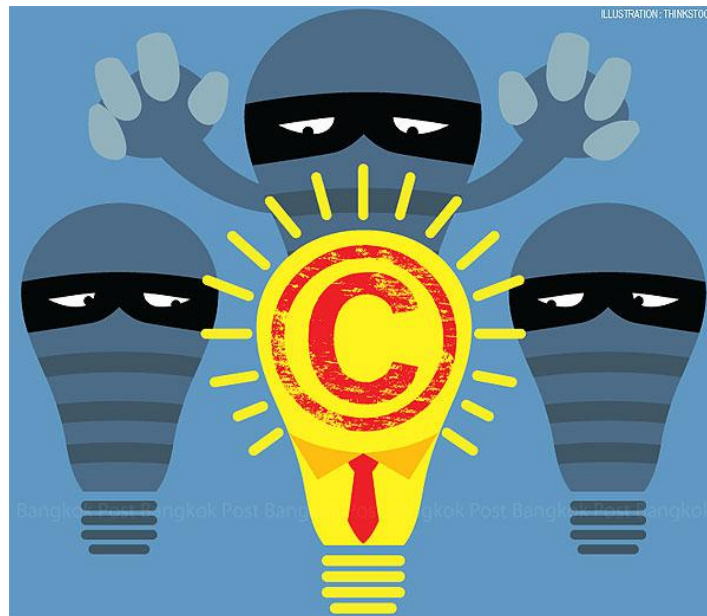


Intellectual Property and Counterfeiting in Thailand

Published: 15 June 2014

Newspaper Section: Spectrum

Whether you know it or not, a day spent in Bangkok will almost certainly involve exposure to intellectual property rights violations and counterfeit goods. In addition to the ubiquitous knock-off designer handbags, there are pirated music CDs, counterfeit clothes, accessories and electronics, pirated operating systems for computers, pirated movies streaming 24/7 and even fraudulent vehicles, international drivers licenses, diplomas, pharmaceutical products, food and passports. That last issue gained prominence with the discovery of two passengers traveling on fake passports on flight MH370. Over the course of the next few articles, we will outline the various laws that are in place to protect intellectual property rights and reduce counterfeiting here in Thailand.



First, what is intellectual property and why should it be protected? Intellectual property (“IP”) can be defined as works or inventions that are a product of human intellect. Intellectual property can be broadly separated into two categories: copyright-related rights and industrial property. Copyrights and related rights cover creative works such as literature, film, musical works, computer software, artistic works, broadcasting, and sound recordings. Industrial property encompasses patents, trademarks, industrial designs and geographical indications.

Legal systems recognize the importance of works considered to be intellectual property and thus confer a bundle of rights which protect the IP and its creator. These rights are known as intellectual property rights. The most compelling argument for providing IP protection is that the progress and well-being of humanity depends on constant technological innovation and a flourishing artistic community. By

prescribing rights to intellectual property we ensure that the creator(s) are compensated for their creativity and efforts, thus incentivizing them and others to continue their work.

The pharmaceutical company looking for a magic pill to cure cancer, the computer programmer toiling away in her parents' garage to create the next revolutionary operating system and the quirky writer working through drafts of his future Booker Prize winning novel have one thing in common: to some degree all are driven by a desire to monetize their efforts. They can only do so if we protect their intellectual property rights. Having the right to benefit from the protection of moral and material interests resulting from the authorship of scientific, literary or artistic productions is seen as such a fundamental human right that it is recognized by Article 27 of the Universal Declaration of Human Rights.

A copyright, denoted by the symbol ©, is a protection offered to the authors of original creative works for the period of their lifetime and, in most countries who are signatories to the 1886 Berne Convention for the Protection of Literary and Artistic Works, for another 50 years after their death. Works that are protected by copyright include works of literature, music, drama and visual and graphic arts, fixed in any tangible medium of expression. The copyright holder has the exclusive right to reproduce, adapt, distribute, perform, and display the work. The movies we watch, the books we read and the music we listen to are all examples of copyrighted material.

A trademark is used to indicate to consumers the source of goods and services so that those consumers can identify and distinguish goods or services of one producer from those of another and can ensure that the goods being purchased are genuine. For example, the logo on the hood of the Toyota allows a consumer to distinguish it from a Honda, and the three stripes on the Adidas running shoes distinguish them from those of Nike. A well-known trademark also serves an advertising function, such as the swoosh logo on my T-shirt or the alligator on my socks. Trademark protection is offered to words, slogans, devices, letters, numerals, combinations of colors or any combinations of the above. For a producer or provider of a high end product, such as a type of smartphone or a famous hotel chain, the trademark provides a customer with some certainty as to the quality of the good or services they are purchasing. A proliferation of low quality counterfeits will degrade the brand.

A patent is an exclusive right granted for a specified period of time to exclusively make, use and sell an invention in exchange for disclosing the details of that invention. The word "patent" is derived from the Latin "*patere*", meaning "to lay open" (i.e. to put in the public realm for inspection). The principle is that society benefits from the public disclosure of the inner working of an invention, in part because with this information others may improve upon that invention to the benefit of society. The quid pro quo for disclosing that information is that the inventor is granted the period of exclusivity in which the inventor may be able to achieve a financial return on their investment. Though the issue is extremely complex and differs somewhat between jurisdictions, generally to be patentable an invention must be novel and non-obvious (i.e. there must have been an "invention"), it must be useful, and the inventor must be able to explain how to actually make it and use it. A patent application is filed at a patent office and typically includes (i) a detailed description of the invention to enable persons skilled in the art to understand and create such an invention by themselves; (ii) a title; and (iii) drawings to support the description and claims. The smartphone you are holding may embody thousands of patents and the Croc shoes you are wearing are the subject of a design patent.

Having worked your way through that IP primer, you should have a new appreciation for the growing prevalence of IP violations and counterfeiting in our daily lives and for the possible long term negative consequences. What is being done to fight back against this trend? We'll find out in our future articles.

Angus Mitchell (angus.mitchell@dfd.com)

Kunal Sachdev (kunal@dfd.com)



Source: <http://www.bangkokpost.com/news/investigation/415366/intellectual-property-and-counterfeiting-in-thailand>