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Thailand and the WIPO Performances and Phonograms Treaty (WPPT): An Economic Point of View

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ABSTRACT

This paper attempts to investigate the current situation in the film and music industries in Thailand, especially, the problems of Thai performers and whether joining The WIPO Performances and Phonograms Treaty (WPPT) would solve the performers' problems. Performer rights may be just one issue in this industry, the entertainment industry is facing high financial risks, a small domestic market, and the monopoly power of the big players in the industry. The low bargaining power of lesser-known performers may not be a result of the country's copyright issue but in a huge part due to the monopoly structure of the market. Becoming a party of the WPPT may provide a net benefit to Thailand while the administrative costs to revise the Act may be minimal. However, some may be concerned that Thailand is a net importer of performances, and any benefits arising from the extension of rights could simply flow overseas rather than to Thailand. The extension of performers' rights would not necessarily result in increased or better performances, as performers appear to have a range of other incentives that encourage performance. These include incentives that are not primarily economic.

Keywords: WPPT, Performance rights, Entertainment industry

JEL Classification: J83, D23

1. Introduction to WPPT

The WIPO Performances and Phonograms Treaty (WPPT) deals with the rights of two kinds of beneficiaries, particularly in the digital environment: (1) performers, including, actors, singers, musicians, etc., and (2) producers of phonograms which are the persons or legal entities that take the initiative and have the responsibility for the fixation of sounds.

According to the provision of the Rome Convention (Article 3), the term “performers” is covered actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works. The WIPO Performances and Phonograms Treaty (WPPT) establishes that performers shall have personal non-economic rights (Article 5) to claim to be identified as the performer of their performances with regard his live aural performances or performance fixed in phonograms and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputations.

For performers, the Treaty grants economic rights to their performances fixed in phonograms, not audiovisual fixations, such as motion pictures. These include the right of reproduction, the right of distribution, the right of rental, and the right of making available.

The right of reproduction is the right to authorize direct or indirect reproduction of the phonogram in any manner or form. The right of distribution is the right to authorize the making available to the public of the original and copies of the phonogram through sales or other transfers of ownership. The right of rental is the right to authorize the commercial rental to the public of the original and copies of the phonogram, as determined in the domestic law of the contracting parties. Finally, the right of making available to the public is the right to authorize the making available to the public by wire or

wireless means, of any performance fixed in a phonogram, in such a way that members of the public may access the fixed performance from a place and at a time individually chosen by them. This right covers on-demand, interactive making available through the internet.

For unfixed (live) performances, the Treaty grants performers the right to broadcasting, the right to communicate with the public, and the right of fixation.

The Treaty also grants performers moral rights, that is, the right to claim to be identified as the performer and the right to object to any distortion, mutilation, and other modification that would be prejudicial to the performer's reputation.

The Treaty, as well, grants economic rights to producers of phonograms. The rights include the right of reproduction, the right of distribution, the right of rental, and the right of making available, the same as the Treaty grants economic rights to performers. The terms of protection must be at least 50 years.

The Treaty was concluded in 1996 and entered into force in 2002. The States members of WIPO can become the party to the Treaty. Currently, there are 109 states members joining the treaty, including, countries in Southeast Asia such as Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore, and Viet Nam (as of July 1, 2022). Thailand is still considering whether to join this Treaty or not.

This paper attempts to investigate the current situation in the film and music industries in Thailand, especially, the problems of Thai performers. Then the paper would find out whether joining the Treaty can solve the performers' problems or not and why? Finally, if Thailand decides to join the Treaty, the paper will provide suggestions on policy implementation.

2. Current Situation of Thailand Entertainment Industry

2.1 Film Industry

The film industry can be divided into several activities or products. The main elements of the movie industry supply chain are (1) development, (2) pre-production, (3) production, (4) post-production, (5) distribution and marketing, and (6) exhibition to the public. Development stage deals with rights acquisition, script development, and financing.

The pre-production stage includes packing the project which means selecting actors, directors, and other players involved in making a movie. It is the process that the producer must convince every stakeholder in this movie to say “yes” to this project.

The production stage is the movie shooting or filming stage. Shooting the movie is a very complex procedure as it involves several departments and suppliers, starting from costumes, arranging props, scheduling the shooting, shooting location, and many more. Establishing synchronization between parties is extremely important as failure can lead to a collapse of the supply chain together. The post-production stage is the process of a movie ready to be exhibited to the public. It includes the process of editing both the picture and soundtrack. Distribution and marketing are the next stages. This stage includes sales, distribution, trailers, and publicity. After a movie is completed, it is licensed to the distributors. These distributors right to display the movie and exploit it for a certain period and in specific geographical territories. In some cases, the distributors agree to share profits with the original financiers. The sales team is responsible for the international sales of the movies. Licensing is important with piracy to begin a long issue in the movie industry. The last stage is the exhibition to the public on various channels, such

as movie theaters, DVDs, television, movie on-demand, and streaming platform.

Table 1: Activities in Film Industry

Development	Pre - Production	Production	Post-Production	Distribution /Advertising	Exhibition
Rights acquisition, script development, financing	Cast and crew selection, green lighting financing	Above the line, below the line	Editing, Soundtrack	Sales, Distribution, Trailers, Publicity	Theatrical (cinemas) DVD/VCR/ Blu-ray/TV (free and Pay per view Free TV

Source: author.

There are small numbers of movie production companies in Thailand. The notable movie production companies are Benetone Films, Five Star Production, GDH 559, Kantana Group, Phranakorn Film, and Sahamongkol Film. Benetone Films is a creative film and TV production and production services company headquartered in Bangkok, with offices in the US, Europe, India, and Myanmar. It has been ranked the leading service provider in Thailand.

Sahamongkol Film International is a Thai motion picture production and distribution company. It is the leading movie company in Thailand, ahead of GMM Grammy's GDH 599, Five Star Production, and RS Film.

Apart from mainstream cinema, there are some new wave directors achieving commercial and artistic success. These independent filmmakers, who are the new crop of filmmakers have grown up outside the traditional and restrictive Thai studio system to create experimental short films and movies. The leader of this indie movement is Apichatpong

Weerasethakul who won the Un Certain Regard Prize at the Cannes Film Festival in 2002 (Blissfully Yours). His 2004 film (tropical Malady) and 2021 film (Memoria) won a Jury Prize from the same festival. However, his films only received limited screenings in Thailand. Other indie directors include Adiya Assarat, Anocha Suwichakornpong, Pimpaka Towira, Sivaroj Kongsakul, and Wichanon Somumjarn, for example.

For cinema theater, Major Cineplex, combined with the EGV chain, is the largest operator of cinemas in Thailand, with a market share of 50 %. Its operations are concentrated in Bangkok. Major Cineplex’s cinemas are divided into five brands which are Major Cineplex, Major Cinema, Paragon Cineplex, Paradise Cineplex, and Esplanade Cineplex. The SF Group is the number two operator, with a 35 percent market share. SF Group includes SF World Cinema, SF Cinema, SFX Cinemas, and Emprive Cineclub. There are a few cinemas chain outside Bangkok, such as Vista which is a cinema chain in Chiang Mai, and Thana Cineplex, which is a chain of small cinemas in Central and Northern Thailand. Today, there are approximately 570 screens in Thailand, with 300 in the Bangkok Metropolitan area. The person-to-screen ratio is 170 people per screen nationwide and 30 people per screen in Bangkok.

Table 2: Revenue to Theater estimated from Cinema Tickets in 2022

Years	Million dollars
2017	7
2018	10
2019	12

2020	4
2021	5
2022	20
2023 (estimated)	22
2024 (estimated)	24

Source: Statista.com

The status of the Thai movie industry can be concluded as follows.

(1) The market size of Thai movies is small, and the revenue received from this industry has fluctuated dramatically over time. There have been a small number of Thai movies launched into the market each year, approximately 40-50 movies a year. Among them, there are only 2-3 movies that can be considered financially successful. Therefore, the Thai movie industry can be considered a high-risk industry. Recently, there have been very few Thai movies that entered foreign markets, such as China and Korea. Thai movies still cannot compete with foreign movies within this regional market, such as from Hong Kong, India, Japan, and Korea. One of the reasons is that Thai movies lack diverse content. Most are either ghost stories or slapstick comedies. However, we can still see a positive trend in Thai movies in foreign markets.

(2) Thai movie market has been dominated by foreign movies for decades. Foreign films have a share of 80% of movies shown in theaters. This can be explained by the quality of Thai movies, which still cannot compete with foreign movies. The quality issues include scriptwriting, film editing,

special effects, acting, and technicians. The limitation of financial resources could explain all problems of this high-risk industry. To produce one “good” movie, the minimum requirement of financial resources is usually at least 1.5 million dollars.

Table 3: Movie Market 2017-2020

	2017	2018	2019	2020
Number of Titles	325	332	306	191
Thai Movies	50	44	48	29
Foreign Movies	275	288	258	162
Revenue (Millions of Dollars)	120.4	134.79	137.33	35.36
Revenue Shar of Thai (%)	11	19	15	26

Source: From the interview.

(3) Supporting industries such as movie studios, post-production, visual effects, sound, visual editing, and animation are small businesses, lacking R&D investment, and are behind international standards. However, some interviewees strongly disagreed with this conclusion, by mentioning that Thai supporting industries apply the same world-class technologies as the rest of the world.

(4) The retail market is controlled by the theater owners. With higher bargaining power, the theater owners’ revenue shares can be as high as 70%. Since Thai movies and foreign movies are charged at the same rates, customers prefer paying to see higher-quality foreign films rather than Thai films. However, the producers are seeking new sources of income such as the royalty from movie-related merchandise (books, models, games, cosmetics, snacks for example) and royalties received from reproductions.

(5) Copyrights infringement still is a major problem in the development of this industry. Infringement has become common practice in the Thai movie business, both in Thai and foreign movies. This practice has discouraged the development of this industry. According to Tavornvanit and Chinsuwapara (2019), the implementation of the law on copyright was ineffective due to the inactive operations of government officials. It was suggested that intellectual property rights should be regarded as a national agenda. Copyright owners need to seriously participate in the protection and continuous raiding of illegal activities.

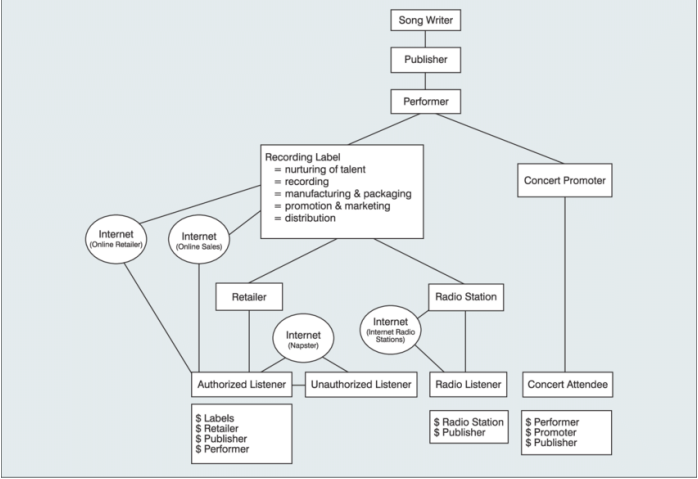
2.2 The Music Industry

In the past 20 years, the entertainment industry has significantly adapted due to changes in technology, especially the music industry. The music industry has been changed not only in content and strategy but also in delivery platforms. The sound recording business is a sub-section of audiovisual services. This industry can be divided into CDs, recording music, and digital music. In this paper, the music industry includes music copyright holders, karaoke service providers, music streaming service providers, and music VDO and karaoke producers.

The music industry supply chain involves several discrete businesses that link together in a sophisticated way. The first stage is the creative product, starting with songwriters, composers, and performers. Then there are the works of producers and engineers to make the recordings of the music. The second stage step includes the publishers and music labels. They finance, record, manufacture, promote and market the music. The third stage is for distributors to take music content into various channels. They take the music content in various forms from the music labels to distribute

through different channels, such as radio, live performance, television, digital download, and on-demand streaming, including to physical retailers. The last stage includes physical retailers, internet retailers, direct digital distributors, and theft.

Figure 4: The Music Industry Supply Chain



Revenue in the music streaming segment has been increasing sharply and is projected to reach 121 million dollars in 2022. The number of users in Thailand is expected to amount to 9.3 million users by 2026. In 202, there is a share of 45.4% of users in the high-income group. Spotify, Apple Music, and Joox are the top three music streaming platforms in Thailand.

Table 5: Revenue of Digital Music in Thailand (in Millions of dollars)

	Music Streaming	Music Download
2017	37	5

2018	50	5
2019	65	5
2020	85	5
2021	105	5
2022	121	5
2023	136	5
2024	149	5
2025	159	5
2026	170	5

Source: Statista.com

2.3 New Business Model creates unfairly contracts for performers

Technological improvement has changed the business model in this industry. Major labels apparently cannot expect to generate major revenue from album sales since the online market has become an alternative channel for performers to present and sell their works. Today, audiences can explore music by themselves while the performers are able to communicate directly to their audiences, cutting out the labels altogether. The market power of major labels has been decreasing. The traditional model of record companies, such as searching for new talents, producing recordings, manufacturing physical products, promoting the performers,

distributing the products, and finally generating revenue from the records and performers may need to be modified. First, we can see the merger between the music industry and movie industry to be an entertainment industry. These new business models have been changed to be, so-called, “divide and grow”, “celebrity factory”, the content provider”, and “Performers Manager”.

(i) Divide and Grow

The major record companies spun off their companies under the “divide and grow” policy, which was intended to support the growth of the companies and concentrate on niche markets. By this, new musical works were released, and the number of new performers increased dramatically. Many performers have been selected from “basic standards” such as fame and appearance-based criteria. Performers must play various roles, such as modeling, product presenting, video figuring, and presenting at events. The audience recognition for performers has essentially depended on social media. Since there are many new “basic standard” performers entering the market every day, the work-life of these performers have been cut short and forgotten by audiences in a short period of time.

GMM Grammy Public Company Limited (GMM Grammy) is the largest media conglomerate entertainment company in Thailand. It claims a 70% share of the Thai entertainment industry. In addition to its music business, the company is involved in concert production, artist management, movie and television production, and publishing. The company has 15 music subsidiaries, such as Genie Records, Grammy Gold, Grammy Big, White Music, GMMTV RECORDS, and Exact Music, for example. It, as well, has conducted business in the movie industry through various subsidiary studios, such as GTH (2004-2015) and

GDH 559 (2016-present). The company has two digital television channels and several studios.

RS Group, (original Rose Sound), is another example of an entertainment integrated company. There are eight recording labels under RS Music, such as Kamikaze and R-Siam. RS Film is the company's film production and distribution arm. In addition to making Thai films, the company also distributes films for exhibitions in Thailand. The company also owns digital TV channels and radio stations (COOL Fahrenheit and COOL Celsius, for example).

(ii) Celebrity Factories

In 2003, Exact Company, a subsidiary of Grammy, launched the TV program “the Star” on a free TV channel. The program was licensed from the pop idol program shown on TV in the West, in which the competitors essentially competed based on singing talents and appearances. They were chosen by the judges based on auditions, assessed by commentators on a weekly show, do various activities together during the week, practiced, and perform the show. They compete each week and receive popular votes from audiences. The one with the least votes leaves the competition. The final three competitors receiving the highest votes at the final stage would be signed with Grammy for five years, while the other five would be signed by Grammy for one year. After The Star launched, there were many similar reality shows that followed. These shows have been successful in Thailand, and using this business model, major labels can select new performers from shows that guarantee the popularity of the audiences for a short period of time. However, among these finalists who enter the entertainment business, only a few are successful and can be active in this business for a long period of time. This new business model is called by some scholars

“Celebrity Culture”, and the companies become “Celebrity Factories” that produce new celebrities to serve the market via popularity tests. Celebrities become assets that generate income for companies.

According to Graeme Turner (2004), celebrities have frequently appeared on social media and are normally derived from the sports or entertainment industries. They have drawn public attention to their private life rather than their skills or their performing talents. Their lives became a topic for gossip among people in society.

(iii) Content Providers

In the past, major labels generally owned and controlled almost all the products in the market, while performers were bound by contracts. The companies effectively held the right to generate revenue from every output of their performers. When the free download of music spread, the revenue of companies derived from the ownership of copyright was jeopardized. New technology raised the issue of music piracy, but it provides some advantages for performers to connect directly to more audiences. As a result, independent labels could easily distribute their music works via digital channels instead of selling them to major labels. The performers who are not under contract, could now introduce their works to the market through the digital channels and create their own audiences. At the same time, Thai audiences who are very price-sensitive and careless about copyright matters enjoy their music through this new channel. The major labels who no longer control music products must adjust their business model from record labels to being “content providers”.

In Thailand, the major labels who own contracted performers, entertainment content, and channels, such as songs, films, TV shows, and radio programs, can provide their products to the audiences via many platforms. Since they

posse numerous forms of content, major labels were able to regain their revenue by building platforms that provide their own content directly to their audiences. For example, Grammy started an e-commerce business in 1999, to gather content and provided consumers with a center of entertainment, as well as establish an online community based on their fans. The site consists of songs, performers' profiles, entertainment news, and activities of their under-contracted performers. In 2003, with the technology of mobile networks, Grammy began selling the ringtones to the market. In 2006, Grammy incorporation with TRUE Corporation Company provided a music download service that allowed the customers to download songs via the TRUE network. Today, Grammy provides entertainment content to business partners, and music streaming platform providers such as Spotify, to bring products directly to the audiences. The major revenue of major labels has shifted from physical products to online content and the performances of performers.

(iv) Performer Managing Companies.

Major labels transformed themselves into performer management companies. These companies adopt the model to establish performers as products for sale. To make up for the loss of revenue from physical album sales, they now sell cultural commodities. Major labels generate revenue from performers in many ways such as from event hires (grand business opening, product launch, and company staff business parties), general musical performances, product presenting, and filming. Hence, major labels have established the performer management division as subsidiary companies, to manage works for under-contracted performers. After albums are released, Grammy performers are sent to the management division, which is responsible for selling performers to appear

at suitable events, both in terms of musical services (concert and other musical performances) and non-musical services (film, TV program, or modeling). This division also arranges a package of performers who can serve as substitutes for famous ones. The advantage of Grammy doing this business is Grammy has more than 750 performers in hand.

(v) Copyrights Owner Companies

However, regarding the copyright situation in Thailand's entertainment industry, there are two types of performers. One is the non-contract performer and the other one is an under-contracted performer. The non-contract performer can accept any work from any label company, while the under-contract performer must work under one company only. Contracts can be divided into two types, which are the Work Made for Hire contract and the employment contract. In the entertainment industry, employment contracts are normally used between producers (principles) and performers (agents). Under this type of contract, the principle holds more bargaining power since he can predetermine and pre-regulate each term in the contract. The performer has little room to rewrite the contract, he can merely choose to accept or reject the whole contract. Of course, the performer's bargaining power may be higher according to his public popularity. Some studies found that most of the contracts in this industry are unfair to the performers.

The first point is the assignments of all performers' rights and their intellectual property rights solely to the principle. The principle usually determines the terms in the contract that the performers must assign all their rights and intellectual property rights to the principles. The principle solely holds the performers' rights and can later utilize and commercialize those rights of their own accord. Normally, the contract term does not include the further payment to the performers for the

future rerun or reproduction on any kinds of platforms which can be a large sum of income to the principles.

Secondly, the contract always limits the choices of performers by not allowing the performers to work with other companies or other producers without their permission. This term can limit the performers' choices to earn income from another source.

In case of contract termination and contract renewal, the companies reserve right to terminate the contracts. Otherwise, the contract will be renewed automatically. A high penalty is applied to performers in case of breaching the contract as well. Some studies found that such a penalty is too high and beyond performers' ability to pay.

3. Economic Impacts on Joining WPPT

According to the International Bureau of WIPO, adherence, to and implementation of the treaty offer several benefits for countries regardless of their stage of development. It provides international protection benefits for national copyright holders, e-commerce promotion benefits, national economy benefits, local creativity, and folklore protection benefits.

(a) For international protection benefits, the treaty requires parties to provide full protection within their territories to Thailand copyright holders when their creations are exploited abroad. This ensures domestic performers and producers, including enterprises enjoy the economic benefits of their work outside the country.

(b) The treaty will promote the development of electronic commerce, both within a country and through international trade. Digital technologies enable the transmission and use of all the materials protected by copyrights and related rights in digital form. Without the protection, digital technology has the

potential to violate the principles of copyright and related rights. With the protection, performances and phonograms will become a major element of global electronic commerce, which will grow and thrive along with the value of the material that is traded. They will exploit the market fully and make more and more valuable works available through the Internet. This result would be a benefit to consumers, a benefit to copyright holders, a benefit to service providers, and a benefit to the national economy.

It is difficult and arguable as to the economic impacts can be calculated. In the paper, we assume that the treaties may create impacts directly on performers in three industries which are the film industry, music industry, and TV drama industry.

Table 6: Revenue generated from Performer-related sectors in the Film Industry (in millions of dollars).

	2019	2020
Revenue from showing in the theaters	152	38.66
Revenue from showing through VDO and TV programs	44	34.33
Revenue from copyright royalty fees	18.73	15.76
Revenue from online film	N/A	1,200
Revenue from showing outside theaters	N/A	216
Share of GDP (%)		0.44

Source: Ministry of Culture

Table 7: Revenue generated from Performers-related sectors in the Music Industry (in millions of dollars)

	2019	2020
Revenue generated for Music Labels	242.13	131.93

Revenue from Music Streaming Services	42.98	58.18
Revenue from copyright royalty fees	31.08	28.27
Revenue from the entertainment activities	248.14	181.63
Total	564.33	400.01
Share of GDP (%)	0.155	0.117

Source: Ministry of Culture

Assume that these are revenues that performers may have exclusive rights to according to the treaties, then the direct economic impacts on GDP based on the 2020 GDP, is approximately 0.703 percent of GDP. Let's assume that joining the treaties may provide more incentive for performers to be more productive and create higher quality work, resulting in higher sales in both the domestic market and international market. By stimulation approach, if the value of a performer-related business is increased by 10 percent from the value in 2020, the direct economic impact of joining the treaties would be a 0.07 percent increase in GDP.

Joining the treaty would encourage investment in Thailand. In 1989, an Organization for Economic Co-Operation and Development (OECD) study indicates that the lack of intellectual property protection would be considered a negative factor in investment decisions by foreigners. The level of intellectual property protection and enforcement is an important factor in the industry's decisions to invest in any country. Adherence to the treaty would make a strong statement of Thailand's commitment to copyright protection and readiness to respond to technological change.

Implementation of the treaty on the protection of local creativity and folklore would provide stronger incentives to creators to produce new creations and promote the

development of the expression of local culture. It would also increase revenue for local performers. This may encourage the local performers and producers to represent their works in the international market.

Since Thailand is a net importer of entertainment content, the treaty may provide more benefit to foreign creators and foreign firms than domestic creators and domestic firms who play a minimal role in the world market. Moreover, the treaty may benefit advanced Parties that hold an advantage in digital technology and benefit less from less-digital technology countries, such as Thailand, that may have to pay higher costs for foreign entertainment content. However, the treaty should provide better opportunities and higher incentives for Thai performers and producers including for Thai entertainment companies to strengthen their capabilities in the world's digital networks and have more active roles in the international entertainment market. The protection of foreign workers would allow domestic players to compete on a fair level. The unprotected foreign works that used to be utilized without payment in Thailand may be reduced and disappeared.

Apart from the benefits at the macro level, the treaty may benefit performers and producers, especially the new-faced performers and new producers, in gaining more bargaining power in contracts. As mentioned above, performers and producers are facing "take it or leave it" contracts, saying they must transfer all rights to entertainment firms. They are unable to reap benefits when their works become financially successful. With the treaty, performers and producers may have more bargaining power to choose which types of contracts they wish to enter. Such as an initial contract that receives compensation as lump sum money and transfers all rights to the firms or the new revenue sharing contract that which they receive basic compensation money plus revenue

sharing from royalty fees when their works are reproduced or redistribution on any platforms. The treaty does not guarantee that they are going to earn more income, but it guarantees that they would have more bargaining power over contract negotiation. Some have shown concern that consumers may have to pay higher prices for these entertainment services, caused by higher costs to performers and producers. Enterprises may get a smaller share of revenue and must increase prices (transfer pricing). However, this concern is arguable since there are several factors that affect prices. Copyrights protection may increase costs to the enterprises but higher competition among enterprises may reduce prices. Since income to performers and producers partly depend on the success of their works, consumers may benefit from better quality entertainment works and are willing to pay more for those high-quality works.

4. Suggestions for Implementation

In this part, the idea of collective management of organizations (CMOs) would be introduced. Basically, it is believed that CMOs is one of the key successes of the Treaty. The CMOs manages music and film related to copyright, focusing mainly on royalty management and rights representation. The idea behind CMOs is a functional one: to establish a centralized way for film and music users to pay royalties for the use of works. Each copyright, such as in sound recordings and cinematographic films, may be owned by different rights holders, meaning that a single piece of film and music work can consist of several rights holders. One music work may include the lyricist, the music composer, the performer, and the record company. Therefore, the primary objective of CMOs is to eliminate the impracticality of having each right holder enforce copyright separately, by offering

centralized Right Management services. The CMOs contract with right holders to collect royalties on their behalf from the film and music users. As middlemen, they play a crucial role in ensuring that copyright protection is efficiently and effectively upheld. The UK Intellectual Property Office describes the main purpose of CMOs as one to facilitate remuneration to right holders for use of their copyright and, conversely, to enable users to use a range of work without having to negotiate each copyright license individually. Therefore, the VMOs are the vital link between right holders seeking access to the commercial market and copyright users who need simplified access to copyright works.

In Singapore, there are 3 CMOs dealing with music and music-related copyright which are Composers and Authors Society of Singapore Ltd (COMPASS), Music Rights (Singapore) Public Limited (MRSS), and Recording Industry Association of Singapore (RIM). The COMPASS is responsible for the collection of royalties related to lyricists and music composer rights. The MRSS is responsible for rights in recorded music, both sound recording and music videos. The RIM is responsible for rights relating to cinematographic film reproduced in karaoke music videos. These CMOs obtain the authority to represent right holders by way of a direct agreement with the right holders or by signing reciprocal agreements with foreign CMOs to mutually represent one another's interests.

Since the role of CMOs is to centralize the use of copyrights, the CMOs are generally natural monopolies. The CMOs may exercise monopoly power and performers may receive fewer benefits as copyright holders than expected. One suggestion is the CMOs operate under the government regulations, such as the CMOs are licensed by the government to conduct the business under a legal framework. It may need the legislated formula to guarantee that how royalties are

determined and distributed in transparent and fair ways. The other suggestion is to allow more than one CMOs and let them compete in the competitive environment.

In Singapore, CMOs are incorporated as private companies run by stakeholders, such as music labels or performers. The CMOs are not government bodies and are not licensed by the government to conduct the business of right management and are self-regulated. There is no legislated formula for determining royalty rates. Different CMOs use different formulas. Even within the same company, royalty rates for various music users are not determined in the same way. For example, COMPASS bases its royalty rates on the size of location for certain music users like shopping complexes, food courts, and ice-skating rinks, and on the number of seats that can fit into a location for other music users like restaurants, bars, and nightclubs. However, the differences in royalty rates among music users, particularly between categories like food courts and restaurants, are not explained clearly by COMPASS. Meanwhile, the MRSS charges royalty rates based on fixed rates that are tiered according to seating capacity bands, for example, 1 to 39 seats. However, these fixed rates and band sizes are different according to the nature of the operator. For example, karaoke facilities in karaoke lounges or nightclubs are charged a higher fixed rate per seating capacity band than karaoke facilities in staff recreation clubs.

The distribution of royalties is the last step in the process of rights management. The question is how royalties are attributed and distributed to right holders under transparency and fairness rules. To avoid collusive conduct among CMOs, the government by the regulator may have to step in. How to license fees are distributed amongst the respective copyright owners must be transparency to the public

5. Conclusion

In the year 2021, we may have seen a sign of recovery in this sector. The 2021 total value of the media and entertainment sector is approximately 17 billion dollars, 5 percent higher than that in 2020. The businesses that gained benefit amidst the covid-19 pandemic were due to customers using digital platforms to consume entertainment, such as music streaming and video streaming. However, with that data of 2020, the value of performer-related businesses is approximately 0.703 percent of GDP.

Performer rights may be just one issue in this industry, the entertainment industry is facing high financial risks, a small domestic market, and the monopoly power of the big players in the industry. The low bargaining power of lesser-known performers may not be a result of the country's copyright issue but in a huge part due to the monopoly structure of the market.

From an economic point of view, becoming a party of the WPPT may provide a net benefit to Thailand while the administrative costs to revise the Act may be minimal. First, joining the Treaty send strong signals to the world community that Thailand has a strong commitment to follow and enforce copyright protection. It would ensure that Thai performers and producers enjoy the benefits of the same rights as performers and producers who are nationals of those countries who are already party to the WPPT are provided with. This would encourage foreign businesses to do more businesses and invest more in Thailand. Secondly, with the treaties, the quality of work would improve by bringing incentives to performers and producers to produce higher quality work. Finally, with higher quality work, Thai movies, music, and folklore may be able to export to the world market more. This can improve Thailand's current account and balance of payment. Therefore, treaty adherence may increase Thailand's GDP.

However, some may be concerned that Thailand is a net importer of performances, and any benefits arising from the extension of rights could simply flow overseas rather than to Thailand. The extension of performers' rights would not necessarily result in increased or better performances, as performers appear to have a range of other incentives that encourage performance. These include incentives that are not primarily economic.

For the micro-level, joining the treaties may benefit some groups of people and, at the same time, it may harm some groups of people directly and indirectly. The entertainment firms may feel threatened by a decline in bargaining power over performers and producers, while the performers and producers benefit from higher bargaining power over contract arrangements. The change in terms of income for these two groups is inconclusive. Revenue received after joining treaties can be lower or higher among groups depending on the change in bargaining power, the improvement in performance quality, the increase in foreign-related activities in Thailand, and the increase in Thai entertainment shown in the overseas markets. Thai enterprises may see their share of this cake as smaller, but it is possible that the size of the overall cake may get bigger.

References

- Chaowalit, P., “Unfair Contract Terms in Actor’s Contract”, Master Thesis, Faculty of Law, Thammasat University, 2015 (in Thai)
- International Bureau,” The Advantages of Adherence to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT)”, document prepare for WIPO., [www, WIPO. Int](http://www.wipo.int)
- La Torre M., The Economics of the Audiovisual Industry: Financing TV, Film and Web, 2014
- Lopattanonont, T., Voraluk, K., and Thaweekul, S., “Coherence of Thai Film Industry and Thailand’s Strategies of Film and Video Promotion, Phase II ((2017-2021), Research Paper, Dhurakit Pandit University, 2020
- Ministry of Finance, WIPO Performances and Phonograms Treaty: National Interest Analysis, New Zealand, mfat.govt.NZ., 2016
- Oxford Economics, The Economic Contribution of the Film and Television Industries in Thailand, www.mpa-apac.org, 2012
- Supsinwiwat, Nathita, “Music Industry in Thailand 4.0”, Journal of Social Media Innovation, Vol. 1(9), pp. 157-167, 2017 (in Thai)
- Tavornvanit and Chinsuwapara, “Intellectual Property Rights Protection: A Case Study of Infringement on Movie Copyrights in Thailand”, Kasem Bundit Journal, October, pp. 60-71, 2020 (in Thai)

Tay, En-Yen, “Collective Management of Musical Copyright in Self-Regulated Regime”, Singapore Academy of Law Journal, e-First, 23 June 2020.

Turner, G., Understanding Celebrity, Sage Publications, London, 2004

Wongsuesat, P., “Performers’ Right Protection under the Beijing Treaty on Audiovisual Performances of the World Intellectual Property Organization”, Master Thesis submitted to Graduate School, Faculty of Law, Bangkok University, 2014 (in Thai)

World Intellectual Property (WIPO) Intellectual Property Handbook [ISBN 978-92-805-1291-5]: https://www.wipo.int/edocs/pubdocs/en/intproperty/489/wipo_pub_489.pdf?msclkid=071ab1f8bbec11eca0a5740d1220b3c4 (last visit: 14/4/2022)

Wuttipong, Nalin, “The Thai Popular Music Industry: Industrial Form and Musical Design”, thesis submitted to the University of Nottingham for the degree of Doctor of Philosophy, September 2011