

## CORPORATE **Counsellor**

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# Holding retail landlords responsible for piracy

The Commerce Ministry, along with a number of private-sector representatives and law-enforcement groups, recently signed a memorandum of understanding on the co-operation in suppression of sales of infringing products. This agreement supplements a similar one implemented on June 26, 2004, which primarily dealt with copyright piracy at the retail level.

The goal of the new agreement is to co-ordinate the work and co-operation between the private sector, policy agencies, and law-enforcement agencies in a more effective effort to combat the infringement of intellectual property rights (IPR), especially with regard to the sale of counterfeit and pirate goods in otherwise legitimate shopping centres.

The agreement establishes two specific categories of areas where the sale of counterfeit goods is particularly problematic, identified as either "Special Restricted Areas" or "Restricted Areas". The difference between these two categories is that the government will conduct IP protection activity against counterfeit products in Special Restricted Areas, whereas the private sector will lead enforcement actions in Restricted Areas.

It is expected that both problem areas will be regularly patrolled by private-sector and public-sector representatives in an effort to create deterrence and suppress Thailand's highly visible trade in illicit goods.

Both categories include a number of well known department stores in Bangkok, including the notorious Pantip Plaza, as well as in other provinces across Thailand. Under the previous agreement, landlords or proprietors of department stores were not required to be responsible for policing or suppressing the vigorous trade in fake goods taking place on their premises.

Although many IP owners have

expressed dissatisfaction with this lack of accountability, it has been difficult to implement effective strategies to hold landlords and proprietors liable for infringement under Thai law, which does not explicitly provide for vicarious or contributory liability for infringement. In negotiations for a free trade agreement, this loophole in Thai law was the subject of contentious discussions.

However, rather than reform the law to make it easier for IP owners to take action against landlords, IPR enforcement officials have instead sought to gain their co-operation through this agreement mechanism. A number of department stores have actively participated in the government's drafting meetings for the new agreement, and have signalled their intention to co-operate in suppressing IP infringements. The agreement was signed on Aug 16, 2006.

Perhaps the most important aspect of the new agreement is the obligation of department stores and landlords to immediately terminate the leases of tenants when the Department of Intellectual Property (DIP) informs the store that the tenant has been prosecuted for IP infringement. Failure to abide by this provision could pave the way for civil liability for landlords and tenants alike, similar to the successful proceedings taken by IP owners against shopping centres in China.

It is expected that this agreement will indeed drive increased co-operation between the private and public sector that will lead to an improvement in the IP enforcement regime in Thailand.

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