

Independent Study Paper Title : Technological Protection Measure Obstacle to Fair Use in Thai Copyright
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ABSTRACT

The study is aimed at analyzing the impact of the technological protection measure (TPM) on the application of fair use in Thai copyright law by analytically comparing to foreign copyright regimes. Nowadays, as in digital environment, digital copyright materials could be easily infringed by consumers because of the advance of technologies. Authors and other copyright owners increasingly rely on technical means commonly known as TPM in order to deal with piracy by installing it in their electronic works. Generally, TPM is a tool or product that copyright owners design to control unauthorized use of their copyright works. Since TPM controls all forms of unauthorized uses, it cannot distinguish between legal and illegal use. Therefore, it also prevents legitimate use under the fair use principle. Fair use principle is very essential to both developed countries and developing countries especially Thailand, as the net importers of foreign information products. This principle enables public to have access to the works, the rich store of knowledge products, and enhances creativity and the production of new works.

This study shows that the application of TPM may cause fair use exception, which established by the law, to be inapplicable and substantially affect the access to information. TPM eliminates balance between the copyright owners' interest and the public' s interest. Although Thailand has not become a member of WIPO Internet Treaties and does not provide any TPM provisions in the Copyright Act B.E. 2537 yet, the implementation of TPM and anti-circumvention provisions in many countries causes Thai right users, who use copyright works under fair use principle to unable access or use information in copyright works that are protected by TPM. This has a negative effect on the education, scientific advancement and the spread of

information or knowledge all of which play very important role in encouraging development human resources and economic growth.

It is recommended that Thailand needs to consider the effect of TPM on public interest and information access ability of Thai right users before enacting TPM provisions in the domestic copyright law to be in line with WIPO Internet Treaties. Additionally, Thailand should not adopt and follow TPM provisions of other countries without considering the economics condition, social condition, the level of technology and public interest in the country. Moreover, in order to maintain the balance between the copyright owners' rights and the public' s toward the digital world, the fair use exception under the Copyright Act B.E. 2537 should not be overridden by TPM provisions, but remain the same as in analogue world.

