

Thesis Title : Problems on the originality of broadcasting works

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ABSTRACT

Broadcasting work, itself, is the transformation of the existing works (Derivative works) and is deemed to be one of the neighboring right under Intellectual Property Law, which has been widely accepted in many civil law system countries. In an international level, under The Rome Convention 1961, The Berne Convention 1971 and TRIPs Agreement, broadcasting work is also protected as neighboring rights. In comparison with The Copyright Act B.E. 2537 Article 6: broadcasting work is determined as kind of copyright. The problems arising are, including but not limited to, 1) broadcasting work which lack of originality factor, and 2) the protection of broadcasting work under TRIPs Agreement is not enforceable in Thailand. The problem of originality in broadcasting work was first arose in the case of Central Intellectual Property and International Trade Court between UBC Co. (Public) Ltd. (Prosecutor) V. Kitt Boonchaiwattana (Accused), in this case, the judgment was to dismiss for prosecutor's accuses in signal infringement, the supporting reason was that the progress of broadcasting by prosecutor (UBC) was just to communicated to the public, their broadcasting programs were not protected by The Copyright Act B.E. 2537. Pursuant to the judgment of this case, if broadcasting work falls under copyright law, it will never received the effective legal protection in Thailand and will never meet the requirement of TRIPs Agreement for member countries (Thailand is a member of TRIPs Agreement) for the minimum standard requirement for the protection of an Intellectual property right.

After the comparative legal analysis, the amendment of The Copyright Act B.E. 2537 Article 6 is probably the most effective solution. The broadcasting work shall be specifically determined to protect broadcasting organization as neighboring rights similar with Performers rights in part 2 of The Copyright Act B.E. 2537. The existing principles concerning the broadcasting organization protection under Rome Convention 1961 should also be applicable to Thai Copyright law.

