

Independent Study Paper Title : Application of Reverse Engineering as Fair Use
Exceptions
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ABSTRACT

The study is aimed at analyzing the application on the use of reverse engineering towards fair use exceptions in Thai Copyright law by analytically comparing to United States copyright regimes. Nowadays, the digital technologies and network have dramatically developed and it has a tremendous impact on the creation, reproduction, and dissemination of copyright works. Computer program became a multi-functional tool for programmers to innovate new technologies and enhances software industry for the economic progress. The technology industry needs to be continuously developed in order to be in line with developed countries and one of a process which helps developing countries to achieve such goal is the application of reverse engineering.

This study shows that the application on the use of reverse engineering have an impact to both copyright owners and the users. In the process of reverse engineering, copying the program's object code and disassembling it to source code must be made. It surely constitutes copyright infringement but the fact that reverse engineering benefits public interest as much as it erodes the owner's exclusive rights, the copyright law should not recognize reverse engineering as copyright infringement as long as it is used for non-commercial purpose which does not conflict with a normal exploitation of the copyright work and does not unreasonably prejudice the legitimate rights of the owner. Thus, to balance interest between these two groups, it must consider the clear cut scope in determining which fair use is fair and which is not by using the four factors under U.S. copyright law together with other predominant factors such as inner intention of person who reverse engineers.

In order not to limit this country's progression and avoid developed countries from taking advantage of, it is recommended that Thai Copyright Act B.E. 2537 (1994) should permit reverse engineering as fair use exception by adding reverse engineering clause in section 35 and the court should strictly consider the four factors under the U.S. copyright law together with the other factors in determining fair use defense on the case-by-case basis. This way, the application of reverse engineering will bring about the utmost benefits upon digital technology, software industry and economic progression respectively.

