

**Session 2: The inclusion of
limitations and exceptions in
domestic law: comparative
experiences.**

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The Inclusion of Limitations and Exceptions in Domestic Law: Thailand's Experiences

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**APEC – IPEG Workshop on Copyright
Exceptions and Limitations
on April 2, 2012 in Santiago, Chile**



Road Map

- International Legal Obligation
- Limitations & Exceptions Under Copyright Law of Thailand
- Case Study
- Guidelines on Copyright
- Challenges
- Draft Copyright Amendments

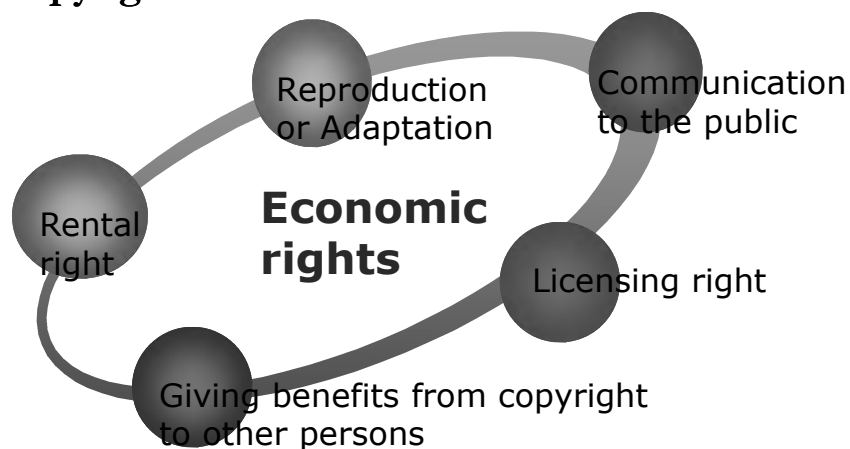
International Legal Obligation

Thailand's legal obligation under two major international copyright agreements:

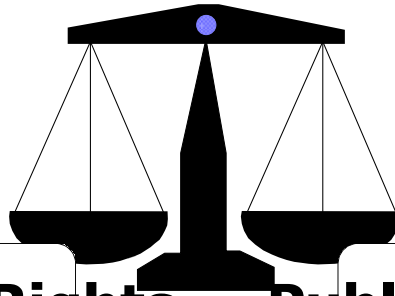
- **Berne Convention** --- Thailand has been a party to the Berne Convention since July 17, 1931
- **TRIPs Agreement** --- Thailand has been a member of TRIPs since January, 1 1995

Copyright Act B.E. 2537 (1994)

Copyright Protection



**Limitations & Exceptions under
Copyright Law of Thailand**



Exclusive Rights Public Interest

**Limitations & Exceptions under
Copyright Law of Thailand**

**Special
Cases**

**Does not
conflict with
a normal exploitation
of the copyright work
by the copyright
owner**

**Does not
unreasonably
prejudice the
legitimate right of
the copyright owner**

Limitations & Exceptions under Copyright Law of Thailand

Special Cases listed in the law

- **Non-profit research & study**
- **Use for personal benefit**, the benefit of family members or close relatives
- **News reporting** through mass media and comment, criticism or introduction of the work with an acknowledgement of the copyright ownership
- **Reproduction, adaptation, exhibition or display for the benefit of judicial proceedings or administrative proceedings** by authorized officials or for reporting the result of such proceedings

Limitations & Exceptions under Copyright Law of Thailand

Special cases listed in the law (cont.)

- **Reproduction, adaptation, exhibition or display by instructor** for the benefit of instruction provided that the act is not for profit
- **Reproduction, adaptation in part of a work or abridgement or making a summary by an instructor or an educational institution** so as to distribute or sell to students in a class or in an educational institution provided that the act is not for profit

Limitations & Exceptions under Copyright Law of Thailand

Special cases listed in the law (cont.)

- Use as part of questions and answers in an exam
- reasonable recitation, quotation, copying, emulation or reference in part from a copyright work with an acknowledgement of copyright ownership
- Librarian's non-profit reproduction of copyright work for use in the library or another library
- Librarian's non-profit reasonable partial reproduction for another person's benefits in research or study

Limitations & Exceptions under Copyright Law of Thailand

Special cases listed in the law (cont.)

- Certain non-profit actions against computer program such as backing up legally acquired computer program for preventing loss, researching & studying computer program, and adapting the computer program as necessary for use

Limitations & Exceptions under Copyright Law of Thailand

Special cases listed in the law (cont.)

- **Non-profit & non-charged public performance of dramatic or musical works** conducted by associations, foundations or organizations having the objectives for public charity, education, religion or social welfare, plus no remuneration given to performers for their performance
- **Reproduction of a copyright work in the possession of the government** by an authorized official or by an order of such official for the benefit of government service

Limitations & Exceptions under Copyright Law of Thailand

Stand-alone specific exceptions

- Drawing, painting, engraving, moulding, carving, lithographing, photographing, cinematographing or video broadcasting of **an artistic works openly located in a public**
- Photographing or cinematographing or video broadcasting of a work of which **artistic works** are a component

Limitations & Exceptions under Copyright Law of Thailand

Stand-alone specific exception (cont.)

- **Restoration of a building** which is a copyright architectural work
- The case of **public communication of a copyright-expired cinematographic work containing copyrighted works**
- **Author's partial insignificant reproduction of artistic works** whose copyright co-owned by the author of artistic works and another person

Case Study

- **Supreme Court Case No. 5843/2543** --- Photo Copying Kisok in the University (Copyright Infringement --- Yes)
- **Supreme Court Case No. 1908/2546** --- Whether an action falls in the purview of copyright exception can be contemplated by **“Quality”** and **“Quantity”** of taken copyright work.

Guidelines on Copyright

Guidelines on limitations and exceptions to copyright issued by the DIP:

- **Guidelines for teaching**
- **Guidelines for news reporting**
- **Guidelines for computer program**

Challenges

- The broad & unclear language on the provisions of copyright exceptions in the Copyright Act B.E. 2537
- Subjective interpretation of copyright exceptions, causing copyright users uncertain of their use
- A few Thai court rulings on copyright exceptions
- The Copyright Act is silent on new models of copyright use such as use of copyright works in the digital environment.

Draft Copyright Amendment

Amendments of Copyright Act B.E. 2537 : Limitations and Exception for Disability Persons

- Non-profit reproduction or adaptation of copyright works for advantages of visually impaired persons, intellectually impaired persons, and other types of disabled persons determined in the Royal Decree.
- The characteristics of all above mentioned disabilities, which fall in this copyright exception, will be determined in the Ministerial Regulation

- Exceptions to the Prohibition of the Circumvention of TPM

Thank You



**Presentation by
Mr. Michael Geist**

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The Limitations & Exceptions Sandbox

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The Bottom Line

- International law defines the “sandbox” or limits of limitations & exceptions (ie. 3 step test)
- Considerable flexibility at national law in implementing limitations and exceptions
- Canadian case study

International Activity

- Global scholarly initiative working on the issue
 - Mandatory minimums
 - International and domestic flexibility
 - Leading to 2012 Global Congress in Rio
- WIPO Development Agenda
 - Treaty for the Visually Impaired
 - Library Treaty

The Canadian Sandbox: Fair Dealing

- Fair dealing the Canadian version of fair use
- Supreme Court says should be interpreted broadly
- Given the recent decisions, fair dealing in Canada currently covers:
 - research
 - private study
 - news reporting
 - criticism
 - review
- If meet the category test, then must meet six-factor analysis of whether dealing is fair

Canada: Fair Dealing

- Six Factor Test:
 - Purpose of the dealing
 - Character of the dealing
 - Amount of the dealing
 - Alternatives to the dealing
 - Nature of the work
 - Effect of the dealing on the work

the courts

Theberge
(2002)

“Excessive control by holders of copyrights and other forms of intellectual property may unduly limit the ability of the public domain to incorporate and embellish creative innovation in the long-term interests of society as a whole, or create practical obstacles to proper utilization.”

cch
(2004)

“the fair dealing exception is perhaps more properly understood as an integral part of the Copyright Act than simply a defence. Any act falling within the fair dealing exception will not be an infringement of copyright. The fair dealing exception, like other exceptions in the Copyright Act, is a **user’s right**. In order to maintain the proper balance between the rights of a copyright owner and users’ interests, it **must not be interpreted restrictively.**”

“The fair dealing exception under s. 29 is open to those who can show that their dealings with a copyrighted work were for the purpose of research or private study. **“Research” must be given a large and liberal interpretation in order to ensure that users’ rights are not unduly constrained.** I agree with the Court of Appeal that research is not limited to non-commercial or private contexts.”

“The amount taken may also be more or less fair depending on the purpose. For example, for the purpose of research or private study, it may be essential to copy an entire academic article or an entire judicial decision.”

Bill C-11 - User Exceptions

- **Expansion of fair dealing**
 - Current coverage research, private study, news reporting, criticism, review
 - Adds education, parody, satire
- **Format shifting (reproduction for private purposes)**
 - Authorized copy
 - Don't give it away
 - No circumvention
 - Use for private purposes
 - Not a copy to CD (private copying levy)
- **Time shifting**
 - Legally acquire program
 - No circumvention
 - One copy
 - Only keep for "reasonable" period of time
 - Don't give it away
 - Private purposes
 - Does not apply to on-demand services

C-11 - User Exceptions

- **Backup Copies**
 - Solely for backup purposes
 - Not an infringing copy
 - No circumvention
 - Don't give it away
 - Must destroy if don't own or licence source copy
- **Non-commercial User Generated Content**
 - Use new work to create new work AND authorize intermediary to disseminate if:
 - Non-commercial purposes
 - Attribution if possible
 - Source not infringing copyright
 - No substantial adverse effect (including financial) on exploitation of existing work

C-11 - User Exceptions

- **Publicly Available Materials on the Internet**
 - Covers works posted on the Internet - education can reproduce, communicate & perform
 - Legitimately posted
 - No steps taken to opt-out & not aware of a violation of rights holder rights
- **Digital Library Loans**
 - Exception for digital inter-library loan
 - Limitations on use (5 days), print one copy, and not transferable
- **Distance Learning**
 - Exception for communication of lessons
 - Lesson must be destroyed 30 days after course

C-11 - User Exceptions

- **Visually Impaired**
 - Expand rights to make copy for print disabled and send overseas (with limits)
- **Commissioned Photographs**
 - Consumers right to use for personal or non-commercial purposes (subject to contract)
- **Computer Software**
 - Reproduction of computer software for interoperability, security, research, and encryption
- **Technological Protection Measures**
 - Various exceptions to TPM provisions

What Next?

- C-11 at third reading - expected to become law by July
- Five year reviews of copyright
- Trade Agreements: ACTA, CETA, TPP
- Supreme Court of Canada - the “Copyright 5” cases

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