

## **Mediation as a Solution to Copyright Infringement Disputes** A Case Study from the IP&IT Court.

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Nowadays, copyright infringements are becoming widespread in Thailand. The license compliance sectors have encountered difficulties in protecting clients' intellectual property rights against infringement activities. It is indeed a significant issue for the software industry to safeguard their intellectual property rights and to maintain a business standpoint. Allowing the infringers to act as they wish might even worsen the unpleasant circumstances. Our litigation team has seen that initiating a civil lawsuit to regain compensation from the infringers might no longer prevent the infringer from repeatedly committing the copyright infringement offense as there are several factors which deters the software owner to be compensated.

**Section 64, COPYRIGHT ACT B.E. 2537 (1994)** states that *“In the case of infringement of copyright or performer's rights, the court has the authority to order the infringer to compensate the owner of copyright or performer's rights with damages the amount which the court considers*

*appropriate by taking into account the gravity of injury, including the loss of benefits and the expenses necessary for the enforcement of the right of the owner of copyright or performer's rights”*

This section allows the judges to apply their discretion to determine in total compensation by considering based on the evidence and the case background of the case. In the case of **compensation in the software industry**, the date of software installation and the usage of the unlicensed software might result in unfavorable compensation compared to the actual damages.

Based upon the aforementioned factors, the software owners indeed bear high risk in each verdict whether the judge panels have the favorable discretion to the copyright infringement cases or not.

In addition, the differences of the cases could **cause the adverse result toward** the verdict as well as the amount of compensation. It is crystal clear that section 64 enables the judges to consider the appropriate amount of compensation according to their personal discretion along with the uniqueness of the case background as they believe that it would bring justice to both parties.

To touch upon the aspects of this problem, our team applied the newest recommendation

from the President of the Supreme Court which is the mediation before commencing the civil lawsuit arranged by IP&IT court under the section 20 ter of Civil Procedure Code, Thailand. The concept is officially called “**Mediation Session Before Commencing Lawsuit**”. This approach allows both parties who desire to amicably settle the dispute without filing a lawsuit by submitting the motion for arranging a mediation session to reduce the number of court cases. Once the infringer obtains the copy of the motion and agrees to join the mediation session, the mediation center of IPIT court will arrange the date for initiating the session.

During the mediation process there will be a mediator who is appointed by the court in charge of facilitating the session. If both parties agree on the mutual agreement, the judge will rule the case according to the settlement agreement that will be drafted in court. The major advantage is when the infringer breaches any terms and conditions stated within the settlement agreement, the software owner will immediately be entitled to commence the execution procedure on the property as the following consequences. It is noteworthy that the mediation procedure is strictly confidential and neither party is unable to use any fact or any claim during

mediation in the court trial. The status of the software owners and the infringers will not yet be considered as plaintiff and defendant since the process encourages both parties to have equal bargaining power and more flexibility. Additionally, the software owner can also decide the exact amount of compensation as they wish without relying upon the judge’s discretion. As the double protection, if the infringers breach the settlement agreement, the software owner shall exercise the right to file a civil lawsuit against the infringer complying with the period of time prescribed by law.

Recently, our team **has just successfully reached the settlement agreement** in court with the infringer. This is the first case in IP&IT court that both parties can settle the dispute through mediation, the movement is a silver bullet to tackle copyright infringement. Moreover, by this action, our team has built upon the establishment in the intellectual property framework. The result can be used as legal precedent for another case to avoid time consuming process in witness examination procedure as well as the unpredictable outcome of each case. On top of that, the client is excluded from the court fee as the expense paid is just the documentation delivery.