

# THAILAND

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

### 2023 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA recommends that Thailand remain on the Watch List in 2023.<sup>1</sup>

**Executive Summary:** The Royal Thai government continues to struggle with the fight against piracy, and a recent government reshuffle raises further questions about the long-term stability of its intellectual property (IP) policies. Though amendments to the Computer Crime Act (CCA) establishing a no-fault judicial remedy to disable access to infringing content gave rights holders hope of improving efforts to combat rampant online piracy in the country, the mechanism has faced difficulties and has had inconsistent and mostly ineffective results to date. Cases should proceed, upon rights holders' election, to the Intellectual Property & International Trade (IP&IT) Court and result in full blocking orders (as opposed to Uniform Resource Locator (URL)-specific orders) properly implemented by Internet service providers (ISPs) in Thailand. Otherwise, enforcement against piracy remains largely non-deterrent, although cooperation with the Police Cyber Taskforce (PCT), the Royal Thai Police Economic Crimes Division (ECD), and the Department of Special Investigations (DSI) has been good, resulting in some enforcement actions against several piracy sites in the past couple of years. Unfortunately, these enforcement actions have not resulted in deterrent outcomes against pirate operators and, as a result, there have not been significant reductions in piracy or needed deterrence. Thai-language piracy sites and services continue to dominate the online ecosystem, unfairly competing with legitimate rights holders.

The Royal Thai government enacted amendments to the Copyright Act in February 2022. The amendments, which entered into force in August 2022, include some helpful improvements to the intermediary liability framework and the protection of technological protection measures (TPMs). In 2022, Thailand officially acceded to the WIPO Copyright Treaty (WCT), following through on the government's longstanding promise to join this treaty, and it is now time for the government to join the WIPO Performances and Phonograms Treaty (WPPT). Unfortunately, the recently enacted amendments did not address certain deficiencies in Thailand's legal framework. IIPA urges the Government of Thailand to better address copyright piracy by improving the legislative framework, addressing remaining shortfalls regarding provisions on intermediary liability and protections of TPMs, ensuring that other important provisions, such as term of protection of copyright, align with current international standards and best practices, and providing a clear legal basis to disable access to copyright infringing content.

Moreover, certain 2019 amendments to the copyright law in the name of Marrakesh Treaty implementation created new problems because of the erroneous inclusion of sound recordings in the scope of certain exceptions. To address the continued operation of rogue collective management organizations (CMOs) that undermine music rights holders and users, the Royal Thai government should also promulgate legislation to bring order to music collecting societies that are distorting the market, including measures addressing the establishment and governance of CMOs.

The Royal Thai government should also remove market access barriers, including screen quotas in the amendments to the Motion Picture and Video Act, and refrain from imposing any new barriers in over-the-top (OTT) regulations. IIPA welcomes recent stakeholder engagement by the Royal Thai government, particularly the Department of Intellectual Property (DIP), and looks forward to continuing close coordination.

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<sup>1</sup> For more details on Thailand's Special 301 history, see previous years' reports, at <https://iipa.org/reports/reports-by-country/>. For the history of Thailand's Special 301 placement, see <https://www.iipa.org/files/uploads/2023/01/2023APPENDIXBSPEC301-1.pdf>.

## **PRIORITY ACTIONS REQUESTED IN 2023**

### **Enforcement**

- Ensure enforcement units, including the PCT, the ECD, and the DSI, increase the number of enforcement actions against commercial-scale digital piracy services, and critically bring criminal prosecutions through to convictions. This includes taking enforcement action against commercial-scale streaming piracy sites such as *123-hd.com*, *037hdmovie.com*, *Kseriestv.com*, and *Siambit.me*.
- Clarify the criminal prosecution process, which remains excessively lengthy and lacks transparency, against commercial-scale piracy websites.
- Take action against rogue CMOs and combine this enforcement action with regulatory reforms to change the criteria for CMO registration.
- Ensure proper implementation and application of CCA Section 20(3) regarding actions to combat pirate websites, including ensuring expeditious and non-burdensome procedures, proper adjudication by the IP&IT Court, and full and fast compliance by Thai ISPs with court orders for full website blocking to disable access to infringing sites.

### **Legislative**

- Introduce changes to Thailand's copyright protection and enforcement framework, including further amendments to the Copyright Act, to:
  - ensure copyright offenses are non-compoundable so that *ex officio* enforcement may ensue;
  - ensure that measures addressing camcording effectively prohibit possession of an audiovisual recording device in an exhibition facility with the intent to make or transmit an audiovisual work, in whole or in part, and provide that exhibition facilities have standing to bring complaints;
  - extend the term of copyright protection consistent with international best practices to 70 years from the death of the author, or for sound recordings (and performances) or other subject matter calculated from publication, at least 70 years from publication;
  - address shortfalls on intermediary liability to clearly establish a basis for liability of online service providers for infringements carried out by third parties using their services, clarify the eligibility criteria for safe harbors to ensure that appropriate repeat infringer policies are an additional condition for eligibility rather than the only necessary condition, and ensure the eligibility criteria includes a requirement for ISPs to implement other measures demonstrated effective in preventing or restraining infringement;
  - ensure that exceptions to TPMs protections are appropriately narrow, for example, to ensure access to content is limited to licensed institutions assisting disabled persons or non-profit educational institutions;
  - reduce the number of, and bring order to, the multitude of CMOs currently active in the market to protect rights holders and users from rogue CMOs, including measures addressing the establishment and governance of CMOs; and
  - while rights holders consider action to utilize the CCA, provide a clear legal basis to enable courts to order online service providers to disable access to infringing websites.

### **Market Access**

- Remove foreign ownership restrictions like the National Broadcasting and Telecommunications Commission (NBTC) rules restricting media mergers, acquisitions, and cross-media ownership.
- Delete Section 9(5) (and the related Section 68) of the 2008 Motion Picture and Video Act (MPVA), which allows the Film Board to establish ratios and quotas against foreign films, and amend the MPVA to avoid onerous film censorship and classification provisions, as such policies would create new barriers and reduce consumer choice.
- Remove the NBTC-approved "must carry" provisions, since they could, if improperly interpreted or misunderstood, restrict the companies' contractual freedom to license.

- Avoid onerous OTT regulations, e.g., that could require streaming operators to set up a local presence or to subject online content service providers to mandatory network usage fees.

## **PIRACY AND ENFORCEMENT UPDATES IN THAILAND**

Prior IIPA reports on Thailand contain a more detailed discussion of piracy and enforcement issues. This report serves only as an update to those reports and is not to be considered an exhaustive review of issues.<sup>2</sup> Overall, piracy in Thailand, especially online piracy, continued to cause major damage to legitimate rights holders and licensees in 2022. Although rights holders have some good cooperation with Royal Thai government authorities, enforcement action against commercial-scale piracy websites and services has been limited and has not significantly reduced levels of online piracy nor provided much-needed deterrence.

**Online Piracy:** Notwithstanding the expanding availability of legitimate services for music and audiovisual materials,<sup>3</sup> increasing access to broadband Internet, particularly on mobile devices, has led to escalating piracy of recorded music, motion pictures, television and streaming content, video games, published materials, and broadcasts. Legitimate services find it difficult or impossible to compete with pirate offerings, and some longtime licensed operators have been driven out of business due to intractable piracy.

Both U.S. producers and distributors, as well as local Thai producers and services, are profoundly harmed by Internet pirate platforms, which specifically target Thai users with Thai-language sites. Streaming unauthorized content is the most popular form of piracy, whether through streaming websites, apps, piracy devices, circumvention devices or software, or even through social media. Many websites serve as portals that allow users to download apps that provide access to pirated content, including the latest theatrical run motion pictures, television content, sporting events, and live streamed pay-per-view events and concerts. The most popular streaming sites in Thailand are home-grown and operated from within the country, including *123-hd.com* (40.6 million visits in Q4 2022, according to SimilarWeb), *037hdmovie.com* (37.6 million visits during the same period), and *Kseriestv.com* (32.3 million visits during the same period). BitTorrent indexing and tracker sites, cyberlockers, and BBS/forums also remain problematic. The popularity of peer-to-peer (P2P) networks remains. Many of the top piracy sites in Thailand are domestic BitTorrent sites: *Siambit.me* (18.6 million visits in Q4 2022 according to SimilarWeb), *dedbit.com* (3.9 million visits during the same period), and *tt-torrent.com* (7.3 million visits in the same period).

Popular stream-ripping services include *ssyoutube.com* (2.6 million visits from Thailand in Q4 2022 according to SimilarWeb), *y2mate.com* (2.2 million visits in the same period), and *savefrom.net* (1.9 million visits in the same period). Some of these services have been subject to website blocking orders or other litigation in some jurisdictions, yet no action has been taken in Thailand. Cyberlockers that egregiously or primarily facilitate access to infringing materials also remain a problem in Thailand, such as *Mega.nz* (6.2 million visits from Thailand in Q4 2022) and *4shared.com* (1.8 million visits in the same period).

In 2022, enforcement action against commercial-scale piracy sites was limited, and the criminal prosecution phase continues to be extremely slow moving and lacks transparency. In May 2022, industry worked well with the PCT, the ECD, and the DSI resulting in the closure of streaming site *We-Play.live* and the arrest of the site's owner. In June 2022, a successful enforcement action resulted in the shutdown of the *PGLiveTV* application, which had been in operation since early 2021 and provided access to live channels (including live sports) and VOD content. These raids should now be followed up with prosecutions to achieve permanent reductions in piracy and establish needed deterrence. Legitimate online services are harmed by the increasing threat from copyright infringing websites, and some longtime licensed operators have stopped doing business as a direct result of this intractable piracy. Both U.S.

<sup>2</sup> See, e.g., IIPA, Thailand, 2022 Special 301 Report, January 31, 2022, at [https://www.iipa.org/files/uploads/2022/02/IIPA\\_2022-Spec-301\\_Thailand-1.pdf](https://www.iipa.org/files/uploads/2022/02/IIPA_2022-Spec-301_Thailand-1.pdf).

<sup>3</sup> Legitimate services in Thailand for content include iTunes, Google Play Store, Hollywood HDTV, Prime Time, iFlix, HOOQ, Doonung, ZABMOVIE, Deezer, KKBox, Spotify, YouTube, AIS, GTH Movie Store, AIS Movie Store, HTV (from True Visions), and Clickplay TV, among others.

producers and distributors, as well as local Thai producers and services, are profoundly harmed by Internet pirate platforms that specifically target Thai users with Thai language sites.

An example of the need for a more efficient prosecution process is *Movies2free*,<sup>4</sup> which was shut down by the DSI in November 2019. After the enforcement action, the DSI announced that the piracy site was one of the largest in Thailand and had been generating USD\$160,000 per month in advertising revenue alone.<sup>5</sup> However, the Public Prosecutors Office is still waiting to receive the site owner's pleadings to the charges, more than 3 years after the enforcement action.

Piracy continues to take its toll on the market for legitimate creative content. Illegal apps on smartphones, readily available from Apple and the Google Play stores, are popular among Thai users seeking to access vast amounts of pirated content either for free or at a very low cost. These include apps for downloading infringing MP3 content. Increasingly, piracy websites are using content delivery networks and cloud services such as Google Drive, making identification of website operators and server locations very difficult.

The provision of the amended CCA that enables disabling of access to infringing websites has been a promising reform, although results with its use in practice have been mixed. In recent years, the Ministry of Digital Economy & Society has forwarded cases to the Criminal Court as opposed to the IP&IT Court, resulting in cases being combined with other criminal matters and decisions resulting in URL-specific blocks that are ineffective. While hundreds of these orders have been issued, the blocks are URL-specific, so they do not result in full website blocking. ISPs are capable of implementing full website blocking, and industry seeks a process whereby the applicants may elect the civil route to obtain full website blocking. Orders should be directed to disable access to entire domains, as opposed to specific URLs, and be dynamic to address sites that “hop” to another domain to circumvent the original order. Full domain site blocking orders should then be properly implemented by ISPs.

**Theatrical Camcorder Piracy:** Thailand continues to represent a potential risk for illicit theatrical camcording, particularly in relation to illegal Thai audio tracks. Although 2020, 2021, and 2022 numbers were anomalous due to COVID-19-related theater closures, in 2019, 18 audio files and three video files of MPA member titles were forensically traced to theater locations in Thailand. If effectively implemented, the Copyright Act provision that deems camcording an infringement of copyright could help, but this provision should be strengthened to adequately address the problem.

**Piracy Devices (PDs) and Apps:** Piracy devices (PDs) include media boxes, set-top boxes or other devices that allow users, through the use of installed piracy apps and software, to stream, download, or otherwise access unauthorized content from the Internet. Such devices are still being purchased in malls and on e-commerce websites but are rarely sold with pre-installed infringing applications, making enforcement action and takedowns more challenging. The number of piracy devices being overtly sold in retail outlets has declined over the last 12 months.

**Reforming the Market for the Collective Management of Rights:** The music industry is concerned that many operators of restaurants, bars, shops and other commercial establishments have been harassed by “rogue” entities, despite having obtained licenses from legitimate CMOs and paid royalties for the use of sound recordings played on their premises. A proliferation of these “rogue” entities has caused serious market disruption, directly harming music rights holders, legitimate CMOs, as well as users in Thailand.

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<sup>4</sup> *Movies2free* was the 15<sup>th</sup> most popular site in Thailand with 34 million visits in Q3 2019.

<sup>5</sup> See <https://torrentfreak.com/police-shut-down-thailands-most-popular-pirate-site-following-hollywood-request-191108/>

## COPYRIGHT LAW AND RELATED LEGISLATIVE UPDATES

**CCA Amendment:** In a significant development, the 2016 Amendment to the CCA B.E. 2550 (2007) added IP infringement as a predicate crime in Section 20, permitting injunctive relief against ISPs to disable access to infringing websites hosted outside of Thailand. The Amendment entered into force in July 2017. Since then, there have been many requests for blocking or disabling access to intellectual property rights (IPR) infringing content or activities. However, in only a dozen or so cases have the Courts issued full website blocking orders, and in the majority of other cases, the orders were to disable access to specific content identified in the URLs. IIPA encourages clarity on IP&IT Court jurisdiction to ensure that the Court is prepared to address structurally infringing websites and issue orders for full website blocking (as opposed to URL-specific orders). Upon rights holders' election, cases should proceed to the IP&IT Court and result in full blocking orders properly implemented by ISPs in Thailand.

**Copyright Act Amendments:** Copyright Act amendments were enacted in February 2022 and entered into force in August 2022. The amendments include improvements to Thailand's intermediary liability framework and the protection of TPMs. On July 13, 2022, Thailand officially acceded to the WCT, effective October 13, 2022. It is now time for Thailand to accede to the WPPT. The following are critical issues that remain with the amended Copyright Act that should be addressed in implementation or further amendments to ensure that the Royal Thai government achieves its stated goals of modernizing its copyright law, complying with its international obligations, and fully implementing and adhering to the WCT and WPPT (collectively, the WIPO Internet Treaties).

- **Infringement a Non-Compoundable Offense:** IIPA urges the Royal Thai government to amend the Copyright Act to ensure that IP infringement becomes a non-compoundable state offense, thus enabling the police to act on their own initiative (i.e., *ex officio*) without any requirement of a formal complaint from rights holders. In the age of online piracy, this ability for authorities to take ownership of investigations and cases is critically important.<sup>6</sup>
- **Service Provider Liability Amendments:** The amendments include helpful improvements to the intermediary liability framework, including requiring an effective notice and takedown mechanism and repeat infringer policies. Nevertheless, further improvements are still needed. First, the law should clearly establish an initial basis for liability of online service providers for infringements carried out by third parties using their services. This secondary liability provides legal incentives for online service providers to cooperate with rights holders to deter the unauthorized storage and transmission of copyrighted materials on their services. Without a clear basis for secondary liability, safe harbors (granting exemptions for such liability) would be unnecessary. Second, the eligibility criteria for safe harbors should be clarified to ensure that appropriate repeat infringer policies are an additional condition for eligibility, rather than itself giving rise to an exemption to liability. Finally, the eligibility criteria for safe harbors from liability should include, in addition to the notice-and-takedown requirement, a requirement for ISPs to implement other measures demonstrated effective in preventing or restraining infringement.
- **Technological Protection Measures (TPMs):** TPMs are critical for the success of services that are providing legal content to users in Thailand today, and they need to be protected. The amendments and related implementing regulations made several improvements to TPMs protections in Thailand, including prohibiting acts of circumvention of TPMs and trafficking in circumvention technologies, devices, components, and services (e.g., enabling actions against stream-ripping websites or other such services). We request the government issue further regulations or guidelines on the provisions for TPMs to make it clear that service, promotion, manufacture, sale, or distribution of PDs and applications/software/add-ons available thereon violate TPMs protections.

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<sup>6</sup> In May 2022, the Supreme Court of India held that offences under Section 63 of the Copyright Act, 1957 are cognizable and non-bailable offences. *M/s Knit Pro International v The State of NCT of Delhi & Anr.*, CRIMINAL APPEAL NO. 807 of 2022, Sup. Ct. India, May 20, 2022. Thailand should follow India's lead on this issue to fully modernize its system and provide enforcement apparatus the tools necessary to tackle online piracy.

- **Rights Management Information:** Exceptions to protections for rights management information are overly broad and should be narrowed. For example, the blanket exclusion of educational institutions, archives, libraries, and non-profit broadcasting organizations from violating the rights management information protections are inappropriate and unjustified.
- **No-Fault Injunctive Relief:** To improve the effectiveness of enforcement against online copyright piracy, the draft amendments should be amended to provide for no-fault injunctive relief in copyright piracy cases, enabling courts to order online service providers to disable access to copyright infringing websites (analogous to the CCA remedy, which applies to all IP crimes).
- **Theatrical Camcording Provision Should Be Revised:** Thailand enacted anti-camcording legislation in 2014. However, the anti-camcording provision falls short because it requires a link between the act of theatrical camcording and a copyright infringement, instead of criminalizing the camcording act itself. Criminalizing the act of camcording, including audio-only captures, without requiring a link to copyright infringement, would empower law enforcement to intercept illegal recordings before they enter the online pirate ecosystem. Preferably, these provisions will be revised to ensure that the possession of an audiovisual recording device in an exhibition facility with the intent to copy or transmit a whole or part of an audiovisual work (including the video, the soundtrack, or both) is prohibited, and that exhibition facilities are given standing to bring complaints. Those engaging in the act proscribed should be subject to interdiction by cinema employees and the police, immediate seizure and forfeiture of the equipment used and any unlawful copies made, as well as civil and criminal penalties.
- **Collective Management Provisions:** The current collective management and collection system for music is unwieldy and remains unclear, with many collecting bodies operating in the market. IIPA welcomes indications from DIP that it is keen to resolve this issue. However, the DIP proposal at this stage is only to introduce a voluntary code of conduct for CMOs, which is not a sufficient response to the long-standing challenge in the Thai market. As of August 2022, the number of CMOs decreased from 40 to 19, with 8 of the 19 confirmed to have applied DIP's code of conduct. Although DIP intends to certify and promote these qualified CMOs, there is no policy to prevent new CMOs from registering. The Copyright Act should therefore be amended to include provisions setting out certain principal conditions for CMOs to operate in Thailand, such as complying with a code of conduct that requires good governance, transparency, fair and accurate distribution, and of course actually representing the rights holders it claims to represent. Regarding the latter point, IIPA recommends that the Copyright Act be amended to provide that an entity wishing to act as a CMO must be registered with the Ministry of Commerce, must be authorized by rights holders, and must comply with the code of conduct. Registration criteria should be fair, objective, transparent, and reasonable and include the requirement for the CMO to operate in a transparent and non-discriminatory manner and in accordance with principles of good governance. In deciding whether to grant permission to a CMO to operate (i.e., register a CMO), the Ministry should consider the number of members, as well as the size of the catalogue of titles and rights under management, and should be entitled to refuse any application for registration or revoke any registration if the CMO does not satisfy such conditions. However, the Thai Government should resist proposals to create, by government dictate, a single collection body. While voluntary cooperation between CMOs can be cost-effective and beneficial for participating CMOs and rights holders, experience shows that mandatory single collection bodies lead to inefficient and unaccountable structures.<sup>7</sup>
- **Exception for the Visually, Hearing, Intellectually, or Learning Impaired:** Copyright Act Number 4 B.E.2561 (2018) was published in November 2018 and entered into force in March 2019. The Act permits persons with disabilities who do not have access to copyrighted work due to impairment in vision, hearing, movement, intellect or learning, or other deficiencies to have equal opportunities to other persons to access, make copies, modify, or

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<sup>7</sup> An example of a well-functioning voluntary joint organization is MPC Music Co. in Thailand, which is a joint licensing agency formed by two collective management organizations (CMOs), Phonorights (Thailand) Co., Ltd. (PNR) (for sound recording rights) and Music Copyright (Thailand) Co. Ltd. (MCT) (for musical works rights).

distribute the copyrighted work. DIP has issued a Ministerial Regulation on the details of authorized or recognized entities and how such copies may be distributed. The Thai exception goes well beyond the mandate of The Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled, which creates a limitation and exception for the benefit of the blind, visually impaired, and otherwise print disabled. That exception will be mandatory for individual WIPO members that ratify the Treaty. From the music industry's perspective, in accordance with the Marrakesh Treaty, sound recordings should not be covered by the exception at all, and in the alternative, the exception should be properly defined and restricted in scope to apply solely to specific acts regarding specific works for the benefit of specific individuals, with adequate safeguards, and with equitable remuneration payable to rights holders. This exception should be amended or implemented in such a way that it faithfully implements the Marrakesh Treaty and does not conflict with the “three-step test” of the Berne Convention, WTO TRIPS Agreement, and WIPO Internet Treaties.

- **Inadequate Term of Protection:** Thailand should extend its term of copyright protection to align it with the international trend of 70 years after the death of the author, or, in cases in which term is calculated based on publication (such as sound recordings), to at least 70 years from publication. Unfortunately, the most recent amendments to the Copyright Act do not change the term of protection, which remains at 50 years. In the case of sound recordings, there are now at least 73 countries worldwide that provide for a term of protection of 70 years or more. Further, if the term of protection is not extended in time, some Thai classics from the 1970s—including the classics of Soontaraporn, Suraphol Sombatcharorn, and Paiboon Buth—will soon fall out of copyright protection, even though they are still widely consumed by the public. This will have a negative effect on local artists' income, especially those who have retired and rely on the royalties for a living. Further, Thailand should be urged to catch up with the new international standard of protecting sound recordings for at least 70 years because, otherwise, the development of the Thai music market will lag behind a vast number of countries in North America, Europe, and APAC.
- **Section 32 and Fair Use Guidelines:** IIPA also continues to call for a narrowing or clarification of Articles 32(6) and (7) of the Copyright Act, and to ensure administrative guidance on fair use is kept within the legal bounds of existing exceptions and that affected publishers and stakeholders are afforded the opportunity to provide input into the guidelines.

## **MARKET ACCESS UPDATES IN THAILAND**

**Screen Quota and Film Classification:** Section 9(5) of the 2008 MPVA allows the Film Board to establish ratios and quotas against foreign films. If implemented, such restrictions would create new barriers to foreign film distribution, discourage cinema infrastructure investments, and reduce consumer choice. Since 2017, the Ministry of Culture has been considering amendments to the MPVA (which, as of late 2022, we understand may proceed via a new Film & Games Act). The motion picture industry continues to urge the Ministry to delete Section 9(5) and the related Section 68, because such limitations, if implemented, could adversely affect Thai distributors and exhibitors, impede the development of the local film industry, limit the variety of entertainment available to Thai consumers, and exacerbate piracy. The MPVA also imposes onerous classification (ratings) requirements on films, music videos, and live performances, as well as censorship requirements on films, audiovisual products, and video games. Thailand should remove onerous ratings requirements, including the 15-day period for obtaining ratings and censorship approval, the associated high costs for film ratings, and the severe penalties for failure to comply. In a positive development, in 2019 the Film Ratings Office removed the requirement for submissions of Digital Cinema Packages with open encryption keys, which would have otherwise raised significant content security risks.

**Must Carry Requirements:** In 2012, the NBTC hastily approved “must carry” provisions requiring all platforms to carry public and commercial free-to-air television channels nationally, on an equal basis. The regulations, which have not been clearly drafted, raise important IPR issues, i.e., they call into question the ability of rights holders to enter into exclusive distribution arrangements in Thailand.

**Over-the-top (OTT) Regulations:** Various government agencies, including the NBTC and the Electronic Transactions Development Agency (ETDA), have considered policies on OTT services, including requiring streaming operators to set up a local presence to respond to government requests around content that the government finds objectionable (a form of mandatory content moderation). The NBTC has also made public comments suggesting forcing content providers to pay for network usage fees. Such regulations, if extended to OTT services, would impose burdensome requirements on foreign content service providers, stifle innovation and the development of a thriving OTT ecosystem in Thailand, and raise costs, particularly in the absence of a robust enforcement regime to protect digital delivery of content.

**Investment/Ownership Restrictions in Media Sector:** In January 2015, the NBTC issued rules governing media mergers, acquisitions, and cross-media ownership. The rules require prior NBTC approval when a television license holder seeks to invest more than 25% directly, or more than 50% indirectly, in another licensed company. This rule severely limits investment and creates unnecessary barriers to entry for U.S. companies.

## **COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES**

Many of the deficiencies in Thailand's enforcement framework described above—including inadequate efforts to combat piracy, burdensome and inefficient civil and criminal procedures, and inadequate and non-deterrent civil and criminal remedies—run afoul of Thailand's obligations under the WTO TRIPS Agreement enforcement provisions, including Articles 41, 42, 45, and 61.