

Legal Update

THE UNITED STATES LAUNCHED THE LAW TO TAKE ACTION AGAINST COMPANIES WHICH DO BUSINESS BY USING ILLEGAL SOFTWARE.

Thai companies using pirated software that export their products to the US could be crippled by a law aimed at targeting the use of illegal IT.

The Unfair Competition Act (UCA) is being harnessed primarily to take action against US importers of pirated software and products created using it. Those importers will face heavy penalties unless they desist from profiteering from cheap, illegal imports.

At 26.4 billion baht, the commercial value of pirated software in Thailand is almost triple that of the annual sales of legal products.

The most damaging impact is likely to be on local companies exporting illegal software and products created using pirated software to the US. Companies that have been found to be using pirated software in other aspects of their business also face penalties. They stand to face the prospect of having their products blacklisted as well as facing damages claims for using unauthorised IT products.

The UCA – covering unauthorised use and sale of both hardware and software – was first introduced in the southern US state of Louisiana in June 2010. It has since been enacted in 36 states and three territories in varying forms and similar legislation is being considered by some European countries.

Under the law, the attorney-general of a state and the owners of the IT copyright can take action against companies both inside and outside the United States who use pirated copies if the original product is marketed or sold in the US. The copyright owners will first issue a notice to the offending companies to replace the illegal product within 90 days or face punitive measures including paying damages, having their products seized and being blacklisted.

In the case of a company outside the US being penalised, the importer of the foreign products would also face a damages claim.

Under this law, a directly competing manufacturer inside or outside the US, the attorney-general of the state and the owners of the IT are entitled to file suits against companies that use illegitimate IT in the manufacture, distribution, marketing or sale of products sold or offered for sale in the US. Given that the use of pirated software in Thailand is high for both personal and industrial purposes, replacing illegal IT would have a massive financial impact on manufacturers and exporters in the country. In a 2011 survey conducted by the Business Software Alliance (BSA) in Thailand, 74% of computer users admitted to acquiring pirated software. The Royal Thai Police's Economic Crime Suppression Division said that complaints of stolen IT use are lodged against 1,000 to 2,000 companies each year.

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Somporn Maneeratanakul, president of the Association of the Thai Software Industry (ATSI), says that while the UCA will mainly benefit foreign software companies, he also believes the legislation is positive for local software developers.

Moreover, the ATSI president is hopeful that the UCA will assist in boosting public and corporate consciousness of property rights as well and encourage IT innovation here. He said the Copyright Act (BE 2537) has been unsuccessful in protecting the property rights of Thai and foreign software developers due to the lack of personnel needed to enforce it and a consistent, clear direction from policy-makers.

THE CABINET HAD AN APPROVAL TO AFFIRM VAT AT 7% FOR ANOTHER 2 YEARS.

The cabinet decided on 8 August 2012 to keep value-added-tax (VAT) at seven per cent for the next two years, deferring the Finance Ministry's proposed hike to nine per cent.

Government spokeswoman Sansanee Nakpong said the cabinet agreed to delay the VAT increase until the end of September 2014. The VAT rate will rise to nine per cent on Oct 1, 2014.

It had been planned to increase the VAT rate to nine per cent from the currently seven per cent from Oct 1 this year.

The spokeswoman said the delay is mainly because Thailand was severely affected by the flooding last year, causing gross domestic product growth to drop to 0.1 per cent in 2011 from 7.8 per cent in 2010.

The drop in the growth rate resulted in lower consumption and a drop in exports.

The delay in the VAT increase would help people regain lost purchasing power and help the investment climate return to normal, Ms Sansanee said.

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