission contract a provision on copyright ownership. Similarly, if, for example, software development is performed by employees of a foreign company's subsidiary in South-East Asia, the subsidiary will own the copyright to the developed software unless there is an agreement between the foreign company and the subsidiary that stipulates otherwise.



Service works

Where drawings of engineering designs, product designs, computer software and other works are created by employees in the course of employment, using the company's business resources and for which the business remains responsible, **the employee usually owns the right of attribution of authorship and the company owns economic rights to the service work.** However, there are also exceptions to this rule, e.g. in accordance with Indonesian law and contrary to most European legislations, the copyright for works created by an employee, even during the course of employment, does not automatically belong to the employer. **The ownership regime of the works created in the course of employment in Indonesia should therefore be expressly regulated within the employment contract SMEs conclude with their employees.**

In the case of the creation of a work outside of employment, the employee would usually own the copyright to such work. However, in some cases the employer may enjoy some preferential rights to such creations (such as preventing the employee for a period of time licensing the work to a third party without the employer's consent, or in case of consent, obtaining an agreed share of the licensing fee). Such contracts could also provide, for example, that copyrights to works created by employees outside of the employment, but still connected to

core business, could be assigned to the employer in exchange for compensation, etc. Thus, **employment contracts should clearly address the ownership of the copyright and related obligations concerning works created by employees across a wide range of circumstances to cover all feasible scenarios.**

Acquiring the copyright of others

If SMEs are not the author of a work or the employer of the creator, they may obtain the rights to the creation by a license agreement, assignment*, succession*, or by other contractual arrangements with the copyright holder.

Proving ownership of copyright

A registration certificate is considered presumptive evidence of copyright ownership. However, where the copyright is not registered or copyright ownership is challenged, evidence sufficient to definitively prove ownership varies with the type of work but typically requires the owner to produce the original work or a true copy*, and any relevant contracts. As a general rule, the original work should show the author's name and the date of creation or first publication. If you are not the original author of the work, you should provide evidence to prove you obtained the copyright by commission, employment, license, assignment or succession.

7. Copyright registration in South-East Asia

How do I register my copyright, what documents do I need to submit and how much does it cost?

Country	Authority	Language	Fee	Who can register
Brunei	<i>Brunei has no system of copyright registration</i>			
Cambodia	Ministry of Culture and Fine Arts	Khmer or English	KHR 20,000 – 60,000 (approximately EUR 4- EUR 13)	Authors and other right holders may proceed with a voluntary registration.
Indonesia	DG Intellectual Property Rights	Bahasa Indonesia	The official fee for filing one recordal for a work relating to computer program/software is IDR500,000 (approximately EUR 33).	Copyright owner
Laos	Ministry of Science & Technology	Lao or English translation	LAK 35,000 (approximately EUR 4)	Copyright owner
Malaysia	Intellectual Property Corporation	Bahasa Malaysia or English	RM 155 (approximately EUR 35)	Citizen or permanent resident of Malaysia. An applicant who is not a citizen or Permanent Resident (PR) of Malaysia may appoint a Malaysian citizen or a PR to file the notification on its behalf.
Myanmar	Intellectual Property Office	Myanmar or English translation	(As Myanmar only has a draft Copyright Law, registration fees are not provided for at the moment)	Copyright owner
The Philippines	National Library or IP Office on the Philippines	Filipino or English	PHP 22,300 (approximately EUR 423)	The author or creator of the work, his/her heirs, or assignee may apply through a duly authorised representative.
Singapore	<i>Singapore has no system of copyright registration</i>			
Thailand	Department of Intellectual Property (DIP) /Ministry of Commerce	Thai	No official fee	Any individual or corporation can record work either through a legal representative or by themselves provided that their domicile/head office is in Thailand, or they have actual business operations in Thailand.
Vietnam	National Copyright Office	Vietnamese	VND 100,000 – 600, 000 (approximately EUR 4- EUR 24)	Authors, copyright holders and related rights holders may file for copyright in Vietnam.

N.B. For further information including the contact details of each registering authority and requirements for registration in each South-East Asia country, please download our [IP Country Factsheets](#) or contact the Helpdesk on question@southeastasia-iprhelpdesk.eu. Please note that all above EUR costs for registering copyright are approximations only.

8. Copyright enforcement in South-East Asia

How do I enforce my copyright if I discover infringement?

Although the legal framework in most countries in South-East Asia is relatively developed major obstacles to an effective fight against infringement remain across the majority of these countries. Piracy and counterfeiting are widespread, however relatively few IP cases are brought to court as the amount of damages awarded often does not warrant the investment necessary to engage the litigation. Furthermore, the efficiency of raids actions may be compromised by leaks from police sources and corruption. In many cases, enforcement is not possible at notorious pirate markets controlled by organised crime organisations because of concerns over personal safety to enforcement officials. Keeping in mind the aforementioned, enforcing IP rights in the South-East Asia region is challenging, but not impossible.

Depending on the country, rights holders may enforce their copyrights through **administrative, civil, customs, or criminal routes.**

In practice, as a first step to enforcing copyright, SMEs need to confirm any suspected infringement and gather and preserve evidence which may be needed at a later stage. For example, in case of suspected infringing goods at a trade show, SMEs should attempt to gather business cards, take photographs, and ask questions about the source of the goods. If SMEs discover suspected infringement on the Internet, they need to determine the identity of the seller or user of the copyrighted work and the network on which the infringing content is stored. For serious cases, a rights holder may want to engage a lawyer or a private investigator to conduct an investigation to confirm the infringement, assess the scope of infringement, and identify the infringers. Where judicial action is contemplated, it is important that SMEs gather sufficient admissible evidence at this stage before infringers are alerted of their actions, e.g. notarisations of purchases of suspected infringing goods, and of downloads of web pages and online content. In minor cases, or as a first-step

to enforcing copyright in serious cases, SMEs may want to send a 'cease and desist' letter to the suspected infringer. A typical letter will identify the copyrighted work, ownership of the copyright, the alleged infringing activity, and a demand that the recipient immediately cease all infringing acts under threat of litigation or further legal action. A follow-up letter may be necessary. Depending on the circumstances of each case, SMEs should consider whether or not to gather evidence necessary to support any potential administrative or judicial actions before sending a letter, because alerting the suspected infringer may make it more difficult to gather important evidence later. In many cases private mediation via legal professionals is more effective and should be considered as a viable option.

Additional information on copyright enforcement in Indonesia, Malaysia, the Philippines, Singapore, Thailand and Vietnam is highlighted below. For further information on copyright enforcement in Brunei, Cambodia, Myanmar and Laos, please download our IP Country Factsheets on those countries or contact the Helpdesk on question@southeastasia-iprhelpdesk.eu.

In practice, as a first step to enforcing your copyright, you need to confirm any suspected infringement and gather and preserve evidence which may be needed at a later stage.

• Indonesia

Criminal: Under the Copyright Law, criminal cases related to infringement will only be processed based on complaints lodged by the copyright owner to enforcement officials, namely the police or the Enforcement Division of the Directorate General of Intellectual Property ("PPNS"). The PPNS has become an alternative for criminal actions against infringers. Since its establishment in 2011, there has been a significant number of copyright and IP owners submitting their complaints to the PPNS.

In practice, criminal action is mainly carried out against high-profile targets, in order to create deterrent effects from criminal sanctions. During the early stage of a criminal action, it would be best to liaise with the enforcement officials (police or the PPNS) by way of providing them with a training or product knowledge briefing or presentation on how to differentiate the infringing products. During this stage, the copyright owner should ensure that the required documentation (i.e. Power of Attorney, samples of infringing products, and any other supporting evidence) is complete. Under the Indonesian Copyright Law, before lodging any criminal complaint, the copyright owner should first try to resolve disputes through mediation, but this requirement does not apply in case of infringement in the form of piracy (e.g. distribution of pirated goods).

Before conducting the raid action, the Police or the PPNS must obtain an expert opinion issued by the Copyright Office to confirm the copyright infringement. Once the Copyright Office's expert opinion is obtained, the Police or the PPNS can move forward with the raid against the infringers' premises. During the raid, the Police or the PPNS may temporarily cease the commercial operation of the infringers, question the responsible person in the premises, as



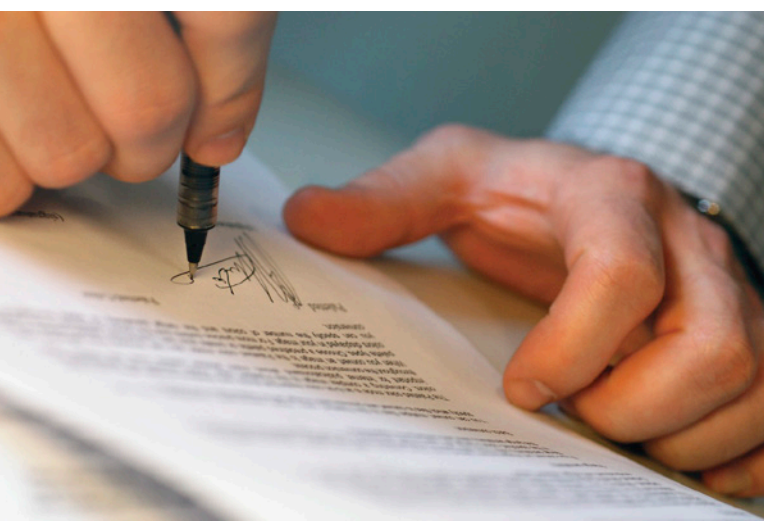
well as confiscate the infringing products as evidence.

Following the raid action, the copyright owner may monitor the development of the case at the Police or the PPNS up to the completion of the case file for delivery to the Criminal Court. However, if the case could be resolved out of court, the copyright owner would need to enter into negotiations for the execution of settlement agreements, including the possibility of obtaining compensation and apology ads for the purpose of disseminating that the enforcement action that has been taken. In this scenario, the enforcement officials will not be actively involved.

Civil: In practice, the aim of civil action would be to seek compensation of damages from copyright infringement, on top of the court's ruling for the infringers to cease the infringement acts. It is always advisable to have strong evidence when initiating a civil action at the Commercial Court. Such evidentiary requirement may include information on the infringers and documentation to support copyright ownership. Any evidence in the forms of documents from overseas should be notarized, legalized and then translated in Indonesian language for it to become admissible.

Legal costs cannot be considered as part of the damages to be compensated, hence each party bears its own legal costs in the civil action proceedings. The Copyright Law does not set up a specific benchmark to calculate damages.

Customs: Indonesian Custom Law does not provide any IP rights recordation or registration. Customs Law in Indonesia gives officials the power to suspend a consignment if they have reason to believe that it contains counterfeit goods. However, seizures are not common. A common reason given for this is the lack of procedure or avenue to contact the rights owners even if they do come across suspected counterfeits.



Customs Law in Indonesia gives officials the power to suspend a consignment if they have reason to believe that it contains counterfeit goods.

'Warning letters' should be considered as a viable option, principally when the infringer is a legitimate business. Such infringers are usually opportunistic traders selling counterfeits as part of their product mix rather than running an outright counterfeiting business. Against such traders, warning letters would still be a more cost effective way to create the desired deterrent effect.

• Malaysia

Criminal: In Malaysia complaints can be lodged with the Enforcement Division (ED) of the Ministry of Domestic Trade, Co-operatives and Consumerism for cases in relation to counterfeiting or piracy. The ED has the power to seize products and prosecute offenders/counterfeiters. These actions are somewhat speedy and can be cost-effective. In brief, the IP right owner would have to provide the ED with documents to prove their rights, an investigation report to show the infringing activity, and also a letter of complaint. Enforcement by the ED is also recommended because it would provide for immediate confiscation of infringing goods. The actions undertaken by the ED can include raid actions against suspected counterfeiters or pirates where goods that are found at the premises are seized. It should be noted that the right owner plays a supporting role to assist the ED to initiate the action against counterfeiters or pirates. This means that they would rely on the authorities to initiate the action and complete the investigation, but they shall support the investigation by providing the authorities with evidential support such as identification of the seized goods and also attendance as a witness in court, if necessary.

In Malaysia complaints can be lodged with the Enforcement Division (ED) of the Ministry of Domestic Trade, Co-operatives and Consumerism for cases in relation to counterfeiting or piracy.

Civil: In cases of copyright infringement, rights owners would also have recourse to file a civil suit in the High Court. An action can be filed against the infringers where the usual result is for an injunction (i.e. a court order obliging the infringer to immediately stop their infringing activities) and damages to be paid to the rights owner. Since 2010, the Chief Justice has directed that civil cases should as far as possible proceed to trial within nine months from the date of filing. This has helped to ensure that the backlog of cases in the courts is minimised.

• The Philippines

Administrative: The Bureau of Legal Affairs of the Intellectual Property Department has jurisdiction over administrative complaints for copyright violations, provided the total damages claim exceeds approximately PHP 165,000 (approximately EUR 3,076). The procedure is similar to a simplified civil action procedure, with parties exchanging a complaint and reply, and evidence upon which a decision is made. Administrative authorities have the power to impose preliminary injunctions, preliminary attachments (a provisional remedy wherein the court/

administrative body is asked to take custody of the property of the adverse party as security for satisfaction of any judgment), as well as damages and administrative fines.

Civil: The copyright owner also has the option to file a civil action for recovery of damages and injunctions. Civil actions for copyright infringement are filed at the regional trial courts. Such cases are not common because they tend to last many years. First instance civil trials normally take two to three years, but are usually followed by appeals which drag the case on much longer. The amount of damages recoverable will be either the reasonable profit which the complaining party would have made had the defendant not infringed his/her rights, or the profit which the defendant actually made out of the infringement, or in the event such measure of damages cannot be readily ascertained with reasonable certainty, the court may award a reasonable percentage based upon the amount of gross sales of the defendant as damages.

Criminal: Under the IP Code, the criminal penalties of imprisonment and fines may be imposed to persons found guilty of copyright infringement. In practice, counterfeiting and piracy are typically dealt with by the criminal system under copyright laws. As criminal litigation tends to take years to finish at the first instance, criminal prosecution is normally sought out only for large scale infringement. The copyright holder should request the enforcement agencies, particularly the Philippine National Police (PNP) or the National Bureau of Investigation (NBI), to file a complaint with the District Court that has jurisdiction over the crime committed (usually the court in the area where the infringement occurred). Although the participation of the PNP and the NBI are not required in order to institute criminal proceedings against infringers, they are necessary in order to preserve the chain of custody of evidence, which are normally questioned by defence lawyers in seeking the dismissal of a criminal action.

Customs: The Bureau of Customs (BOC) handles applications for recordal of IPR and products covered by these rights. At present, only imports are covered by customs regulations. Upon registration of their IPR with the Bureau of Customs, a copyright holder who has valid grounds for suspecting that pirated copyright goods will be imported may lodge an application in writing with the Commissioner of the Bureau of Customs for the issuance of a hold order on the release of such goods. The copyright owner or agent shall request in writing to the Commissioner of Customs for the

issuance of a hold order on suspected counterfeit goods, providing as much detail as possible regarding the shipment, e.g., the date that the shipment is coming in, on which ship, from which port, etc.

If you already have details about a suspected illegal shipment in advance, you can activate border enforcement by giving written notice to Customs of a suspected import of IPR-infringing goods.

- **Singapore**

Civil: The remedies which the court may award in such proceedings include damages (or an account of profits), statutory damages, an injunction, and disposal of infringing goods.

Criminal: The Copyright Act provides criminal penalties for infringers. An IPR owner may initiate private criminal prosecution against an infringer for such offences. Alternatively, the Intellectual Property Rights Branch of the Criminal Investigation Department may prosecute the infringer on its own initiative. At the end of a successful criminal prosecution case, the infringer will be ordered by the court to pay a fine and/or serve a prison term.

Customs: The Singapore Customs is a governmental agency of the Ministry of Finance. Their objective is the implementation of customs and trade enforcement measures including the checking and detainment of suspected infringing goods crossing the border. As there is no official recordal system via which SMEs can request that Customs monitor and notify them of suspected infringing goods which are being imported into Singapore, SMEs should not just rely on Customs to discover or monitor such shipments on their behalf, and instead will need to be proactive about monitoring this themselves. SMEs can do so by hiring private investigators if they have information on potential infringers or suspected shipments. However, if they already have details about a suspected illegal shipment in advance, they can activate border enforcement by giving written notice to Customs of a suspected import of IPR-infringing goods. Activate border enforcement can be activated only for IP that is registered in Singapore.

- **Thailand**

Administrative: Administrative measures in Thailand are generally seen as ineffective due to a lack of sufficient resources (both financial and human) and proper training of the enforcement agencies, as well as non-detering liabilities imposed on infringers. The efficiency of raids actions may also be compromised by leaks from police sources and corruption. However, the signing of an MOU between the Department of Intellectual Property (DIP) and the Royal Thai Police establishing special IPR Suppressions Centres in major cities in Thailand in April 2012, and the launch of the National IPR Centre of Enforcement (NICE) in March 2013, show the willingness of the Thai government to intensify enforcement actions and reduce IPR violations in the country. The focus will be on large-scale infringers and dangerous goods though, and particularly on the IPR 'Red Zones', or priority areas, such as MBK,



Panthip Plaza, Patong, Kata and Karon beaches in Phuket, Walking Street in Pattaya etc.

Civil: Civil litigation is rarely used in Thailand due to the difficulty in proving 'actual damages', the lack of a formal discovery process, and the delays in prosecuting the case. There is also a lack of proper IP training and human resources within the judicial system, meaning that case outcomes can be somewhat unpredictable. In civil proceedings, possible outcomes include injunctions and awards of damages. However, preventive injunctions are rarely granted in Thailand due to the difficulty for the plaintiff to prove the importance of the case to the judge, and the amount of damages awarded is low, thus usually not warranting the investment necessary to engage in litigation.

However, with the new amendment to the Copyright Act, copyright owners can seek preventive injunctions of copyright infringement in a computer system. This may increase the probability for the plaintiff to succeed in their claims for preventive injunctions as they only need to have evidence of the existence of a copyright infringement in the computer system of the service provider, instead of having to prove the importance of the case to the judge. In order to encourage copyright owners to seek recourse, the new law also provides that the court may award higher level of damages if there is evidence that the copyright infringement is committed intentionally. Further, the court may order that the infringing materials be destroyed at the expense of the infringer instead of by the owner of the copyright, which is aimed to reduce the expenses and effort of right owners.



Although registering with Thai Customs is not mandatory, it is advisable to register your rights to their database, as it will help the Customs authorities to recognise counterfeit versions of your products, and improve the chances of such suspected items being blocked at the border if you know of a suspected illegal shipment of your products.

Criminal: Criminal prosecutions are usually considered as the most cost-effective enforcement route available to IP right holders. However, search warrants necessary to conduct a raid action are also very difficult to obtain, as the standard of evidence of the alleged infringement required is very high and judges are reluctant to impose harsh penalties on infringers, especially for first-time and minor offenders. This results in light penalties which often do not act as a deterrent to infringers. Penalties available under criminal prosecution are in the form of fines and imprisonment.

Customs: At present, the Customs Act on Examination of Goods and Prevention of Smuggling gives Customs officers the power to search, inspect and seize pirated copyright goods imported into and exported from Thailand. The Export and Import of Goods Act also gives power to the Minister of Commerce to issue notifications in the Royal Gazette magazine specifying particular goods that are prohibited from export and import. Although registering with Thai Customs is not mandatory, it is advisable for SMEs to register their rights to their database (also known as the 'Customs Watch List') as it will help the Customs authorities to recognise counterfeit versions of products, and improve the chances of such suspect items being blocked at the border. If SMEs know of a suspected illegal shipment of their products, they can also work together with Thai Customs in advance to detain such shipments.

• Vietnam

Administrative: Administrative actions are both cost-effective and time-efficient, and this is certainly the most common route for most companies when infringement is discovered. It is a good way to deal with small-scale infringers and to gather evidence for larger-scale infringers, and is the best option if the IP right holder's main priority is to immediately stop on-going copyright infringement. Depending on the value and nature of the case, different governmental bodies may be involved in the action, such as the Inspectorate of Science and Technology, the police, market control force, Vietnamese Customs, Vietnam Competition Authority, etc., and will be able to issue different penalties such as cease and desist orders, revoking business licences, issuing monetary fines, or the confiscation and destruction of infringing goods. While such penalties are generally not as harsh as penalties that can theoretically be awarded under civil litigation or criminal prosecution, administrative actions may offer a more realistic chance of stopping infringers quickly, and in some cases obtaining damages.

Civil: Civil litigation is more suited to addressing larger scale infringements but few of these cases are brought to court in Vietnam. In 2006, sixty-five (65) civil litigation cases were brought to court, while the following year in 2007 this number decreased to just twenty-six (26), while administrative actions increased. This is as a result of the length of time required to bring a case to court and the lack of proper IP training and human resources within the judicial system, meaning that case outcomes can be somewhat unpredictable. Damages are often based on the amount of lost sales or the infringer's profits, however if the actual amount of damages owed cannot be determined, the maximum amount the court can award in damages is VND 500,000,000 approximately EUR 19,500. By taking civil actions, copyright holders can request provisional measures (preliminary injunctions) and claim remedies

available under law, including claims for damages. To initiate a lawsuit, SMEs will need to file a petition and necessary documents to the court within two (2) years from the date on which they discover that their rights have been infringed.

Criminal: While relatively rare, criminal prosecutions have the power to award the harshest penalties for copyright infringement. Criminal charges in Vietnam can be brought against copyright or related rights infringers for the reproduction or distribution of the work to the public, with this infringement deemed to be on a commercial scale. Penalties for copyright infringement include a monetary fine of up to VND 1,000,000,000 (approximately EUR 39,322), and imprisonment for up to three (3) years. For a corporate legal entity, the penalties can be up to VND 3,000,000,000 (approximately EUR 117,966) or its operation may be suspended for six (6) to twenty-four (24) months. The cost of criminal prosecution is borne by the authorities, and a favourable ruling could be a valuable deterrent to potential future infringers.

Customs: Vietnamese law prohibits the export or import of goods that infringe copyrights, and Vietnamese Customs have the authority to impose fines on infringers and confiscate infringing goods both for imports and exports. If the infringement of copyright exceeds a certain threshold, the Customs authorities can also arrange for criminal proceedings to be brought against the infringing party. Border control can be an effective means for enforcing IP rights in Vietnam, and serve the purpose of pre-empting and suppressing copyright counterfeits of SME's products at Vietnam's borders. Border control has gained more attention over the past few years from business owners wishing to protect their IP in Vietnam. Although registering with Vietnamese Customs is not mandatory, it is advisable to add yourself to their database as it will help authorities to recognise counterfeit versions of SME's products, and improve the chances of such suspect items being blocked at the border. If SMEs are aware of a suspected illegal shipment of their products, they can also work together with Vietnamese Customs to detain such shipments.

10. Case Study

1. Case Study: Indonesia

Although protection can still occur without it, the practice of registering copyright is common in Indonesia, as local businesses and entrepreneurs often see it as the State's 'endorsement' of their IP. It can however be abused as the following case study demonstrates.

Background

In a dispute between an Indonesian structural engineering company and one of its former employees, a Commercial Court, in a decision handed down in 2012, ordered the cancellation of a copyright registration for a database formula which calculated land use in the mining industry.

Action taken

The court found that the aforementioned database formula was jointly developed by staff of the engineering company and the former employee in question. However, the former employee registered copyright of the database formula after it was jointly developed and put to first use by the company. Based on this fact, the court declared the engineering company to be the copyright owner. In allowing the company's request to cancel the copyright registration, the court also rejected the former employee's counterclaim for copyright infringement on the same subject matter.

Lessons learned

- Businesses should always specify IP ownership in any work product or knowledge created in order to avoid any possible future dispute.
- All employment or engagement contracts should specify ownership in the copyright of any work product created by employees.

2. Case Study: Malaysia

In Malaysia, there is no specific system of registration for copyright. Copyright exists as soon as the original work is created and belong to the creator of the work automatically. So it is difficult to establish and prove the ownership of copyright. The following case study demonstrates that.

Background

In a dispute between the authors of artistic works and the publisher, the authors sued the publisher for using their artistic works in a book without permission. However, the publisher countered that the authors had no copyright over their works because anybody could have drawn such drawings or pictures and that these drawings were similar to other drawings anywhere and therefore do not deserve any protection under the Malaysian copyright Act.

Action taken

The court found that, the publisher has scanned the pictures and by their own admission, due to oversight has published those drawings in their book. Therefore there had been infringements of the authors' copyright over the artistic works. The copyright owners were awarded additional damages under the copyright act and cost. As the publisher had already removed the works from the book and replaced them with graphic drawings, the court did not make any injunctive order.

Lesson learned

- The owner of copyright should always have evidence to prove the ownership of its copyright, especially when there is a dispute.
- Businesses should research carefully and obtain permission from the rights owners to them to avoid infringing any copyrights.

9. Computer Software

Computer software is expressly protected by copyright in the South-East Asia region. Copyright protection of computer software covers the source code and the object code, as well as the written documentation. Source code is a computer programme in the form written by a programmer. Object code is a computer programme converted into a form in which a computer would run it. The copyright of computer software does not protect the ideas behind the programme. Software copyright will prevent running, copying, modifying or distributing the programme, except with the permission of the rights owner.

11. Copyright Strategy

To start integrating copyright protection into your company's overall IP strategy, ask yourself the following questions:

- Which works of mine are already protected by copyright?
- Who in my company owns those copyrights?
- Does my company's standard employee contract include a clause about copyright ownership to decrease the chances of a potential copyright dispute?
- Which of those already copyrighted works are the most important to the livelihood of my company?
- Which one(s) should I voluntarily register for?
- Should I consider hiring a monitoring service to make sure my copyrights are not being infringed?

Given that copyright is an automatic right that arises the moment a work is created, many companies gloss over its importance. Your company may own more copyrights than you initially think and it is important that you identify, prioritise and register those which are most important to your business. It may save you considerable time and money later. Graphic designs in your brochure or catalogue, images and photographs of your products, company website and its content, customer databases, standard operating procedure documents, and even E-mails are all considered creative works. Infringement of those works can result in brand dilution, lost customer loyalty, and lost profits for your business.

For more information on copyright protection in South-East Asia, please contact our Helpdesk experts at the following e-mail address question@southeastasia-iprhelpdesk.eu now and receive a reply within three (3) working days.

Your company may own more copyrights than you initially think and it is important that you identify, prioritise and register those which are most important to your business.

12. Glossary

Applied art - The applied arts are the application of design and decoration to everyday objects to make them aesthetically pleasing. The term is applied in distinction to the fine arts which aims to produce objects which are beautiful and/or provide intellectual stimulation. In practice, the two often overlap.

Assignment - Transferring the economic rights of copyright to third parties, i.e. a musician assigning the copyright of recorded songs or albums to a record company in exchange for royalties.

Succession - Distribution of copyright to chosen persons by will in the event of the author's death.

True Copy - An exact copy of a legal document as attested by a notary public.

13. Related links:

- Visit the South-East Asia IPR SME Helpdesk website for further relevant information, such as how to deal with business partners in the South-East Asia region – www.southeastasia-iprhelpdesk.eu
- Visit the Helpdesk blog <http://www.yourIPinsider.eu> for related articles on IP in South-East Asia and China
- For more information on the Berne Convention, please visit <http://www.wipo.int/treaties/en/ip/berne/>.

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