

Independent Study Paper Title : Problem of Criminal Offence of Copyright Infringement
under the Copyright Act B.E. 2537 (A.D. 1994)
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ABSTRACT

Copyright in Thailand is not a new concept and it has been there since 1892 from the Royal Proclamation of Vachirayan Library for protection of literary works. However, the Copyright Act of Thailand had been changed many times due to technological developments and the increasing globalization of the economy. The enforcement on the copyright protection faces setback under the present Thai Copyright Law B.E. 2537(A.D 1994). Under the present Copyright Act, copyright is considered as public right and violation of the copyright is liable with criminal offense, the violating parties may be subject to prison sentence or fines as prescribed by the Act. As the guardian of the copyright protection, the Central Intellectual Property and International Trade Court were established to take up the matters relating to Intellectual Property Rights. Besides all the changes and amendments made for the protection of copyright, still there are certain problems regarding enforcement.

In Thailand, the present copyright law states copyright infringement as criminal offence, this can create the problem of making all the copyright infringers as criminals, leading to the problem of over- criminalization. Certain changes need to be made in the copyright legislation to prevent such problem. The legislature could not further criminalize copyright liability as much as they can and enforcement authority could not enforce copyright as criminal liability without understanding the nature of offence. The civil fundamental root of copyright and the basic concept of crime must be considered seriously. The wide-range legislature labeling most of the people as criminals and must be eradicated. Such problem of criminalizing the copyright infringers can be solved by taking certain measures and changes with

certain sections of the Copyright Act. Section 66, of the Copyright Act B.E.2537 (A.D 1994) states that copyright infringement is compoundable. This section on amendment has a provision to solve the problem of criminalization. The word compoundable provides the provision for the parties to reconcile with the copyright infringement matters. This problem can be solved by categorizing the infringers into certain categories, like manufacturers, sellers, and employees as well as buyers, by looking into the nature of offence committed and amount of harm and wrongs done to society.

It is important to change the penalty provisions, when there is change in the nature of crime. The differences with the penalty must ensure that the minor offenders are not criminalized. The penalties must be imposed according to the nature of crime committed by the infringers, based on the category of the offence as classified under compoundable offence.

To conclude, the problem of over-criminalization can be solved by the compoundable offence, but certain changes need to be made under the provisions of Sections 66, 69 and 70 of the Copyright Act 2537 (A.D. 1994).