

# Assessing Global E-Commerce Policies: A Perspective from Thailand\*

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This article discusses e-commerce-related policy issues from a Thai perspective. Its objective is to assess certain global e-commerce policy proposals advanced by international bodies, governments and academics in developed countries. The assessment will be limited to five areas: liberalization of the telecommunications sector, taxation, trade negotiations under the GATS (General Agreement on Trade in Services), the harmonization of e-commerce-related commercial laws, and the protection of intellectual property rights. Although the analysis is largely based on case studies of Thailand, it is hoped that it also reflects the viewpoints of other developing countries. A brief overview of the status of e-commerce in Thailand is given in the next section.

## 1. THE STATUS OF E-COMMERCE IN THAILAND

E-commerce in Thailand is still in its infancy. On the consumer side, it is estimated that as of 1999, there were approximately one million Internet subscribers in the country. According to a survey, 57.5 percent of the users are in their 20s, 22.5 percent in their 30s, and 11 percent are teenagers (NECTEC 1999). The survey also found that more than 81.6 percent of the Internet population have no experience in buying online goods and services.

On the supply side, another survey conducted in May 1999 found that at least 383 companies have web presence (Somkiat 1999). However, about 53 percent of these web sites are merely for posting company information or advertising products. Only 32 percent offer online transaction, while 15 percent offer secured credit-card payment facilities. Among the goods offered for sales are electronic products, jewelry, books, handicraft items, etc. There are very few companies selling intellectual products, e.g., software, music and

information. Among the services provided online are hotel reservation and Internet access services. There are currently no web sites that provide online professional or business services.

Concerning business-to-business (B2B) e-commerce, very few companies have started to procure raw materials and provide customer service over the Internet. Recently, a few B2B exchanges have started emerging in some industries, e.g., food and oil.

## 2. DIGITAL DIVIDES

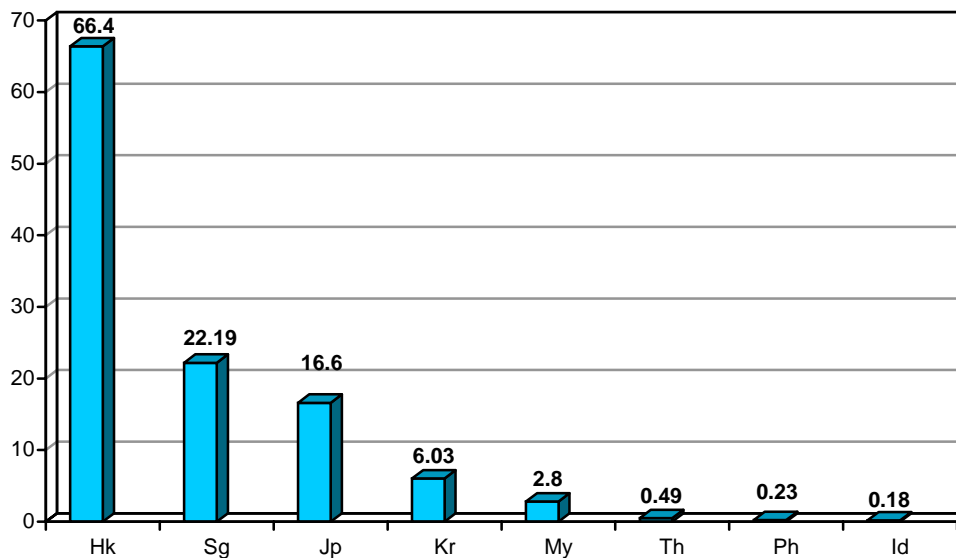
It is broadly known that e-commerce infrastructure and e-commerce-related activities are highly concentrated in a few developed countries, especially the US. Such lop-sided development is feared to create a 'digital divide.' The main reason for the emergence of a divide is that Internet penetration is generally correlated with the level of development of a country, measured by income per capita. Thus, the US, which has less than 5 percent of the world's population, is home to over 25 percent of all Internet users. This 'access divide' inevitably translates into differences in the use of e-commerce, the 'commerce divide.' Currently, approximately 85 percent of the world's e-commerce web sites are US-based, with Western Europe and Asia making up almost all of the rest.

There are also great disparities among Asian countries. In terms of the Internet host penetration, for example, Thailand is considered less wired than Hong Kong, Singapore, Japan, South Korea and Malaysia, but more advanced than the Philippines and Indonesia (See Figure 1).

Due to the disparities mentioned above, global e-commerce policies proposed by developed countries may not necessarily be appropriate for developing countries. It is important for us to assess these proposals carefully from our own perspectives.

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**Figure 1 Number of Internet Hosts per 1,000 People in Selected Asian Countries in 1999**

Source: Network Wizard ([www.nw.com](http://www.nw.com)).

### 3. THE US-CENTRIC PROPOSALS

The US is the most active nation in advocating its policies on global e-commerce. Its vision on developing the global platform for e-commerce is articulated in “The Framework for Global Electronic Commerce” (White House 1997). The framework laid down the following principles:

1. The private sector should lead.
2. Governments should avoid undue restrictions on e-commerce.
3. Where governmental involvement is needed, its aim should be to support and enforce a

predictable, minimalist, consistent and simple legal environment for e-commerce.

4. Governments should recognize the unique qualities of the Internet.
5. Electronic commerce over the Internet should be facilitated on a global basis.

In addition to the above principles, the framework also discussed certain key policies and provided concrete strategic directions. Among other things, it proposed that the telecommunications market be liberalized, that the Internet be a tariff-free environment for trade in goods and services, that the commercial code be harmonized and that intellectual property rights be strongly protected (see Box 1 for more details).

#### Box 1 Issues Deliberated in the US Framework for Global Electronic Commerce

##### Financial Issues

- Customs and taxation: The US will advocate in the World Trade Organization (WTO) and other international fora that the Internet be declared a tariff-free environment whenever it is used to deliver products or services.
- Electronic payments: As electronic payment systems develop, governments should work closely with the private sector to ensure that governmental activities flexibly accommodate the needs of the emerging marketplace.

##### Legal Issues

- ‘Uniform Commercial Code’ for electronic commerce: The US supports

the adoption of an international set of uniform commercial principles for electronic commerce through international fora including the UNCITRAL.

- Intellectual property protection: The US supports the adoption of international agreements that establish clear and effective copyright, patent, and trademark protection.
- Privacy: The US will engage its key trading partners in discussions to build support for industry-developed solutions to privacy problems.
- Security: The US will encourage the development of a voluntary, market-driven key management infrastructure that will support authentication, integrity and confidentiality.

##### Market Access Issues

- Telecommunications infrastructure and information technology (IT): The US will seek effective implementation of the WTO’s Basic Telecommunications Agreement and the Information Technology Agreement to ensure global competition in the provision of basic telecommunications services and removal of tariffs on IT products.
- Content: The US supports the broadest possible free flow of information across international borders.
- Technical standards: The US urges industry-driven multilateral fora to consider technical standards.

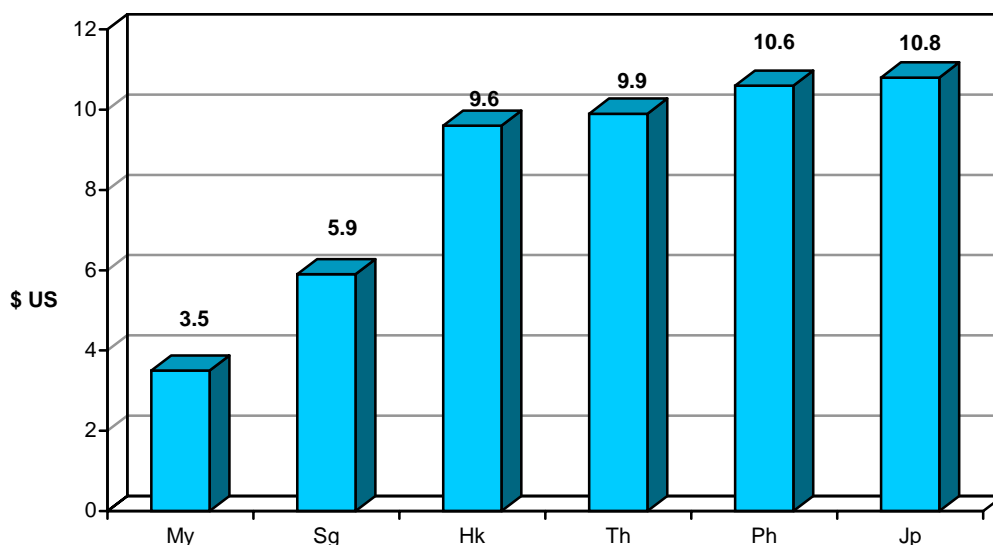
#### 4. LIBERALIZING THE TELECOMMUNICATIONS MARKETS

Telecommunications is an indispensable infrastructure for e-commerce. In many developing countries, monopolization of the sector has retarded the countries' entry into the cyberspace. In Thailand, for example, although the retail Internet access market is quite competitive with 18 companies operating as Internet service providers (ISPs), the wholesale market (for international access) is still monopolized by the Communications Authority of Thailand (CAT). The state

monopoly adversely affects a wider adoption of the Internet in the country in many ways.

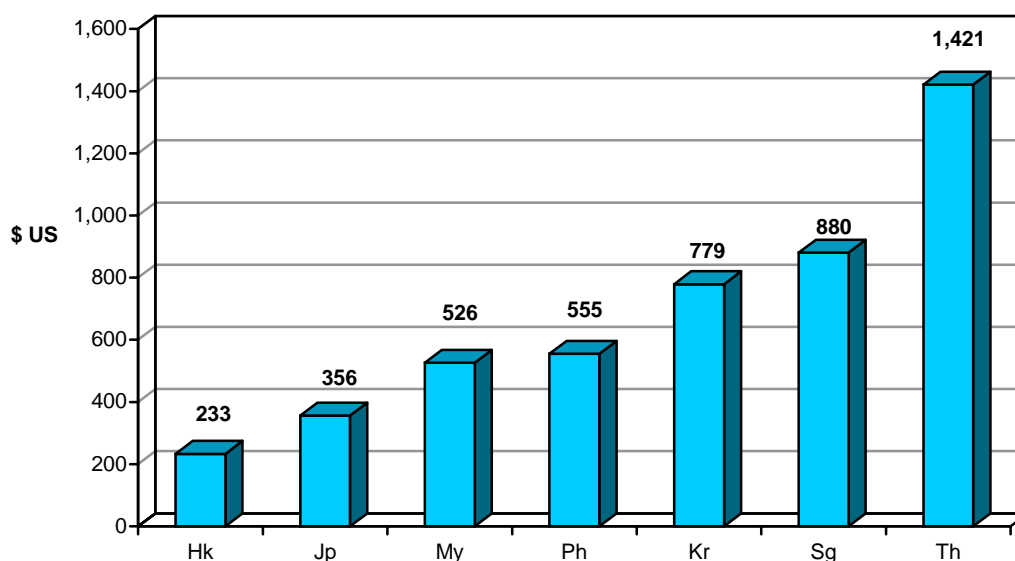
Firstly, the cost of Internet access in Thailand is significantly higher than in many other Asian countries. Figure 2 compares the price of Internet access among the selected Asian countries. It can be seen that while the price of a 20-hour dial-up Internet service in Thailand is comparable to most other Asian countries, a 64-Kbps leased line costs significantly more in Thailand. It is about six times as expensive as in Hong Kong, four times that of Japan, 2.7 times that of Malaysia and 2.6 times that of the Philippines.

**Figure 2a Charges for 20 Hour Dial up Internet Access in Selected Asian Countries (as of September, 2000)**



Source: Thailand Development Research Institute.

**Figure 2b Monthly Charges for a 64-Kbps Internet Leased Line in Selected Asian Countries (as of September, 2000)**



Source: Thailand Development Research Institute.

A previous study showed that, due to the monopoly, the number of Internet hosts—the computers connected to the Internet—in Thailand is significantly lower than other countries with comparable gross domestic product (GDP). More generally, econometric analysis showed that, on average, there will be 557 more Internet hosts for every billion dollar of GDP in a country with a competitive international telecommunications market than in a country with a monopolistic one (Somkiat and Deunden 1997).

Other state interventions also impose higher costs to the users. In particular, CAT requires that every ISP hand over one-third of its shares free of charge to CAT in return for the concession to operate. The above study also showed that for an ISP that expects an annual internal rate of return (IRR) of 30 percent, the equity handout requires an additional 20 percent price markup.

To promote the use of the Internet and e-commerce, Thailand needs to develop a competitive market and a more reasonable regulatory regime. One way to achieve the goal is to liberalize the market to allow more competition from new entrants, domestic as well as foreign, and to set up an independent regulatory body that works in the interests of consumers. In particular, we need to ensure an effective implementation of the WTO's Basic Telecommunications Agreement, as advocated by the US proposal in the Framework for Global Electronic Commerce.

## 5. CREATING A TARIFF-FREE ENVIRONMENT

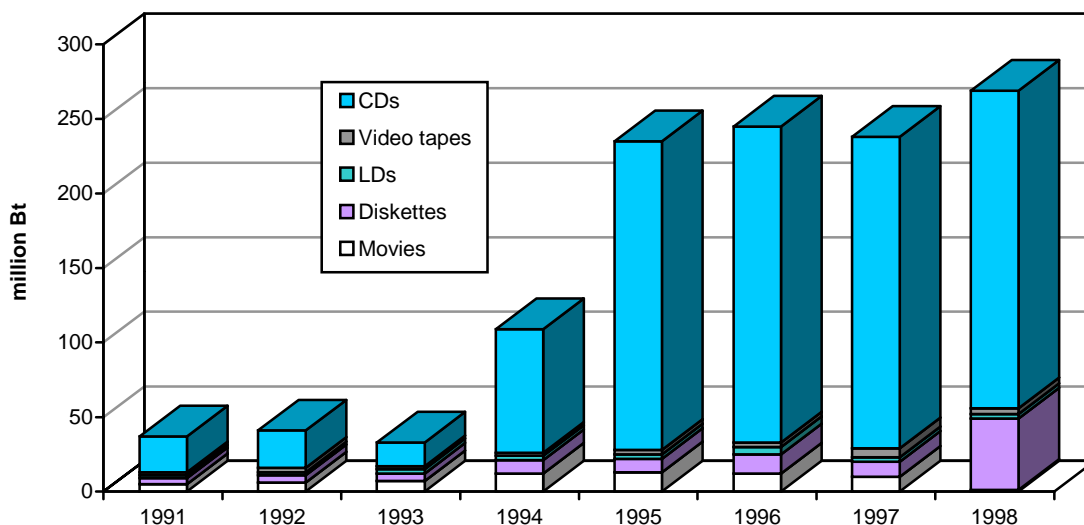
The spread of e-commerce will pose serious problems for the collection of income tax, consumption tax and tariffs. This is due to the difficulties in identifying the parties involved in the transaction, the tax jurisdiction and the content of the transaction itself. Disintermediation and monitoring costs also impose a

greater burden on revenue authorities. Transactions that are most problematic in terms of tax collection are those that involve trade in intangible goods, i.e., software, music, movies and online services.

Let us assess the impact of exempting tariffs on digital goods delivered online, as proposed in a WTO Ministerial Conference by the US government, on government revenue collection. Potentially, digital goods would include all the 'information products' that can be digitized, i.e., books, CD-ROMs, diskettes, videotapes and movie films. A previous work showed that tariff revenue that could potentially be lost would be on average less than 1 percent of the total tariff revenue and 0.06 percent of the total government revenue (UNCTAD 2000). In the case of Thailand, Somkiat (2000) found that tariffs collected from information goods constituted only US\$ 6.6 million in 1998, or 0.03 percent of the total government revenue (See Figure 3). Thus, tariff exemption seemed to have a negligible impact on government income. Considering the difficulty in collecting tariffs for digitized products, it would seem logical to conclude that imposing tariffs on international transmission is hardly worth the cost of collection.<sup>1</sup>

Since the potential loss in terms of uncollected taxes, particularly, consumption tax, from trade in digital goods can be significant, academicians in the OECD countries suggest a shift toward alternative tax regimes to compensate for the forgone revenue. For example, some advocate an increase in the tax on labor compensation since labor wages are probably least affected by e-commerce (e.g., Mann *et al.* 2000; Bishop 2000). Others have recommended a reform of consumption tax to a system called a 'broad-based consumption tax'—consumption tax based on the difference between a person's income and savings (Varian 2000). Still others advocate adopting an origin-based taxation instead of the current destination-based taxation in taxing consumption (Office of Tax Policy 1996).

**Figure 3 Tariff Revenues from Information Goods**



Source: Thailand Development Research Institute.

The argument in this article is that, in the case of Thailand, and probably other Asian countries, the solutions proposed by developed countries may not be applicable due to different tax structures. In most Asian countries, the government would need to widen the tax base by being more frugal in handing out tax privileges for the promotion of investment, cracking down on tax evasion and making the informal sector taxable. A previous study showed that about 81 percent of the tax incentives given by the Thai government to attract foreign investment were redundant (FIAS 1999). Offshore diesel smuggling alone contributed to an estimated loss of Baht 386-1,285 million to the Thai government in 1997 as evaded tax (TDRI 2000).

**6. LIBERALIZING ONLINE SERVICES**

E-commerce poses many puzzling questions to the organizing framework of WTO. Traditionally, cross-border transactions are dealt within the classification of either the General Agreement on Tariffs and Trade (GATT) or the GATS. If this classification is maintained, should digital products be dealt under the GATT or the GATS? If e-commerce is classified as a service, which mode of supply would it fall under? To study these issues, the General Council of WTO established a work program for the relevant specialized bodies in 1998. Examples of issues examined by the bodies are shown in Table 1.

Due to limitation of space, it is impossible to discuss all of these issues. Here, I will focus on an issue that is central to the negotiation on e-commerce in GATS: should online service provision, i.e., professional and financial services, be considered as Mode 1 (cross-border supply), Mode 2 (overseas consumption) or Mode 5 (a new mode service)?<sup>2</sup>

A Mode 1 service is a service delivered across the national border from a service provider in one country to a consumer in another country. For example, a law firm may deliver a legal consulting service via telephone to a client in a foreign country. Mode 2 describes services consumed overseas. For example, a client may travel to another country to obtain legal consulting services (See Box 2 for more detailed definitions of the modes of supply under the GATS). The problem concerning online service provision is that nobody knows where the consumer and the service provider meet in cyberspace.

Many proposals have been advanced to solve the difficulties in assigning the appropriate mode of service for on-line services. Tinawi and Berkey (1999) analyzed several options. One of them is to combine Mode 1 and Mode 2 services. This would solve the classification problem since online services would be covered in the new combined mode. However, this solution creates a more difficult problem of reconciling the differences in the previous commitments made under each of the two modes.

**Table 1 WTO Work Program on Electronic Commerce**

Relevant Body	Examples of Issues Examined
The Council for Trade in Services	Modes of services, market-access commitments on electronic supply of services, customs duties and classification issues
The Council for Trade in Goods	Market access for and access to products related to electronic commerce, valuation issues, customs duties and other charges, standards in relation to electronic commerce, 'rules of origin' issues and classification issues
The Council for TRIPS	Protection and enforcement of copyright and related rights, protection and enforcement of trademarks, new technologies and access to technology
The Committee on Trade and Development	Effects of electronic commerce on the trade and economic prospects of developing countries, challenges to and ways of enhancing the participation of developing countries in electronic commerce

Source: WTO.

**Box 2 GATS Classification of Modes of Supply of Services**

**Mode 1** (Cross-border): Delivery "from the territory of one member state into the territory of another member state." An example of cross border delivery is a legal consultation provided by a US lawyer to a client in Thailand over the phone.

**Mode 2** (Consumption Abroad): Delivery "in the territory of one member state to service the consumer of any other mem-

ber state." This includes all services that a citizen of a country obtains while in another country. For example, a Thai client who travels from home to obtain legal consulting in the US.

**Mode 3** (Commercial Presence): Delivery "by a service supplier of one member state through the commercial presence in the territory of any other member state." For example, a US law firm may provide

legal services in Thailand through a subsidiary located in Bangkok.

**Mode 4** (Movement of Natural Persons): Delivery "by a service supplier of one member state through the presence of natural persons of the member state, in the territory of any other member state." For example, a US law firm may send its lawyer to provide a legal consultation to a Thai client.

Another idea is to create a new mode for on-line services (Mode 5). This will avoid the classification dilemma and it does not complicate existing commitments. However, the problem of this approach is that it is still not clear whether an online service should be classified in Mode 1, Mode 2 or Mode 5? For example, if a medical practitioner delivers his/her advice over the phone, would this service be classified as Mode 1 or Mode 5? Would the classification change if he/she instead delivers it over the Internet?

Yet another solution is to classify all online services as Mode 2 services, as suggested by some US scholars. The classification will automatically result in a very liberal trade regime for e-commerce. This is because in the Uruguay Round, commitments in Mode 2 were clearly more liberal than those in Mode 1 for most countries. For example, Table 2 shows parts of the commitments of Thailand for some professional service sectors. It can be seen that while Thailand imposes no restrictions on overseas consumption of services for all Mode 2 services except management consulting, it does not commit to liberalize any of the Mode 1 services.

Bringing all online services under Mode 2 will mostly benefit service-exporting countries, most notably the US. Of course, consumers in developed and developing countries will also gain from a more liberal regime. However, we argue that such liberalization will bring about a more open trade regime than that foreseen by member states at the time when commitments are made during the Uruguay Round negotiations. Instead, we suggest that online services be classified as Mode 1 services and that additional commitments be made through further negotiations. This can be achieved by redefining Mode 2 to require physical presence, as suggested by Drake and Nicholaidis (1999). To ensure that all participating countries fully gain, negotiations to increase Mode 1 commitments should be implemented on a cross-sectoral basis.

## 7. HARMONIZING COMMERCIAL CODES

The expansion of global electronic commerce depends on the participants' ability to achieve a reasonable degree of certainty regarding their exposure to liability for any damage that might result from their actions. Inconsistent local tort laws, coupled with uncertainties regarding jurisdiction, could substantially increase litigation and create unnecessary costs that ultimately will be borne by consumers. The US advocates the adoption of an international set of uniform commercial principles for e-commerce through international fora including the United Nations Commission on International Trade Law (UNCITRAL).

The UNCITRAL has completed a Model Law for e-commerce, that supports commercial use of international contracts in e-commerce. The law establishes rules and norms that validate and recognize contracts formed through electronic means and sets default rules for contract formation. It also defines the characteristics of a valid electronic writing and an original document, provides for the acceptability of electronic signatures for legal and commercial purposes, and supports the admission of computer evidence in courts and arbitration proceedings.

Also of particular importance is the development of trusted certification services that support the use of electronic signatures which will permit users to know who they are communicating with on the Internet. To promote the growth of a trusted electronic commerce environment, the law that governs the use of electronic signature needs to be harmonized. The UNCITRAL is in the process of developing uniform rules for electronic signature. The rules would lay a framework for determining duties and liabilities of related parties: signature holders, relying parties and signature issuers. They will also set a standard for recognizing signatures issued overseas, to avoid discriminatory practices.

**Table 2 Examples of Thailand's Commitments to Liberalize Service Sectors**

Service	Sub-Service	Mode 1		Mode 2	
		Market Access	National Treatment	Market Access	National Treatment
Legal service		Unbound	Unbound	None	None
Accounting, auditing and book keeping services		Unbound	Unbound	None	None
Architectural services		Unbound	Unbound	None	None
Engineering services		Unbound	Unbound	None	None
Computer and related services	(a) Consultancy related to the installation of computer hardware	Unbound	Unbound	None	None
	(b) Software implementation services (part 842)	Unbound	Unbound	None	None
	(c) Data processing services (part 843)	Unbound	Unbound	None	None
	(d) Database services (part 844)	Unbound	Unbound	None	None
Advertising services		Unbound	Unbound	None	None
Market research (part 864)		Unbound	Unbound	None	None
Management consultancy services		None	None	None	None

Unbound = No commitments to liberalize.

None = No restrictions.

Source: WTO.

Recognizing the need to harmonize commercial codes for e-commerce, the Thai government has begun the process of drafting the Electronic Transaction Act and the Electronic Signature Act, based on the UNCITRAL laws.<sup>3</sup>

## 8. PROTECTING INTELLECTUAL PROPERTY RIGHTS

I will now discuss the problem of intellectual property right protection in the context of e-commerce. In particular, I will analyze the problems of copyright protection for digital products, the conflicts between domain names and trademarks, and the problems of extending patentable subject matters under the patent law to cover business methods.

The US is advocating a worldwide adoption of the World Intellectual Property Organization (WIPO) Copyright Treaty (WCT), which is believed to be the solution to the protection of copyrighted digital works. The treaty not only confirms and clarifies existing rights of copyright holders under the trade-related aspects of intellectual property rights (TRIPS) agreement as well as the Berne Convention, but also provides new measures to fight against piracy of digital works.

Firstly, the WCT provides for the protection of the 'right of communication' or 'right of making available' a copyrighted work to combat its unauthorized 'uploading' on to a server which would enable its subsequent unauthorized downloading. Secondly, it provides for the protection of 'technological measures' to prevent the cracking of passwords, keys, hard locks, etc. Thirdly, the treaty also protects against the removal or alteration of 'rights management information,' i.e., information, numbers or codes identifying the work, author, right owner, or terms and conditions of use, etc. Currently, only 17 member countries of WIPO have ratified the treaty. The number is still short of the required 30 to bring the treaty into effect.

Thailand has yet to signify the treaty. However, the current Thai copyright law, the Copyright Act, 1992, already provides for most of the protections granted by the treaty. The protections include, among other things, the right of reproduction, the right of rental and the right of communication to the public. The only unprotected rights are the protection of technological measures and the protection of rights management information. Thus, there is no immediate need for Thailand to become a signatory to the treaty.

Concerning domain names, the problem of "cyber squatting" or "abusive domain name registration" appears to be the most imminent problem. It has brought about conflicts between domain name holders and trademark holders. The US and the WIPO are advocating the provision of privileges to famous mark holders with respect to domain name registration and dispute settlement. In theory, such a provision would alleviate the

problem of cyber squatting. In fact, the current conflict resolution mechanism under the Internet Corporation for Assigned Names and Number's (ICANN) Rules for Uniform Domain Name Dispute Resolution Policy has implicitly provided these privileges. As of May 2000, about 75 percent of the 327 cases settled under the rules were in favor of well-known mark holders.<sup>4</sup>

It is important to recognize the increasing number of abuses by mark holders. For example, McDonald's, the global fast food company, has sued a number of companies including McWellness (a Swiss health care company), McAllen (a Danish sausage store), McMunchies (an English sandwich retailer) and McCaughey (a Californian coffee shop), claiming that its mark is contaminated by these confusingly similar marks (Economist 2000).

Thus, such privileges should be granted in a fair and transparent manner. Stakeholders need to have an opportunity to voice their concerns. Governments of developing countries should be urged to follow closely future policy developments in international fora, especially in the ICANN, an international organization that manages domain names.

Let us now turn to the issue of business method patents. A business method patent is a patent granted to protect a certain way of conducting business. Examples of such patents that have been granted in the US are shown in Table 3. From the table, it can be seen that most business method patents are related to the execution of e-commerce activities on the Internet. As a result, their impact reaches across national borders more rapidly than that of traditional patents.

Traditionally, a patent applies only within the country where it was granted. For example, although a US company has obtained a US patent on an invention, it is still possible for a Thai company to independently develop and manufacture similar product and sell it within Thailand without violating the patent holder's rights. However, in the age of the Internet, the situation is different. When a US company obtains a US patent for an Internet-related service, consumers from all over the world can use the service over the Internet. If a Thai company starts providing a similar service, some US consumers may switch to it. This will mean a loss of business for the US company. The US company may claim that its patent is violated and may take legal action against the Thai company.

We argue that a business method patent works against the benefits of all related parties except patent holders. It may result in a wider 'digital divide' between developed and developing countries. Developing countries will lose opportunities to gain benefits from imitating developed countries' method of conducting business on the Internet. Such patents therefore should be abolished. However, if granting such patents proves inevitable, the process should be more prudent and the protection period should be lowered from a typical 20 years to three to five years.

**Table 3 Examples of US Business Method Patents**

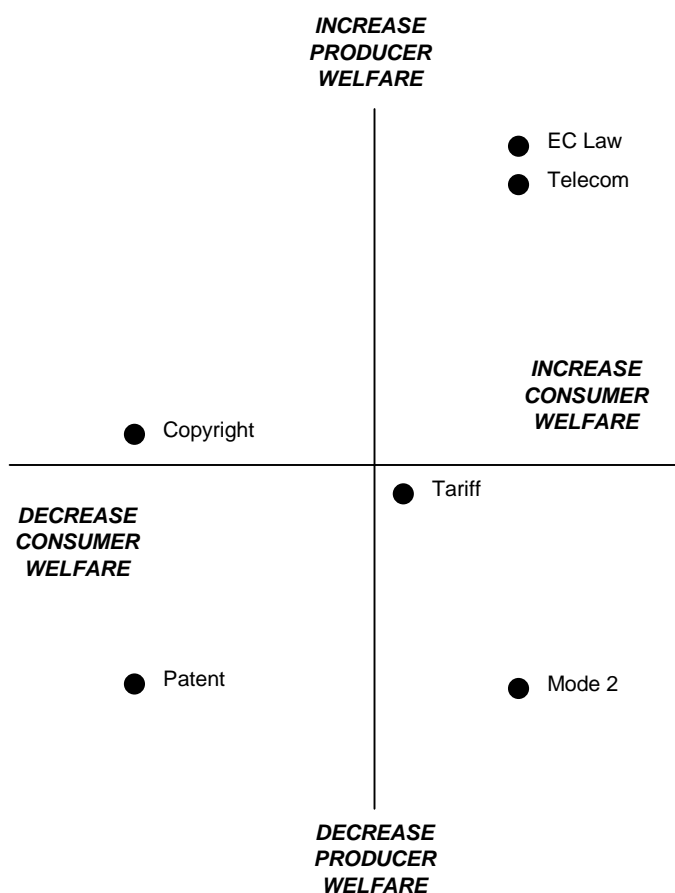
Patent Number	Invention	Patent Holder
5,715,314	Network sales system	Open Market Inc.
5,724,424	Digital active advertising	Open Market Inc.
5,774,870	Fully integrated, on-line interactive frequency and award redemption program	Netcentives Inc.
5,794,210/5,855,008	Attention brokerage	Cybergold Inc.
5,794,219	Method of conducting on-line auctions with bid pooling	Health Hero Network Inc.
5,797,127	Reverse auction	Walker Asset Management L.P.
5,798,508	Postpaid traveler's checks	Walker Asset Management L.P.
5,802,497	Method and apparatus for conducting computerized commerce	Digital Equipment Corporation
5,862,223	Selling professional advice over the Internet	Walker Asset Management L.P.
5,897,620	Method and apparatus for the sale of airline-specified flight tickets	Priceline.Com Inc.
5,960,411	One-click buying	Amazon.Com Inc.
6,029,141	Internet-based customer referral system	Amazon.Com Inc.

Source: TDRI, from US Patent and Trademark Office data.

## 9. CONCLUSION

To assess the US-centric proposals, they are classified according to their impact on consumers and e-commerce producers in developing countries. According to the classification, there are four categories of

proposals: those that increase both consumer as well as producer welfare, those that increase consumer welfare but decrease producer welfare, those that decrease consumer welfare but increase producer welfare and those that decrease both consumer and producer welfare (See Figure 4).

**Figure 4 Assessment of the US-Centric Proposals**

Proposal	Impacts
Telecom: Telecommunications liberalization	Liberalization reduces access cost for consumers and e-commerce business.
EC Law: Harmonizing e-commerce laws	Harmonized laws will facilitate electronic transactions.
Tariff: Making the Internet a tariff-free zone for on-line trade in digital goods	Exempting tariff will make imported digital goods cheaper.
Famous mark: Giving privileged protection for famous marks in domain name disputes	Similar marks of other companies will be unfairly treated in domain name disputes.
Copyright: Signifying WIPO Copyright Treaty	Signifying the treaty will create higher cost for consumers.
Mode 2: Treating on-line services as the GATS's Mode 2 services	Service sectors will become more liberal than agreed under the GATS.
Patent: Extending patentable subject matters to include business methods	Companies in developing countries will face constraints to participate in e-commerce as producers.

Source: Thailand Development Research Institute.

### ***Proposals that increase consumer and producer welfare***

Examples of proposals that increase both consumer and producer welfare are the harmonization of e-commerce laws and the liberalization of the telecommunications market. The former will facilitate electronic transaction and will benefit both consumers and producers due to lower transaction cost. The latter will reduce the cost of access to Internet to users (consumers) and e-commerce related business operators (producers), e.g., ISPs, web hosting service providers, application service providers (ASPs), etc.

### ***Proposals that increase consumer welfare but decrease producer welfare***

Protection for famous marks in domain name disputes is an example of a proposal that increases consumer welfare but decreases producer welfare, at least in the short term. While the protection helps reduce potential confusion arising from identical or similar marks and thus increase consumer welfare, most producers in developing countries with less known marks are prone to be unfairly treated in domain name disputes. Another example is the proposal to make the Internet a tariff-free zone for digital goods. Lowering the tariff barriers induces more competition that will benefit consumers but make life more difficult for domestic producers. However, the extent of the welfare effected on consumers and producers in this case is relatively small since digital goods are already tariff-free in practice. Similarly, treating online services as the GATS's Mode 2 services is also classified in this category since a more liberal regime will increase consumer choice while imposing greater competitive pressure on domestic producers.

### ***Proposals that decrease consumer welfare but increase producer welfare***

An example of proposals that decrease consumer welfare but increase producer welfare is the world-wide adoption of the WIPO Copyright Treaty. The adoption will bring about stronger protection for local software producers hence increase their welfare. However, as most developing countries are software-consuming countries, the benefit from stronger protection is unlikely to offset the loss in consumer welfare due to the monopoly granted by the copyright protection.

### ***Proposals that decrease both consumer and producer welfare***

Extending patentable subject matters to include business methods will decrease welfare of consumers and producers in developing countries. This is because the producers will not be able to exploit the patented business methods freely. As a result, they may be forced to

use less efficient methods in providing their services. Part of the cost will be passed on to their consumers.

Proposals that increase consumer and producer welfare should be implemented with no hesitation. Proposals that increase consumer welfare but decrease producer welfare should also be implemented in most cases. However, developing countries need to ensure that global e-commerce policies in these areas are sufficiently well balanced. For example, famous marks must not be given unreasonably privileged protection. To achieve that, developing countries must take more active roles when participating in international fora, e.g., the ICANN. On the contrary, proposals that significantly decrease consumer welfare but trivially increase producer welfare like adopting the WCT should not be implemented unless developing countries are compensated fairly by the developed countries that are likely to gain considerably from the implementation. The 'compensation' could be in the form of liberalization of certain markets in developed countries that will bring about significant benefits to developing countries, e.g., the agricultural sector.

Asian countries should form alliances with one another to tackle critical policy issues; those that clearly decrease the welfare of consumers as well as producers in our countries. In some cases, the alliances should be extended to parties in developed countries with similar stances. Concerning business method patents, for example, many not-for-profit organizations and even some business leaders in the US also advocate the abolition of such patents. These groups of people can be powerful allies.

### **ENDNOTES**

- 1 For consumption tax collected from trade in digital goods, however, the potential loss is significantly greater. The issues need to be addressed more carefully and are beyond the scope of this article.
- 2 E-commerce will also impact other modes of services. For example, laws and regulations that require commercial presence will limit activities of 'pure' online service operators. Again, due to space limitation, these issues are not discussed here.
- 3 Apart from these laws, the National Information Technology Committee (NITC) is also drafting other 'cyber laws,' viz., the law on data privacy, the law to fight against computer crimes and the law to facilitate electronic fund transfer.
- 4 See ICANN's web site ([www.icann.org](http://www.icann.org)) for more information concerning the rules and the cases settled.

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