



**PROVISIONAL PROTECTION MEASURES AGAINST  
COPYRIGHT INFRINGEMENT ON THE INTERNET**

**BY**

**MISS NAWEENA WATTHANAPRADIT**

**A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF  
THE REQUIREMENTS FOR THE DEGREE OF  
MASTER OF LAWS IN BUSINESS LAWS**

**(ENGLISH PROGRAM)**

**FACULTY OF LAW**

**THAMMASAT UNIVERSITY**

**ACADEMIC YEAR 2015**

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THESIS

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ENTITLED

PROVISIONAL PROTECTION MEASURES AGAINST COPYRIGHT  
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was approved as partial fulfillment of the requirements for  
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on August 11, 2016

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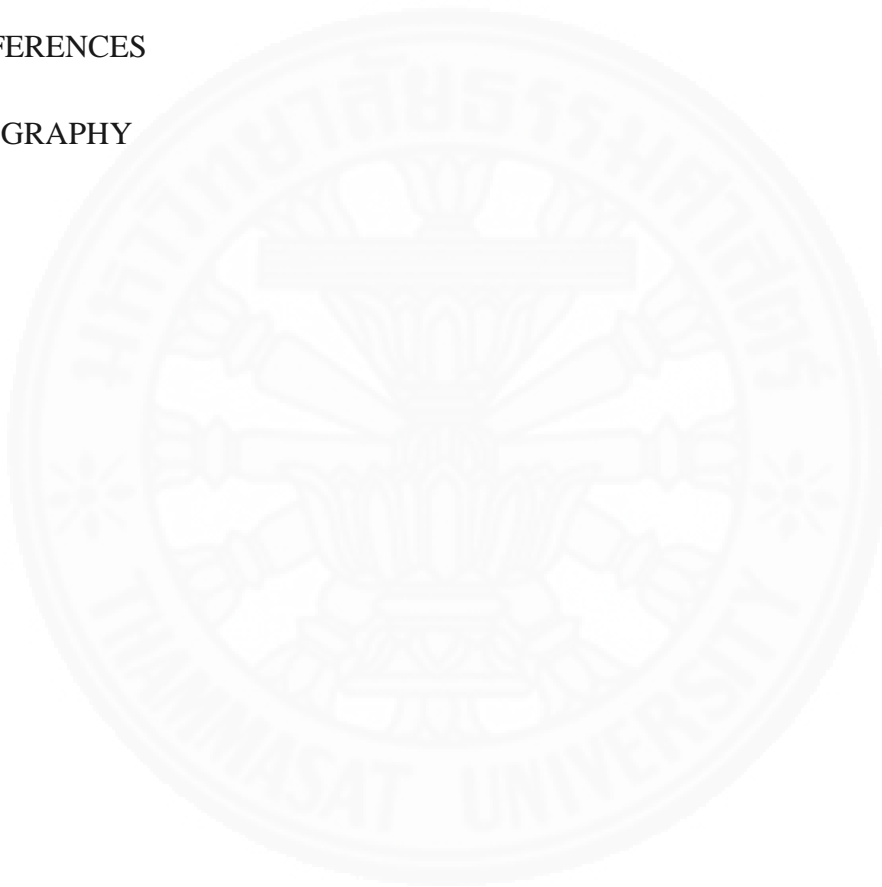
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## **ABSTRACT**

Prior to the enforcement of the Copyright Act (No.2) B.E. 2558 puts into force, Thailand does not directly have the law related to copyright piracy. In case the copyright piracy occurs, the Copyright Act B.E.2537 and the Computer Act B.E.2550 will be applied.

Understanding the social context, at present, has rapidly changed, technology has played much more crucial role in our daily life, especially the internet access. As a result, the copyright piracy through internet network has been increasing. Therefore, to have the enforcement of technology strategy to protect copyright work, Thai government has stipulated the Copyright Act (No.2) B.E.2558, coming into force on September 4, 2015. The act has applied the 'safe harbor' principles of the United States of America and Europe in drafting as the model, with the purposes of protecting the creators and the initiators of the new works that disseminated through the internet and also in accordance with the internet users' behaviors.

The research purposes were to analyze the Copyright Act pertaining to the reliability of Internet Service Provider: ISP of the international countries (both civil and common laws system). This is to study the advantages and the disadvantages of its principles as they will be used as guidelines for copyright enforcement in the

aspect of internet service providers 'liability, promulgated in Section 32/3 of the Copyright Act (No.2) B.E.2558 of Thailand.

Section 32/3 has mentioned the setting up of liability limitation of ISP to protect the internet service providers from risk in being sued in case of copyright piracy. The copyright owners can ask the Court to order ISP to take down pirated files from their websites whereas the copyright owners has to show enough evidences to the Court. After, the ISP has followed the Court's order to take down the pirated file, the ISP do not have the liability of the pirated action.

The research is a documentary research from where the information is from technical articles, international laws, online information, related articles, copyright enforcement experts and computerized experts. This is to analyze the advantages and disadvantages of the principles of law related to ISP and the copyright owners by comparing between the copyright law of Thailand and the international principles of laws pertaining to the suppression of copyright piracy on the internet.

In Section 32/3, it was found that the process in suppression of copyright piracy and the protection of copyright of the copyright owners has focused on court procedure which it takes time consume and also has impacts on suppression since technology changed all the time. This leads to overwhelming cases in Court of Justice. In addition, the internet copyright piracy deals with technology where it needs technology expertise and experts to more efficiently solve the problems and provide guidelines than the past.

From the observations mentioned earlier, in the researcher's point of view, it is noted that the Copyright Act (No.2) B.E.2558 is difficult to put into action and cannot solve the problems of intellectual property infringement and internet copyright piracy. As the result, Thailand will remain the country of Priority Watch List (PWL) according to the Special 301 Report of the United States Trade Representatives.

**Keywords :** Copyright infringement , copyright owner, internet service provider, liability



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Miss Naweena Watthanapradit  
Thammasat University  
Year 2015

# CHAPTER 1

## INTRODUCTION

### 1.1 Background Information

As we know the controversy regarding infringement of intellectual property has been raging for years. In this new electronic age it is now so easy to gain access to the internet with the price of a computer which is can now much cheaper these days. People of all ages can near effortlessly access online information any time. The internet is the bridge that connects people to networks sending data to countless users. This makes the rights owner who keep their works in the Digital file system afraid that their works will be infringed by the user of the internet and they also think that this problem is difficult to deal with.

If intellectual property laws are not effective, online infringement will only increase and cause potential copyrighters owners to be afraid to create innovative works and cause incalculable damage to the world economic system.

The United States of America adopted laws on intellectual property more than one hundred years ago. It has strongly protected the works of rights owners.

However, the law of intellectual property on the copyright in Thailand which is enforced nowadays is The Copyright Act B.E.2537, but one aspects sui generis that just came into effect in August 2558 (2015). Nonetheless, some issues of it are still being debated, for example Copyright Act B.E.2537 amended by Copyright Act B.E. 2558 no.2 and no.3

The sui generis<sup>1</sup> law affects the problem. It should especially secure the rights owners who create work of value to the economic system and strongly protect any work that is infringed.

The way to resolved infringed materials in Thailand years ago was totally different from now. For example, music on tape cassettes changed to compact discs

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<sup>1</sup> International Intellectual Property Institute, “*Is a Sui Generis system necessary?*” IPI, <http://iipi.org/wp-content/uploads/2010/07/NewYork011404.pdf> (Accessed November 18, 2015)

(CDs) then changed to the digital video disc (DVDs), movies on video cassettes to compact discs (CDs) and changed to the M PEG3 (MP3) and were sold to customers. If anyone wants to obtain the infringed content, he/she especially has to bring an external hard disk to a shop and pay to get it.

The good thing for enforcement is we can observe infringement easily and it is easier to locate the person who has infringed. We can see widespread infringement in Zoned Areas (for example, Silom Road, Patpong, at Pantip Plaza) that clearly shows enforcement against intellectual property infringement is not enough.

The Special301 report, the Office of Trade Representative lists red zones where one can find counterfeit goods easily in Thailand for purchase. The locations are well-known as major shopping centers such as Chatuchak Market, MBK Center and Siam Square; night market areas along Sukhumvit, Silom Rd.(including Patpong) and the border market at Aranyaprathet (Thailand-Cambodia border)<sup>2</sup>

Nowadays technology for downloading content on the internet is cheaper, easier and faster, providing the easiest way to share infringed content. Moreover, technology is always moving forward. Thus infringement has developed by leaps and bounds. At the present time technology serves the demand of users. Producers fulfill customer needs and demands. Many problems occur in cyberspace. For example, there are many shops that sell clothes, food, or bags and some shops use pictures from other shops as advertisements to sell their own products. Or websites that allow users to upload or download infringed content, for example, movies, musics,etc.

In the past Thailand has not had specific laws regarding copyright infringement and after many attempts over many years, in Copyright Act B.E.2537 amended by B.E.2558, the Copyright Act was passed. Section 32/3 mentioned the responsibilities of the Internet Service Provider (ISP) and the details that rights owners need to put in any petition to get a court order to protect works that have been

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<sup>2</sup> IPI, Blumenthal Richter & Sumet, “*Thailand Stays on USTR’s Priority watch list*”, <http://brslawyers.com/news/news/109> (Accessed May 30,2016)

infringed.

The New Copyright Act, section 32/3 was passed to solve copyright infringement, a major problem at the present time, and has been on the United States Trade Representative (USTR) on a Priority Watch List (PWL) over 9 years.

The expectation of this thesis is to research and present the best ways to decrease infringement of copyright work on the internet in Thailand so laws can provide the way to protect the rights of owners, and decrease the sharing of infringed files, at the same time.

Even though Thai state and private agency have cooperated to decrease the problem of Copyright infringement, piracy, or online infringement, Thailand still focuses on the United States government's Priority Watch List (PWL) over the past 9 years as the United States continue to assess progress on the issue in Thailand. In the 301 report, the United States Trade Representative stated that intellectual property enforcement does not seem to be a top priority of Thai law enforcement, so this intensive study aims to be helpful, constructive, as much as humanly possible, to all parties concerned.

## **1.2 Hypothesis**

Thailand has been on the Priority Watch List (PWL) for the past 9 years, since 2007 because of the problem of Intellectual Property and copyright law was passed to solve the problem of infringement. This problem has continued, as it is inextricably involved with technology that develops all the time with so many multifarious ways of infringing that protection and suppression of copyright infringement in Thailand cannot effective. United States Trade Representative (USTR), Thailand be classed on the Priority Watch List (PWL). Copyright infringement in Thailand on the internet is still increasing nowadays.

The new Copyright Act B.E.2537 amended by Copyright Act B.E.2558 was forged last year to help solve the copyright problems that the Copyright Act B.E.2537 did not. For example, the liability of the Internet Service Provider(ISP).

The Copyright Act B.E.2537 of Thailand does not mention the liability of

the Internet Service Provider (ISP) in a case where there is infringement on the internet. Normally, the court uses the Copyright Act B.E.2537 and the Computer Related Crime Act B.E.2550 when any person illegally damages, destroys, corrects, changes or amends a third party's computer data, either in whole or in part on the internet.

There have been many debates since officiate started to write this Act. Some say that it is not proper to protect the rights of owners, that it modeled on was copied from the foreign act but not yet completed. This will explain the law of the Copyright Act B.E.2537 amended by Copyright Act B.E 2558, No.2 Section 32/3 which specifies liability of the Internet Service Provider (ISP). And will analyze the advantages and disadvantages of the Copyright Law of the United States, for example, the Digital Millennium Copyright Act Section 512, OCILLA and other related legislation and European legislation which serves as the prototype for the Copyright Act B.E.2537 amended by Copyright Act B.E.2558.

### **1.3 Subjectives to Analysis**

1. To study the classifications of the United States Trade Administrative (USTR) of countries that face problems with intellectual property infringement.
2. To analyze the Service Provider under Copyright Act B.E.2537 amended by Copyright Act B.E.2558, section 32/3 has liability with the copyright owner
3. To analyze the real problems that lead Thailand to the Priority Watch List (PWL)
4. To analyze Copyright laws of the United States of America
5. To analyze the Copyright Laws of Europe
6. To analyze how the United States and Europe deal with copyright infringement problems and analyze whether they can resolve the problem of Copyright infringement in Thailand.
7. Ways to enhance the effectiveness of the Copyright Act B.E.2537 amended by Copyright Act B.E.2558 resolve the problem of infringement on the internet.

8. To get the answer that the Copyright Act B.E.2537 amended by Copyright Act No.2 B.E.2558 Section 32/3 can protect copyright work

#### **1.4 Scope of study**

This thesis proposes:

1. To show the problems of copyright infringement online before The Copyright Act B.E.2537 amended by Copyright Act B.E.2558 was enforced, and to analyze whether the Copyright Act B.E.2537 amended by Copyright Act B.E.2558 can solve the problem of copyright infringement on the internet effectively, by studying the copyright laws of the United States of America and of Europe, which are the prototypes for the Copyright Act in Thailand to see whether Copyright Act B.E.2537 amended by Copyright Act B.E.2558, Section 32/2 can protect the rights of owners or needs to use the laws of The United States of America and/or Europe, which are the model of the Thai Copyright Act.

2. And to study the take down and notice system and other procedures that other countries use to decrease copyright infringement online in their countries. And because the technology is moving so fast and file-sharing on the website takes only mere seconds to upload and download. Asking for a court order every time that the infringement is discovered is no way to genuinely protect the work. This will only increase the number of cases in court. This thesis will offer suggestions for the protection of rights owners.

#### **1.5 Methodology**

The method used in this thesis is based on online research reviewing texts from international websites that show how other countries deal with the problem of copyright infringement online, and documentary research from articles, textbooks, related international laws, and by discussion with the experts on related issues, as source material to delve into the most effective ways to protect copyright works.

## 1.6 Expected Result

1. To determine whether Copyright Act B.E.2537 amended by Copyright Act B.E.2558, No.2, Section 32/3 can protect the work of rights owners from the infringement.

2. To determine whether the Internet Service Provider in the Copyright Act B.E.2537 amended by Copyright Act B.E.2558 No.2 Section 32/3 bears liability with the Copyright Owner or not

3. To examine and understand the international legislation which is the model for the Copyright Act B.E.2537 amended by Copyright Act B.E.2558 No.2

4. Analyze the copyright laws of The United States, European Union and other countries and compare them with the Copyright Infringement laws in Thailand.

5. To understand the real problem that lead Thailand to Priority Watch List (PWL) class

## CHAPTER 2

### THE ORIGINS OF THE COPYRIGHT LAW B.E.2537 AMENDED BY COPYRIGHT ACT B.E.2558

The concept of copyright is rising in the United Kingdom at the beginning of the 18th century in the Licensing of the Press Act 1662, which established a register of licensed books and required a copy to be deposited with the Stationers' Company. Copyright is a legal right created by law to protect the rights of the creator. These rights include the use reproduction and distribution<sup>3</sup>.

Normally, the duration of a copyright period is the creator's life time plus 50 to 100 years after the creator dies, depending on each jurisdiction. Some countries need a formal copyright to establish the copyright, some merely need a completed work without formal registration.

The Copyright Act came into force in A.D.1994 applies to creative work, including literary, dramatic, artistic, musical, audiovisual, cinematographic, sound, recording sound, or video broadcasting work in any form of expression.

The copyright starts when the work is created. The owner of the copyright has the exclusive rights to reproduction or adaptation for communication to the public or licensing the rights<sup>4</sup> toward anyone who acts against the work of the copyright owner alleged in the infringement. These rights exist for the life of the creator and continue for another 50 years after the death of the creator.

Protection for the copyright owner takes immediate effect without any legal process and does not need to be registered. The registration is revealed to the public.

At the present time the problem of copyright infringement in Thailand is increasing. Those who infringe on someone else's work constantly find new ways to do it. Both state and the private agencies cooperate to suppress copyright

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<sup>3</sup> Copyright Timeline : “A history of Copyright in the United States l Association of Research Libraries” <http://www.arl.org/focus-areas/copyright-ip/2486-copyright-timeline> (Accessed October 31,2015)

<sup>4</sup> Thai Copyright Act B.E.2537 (1994) section 15



infringement, which has become part of the problem of making other countries believe that it is easy to infringe copyright work in Thailand.

Clear evidence of Thai was when the United States Trade Representative (USTR) recently announced that Thailand is one of countries that has an infringement problem.

The Office of the United States Trade Representative (USTR) under Section 301 as amended in the Trade Act of 1974<sup>5</sup> identifies trade obstacles to United States companies and products due to the infringement of property laws the intellectual property laws, such as copyrights, patents and trademarks the United States owns, in other countries.

On 30 April 2014 United States Trade Representative (USTR) announced the classification of countries where the protection of intellectual property rights is effective in its annual report section 301, special 2014. The United States put Thailand on Priority Watch List Class for 9 years since 2007

In April 2016, Thailand was put on the announcement but on the. Priority Watch List (PWL) according to the United States Trade Representative 2016 301 Special Report. In which it stated that “Intellectual Property Right enforcement does not seem to be top priority for Thai law enforcement.” The report also referred to the Section 32/3 in the Copyright Act B.E.2537 amended by Copyright Act B.E.2558 No.2 that “Another Copyright Act amendments, introducing an option for right holders to obtain a court order to force online service providers to take down infringing content, has resulted in the lack of clarity in the operation of the notice-and-takedown procedures.” That because the law of the United States of America is a model law for this Act but Section 32/3 is not mentioned clearly whether the Internet Service Provider (ISP) bears liability to the right holder or not and after the ISP gets a

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<sup>5</sup> Federal Register, The Daily Journal of the United States Government, “*Supplementary Information Section 182 of the Trade Act of 1974 (Trade Act) (19U.S.C.2242)*” <https://www.federalregister.gov/articles/2011/09/28/2011-24985/section-306-monitoring-of-paraguay-memorandum-of-understanding-on-intellectual-property-rights> (Accessed January 8, 2016)

court order, the ISP has to take down that work, but the law does not provide follow-up protection if the infringement occurs again.

The report states that<sup>6</sup> “Thailand remains on the Priority Watch List in 2016. The United States welcomes Thailand’s stated desire to improve IPR protection and enforcement, including recent remarks by the Prime Minister acknowledging the importance of respecting IPR and the role IPR plays in making the Thai economy<sup>7</sup> competitive. At the same time, IPR enforcement does not seem to be a top priority for Thai law enforcement, and there has been limited improvement of poor coordination among government entities despite the launch of the National IP Center of Enforcement in 2013. The United States urges Thailand to do more to prioritize IPR enforcement and to address longstanding organizational challenges. The Thai government took several legislative steps in 2014, including an amendment to the Customs Act that provides Thai customs officers with *ex officio* authority to suspend and seize illegal goods in transit, as well as copyright law amendments to address unauthorized camcording. Unfortunately, the Thai government in drafting several of the Copyright Act amendments failed to give weight to concerns expressed by foreign governments and industry on prior drafts of the law, such as omitting a much-needed landlord liability provision. As a result, the amendments do not provide adequate protections against the circumvention of TPMs and the unauthorized modification of rights management information, nor do the amendments address procedural obstacles to enforcement against unauthorized camcording. Another Copyright Act amendment, introducing an option for right holders to obtain a court order to force online service providers to take down infringing content, has resulted in a lack of clarity in the operation of the notice-and-takedown procedures. Rights holders also express concerns regarding pending legislation imposing content quota restrictions and the unintended effects of data and cyber security laws. It will be critical for Thai

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<sup>6</sup> Executive office of the president of the United States of America, The United States Trade Representative (USTR), “2016 Special 301 Report”, <https://ustr.gov/sites/default/files/USTR-2016-Special-301-Report.pdf> (Accessed February, 15 2016)

<sup>7</sup> Department of Intellectual Property, “กฎหมายลิขสิทธิ์ช่วยขับเคลื่อน Digital Economy” (Copyright Law propel Digital Economy) [https://www.ipthailand.go.th/index.php?option=com\\_content&view=article&id=1618:digital-economy-10-000-400-000&catid=8:news&Itemid=332](https://www.ipthailand.go.th/index.php?option=com_content&view=article&id=1618:digital-economy-10-000-400-000&catid=8:news&Itemid=332), (Accessed August 29 ,2015)

authorities to engage closely with foreign governments and industry as this and other legislation take shape. Other concerns include a backlog in pending patent applications, widespread use of unlicensed software in both the public and private sectors, growing Internet-based copyright piracy, rampant trademark counterfeiting, lengthy civil IPR proceedings and low civil damages, and extensive cable and satellite signal theft. The United States continues to encourage Thailand to provide an effective system for protecting against the unfair commercial use, as well as unauthorized disclosure, of undisclosed test or other data generated to obtain marketing approval for pharmaceutical and agricultural chemical products. The United States urges Thailand to engage in a meaningful and transparent manner with all relevant stakeholders, including IPR owners, as it considers ways to address Thailand's public health challenges, while maintaining a patent system that promotes innovation. The United States looks forward to continuing to work with Thailand to address these and other issues.

### **2.1 The Classification by United States Trade Representative (USTR)**

Each year the USTR must identify countries which do not provide sufficient or effective protection of intellectual property rights. USTR must also undertake annual surveys of foreign countries' intellectual property laws and policies. The annual report must identify a list of "Priority Foreign Countries", those countries judged to have insufficient intellectual property laws. These countries may be subject to sanctions. In addition, the report contains a "Priority Watch List" and a "Watch List", containing countries whose intellectual property regimes are deemed of concern.

There are 5 levels that the United States uses to classify each country by their effectiveness and the USTR can move countries from one list to another, or remove them from the lists, throughout the year<sup>8</sup>.

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<sup>8</sup> Global Intellectual Property Center : U.S. Chamber of Commerce, "What is Special 301", <http://www.theglobalipcenter.com/initiatives/trade/special-301/>, (Accessed January,15 2016)

### **2.1.1 Priority Foreign Country (PFC)**

A Priority Foreign Country is the worst classification given to foreign countries that fail sufficient and effective protection of intellectual property rights or fair and equitable market access. In 2011 and 2012 no countries were classified as a Priority Foreign Country

### **2.1.2 Priority Watch List**

Two categories have been created under Section 301 of the Trade Act of 1974. Priority Watch List and Watch List countries are identified by the annual Special 301 report. Priority Watch list countries are judged by the USTR as having serious intellectual property rights insufficiency.

### **2.1.3 Watch List (WL)**

Watch List countries have been identified by the USTR as having "serious intellectual property rights insufficiency but are not yet placed on the "Priority Watch list". Countries that were classified at this level were in the European Union in 2007 and Malaysia in 2012

### **2.1.4 Monitoring**

The USTR designated Paraguay as a Priority Foreign Country in the 1998 after the United States and Paraguay successfully entered into a Memorandum of Understanding (MOU) on Intellectual Property Rights. USTR announced that the MOU would be monitored through Section 306 of the Trade Act of 1974. USTR requests written submissions from the public concerning implementation of the MOU on Intellectual Property Rights to improve the protection and enforcement of intellectual property rights.

### **2.1.5 Pending**

The USTR classifies the countries whose status is still pending, for example, Israel classified at this level in 2010

There are statistics from the annual special 301 reported that have been kept keep by The International Intellectual Property Alliance (IIPA)<sup>9</sup> since 1989, IIPA is a private sector working to improve international protection and enforcement of copyrighted materials the duty of IIPA is to submits an annual report to the United States Trade Representative (USTR) and other U.S. Government agencies in the United States Government’s annual “Special 301” review on whether acts, policies or practices of any foreign country deny sufficient and effective protection of intellectual property rights or deny fair and equitable market access for United States persons relying on intellectual property protection which shows statistics on some country classified by the United States Trade Representative.

Country	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Thailand	WL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL	PWL

These statistics reveal that after 2006 Thailand was classified on the Priority Watch List (PWL), as it has been over the past 9 year.

The faster Thailand enacts laws the sooner the problem of Infringement of Intellectual Property will be solved. However, enacting laws needs takes time. Even though Thailand has developed laws on Intellectual Property and has designated it as part of the national agenda and set up National IPRs Center of Enforcement<sup>10</sup> (NICE) since March 2013 to increase the efficiency of the coordination between each agency. To modify the law to related to WIPO.

The National IPRs Center of Enforcement (NICE) is the center that state agencies such as the Department of Special Investigation (DSI), Economic Crime Suppression Police, DIP and related agencies to enforce infringement of Intellectual

<sup>9</sup> International Intellectual Property Alliance, “*International Intellectual Property Alliance (IIPA) Representing The U.S. Copyright-Based Industries for 30 Years*”, IIPA home page, <http://www.iipawebsite.com> (Accessed November,9 2015)

<sup>10</sup> Dan Greif, “*International Trademark Association, Thailand: Recent Government Crackdowns on counterfeit*”, [http://www.inta.org/INTABulletin/Pages/THAILAND\\_RecentGovernmentCrackdownson\\_Counterfeits.aspx](http://www.inta.org/INTABulletin/Pages/THAILAND_RecentGovernmentCrackdownson_Counterfeits.aspx) (Accessed November,5 2015)

## Property rights

The United States hope that Thailand will expedite the procedures in enforcing copyrights laws and the exploitation of Intellectual Property Rights.

In 2015 the United States Trade Representative (USTR) still classifies Thailand on the Priority Watch List level, for 8 years. Previously, the Department of Intellectual Property had tried to work with the USTR in the investigation of internet infringement and campaign for the computer users to use copyright software. And the Thai government gave precedence to enacting and enforcing the Law of Copyright.

In the United States and European countries the law focus on enforcement against direct infringement. Infringement on the internet is not only involved with the Rights of owners and subscribers who upload infringed contents onto the internet but are still involve with the Internet Service Provider (ISP). The Internet Service Providers (ISP) is an online intermediary (mere conduit) to provide transmission to the internet.

### **2.2 Problems before the enactment of the Copyright act B.E.2537 amended by Copyright Act B.E.2558**

On the Internet, the people involved are the Internet Service Provider (ISP), the copyright owner and the person who upload contents on the Internet. The Computer Crime Act B.E 2550 states that the Internet Service Provider is<sup>11</sup>

(1) A person who provides services to the public with respect to access to the Internet or other mutual communication via a computer system, whether on their own behalf, or in the name of, or for the benefit of, another person.

(2) A person who provides services with respect to the storage of computer data for the benefit of others.

The Internet Service Provider is the middleman connecting the users with the website

In Thailand there are agencies providing the service in two types

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<sup>11</sup> Computer Crime Act B.E 2550 (2007) section 3 [https://advox.globalvoices.org/wp-content/downloads/Act\\_on\\_Computer\\_Crime\\_2550\(2007\).pdf](https://advox.globalvoices.org/wp-content/downloads/Act_on_Computer_Crime_2550(2007).pdf) , (Accessed December 18, 2016)

1. Commercial Internet Service Provider: this type of provider is an internet Service Provider who provides the service commercially expecting the reward for example, the rental of the space from websites, for example, Cs-Loxinfo , Samart , CAT, etc.

2. Non-Commercial Internet Service Provider : this type is a provider who provides the service without benefit. The purpose of this provider is for educational research or for a government agency, for example, ICT , GITS, etc.

The Internet Service Provider gains profit by helping users communicate with contents being uploaded. The Copyright Act Section 32/3 states that if an Internet Service Provider (ISP) gets an order from a court that there is an infringed file and it directs the damage to the rights owner, if the Service Provider takes down the infringed files they will be not liable of infringement. The duty of the service provider is that of a mere conduit

Copyright of Digital Information III.B.4. chapter 3 Mere Conduits for Others' Communications Subsection (a), the "mere conduit" provision, covers copies that must necessarily be made during digital communications, and covers only intermediate carriers of the communications, not the originators or recipients of the communications<sup>12</sup>.

In case the Service Provider is not the one who uploaded the infringed content to the system and follows the court order by taking down the infringed files, the Service Providers won't be liable for any legal actions that occurred before the court order.

Before the revision of Copyright Act B.E.2537 amended by Copyright Act B.E.2558 the infringement of copyright was handled by the Copyright Act B.E.2537 whenever someone hacked the system and used someone else's work without permission. The Computer Related Crime B.E.2550 does not punish infringement on the internet. The Computer Related Crime B.E.2550 lets the one who posts the infringed file to take it down when they are informed that content belongs to someone else.

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<sup>12</sup> Legal Protection of Digital Information, "*Digital Law Online : Mere Conduits*", <http://digital-law-online.info/lpdi1.0/treatise35.html> (Accessed April 20,2016)

After identify being set on the U.S. Priority Watch List, Thailand kept trying to enact the new Copyright Act B.E.2537 amended by Copyright Act B.E.2558 No.2 until it was passed on 4 August 2015. The Copyright Act B.E. B.E.2537 amended by Copyright Act 2558 should have been passed on many years ago. It might have kept Thailand from being classified on the Priority Watch List (PWL).

This law is envisioned as a part of the proposed Digital Economy which is an important policy of present Thai government to use digital information or the internet to push forward of Thai economy.

### **2.3 The Copyright Act B.E.2537 amended by Copyright Act B.E.2558, NO.2, Section 32/3**

This Act aims to enable rights owners to create new work without the fear that someone will steal it. The new Copyright Act will protect copyright information and will enable websites without infringed contents as this Copyright Act compels the Internet Service Provider(ISP) to participate in solving the problem of Copyright infringement. This is because just the copyright owners or the law enforcement agencies cannot solve copyrights infringement problems without the participation of the Internet Service Provider(ISP). According to this act when the copyright owner gets a court order identifying the 6 important details to show the court that their works were infringed.

Paragraph 3 of Section 32/3 states that the petition must contained these:

1. Name and the Address of the ISP
2. Work that was infringed
3. The work that infringes others works
4. Details of that infringement such as the date and time the rights owner discovered the infringement, the action of infringement and any evidences that led to the infringement
5. The damage that occurred or will occur from the infringement
6. The order from the court to the Internet Service Providers (ISP) to take the infringed content down from their online system.

When the Internet Service Provider(ISP) get order from the court, the ISP



can take down the infringed content legally, and the action of the ISPs does not mean they have violated the user's personal rights.

When the court gets the petition, the court has to conductive inquiry to see whether the petition possesses the proper details to show infringement or not, and whether the court should order the Internet Service Provider(ISP) to take down that infringed content or not. If the court orders the ISP to take down the infringed contents the ISP needs to take down that contents within a specified time.

The important thing in Section 32/3 is if the Internet Service Provider(ISP) is not the one who created the infringing works or is not the one who control that infringed contents and follow the court order by taking down the infringed content, the ISP will not bear liability for infringement before the court has the order and after the court order was discharged. Furthermore, the ISP does not have any liability for any damage arising from following the court order.

Another possible problem that shows up in the Copyright Act B.E.2537 amended by Copyright Act B.E.2558, Section 32/3 is the copyright owner whose work was infringed needs to gather evidence to show the court that the work belongs to him/her to get the court order to show the ISP to take down the infringed file. Considering Copyright Act B.E.2537 amended by Copyright Act B.E.2558 the copyright owner needs to prove that the work that was infringed belongs to him/her. Gathering this evidence will take time, so the infringed content will appear on the system longer. Dealing with the problem on the internet should be expedited as fast as possible but before that process starts many people can upload files on the internet or download files before the court order is delivered to the internet service provider. Studying other countries procedures should give us some idea to find the best way to solve copyright infringement on the internet.

The copyright owner can also sue a person who has uploaded infringed files at the same time when the Internet Service Provider gets the court order without any argument from that person. They may not have intended to upload the infringed file to the system, for example, they may have in a good faith believed that the content belonged to them, or they may not know that the work belongs to someone. Allowing the copyright owner to sue will certainly increase number of cases to the

court as well.

This research will study the methods of other countries to see how they deal with this problem and the procedures to prevent, and protect copyright infringement on the internet system, and to see which procedure Thailand should follow.

The problem of the Internet crime that Thailand confronts today is mostly connected to anonymity and the communication.

In the Copyright Act B.E.2537 amended by Copyright Act B.E.2558, No.2 Section 32/3 the law states to the Service Provider. There are many kinds of services involved in the computer system, for example, Application Service Providers (ASPs), Network Service Provider (NSPs), Internet Service Providers (ISPs), Managed Service Providers (MSPs), Storage Service Providers (SSPs), Telecommunications Service Providers (TSPs). A Service Provider is a company or agency that provides online service for the customer<sup>13</sup>.

Media Service Providers (MSPs) or Network Service Provider (NSPs) or Telecommunications Service Providers (TSPs) are enables an application to control media for a particular transport mechanism. An MSP is always paired with a Telephony Service Provider (TSP). The MSP allows application control over media transport during a communication session. An MSP handles the device-specific and protocol-specific mechanisms required to enact these controls, and communicates with its paired TSP or an application through use of the methods. The MSP companies that are best known in Thailand are, for example, the Office of the National Broadcasting and Telecommunications Commission, TOT Public Company Limited, TRUE Corporation Public Company Limited, Triple Three Broadband Company Limited, TT&T Company Limited, Samart Communication Service and Advanced Info Service Public Company (AIS)

An Internet Service Provider (ISP) is an organization that provides services for accessing, using, the Internet. Internet Service Provider may be organized

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<sup>13</sup> Xfinity “*What Are Internet Service Providers? (ISPs)*” <http://www.xfinity.com/resources/internet-service-providers.html> (Accessed December 18,2015)

in various forms, such as commercial, community-owned, non-profit, or otherwise privately owned.

Internet services regularly provided by ISPs include Internet access, Internet transit, domain name registration, web hosting, Usenet service, and colocation center.

One of the Internet Service Providers can play several roles, such as an access provider, host service provider, information location tool provider or content provider. The different roles may affect the liability of the Internet Service Provider.

In Thailand there are two kinds of Internet Service Provider (ISP), Commercial ISP and Non-commercial ISP. ISPs may take part in peering that is an arrangement for purpose of exchanging traffic between users of each network. Peering is distinct from transit. Multiple ISPs interconnect at peering points or Internet exchange points allowing routing of data between each network, without charging one another for the data transmitted. Companies that are ISPs in Thailand, for example, the Office of the National Broadcasting and Telecommunications Commission, Jasmine internet Company, Samart Info Net Company, CS Loxinfo Company, TOT Public Company Limited, Advanced Info Service Public Company (AIS). According to data from the Office of the National Broadcasting and Telecommunications Commission (NBTC) there are 128 public companies who have got the licenses from NBTC to be legal ISP in Thailand.

In Copyright Act B.E.2537 amended by Copyright Act B.E.2558, NO.2, Section 32/3 states that there are two types of the Service Provider :

1. A Service Provider who provides the internet access, for example, True Company, Advanced Info Service Public Company (AIS), for themselves or for a third party
2. Material Storage, for example, Pantip, Youtube, Facebook and 4shared

In the Copyright Act B.E.2537 amended by Copyright Act B.E.2558, when the copyright infringement was discovered, the law used was the Computer Crime Act B.E.2550 (2007) in Section 3, which states that an ISP is

1. A person who, either in his own name or in the name of or for the benefit of, another person, serves another person in accessing the internet or capable to communicate by other means through a computer system.
2. A person who stores computer data for the benefit of another person under1

From the Computer Crime Act B.E.2550 (2007) can tell that the meaning of “Service Provider” in the Copyright Act B.E.2537 amended by Copyright Act B.E.2558 is the same as in the Internet Service Provider in the Computer Crime Act B.E.2550

We will focus on developed countries, for example, the United States of America, the European Union, Canada and the country in South East Asia for example Malaysia Singapore to find the best ways to make copyright infringement laws in Thailand more effective in the next Chapter.

## **CHAPTER 3**

### **THE PROTECTION OF THE COPYRIGHT INFRINGEMENT IN OTHER COUNTRIES**

Because the Law of Copyright of the United States of America and the Law of Copyright of the Europe Union are model laws for this Act, so this thesis will further explain these two laws

Legal systems are generally of four systems : common law or know as case law is law by judges, courts deciding individual cases, but in addition have an effect on future cases. One third of the world's population live under common law jurisdiction or in systems mixed with civil law. Common law was propagated in the colonies of the United Kingdom, including India, the United States (both in the federal system and 49 of its 50 states). The common law system puts the weight on court decisions. Common law courts have the authority to make laws if no legislation exists.

#### **3.1 Common Law system**

In common-law jurisdictions, the main remedies available to the copyright owner are instructions to control the continuation of infringement, and damages to compensate the copyright owner for the damage caused by any infringement to the value of their copyright.

Infringement under common laws provisions can be separated into two kinds :

##### **3.1.1 Direct infringement**

According to the Copyright Act of 1976, the copyright owner has the exclusive right to, and can authorize, any activities, such as reproducing the copyrighted work in copies, distributing copies of the copyright work to the public. Many cases of online copyright infringement come from the action by individual

users<sup>14</sup> A person who without authorization of the right owner 's exclusive rights or authorizes another person to do so is liable as a direct infringer by reproducing, adapting, distributing, publicly performing or publicly displaying the copyright work of another without authorization.

United States of America law states that the copyright owner must prove that :

1. The copyright owner owns a valid copyright of that work (The owner must show the ownership of the copyright)
2. The person who infringes copies or authorizes the copying of protected elements of the works (The court refers to the action as copying even though distribution, performance, and display need not involve copying)

Direct infringement is when someone, without permission, does something only the copyright owner has the right to do or authorize to do. For example, only the copyright has the right to make a copy or authorize the making of a copy. When a person makes a copy without permission or authorization from the copyright owner, it is considered a direct infringement.

### **3.1.2 Indirect Infringement or Secondary Liability**

Indirect infringement or Secondary liability is when a person contributes to, induces, or is otherwise responsible for directly infringing acts by another person. Secondary liability in copyright has come about via case-by-case decisions. The person who contributes has to have the actual right and actual ability to control the infringement

In copyright infringement not only can the right owner usually sue the user but also the ISP who acts as the conduit for such infringing activities. The ISP is directly liable based on the actions of its subscribers, because the ISP provides Internet Access or some other service to the primary infringer.

Indirect infringement refers to persons who deal with infringed

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<sup>14</sup> COPYRIGHT ACT, CHAP. 1, Sects 106-120 <https://www.law.cornell.edu/copyright/copyright.act.chapt1b.html> (Accessed April 29,2016)

copies without legal authority or permit a public performance of a work. These provisions usually concern commercial dealings through sales of copies, commercial distribution, or trade. For example, the personal sale of infringed copy items is considered a violation of indirect infringement secondary infringement in common-law.

There are generally two kinds of indirect infringement developed by courts

### **3.1.2.1 Vicarious liability<sup>15</sup>**

Vicarious liability was developed from the theory of responsibility by the superior for the acts of a subordinate.

The third party has the right and ability to control the actions of a direct infringer is considered a vicarious liability in common law. The person who controls the action must get direct financial benefit from the infringement may held liable as a vicarious liability.

The first element of the vicarious liability is the Internet Service Provider has the right and ability to exercise control over the activities of the users in particular.

Second, the Internet Service Provider gets direct financial benefit from the infringing activities of its users.

### **3.1.2.2 Contributory liability<sup>16</sup>**

Another form of Indirect Liability is liability on the part of someone who is not directly infringing one of the exclusive rights of a copyright owner but making contributions to the infringing acts of others. A person who commits an act of infringement must have knowledge of the act itself.

Assistance to or encouragement of the direct infringer is considered a contributory liability in the common-law. A person becomes liable as a

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<sup>15</sup> Margaret Jane Radin and John A. Rothchild and Gregory M. Silverman, **Intellectual Property and the Internet**. 212(2004),

<sup>16</sup> Ibid, 227

Contributory Infringer if the person is knowledgeable of the infringing activity, induces or contributes to the infringing conduct of the primary infringer and allows the alleged infringing content on their system so that any user can access that infringed content.

There still is having another form of indirect infringement called Inducing Liability, if any person actively induces infringement of a patent. A person who does not commit direct infringement, but asks or induces another person to do so, or sell a product with advertising, or instructions about infringing use, may be held liable for inducing infringement.

## **3.2 Common Law jurisdiction in other countries**

### **3.2.1 United States of America**

The legal system in the United States is common law. In 1998, the law known as the Digital Millennium Copyright Act was enacted by Congress. This act was an attempt by the U.S. to adapt their copyright law to the challenges posed by digital technologies and the online environment.

The Digital Millennium Copyright Act (DMCA)<sup>17</sup>

In 1998 the Digital Millennium Copyright Act incorporated a series of affirmative or safe harbors for the Internet Service Provider that might have been deemed a secondary liability for the actions of their subscribers in infringing.

The Digital Millennium Copyright Act (DMCA) tries to find the balance among the interests of the Internet Service Providers, The Subscribers, and the Copyright owners.

The Copyright Act details the several exclusive rights held by copyright owners, with the aim of encouraging authors to create original work but also to ensure that the works created are reasonably available to the public. The limitation on the exclusive rights of copyright owners is in the 17 U.S.C. Section

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<sup>17</sup> Cornell University Law School “17 U.S. Code S 512 – Limitation on liability relating to Material online | US Law | LII/Legal Information Institute” <https://www.law.cornell.edu/uscode/text/17/512> (Accessed November 11,2015)



512<sup>18</sup> of the Digital Millennium Copyright Act (DMCA).

In 17 U.S.C., Section 512 (2006)<sup>19</sup> “the service provider offering the transmission, routing or providing the connections for the digital online communication between or among points specified by a user, material or the user’s choosing without modification to the contents of the material as sent or received or a provider of online service or network access or the operator of facilities therefore.”

There are three terms for Service Provider :

1. Internet Service Provider (ISP) : a business or organization that offers a user access to the Internet and related services which allow a subscriber to communicate with others and access information on the internet.

2. Online Service Provider (OSP), including ISP, and IAP : provides Internet access to the subscriber.

3. Internet Access Provider (IAP)

The DMCA contains safe-harbor provisions for online service providers from copyright infringement claims made by their customers or users. To take advantage of this provision, the Internet Service Provider needs to receive notice and take down procedures by removing infringed contents. The copyright does not have to be registered with the United States Copyright Office to take advantage of this DMCA provision.

17 U.S.C. Section 512 of the DMCA creates four new limitations on liability for copyright infringement by online Service Providers. The limitations are based on the following four categories of conduct by an ISP<sup>20</sup>

### **1. Transitory communications**

Section 512(a) limits the liability of an ISP in certain circumstance. The ISP provides data conduit transmission, digital information from one point of the network to another user. The limitation covers transmission, routing and providing the network connection for the information.

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<sup>18</sup> Section 512 limits online Service Provider liability for direct liability and indirect liability (contributory and vicarious liability)

<sup>19</sup> *Id.*

<sup>20</sup> *Supra* note 15. pp.286

An Internet Service Provider's activities must fall under these conditions

1.1 The transmission must be initiated by an other person, not by the ISP.

1.2 The transmission, routing, connection or copying must be carried out by the automatic technical process without selection of material by the ISP.

1.3 The ISP must not limit the reception of the material.

1.4 Any intermediate copy must not be accessible to anyone other than the anticipated recipient.

1.5 The material must be transmitted with no modification to its content.

## **2. System Caching**

Section 512(b) limits the liability of an Internet Service Provider for the practice of retaining copies for a limited time of material that has been made available online by a person other than the ISP and transmitted to a subscriber at their direction. The limitation is subject to these following conditions :

2.1 The content must not be modified.

2.2 The Internet Service Provider must conform to refreshing the material from the original location.

2.3 The Internet Service Provider must not interfere with technological information to the person who posted the material.

2.4 The Internet Service Provider must limit user access to the material in accordance with conditions on access, for example, password protection imposed by the person who posted the material.

2.5 Any material that was posted without copyright owner authorization must be removed or blocked promptly once the Internet Service Provider has been notified.

## **3. Limitation for information Residing on systems or Networks at the Direction of Users**

Section 512(c) limits the liability of an Internet Service Provider for infringing material on a website or other information provided hosted on its system.

Apply for storage at the direction of the user. In order to meet the limitation, it must comply with these conditions :

3.1 The ISP must not have knowledge of the infringing activities, or in the absence of actual knowledge it must not be aware of facts or circumstances from which infringing activities are apparent. Under this knowledge standard, the ISP is eligible for limitation on liability only if the ISP does not have actual knowledge of the infringement.

3.2 If the ISP has the right and ability to control the infringing activity, it must not receive financial benefit directly from the infringing activities.

3.3 Receiving proper notification of claimed infringement, the ISP must take down or block access to the material. Under the notice and takedown procedure, a copyright owner submits a notification to the ISP if the ISP receives proper notification, the ISP must promptly remove or block access to the material identified in the notification. Thus the ISP is exempt from any liability based on having to take down the material Section 512<sup>21</sup> (g) Replacement of removed or disabled material and limitation on other liability.

(1) No liability for taking down generally. Subject to paragraph

(2) A service provider shall not be liable to any person for any claim based on the service provider's good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing.

3.4 Section 512(c) established procedures for the proper notification. The Internet Service Provider must designate an agent to receive the notifications of claimed infringement. The agent's contact information must be made available on the Internet Service Provider own site through registration with the Copyright office. The Notification to the designated agent must contain the identification of the infringing materials and information for the Internet Service Provider to locate the infringing materials

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<sup>21</sup> *Supra* note 17

The Internet Service Provider is immune from the damages if it removes or blocks access to the infringing materials in notification. The Internet Service Providers are not liable for any good faith removal whether the materials are infringed or not.

In order to protect against the possibility of erroneous action, Section 512(g)(1) allows the subscriber to respond to the notice and take it down by filing a Counter Notification. If the subscriber serves the counter notification that the material was removed or disabled through a mistake or misidentification unless the copyright owner files an action seeking a court order against the subscriber. The ISP must put the material back within 10-14 business days after receiving a counter notification.

The DMCA provides protection from a wrongful claim of copyright infringement by requiring the Service Provider to notify the person who posted that material promptly when it is removed because of a takedown notice. That person has the right to submit a counter notification asking their materials to be put back without a specific time limit for submitting it if they in good faith believe that the material was wrongly removed and are prepared to state that their contents do not infringe any Copyright owner; otherwise they might be challenged by the copyright owner.

The Internet Service Provider bears liability for knowingly making false claims in a DMCA takedown notice or counter notification.

According to Section 512(c), the DMCA imposes conditions on an Internet Service Provider to receive a degree of exemption from liability for third-party acts. ISPs will be exempt from direct liability, contributory, or vicarious liability for third party copyright infringement. The primary steps that the ISP must follow are :

1. Designation of an agent

In addition, the ISP is required to designate an agent by the Copyright office to receive notifications of copyright infringement. The Digital Millennium Copyright Act requires an ISP to register to avoid liability for infringing material found on their system.

2. Notification

When a copyright owner finds a website that is using its images without permission, the copyright owner must contact and send a letter to the ISP that

hosts the responsible website, to report the infringement, and request they stop the infringement. A Digital Millennium Copyright Act (DMCA) takedown notice is the official name for the notification letter from a copyright owner to the ISP. The DMCA requires the copyright owner put the ISP on notification in detail but allows notification by means that comport with the designated format substantially rather than perfectly.

The Notification must be in writing sent to the Internet Service Provider or agent. The notification must include identification of copyrighted work, infringed material and location of the infringing material

### 3. Takedown procedure

The Digital Millennium Copyright Act provides safe harbor for the Internet Service Provider from copyright infringement liability for passive or automatic action. The internet service provider may qualify for the exemption from liability of transitory network community, system caching, online storage, or linking of infringing materials. When a copyright owner finds infringing content on the internet and requests to the Internet Service Provider take down that content, the Internet Service Provider must remove that content expeditiously, or disable access to the infringing content.

During the takedown procedure, the Internet Service Providers must give a warning message to the alleged infringer to tell him/her if there is a repeat of the copyright infringement it can lead to the deletion of the account and all its content.

Responding to a Digital Millennium Copyright Act Takedown Notice, If an Internet Service Provider receives a Digital Millennium Copyright Act takedown notice, the Internet Service Provider must respond by removing the infringed material, automatically without making any judgment about whether the content is infringing or not. The public people will receive notification if they try to share the infringed contents on the internet.

## **4. Limitation for Information Location Tools**

Section 512(d) relates to hyperlinks, online directory, search engines limiting liability for acts of referring or linking users to a site that contains infringing

material, by using such information location tools if one follows these conditions :

4.1 The ISP must not have knowledge that the material is infringing. The knowledge standard is the same for under the limitation for information residing on systems or networks.

4.2 If the ISP has the right and ability to control infringing activity, the ISP must not receive a financial benefit directly to the activity.

4.3 Receiving the notification, the ISPs must take down or block access to the material.

The DMCA was enacted both to safeguard copyright enforcement on the Internet and to provide immunity to an ISP from copyright infringement liability action in which the ISP engaged in the technological process initiated by another without the knowledge of the ISP. Protection of an innocent ISP disappears at the moment the ISP loses its innocence (at the moment the third party is using its system to infringe).

Besides the Online Copyright Infringement Liability Limitation Act (OCILLA), an ISP can be put on notice for infringing material on its system by one of the following two ways :

1. A notice and take down is a written notification from the copyright holder to the Service Provider's designated agent to claim damage from infringements.

2. The existence of red flags

Red Flags are known as warnings or alarms of any suspicious, inappropriate activities. Red flags contain both subjective and objective elements. Subjectively, the ISP should be aware of the content residing on their system. Objectively, ideally operators would be aware of the any infringing activity. Notice from the Copyright Owner has to include the following:

“1. A physical or electronic signature of an owner that is allegedly infringed.

2. Identification of the copyrighted work claimed to have been infringed

3. Identification of the material that is claimed to be infringing or to

be the subject of infringing activity and that is to be removed or access to that which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.

4. Information that is sufficient to allow the service provider to contact the complaining party, such as an address, telephone number or an electronic mail address

5. A statement to show that they have a good faith to believe that the usage of the content is not authorized by the copyright owner, its agent, or the law.

6. A statement that the information in the notification is correct and under penalty of perjury that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.”

#### Counter Notification

The Digital Millennium Copyright Act (DMCA) provides protection from a wrongful claim of copyright infringement by requiring the Service Provider to notify the person who posted that material promptly when it is removed because of a takedown notice. That person has the rights to submit a counter-notice asking that its material be put back without a specific time limit for submitting it if he/she in good faith believes that the material was wrongly removed and is prepared to declare that its content is not infringing on any copyrights owner; otherwise, they might be intimidated by the copyright owners. The Service Provider is required to replace the disputed content within 14 days. Internet users may claim damages against any person who knowingly, materially misrepresents content as infringed.

The Counter Notification must be in writing sent to the Internet Service Provider. The Counter Notification must include the identification of removed material and its location and states that material was removed or access was disabled as a result of mistake or misidentification of the material.

An ISP bears liability for knowingly making false claims in a DMCA takedown notice or counter-notice.

Similar to the specific requirements for a copyright owner’s notice, there are specific requirements for a counter notification:

“To be effective under this subsection, a counter notification must be

a written communication provided to the service provider's designated agent that includes substantially the following:

(A) A physical or electronic signature of the subscriber.

(B) Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.

(C) A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.

(D) The subscriber's name, address, and telephone number and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber's address is outside of the United States, for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification under subsection (c)(1)(C) or an agent of such person."

### **5. Adherence to injunctive orders<sup>22</sup>**

When an Internet Service Provider (ISP) receives notification from a copyright owner or the copyright owner's agent of an infringement claim: Upon receipt of the notification, certain safe harbor guidelines exist. The ISP must promptly block access to its, or remove the alleged infringing material adhere to and be qualified by the ISP.

A Copyright Alert System or CAS is used in the United States to alert, educate and/or punish ISP subscribers based on an allegation of the use of peer to peer and/or BitTorrent file sharing, which distributes copyright materials without authorization.

Moreover, a monitoring service body working on behalf of the participating copyright owners will issue a report on discovery of infringing. CAS is

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<sup>22</sup> Heinonline "*International Take-Down Policy : A Proposal for the WTO and WIPO to Establish International Copyright Procedural Guidelines for Internet Service Providers*" <http://heinonline.org/HOL/LandingPage?handle=hein.journals/hascom22&div=25&id=&page=> (Accessed November,19 2015)



also known as the “Six Strikes Program”, a name which given for six electronic warning notifications sent to a user in any copyright infringement by an ISP. These electronic warning notifications are in the form of pop-up messages and e-mails before stronger measures are taken by the ISP. The messages serve as a vehicle to inform the user that his account is suspected of being used to infringe copyright, and to warn of potential consequences.

The Digital Millennium Copyright Act (DMCA), Section 512(f) establishes civil liability when there is any misrepresentation in a notice :

“Any person who knowingly materially misrepresents under this section

(1) that material or activity is infringing, or

(2) that material or activity was removed or disabled by mistake or misidentification, shall be liable for any damages, including costs and attorneys’ fees, incurred by the alleged infringer, by any copyright owner or copyright owner’s authorized licensee, or by a service provider, who is injured by such misrepresentation, as the result of the service provider relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it.”

There is a famous example case, *A&M Records, Inc. v. Napster, Inc.*<sup>23</sup>, should be considered since it is a clear landmark case for ISPs’ liability if they allow illegally file-share on their website which can tell how copyright owner is damage from the act of the infringer. Internet Service Providers (ISPs) have direct relationship with internet users and this is why ISP be counted as a one who should have liability of illegally file-share. ISP are highly possible to encourage and educate their end-users to use internet with a good moral and respect to copyright’s owner. They also efficiently block users’ access to illegally websites.

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<sup>23</sup> *A&M Records, Inc. v. Napster, Inc.*, 239 F.3d 1004 (9th Cir. 2001)

Napster at first was a small Internet business located in San Mateo, California. It makes copyright MusicShare software available for their users to freely download. Then, their users are able to share MP3 files with others logged on to the Napster system. Transitory indexes and directories support the users search the songs they seek. The issue is that while their users download music shared, neither Napster nor its users own the copyrights.

A&M records, as the music company plaintiffs filed a motion for partial summary judgment on the issue of liability for copyright infringement. The district court found that the infringing MP3 files do not pass through Napster's system within the meaning of Title II, meaning that the safe harbor provision does not apply. In other words, the court found that peer-to-peer technology, in which users interconnect and interchange information over the Internet between them, without the connection or transmission path passing directly through a facilitator's systems, is not covered by the safe harbor provisions. The court also held that Napster did not meet the general requirement of having, announcing, and enforcing a policy of terminating repeat infringers. The Ninth Circuit also rejected Napster's fair-use defense.

After the case mentioned-above, it occurred that there is the impact of file-sharing on sales of authorized copies and industry revenues. However, surprisingly it does not have only negative effects as many people especially, music industries have foreseen. There are many interesting researches have proved that although the revenue from CD sales has decreased in the era of post-Napster case, the revenue of live concern dramatically has increased.

J.H. Mortimer et al./Information Economics and Policy 24 (2012) 3–14

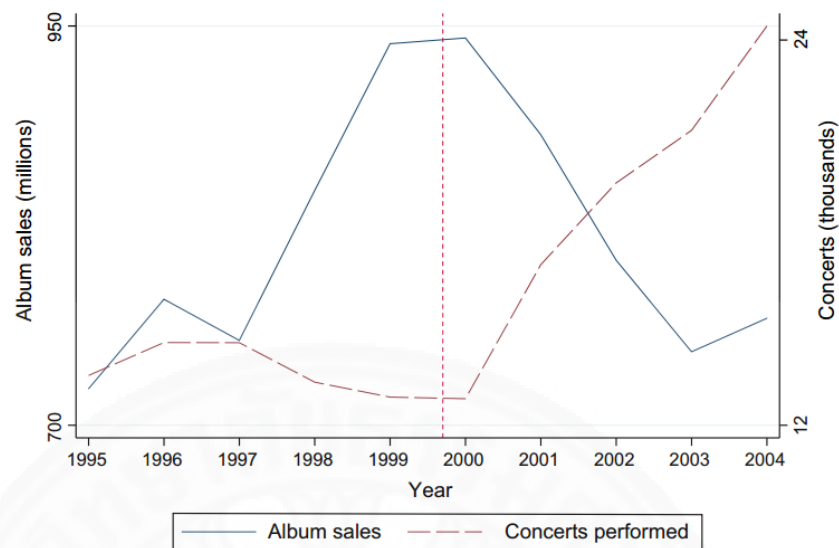


Fig. 1. Album sales and concerts, 1995–2004.

As we can see from the graph<sup>24</sup> above, the researchers find a substantial decline in album sales following the beginning of Napster. However, the researchers also find that conversely the concert revenue increases at a substantially higher rate following the entry of Napster. Moreover, they also find that at the beginning of Napster, the concert revenues for the highest-ranked artists were mostly unaffected. On the other hand, album sales for top-ranked artists significantly decreased following the entry of Napster.

It can be concluded from the research that file-sharing has an effect on the revenue of CD-sales; however, artists appear to receive little or no benefit from file-sharing in terms of increasing demand for their concerts. This may be because file-sharing of music by the internet causes most people widely recognize music shared online and increasing awareness of the artists' music. As a result, it can increase demand for live concert performances by those artists, as well as any benefit loss in recorded music sales from illegal downloading.

<sup>24</sup> Information Economics and Policy “Supply responses to digital distribution: Recorded music and live performances” [http://faculty.chicagobooth.edu/chris.nosko/research/nosko\\_iep.pdf](http://faculty.chicagobooth.edu/chris.nosko/research/nosko_iep.pdf) (Accessed April 4, 2016)

Infringement is from outside the country

The United States courts have held that a foreigner's activities outside the United States can infringe US copyright law. As a result, the US copyright law is being used with increasing frequency against online activities that occur outside American borders.

Another country under in the common law system is Malaysia, where, the owner only has exclusive copyright ownership for a specific period. It is governed by the Copyright Act 1987. There is no registration system for copyright but instead an Affidavit or Statutory Declaration is given to the copyright owner.

### **3.2.2 Malaysia**

Law of Malaysia Act A1420 Copyright (Amendment) Act 2012, Malaysian law is mainly based on the common law legal system from the law of Malaysia Act A1420 Copyright Act 2012 (Amend from the Copyright Act 1987).

In general, the reproduction of work in any shape or form is controlled by the copyright owner, and he alone has the exclusive right to do so. For example, the owner of a play, show or performance has the exclusive right to control publication and/or distribution in whole or/in part of copies of the content, by sale or other means of transfer of ownership, or commercial rental to the public.

There are two types of infringement in Malaysian law

#### 1. Directly infringement

- Reproduction in any material form, performances, shows or plays, or distribution to the public

- Communication by cable or broadcast of the whole work or a substantial part thereof, either in its original or derivative form

- Importation of any article into Malaysia for the purpose of trade or financial gain

#### 2. Indirect infringement

- Sale or rental of any infringing copy

- Sale hire or any means of trade, exposure or offer for sale or hire of any infringing copy

- Distribution of infringing copies
- Possession, other than for his private and domestic use, any infringing copy
- Trade, exhibition in public of any infringing copy;
- Importation into Malaysia, other than for his private and domestic use, an infringing copy
- Use or intention to be used for the purpose of making infringing copies
- Work performed in public
- Proof of any infringement, or the copyright owner lies, or fails to provide sufficient evidence.

#### Malaysian Copyright Act and DMCA

Copyright Act 1987 remains in the amendment (Act A1420) of 2012. However, Part VIB 'Limitation of Liabilities of the Service Provider' Sections 43B-I, was added, which provides a safe harbor provision for internet intermediary liability for copyright infringement. The provisions of the Malaysian Act are similar to the Digital Millennium Copyright Act (DMCA) in the United States in which Internet Service Providers and content aggregators are provided exemption from liability for copyright infringement if they protect copyright owners by removing or disabling access to infringing files.

Because Malaysia is under the common law system, an ISP is not liable if he/she does not have knowledge that the work or activity in their system is infringing.

Malaysia's provision is similar to the United States, so they provide exemption for the ISP from liability if the service provider is "in good faith" and agrees to remove the copy or other work or activities from its network

#### Notification and Take Down

A copyright owner whose their work was infringed may notify the Internet Service Provider of the network of such infringement. The way to notify the Internet Service Providers by issuing to the Service Provider a notification as required

by the Minister and Service Provider that shall remove the infringed content or disable any access within 48 hours according to Section 43H, provided that the rights owner undertakes the compensation arising from such notification

#### Counter Notification

A person who has uploaded files that were removed by the Service Provider can issue a counter notification to the Internet Service Provider to restore those files or access to the network system, but has to undertake if arising of the damage after send the counter notification to the Service Provider.

#### The Infringement from outside the country

If the infringing material comes from an online network outside the country, the court may order the Service Provider to disable access to that material to eliminate that material

The United Kingdom (UK) is also under the common law system except Scotland. In the United Kingdom there have been many infringements on the internet system, for example, in the music industry, or game services, by downloading or file sharing.

#### **3.2.3 The United Kingdom**

The Intellectual Property of Copyright Owners in the United Kingdom is protected by The Copyright, Designs and Patents Act 1988 by not allowing anyone to share infringed files.

In the United Kingdom the law of Digital Economy was enacted to increase the penalties for those who infringe others' copyright work on the internet. The law also exempts Internet Service Providers that provide the monitoring system.

#### Notification

Section 124(a)(3) of the Communication Act 2003 directs the copyright owner to send the report to the Internet Service Provider within one month so they can gather evidence to show that there is an infringed file appearing on their

internet, showing the subscribers IP address and details of the infringement where it happened if someone was infringed by their work on the internet.

When the Internet Service Provider receives that notification the law provides that the Internet Service Provider notify the subscriber who uploaded that infringed file on the internet about the report within one month of the Service Provider receiving the report.

The Digital Economy Act 2010 introduced a notification system aimed at educating consumers about copyright and to change consumers' behavior. Unlawful online peer-to-peer file sharing was the reason for this Act. The government is committed to implementing these provision.

### Monitoring

The Digital Economy provision provided the Internet Service Provider and the rights owner to Monitor activities on the internet to reveal activities that may cause infringement. There is rare human intervention in monitoring systems.

Not all file sharers will receive a notification. The system will focus on people whose internet accounts have been used to share copyright infringement contents more than once. This is different from the United States where people get a notification after the first time that they try to upload infringed files.

Another country that has common law jurisdiction is Canada (except Quebec) The Copyright Act of Canada, also known as Bill C-11, titled the Copyright Modernization Act, serves the same purpose.

An infringement of copyright is an action by any person, for the purpose of doing anything referred to as selling, trading, distributing or renting, to export, or attempt to export a copy of a work, or sound recording and that person knows or should have known that it was done without the consent of the owner of the copyright in the country where the copy was made. Subsection 2.11 does not apply with respect to a copy that was made under a limitation or exception under this Act or, if an actual infringement of copyright occurs through the internet or another digital network as a result of the use of that service. Copyright holders can notify Internet Service Providers (ISPs) about copyright infringements. Canadian law requires

internet service providers (ISPs) to forward notifications from copyright owners to customers whose IP address has allegedly infringed copyright, and inform the rights holder that the notice has been delivered;

Service providers are not liable for copyright infringement; they are only acting as intermediaries with respect to communication, caching, hosting activities, except if the service provider knows or should have known, acts of copyright infringement, if actual infringement results; if a web host knows from a court decision that the stored material infringes copyright.

#### The notice and notice

The “Notice and Notice” provisions of the Copyright Modernization Act allow copyright owners to indirectly communicate with those who infringed their content. The content owner cannot identify the person associated with an IP address; they can only identify the service provider that is providing an IP address. The Service provider may be able to identify the person associated with an IP address.

The Notice and Notice provisions operate as follows:

A content owner may choose to monitor websites where files are shared. If the content owner believes that there is an infringement of copyright, the content owner may choose to send an infringement notice to the service provider. The Notice and Notice provisions require the service provider make efforts to identify the person associated with the IP address listed in the infringement notice, and if that person can be identified, to forward the infringement notice to that person and notify the content owner that the notice was forwarded, or notify the content owner that it was not possible to forward the notice, and why. The service provider must keep records for six months. If the service provider receives an infringement notice, but does not comply with the Notice and Notice provisions, the copyright owner may seek damages against the service provider. The damages are at least \$5,000 and up to \$10,000.

#### Infringement from outside the country

If the infringement was made outside Canada, that would have been made under such a limitation or exception had it been made in Canada.



### 3.3 Civil Law (Civilian Law or Roman Law)

In civil law jurisdictions the courts lack authority to act if there is no legislation. Court jurisdiction is based on the law. Countries that have in civil law jurisdiction system are, for example, all European Union states (except the United Kingdom) All of East Asia (except Hong Kong), Switzerland, Indonesia, Vietnam, Thailand

#### Statutory law

Statutory law is a written law and postulated clearly. The statutory is for the absolute monarchy.

#### Religious Law or combinations of these.

Religious law is the ethical and moral code of the religious traditions.

There are many countries following the civil law system, for example France, Switzerland, Germany, most Central Europe and Thailand. The civil law system is a codified system of law. The civil law an counterfeit, originated in ancient Roman law.

#### 3.3.1 France

In the past new legal called “three strikes<sup>25</sup>” is enacted in France. The three Strikes law is come from the United States, it mandates court to impose the punishment to the person who convicted of an offense if they have been convicted previously. In 2013 the three strikes law has been suspended<sup>26</sup>. The court is able to punish the person who illegally downloading content by monitoring internet connection. Instead of targeting individual downloaders, the French government is focusing on commercial piracy. Pirates aren't in the clear though; those who share files illegally<sup>27</sup>.

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<sup>25</sup> Prof.Bernt Hugenholtz and Edited by Irini A. Stamatoudi, “*Copyright Enforcement and the Internet*”, Volume21, n.d. 163

<sup>26</sup> France ends Three-Strikes Law, <http://www.fastcompany.com/3014122/the-code-war/france-ends-three-strikes-law-stops-threatening-to-take-the-web-from-pirates> (Accessed June,5 2016)

<sup>27</sup> Alice Truong, “*good news for downloader in France : The country’s three-strikes*”, <http://www.fastcompany.com/3014122/the-code-war/france-ends-three-strikes>,”

The French Courts will take the hosts under the French Act. However, it is quite hard to limit a hosts' liability. Hosting applies to web-hosting businesses. The website is considered to be a host to their own business.

The Court considers that the users of a Service Provider are responsible for the contents they share.

First, the aim of a Service Provider is to allow users to download contents onto servers in order for them to be broadcast to the public

Second, users choose the content they want to upload by themselves, and

Third, users who access the service have to accept the terms of use which state that the contents do not harm someone else's rights.

Article 6-I-2° of the Act provides that a hosting provider may not be liable under civil liability except he/she was aware of unlawfulness. He will be liable if he/she did not take prompt action to withdraw the information or to prevent access to such information as soon as he/she was aware of it.

While hosting providers are required to promptly take action once unlawful content is brought to their attention, unlawful contents must be properly notified by them.

#### Notification

The hosts notify copyright owners of infringed content. If a Service Provider receives a notification which contains a description of such facts, the location of the information, and the reasons for the removal request, they have to take down that infringed content. Even if the notification was sent to the host that infringed content. Even if it had taken down the original content, it does not mean that the Service Provider does not have the duty to protect the infringement because if the same content being post and even by the different user the Service Provider may receive notification again.

Another model law that Thailand adopted in the new Copyright Act

is the Copyright Law from European countries.

### 3.3.2 Switzerland

Switzerland does not have a legal framework with rights and obligations of Internet Service Providers. Its legal doctrine and practices are similar to principles stated in the Electronic Commerce Directive of the European Union. Liability of Internet Service Providers depends on the closeness of the content.

There are many types of Internet Service Providers in Switzerland<sup>28</sup>

1. Content Providers make information, pictures music or films available to the public. When infringement arises, the content providers may bear liability. According to article 10 of the Swiss Copyright Act, a content provider is liable for the creation of infringing content and also the collecting of the content from a third person and making it available to any person by uploading that content to the server.

2. Access Providers provide internet access, a user with access to the internet system. They are obliged to inform the user specifically not to make any infringing material available. If a user does not comply, it is the obligation of the Access Provider to block the user's internet access that related to the infringing content. The access provider serves a transport function similar to that in Article 12 of the Electronic Commerce Directive. The Access provider can take down contents that is obviously illegal by blocking it, but it is not reasonable to search all of the infringing content, so the notice should be sent to a government agency. Blocking may not be in compliance with freedom of expression and freedom of information and the effect of the blocking may be uncertain. The access provider has to rely on legal advice, or the opinion of the government agency that received the Notice.

3. Host Providers leave the storage location in their servers. Liability for host providers depends on the activities of the user, similar to liability for hosting in Article 14 of the Electronic Commerce Directive. The notice and take down procedure can cause liability to host providers if the host provider has knowledge of the infringed content.

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<sup>28</sup> Internet Service Provider Liability ; The Swiss Perspective, [www.jipitec.eu/issues/jipitec-1-3-2010/2793/Weber\\_ISP\\_Ch.pdf](http://www.jipitec.eu/issues/jipitec-1-3-2010/2793/Weber_ISP_Ch.pdf), (Accessed March,27 2016)

4. Service Provider to provide transmission as a mere conduit

5. Link Provider

5.1 As transmission of content produced by a the third person

5.2 As they keep their own content available

A link provider refers to websites for substantial content. In theory, the link provider can check content and websites before linking to them, but in practice it is not feasible to supervise all linked websites. If a link provider does not recognize obviously the infringed content, he/she is liable as content provider.

According to the Special 301 Report 2014 of the Office of the United States Trade Representative (USTR), states that it continues to have serious concerns regarding Switzerland's system of online copyright protection and enforcement. From this, it can encouraged Switzerland to prove the copyright protection and opposed the online infringement to ensure that rights owner can protect their rights.”

The copyright law in the Switzerland at present time, according to the Swiss Federal Intellectual Property Office (IPI) : “The AGUR12<sup>29</sup> proposes that, in serious cases, access providers be required to block access, on the order of the authorities, to web portals featuring obvious illegal sources by means of IP and DNS blocking,” according to the release, referring to internet protocol and domain name system blocking. It also notes that the AGUR12 disagrees with prosecuting internet users. Downloading from the internet should remain permissible; unauthorized uploading, however, will remain illegal.”

An unofficial translation of the recommendations of the AGUR12 states that “downloading from illegal sources, as provided for in current law according to the prevailing doctrine, should remain legal.” According to some observers, despite being different, the Swiss system has not been detrimental to the market.

According to the IPI, on 6 June, “the Federal Council dealt with the AGUR12 recommendations and mandated the FDJP [Federal Department of Justice

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<sup>29</sup> Arbeitsgruppe zum Urheberrecht (AGUR12) the copyright working group [http://www.suissimage.ch/fileadmin/content/pdf/9\\_News/presentation/AGUR12.pdf](http://www.suissimage.ch/fileadmin/content/pdf/9_News/presentation/AGUR12.pdf) (Accessed April,7,2016)

and Police] to prepare a draft bill for public consultation by the end of 2015.”

### Swiss in the Eyes of the United States Special 301<sup>30</sup>

Separately, in its Special 301 Report of 2014, the Office of the United States Trade Representative (USTR) said it “continues to have serious concerns regarding Switzerland’s system of online copyright protection and enforcement.” It encouraged Switzerland “to demonstrate its commitment to copyright protection and to combating online piracy by taking steps to ensure that the rights holders can protect their rights.”

The report further said USTR “welcomes many aspects of the December 2013 report of the AGUR 12 working group on copyright and urges the Swiss government to move forward expeditiously with measures to appropriately and effectively address copyright piracy in Switzerland.”

As mentioned, Switzerland does not have a specific law to deal with the Internet Service Provider. The liability of Service Providers needs to be based on Conventional rules. Laws, however, must not be very different from those in other countries, especially in the European Union. Liability should be similar for the internet service provider as stated in the Electronic Commerce Directive.

Content providers are responsible for any infringement or illegal material. As soon as the provider realizes the existence of infringing content or illegal material, the law assumes the providers must delete that content.

### 3.3.3 Germany

Several people or companies can be involved with access of infringed content. Downloading any content from an internet page by not only participating with the actual provider of the content, and user content, but also involvement with the host provider who supplied the space for the contents, and the access provider of the user. The development of technical control one’s enables the service provider to monitor and trace any activities on the internet.

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<sup>30</sup> Switzerland Continues Work On Changes To Online Copyright Rules, <http://www.ip-watch.org/2014/08/06/switzerland-continues-work-on-changes-to-online-copyright-rules/> (Accessed April, 7 2016)

In Germany there is a debate on the obligation to prevent access to a webpage that contains infringed material (including child pornography or terrorist material) by blocking or deleting a webpage.

German legislature uses the term telemedia for all websites, search engines, chatrooms or blogs. Telemedia is regulated by Rundfunkstaatsvertrag (RStV) and the Federal Telemedia Act (TMG).

The Telemedia Act (TMG) separates the general principles of the service providers and their responsibilities<sup>31</sup> as mentioned in Section 7 of Telemedia Act General principles of the service provider ;

“(1) Service providers shall be responsible for their own information which they keep ready for use, in accordance with general legislation.

(2) Service providers within the meaning of Sections 8 to 10 are not required to monitor the information transmitted or stored by them or to search for circumstances indicating an illegal activity. This shall be without prejudice to obligations to remove or disable access to information under general legislation, even where the service provider does not bear responsibility pursuant to Sections 8 to 10. Privacy of telecommunications pursuant to Section 88 of the Telecommunications Act must be maintained.”

There are many kinds of service provider listed in the Telemedia Act (TMG)

1. Hosting providers provide storage and access to a third party through their computer system (server). Host providers can enable users to save contents on their computers. According to section 10<sup>32</sup> of the Telemedia Act, storing of the information, the law states that, “service providers shall not be responsible for the information of third parties which they store for a recipient of a service, as long as

1. They have no knowledge of the illegal activity or the information and, as regards claims for damages, are not aware of any facts or circumstances from which the illegal activity or the information is apparent, or

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<sup>31</sup> Telemedia Act (TMA) of 26 February 2007 (Federal Gazette I, p. 179) (accessed March, 7 2016)

<sup>32</sup> Telemedia Act (TMA) of 26 February 2007 (Federal Gazette I, p. 179) (accessed March, 7 2016)

2. Upon obtaining such knowledge, have acted expeditiously to remove the information or to disable access to it.

Sentence 1 shall not apply when the recipient of the service is acting under the authority or control of the service provider.”

Service providers are not responsible for the content they save for users if the Hosting Provider does not have such knowledge.

2. Access providers transfer the information to a user who requires access to internet. Access providers are excluded from any liability by the Telemedia Act if they limit transmitted information or provide access to the usage of information if :

2.1 Access providers do not initiate the transmission.

2.2 Access providers do not pick the address to transfer information.

2.3 Access providers do not select or change the transmission information.

In the Telemedia Act Section 8<sup>33</sup>, the service provider acting as a conduit of information

“(1) Service providers shall not be responsible for the information of third parties which they transmit in a communication network or to which they give access, as long as they

1. have not initiated the transmission,

2. have not selected the addressee of the transmitted

information, and

3. have not selected or modified the transmitted

information.

Sentence 1 shall not apply when the service provider deliberately works together with a recipient of his service to commit illegal acts.

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<sup>33</sup> Telemedia Act (TMA) of 26 February 2007 (Federal Gazette I, p. 179) (Accessed March, 7 2016)

(2) The transmission of information pursuant to Sub-section 1 and the provision of access to it includes the automatic, intermediate and transient storage of this information, in so far as this takes place for the sole purpose of carrying out the transmission in the communication network and the information is not stored for any period longer than is reasonably necessary for the transmission. “

An access provider bears liability if the access provider cooperates with a user of their service to use illegal materials.

3. Proxy-cache providers provide the transmission distance to the user and supply intermediate storage to speed up the transmission of accessed content.

In Section 9<sup>34</sup> of the Telemedia Act, the temporary storage for the accelerated transmission of information, service providers shall not be responsible for automatic, intermediate and temporary storage which serves the sole purpose of making more efficient the information's onward transmission to other recipients on their request, as long as they do not modify the information,

1. comply with conditions on access to the information,
2. comply with rules regarding the updating of the information, specified in a manner widely recognized and used by industry,
3. do not interfere with the lawful use of technology, stipulated in widely recognized and used industrial standards, to obtain data on the use of the information, and
4. act expeditiously to remove or to disable access to the information they have stored within the meaning of this provision upon obtaining knowledge of the fact that the information at the initial source of the transmission has been removed from the network or that access to it has been disabled, or that a court or administrative authority has ordered such removal or disablement. Section 8 (1) sentence 2 applies mutatis mutandis.

Proxy-cache servers are not liable for automatic temporarily limited caching. But requirements for the exemption are :

- 3.1 The original content must not be altered.

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<sup>34</sup> Section 9 Temporary storage for the accelerated transmission of information



3.2 The requirement for accessing the information must not be disregarded. Protection would be guaranteed by the proxy-cache providers.

3.3 The provider must compare the cache information to the original source to check whether it has been changed.

3.4 The proxy-cache is not allowed to obstruct data technology

The proxy-cache has to delete the caching if the original source is removed or blocked.

4. Content providers offer their own data through their own computer or server of the hosting provider. Content providers bear liability even if they provide their own content on their own computer or the server of someone else.

There is no liability for a person who provides his own content on his own computer or on the server of someone else.

The German legislation was guided by a commission of experts working on the standard of Europe-Level which means the German legislature adopted from Europe regulations.

### **3.3.4 China**

The Republic of China adopted a Western legal code in the civil law tradition specifically German. The establishment of the People's Republic of China in 1949 brought with a socialist law.

China has a largest population of the Internet users in the world and the rate of copyright infringement in the Internet system become a global problem with Chinese made pirated copies of films and recordings. The Chinese adopted legislation that control the Internet Service Provider with the safe harbors for the damages caused by their subscriber (the internet user)

There are 4 regulations concerning about the Internet Service Providers

1. Tort Law

2. Interpretation of Supreme People's court on several issues Concerning the Application of Law in Hearing Cases Involving Computer Networks Copyright Disputes

The interpretation law article 6-12 included the Notice and Takedown procedure similar to the Digital Millennium Copyright Act. The Internet Service Providers in China maybe held liable for the copyright infringement by their subscribers.

The Internet Service Provider is provided the immunity from damages if the Internet Service Provider removed the infringing contents after the Internet Service Provider received the Notice from the copyright owners. The interpretation also impose the liability of the copyright owners if they alleged the false infringement contents.

In the Interpretation the Internet Service Providers held the liability under the contributory liability of. There are no regulation in China concerning about the vicarious liability.

3. The Measures on Administrative Protection of Internet Copyright. The subscriber can file the notification and in article 7-10 the Internet Service Providers can restore the contents after received the counter notification.

4. The Regulation on Protection of the Right to Network Dissemination of information<sup>35</sup>.

The Internet Service Provider in China also engaged in monitoring the users.

The Internet Service Providers use automated computer program to check the contents that transmit in a network. When the Internet Service Provider found the problem they can deploy the target. The automated monitoring may not solve the problem of infringement that much because the contents will be removed before the monitoring. These days the automated monitoring is more functional than before because of the technology development forced the Internet Service Provider. The Internet Service Provider is forced to have to begin to search for new source to deal with the problem of the infringement.

The big problem from the monitoring procedure in China is the parties who try to infringe may pay the government to turn a blind eye to their

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<sup>35</sup> Internet Service Provider's vicarious liability versus Regulation of Copyright infringement in China, pp.375 <http://www.HeinOnline.com>

copyright infringement which leads to the corruption. About the foreign copyright owners in China. The foreign works enjoyed the super national treatment than the Chinese national. The State Council drafted the special administrative act to protect the interests of the foreigner. Copyright Law 2001 eliminated the super National Treatment but the foreigner can easily monitoring online copyright infringement and bring the action to the government and the government will have to take action against the copyright infringement.

### 3.3.5 European Union Countries

The law of the European Union<sup>36</sup> has two levels, the laws for the European Union, and the laws for all the 25 member countries. In the European Union there are three basic types of legislation : Primary Legislation, Secondary Legislation and International Agreements. For the member countries there are at least two types of legislation : National/Federal Legislation and Local Legislation.

Protection of copyright has attracted the attention of the Commission because of the need to ensure that goods and services can be moved freely. In the Commission's view, copyright owners will be denied use of the computer network to spread their work unless they are satisfactorily protected by copyright.

#### Primary Legislation

The treaties whereby the leaders of each member country agreed. The treaties are the constitution of law of the European Union.

#### Secondary Legislation

In the European Union, there are three basic types of European Union legislation : Regulations, Directives and Decisions. There are more types of rule that to consider but they are not legislation ; they are Recommendations and Opinions.

Regulation is similar to a national law. It is applicable to all member states without the need for national legislation. Regulations are equivalent to Acts of Parliament and do not need to be mediated into national law by means of

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<sup>36</sup> Prof.Bernt Hugenholtz and Edited by Irini A. Stamatoudi, "*Copyright Enforcement and the Internet*", Volume21, n.d., 7

implementing measures. As such, regulations constitute one of the most powerful forms of European Union law and a great deal of care is required in their drafting and formulation.

When a regulation comes into force, it overrides all national laws dealing with the same subject matter, and subsequent national legislation must be consistent with and made in light of the regulation.

Directives set out general rules to be transferred into national law by each country as they deem appropriate. National authorities must draw up legislation in order to conform with the directive within a certain time. A directive is a legislative act that sets out a goal that all European Union countries must achieve. However, it is up to the individual countries to devise their own laws on how to reach these goals.

Decision is issued by the Council or Commission; these are not of general application. They may be addressed to particular member states, individuals or companies and they are binding on those to whom they are addressed

The copyright law of the European Union consists of a number of directives, which the member states are obliged to enact into their national laws, and by the judgments of the Court of Justice of the European Union (including the European Court of Justice and the General Court). Directives of the EU are passed to harmonise the laws of European Union member states.

The Electronic Commerce Directive adopted in 2000 is set up for electronic commerce which provides laws for businesses and consumers. It establishes issues on the transparency and information requirements for an online Service Provider and the limitation of liability of an intermediary Service Provider. The Service Provider is a basic provider who gives the access to the internet, and transmission and hosting of the information. The directive provides for a system of liability exemption for the Internet Service Provider. If liability does not qualify under the directive, it will be determined by the national laws of the respective member states.

The Service Provider in the Directive is defined in Article 2 : “A service Provider is any natural or legal person providing an information society”

The Internet Service Provider according to the European Union engaged in mere conduit, caching and hosting services. All online activities must be engaged with at least one Internet Service Provider<sup>37</sup>.

Article 14 of the Electronic Commerce Directive is about the limited liability of a Service Provider who is a Host. This article states : “Where an information society service is provided that consists of the storage of information provided by a recipient of the service, Member States shall ensure that the service provider is not liable for the information stored at the request of a recipient of the service, on condition that

(a) the provider does not have actual knowledge of illegal activity or information and, as regards claims for damages, is not aware of facts or circumstances from which the illegal activity or information is apparent; or

(b) the provider, upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information.

2. Paragraph 1 shall not apply when the recipient of the service is acting under the authority or the control of the provider.

3. This Article shall not affect the possibility for a court or administrative authority, in accordance with Member States' legal systems, of requiring the service provider to terminate or prevent an infringement, nor does it affect the possibility for Member States of establishing procedures governing the removal or disabling of access to information.

#### Mere Conduit

Mere Conduit<sup>38</sup> in Article 12 means the transmission of communication in a network of information is provided a recipient. An Internet Service Provider carries data through its network. An Internet Service Providers has no control over the data and no liability if he does not initiate the transmission, nor select the reciever, nor modify the information in the transmission.

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<sup>37</sup> Liability of Intermediary Service Providers in the EU Directive on Electronic Commerce, <http://www.HeinOnline.com> (accessed March,27 2016)

The limitation on liability of a mere conduit is also written in the Electronic Commerce (EC Directive) Regulation 2002<sup>39</sup> in section 17<sup>40</sup> as well. Section 17 states that

(1) Where an information society service is provided which consists of the transmission in a communication network of information provided by a recipient of the service or the provision of access to a communication network, the service provider (if he otherwise would) shall not be liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that transmission where the service provider

(a) did not initiate the transmission;  
 (b) did not select the receiver of the transmission; and  
 (c) did not select or modify the information contained in the transmission

(2) The acts of transmission and of provision of access referred to in paragraph (1) include the automatic, intermediate and transient storage of the information transmitted where:

(a) this takes place for the sole purpose of carrying out the transmission in the communication network, and

(b) the information is not stored for any period longer than is reasonably necessary for the transmission.

### Caching

Caching is when an Internet Service Provider locates high demand content on Remote Servers and temporarily stores the copies on the local server in which the user can access the contents more quickly, but the Internet Service Provider does not modify the data. The important thing is that the Internet Service Provider

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<sup>39</sup> In Brief, “*Internet Service Providers, Copyright Infringement and Illegal Material*”, General liability under copyright law, <http://www.inbrief.co.uk/intellectual-property/internet-service-providers-copyright-illegal-material/> (Accessed March 28,2016)

<sup>40</sup> The Electronic Commerce (EC Directive) Regulation 2002

will not held liable if he removes it from the network or disables access to the infringed content by the time anyone has actual knowledge, or a court order.

The limitation of liability in caching is also written in the Electronic Commerce (EC Directive) Regulation 2002 in section 18<sup>41</sup> as well.

The Electronic Commerce (EC Directive) Regulation 2002 in section 18 states that “Where an information society service is provided which consists of the transmission in a communication network of information provided by a recipient of the service, the service provider (if he otherwise would) shall not be liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that transmission where

(a) the information is the subject of automatic, intermediate and temporary storage where that storage is for the sole purpose of making more efficient onward transmission of the information to other recipients of the service upon their request, and

(b) the service provider

(i) does not modify the information;

(ii) complies with conditions on access to the information;

(iii) complies with any rules regarding the updating of the information, specified in a manner widely recognized and used by industry;

(iv) does not interfere with the lawful use of technology , widely recognized and used by industry, to obtain data on the use of the information;

(v) acts expeditiously to remove or to disable access to the information he has stored upon obtaining actual knowledge of the fact that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

Hosting

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<sup>41</sup> The Electronic Commerce (EC Directive) Regulation 2002

Any individual user can rent space from a host and may post any kind of material. The Internet Service Provider will not be held liable for this until anyone has actual knowledge of the infringement. Or if anyone has removed or disabled access by the time anyone has actual knowledge. The Internet Service Provider will be held liable if anyone can control the contents.

The limitation of liability for hosting is also written in the Electronic Commerce (EC Directive) Regulation 2002 in section 19<sup>42</sup> as well. Section 19 states that Where an information society service is provided which consists of the storage of information provided by a recipient of the service, the service provider (if he otherwise would) shall not be liable for damages or for any other pecuniary remedy or for any criminal sanction as a result of that storage where

(a) the service provider

(i) does not have actual knowledge of unlawful activity or information and, where a claim for damages is made, is not aware of facts or circumstances from which it would have been apparent to the service provider that the activity or information was unlawful; or

(ii) upon obtaining such knowledge or awareness, acts expeditiously to remove or to disable access to the information, and

(b) the recipient of the service was not acting under the authority or the control of the service provider.

In the European Union the limitations on the Internet Service Provider are adopted from the limitations on the Internet Service Provider in the Digital Millennium Copyright Act of the United States of America. The European Directive uses a regime that is applicable to any type of infringement that occurs in Europe, whether it is copyright defamation or privacy rights. In this regime the Service Provider does not have to monitor the content of the material that is published by a customer. There is another regime that applies a different legal liability. In this regime Service Providers are forced to analyze all the content before posting, the

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<sup>42</sup> The Electronic Commerce (EC Directive) Regulation 2002



copyright agent<sup>43</sup>. Censorship is the suppression of speech, public communication or other information which may be considered objectionable, harmful, sensitive, politically incorrect or inconvenient as determined by governments, media outlets, authorities or other groups or institutions. The example to show the censorship procedure is the case between the A&M record Inc. v. Napster Inc. Napster<sup>44</sup> has a duty to control over their network to censor the inappropriate users and ensure that there is no copying, downloading, uploading, transmitting or distribute someone's work running on their system.

Under strict liability, the Service Provider bears liability whether it has knowledge<sup>45</sup> or control over any material disseminated by it or not. So the Service Provider must monitor all material that is posted on their system.

There are two levels of knowledge: 1. Actual knowledge if the Internet Service Provider knows that there is some material that violates other people's rights ; and 2. constructive knowledge, if the Internet Service Provider has clues or should have reasonably presumed that the material was infringed

The directive does not establish a Notice and Take down regime as it is found in the DMCA. But there are some parts of the regime under the DMCA.

1. The Online Service Provider (including the Internet Service Provider) must have a designated agent to receive the notice.

2. The Online Service Provider (including the Internet Service Provider) must determine the identity of the Agent to the Copyright Office.

The Notification must contain

- The name, address and electronic signature of the complaining copyright owner
- Sufficient information to identify the copyright work
- The infringing matter and its internet location

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<sup>43</sup> Seth F Kreimer. *"Censorship by Proxy : the First Amendment, Internet Intemedias, and the Problem of the Weakest Link"* pp.85

<sup>44</sup> Ibid, 88

<sup>45</sup> Brien Roche Law, Knowledge Constructive Actual Explained by Injury Attorney, <http://www.brienrochelaw.com/tort-law/tort-terms/k/knowledge/> (Accessed June 5, 2016)

- A statement by the owner that it in good faith believes that there is no legal basis for the use of that materials
- A statement that the complaining party is authorized to act as right's owner

And because a copyright owner has the right to protect his material, and the web creator has the right to spread any work freely without being removed or access disabled. And the Internet Service Provider (Host) has the right to specify the guidelines, it is also necessary to set up a put back procedure. The put back procedure is complete protection for all parties involved. They have the right to request reposting or replacement.

#### The Put Back Procedure<sup>46</sup>

The service provider is not liable if the removal or access-blocking is done in good faith when it has received a notice, or knows on its own that the material is infringing. Section 512 (g)(1)<sup>47</sup> states that a service provider shall not be liable to any person for any claim based on the service provider's good faith disabling of access to, or removal of, material or activity claimed to be infringing or based on facts or circumstances from which infringing activity is apparent, regardless of whether the material or activity is ultimately determined to be infringing.

The liability covers the disability of the access, or removal of the material, or activity claimed to be infringing. It does not sanction the removal of material that does not infringe unless it is necessary to disable access, or remove the alleged infringing content.

It is necessary to notify the user that the service provider has removed or disabled access to the infringed content and respond to the counter notification from a subscriber whose material was taken down, by sending a copy of the counter notification to the copyright owner who filed the notice to inform them

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<sup>46</sup> Digital Law Online : Notice and Takedown and Putback” <http://digital-law-online.info/lpdi1.0/treatise34.html>

<sup>47</sup> The Digital Millennium Copyright Act (DMCA) of 1998, U.S. Copyright Office Summary, <http://www.copyright.gov/legislation/dmca.pdf>, (Accessed on November, 18 2016)

that the service provider will replace the removed material or disable access to that material.

The service provider must notify the subscriber of take down, but if the subscriber challenges the take down, the service provider must restore the material within 14 business days. This gives the copyright owner time to file an infringement petition and get a temporary injunction ordering the continued removal or blocking of access to the alleged infringing material.

The put back procedure is an amendment in order to provide the sufficient protection to third parties whose materials could be taken down by the service provider.

Meanwhile, the service provider must make a reasonable effort to notify the user of any material taken down.

The service provider should follow the reasonable steps of sending an e-mail notice to an e-mail address associated with a posting, or if only the subscriber's name is identified in the posting, sending an e-mail to an e-mail address that the subscriber submitted with its subscription.

Under the DMCA the person who sends false Notification will be held liable, but there is no provision under this directive, so the national liability laws will apply.

### Monitor

Under this directive, obligation to monitor content that flows through its network, which the Internet Service Provider transfers or stores, cannot be imposed because it is almost impossible, or realistic.

The limitations of the Service Provider were written in the Electronic Commerce Directive 2000/31/EC, Article 14, and were implemented in Electronic Commerce Regulations 2002 Section 19.

The European Union Court can be ordered to block websites. Article 8(3) of Directive 2001/29/EC of 2001 states that "Member States shall ensure that right holders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right." The Court of Justice of the European Union (CJEU) decided that the Internet Service Provider

(ISP) may be ordered to block its customers' access to a copyright infringing website. The court found that an internet service provider "which allows its customers to access protected subject-matter made available to the public on the internet by a third party is an intermediary whose services are used to infringe a copyright."



## CHAPTER 4

### Analyzing Section 32/3

At this present time, people tries to find new methods to get the knowledge and further develop their valuable ideas so there will be the protection of it.

The concept of Copyright law is to protect the expression of the idea of the creative works and the technology developments, it leads to the problem that involve in the copyright infringement. Not only recording the data in digital files but also the broadcast in many electronic ways. Even technology facilitates the expression for the copyright owner but at the same time it also leads the right owners face with the infringement. Because it is easy to copy and broadcast the copyright works with less cost and get the same quality of the original works. The United States government tries to push many countries in the world to rectify their Copyright Laws by making the international treaty/agreement/contract in the World Intellectual Property Organization (WIPO) on the creation of a Free Trade Area. Some principles are about “technological Protection Measure”<sup>48</sup>, the liability of the Internet Service Provider.

The technological measure is the method for the copyright owners to control the usage of their works. While the copyright owners use the technological measure to protect their works, there are many computer technology experts find the measure to avoid the technology measure (circumvention of technological measure) to access and gain the benefit from others’ works.

The Copyright Act B.E.2537 is silent on the technological measure. Technological measure is stated in the drafted of new Copyright Act came from the agreement of free trade area between the United States and other countries, for example, the agreement between the United States and Singapore Free Trade Area

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<sup>48</sup> จักรกฤษณ์ ควรพจน์ และ นันทน์ อินทนนท์, ลิขสิทธิ์ยุคเทคโนโลยีดิจิทัล มาตรการทางเทคโนโลยีและทางเลือกสำหรับประเทศไทย (2550), โรงพิมพ์มหาวิทยาลัยธรรมศาสตร์: หน้า 63 (Jakrit Kuanpoj and Nandana Indananda, **Right in Digital Era Technological Measure and the option for Thailand**, Thammasat printing : pp.63)

(FTA) in Article 16.4.7(b)<sup>49</sup> “...effective technological measure means any technology, device, or component that, in the normal course of its operation, controls access to protected work, performance, phonogram, or other subject matter, or protects any copyright or any rights related to copyright” which enacted in Copyright Act B.E.2537 amended by Copyright Act B.E.2558, No.2,.

Section 3<sup>50</sup> states that “Technological Measure is the technology that is designed to protect the copy, control the access to the copyright works effectively.

After examined the procedure of each country to see the problem of copyright infringement in the internet system this analyzing will show how Thailand and other countries deal with the problem of Copyright Infringement in the internet system.

According to the Copyright Act B.E.2537 amended by Copyright Act B.E. 2558, No.2, in Chapter 2 and the laws of other countries in Chapter 3 : First thing to be mentioned is about the petition that the owner will send to the court, when the copyright owners have knowledge that their works are infringed the copyright owner has the rights to send the petition to get the court order to the Internet Service Provider (ISP) for takedown the alleged infringed contents that they found in the internet. The law states that the copyright owners must put the details in the petition. This is quite similar to the copyright act of other countries because the right owner is the one who knows his/her works the best and can show to the court that he/she is the owner of that work but gathering all those details might take time and it will let the infringed works be in the system longer.

In Thai Copyright Act, Section 32/3 there are some provisions that make the Copyright Law in Thailand be different from other countries such as the United States of America and European Union. The difference point between the liability of the Internet Service Provider in Thailand and other countries is in Thailand Section 32/3, which is only the supplementary law in order to be an option to solve the problem of copyright infringement. Even the Digital Millennium Copyright Act of the United

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<sup>49</sup> Electronic frontier foundation “*Seven lessons from a comparison of the Technological Protection Measure Provisions*” <https://www.eff.org/pages/seven-lessons-comparison-technological-protection-measure-provisions>

<sup>50</sup> Copyright Act B.E.2537 amended by Copyright Act B.E.2558

States and the Law of Copyright in the European countries are the Model law but there are many weak points to show

First, the right to free speech is a fundamental right in several countries. In digital age, people express their ideas through the internet. Thus access to the internet has become an important necessity for people and organizations to express their opinions and creativity. Accessing to, and using of, the internet strongly improve freedom of speech<sup>51</sup>.

Section17(5) of the Digital Economy Act of the United Kingdom states that “in determining whether to grant an injunction, the court must take account of ... (e) the importance of freedom of expression<sup>52</sup>”.

#### **4.1 The liability of the Internet Service Provider**

The law of Copyright Act B.E.2537 amended by Copyright Act B.E.2558 did not specify the liability of the Internet Service Provider only the limitation was written but in France the court held that the Internet Service Provider is a host of the internet system which means the Service providers cannot deny that they do not involve with the infringed contents posted by the user. The court thus focusing on the Service Provider first and the exemption will appear after the service providers take down that infringed contents.

In Europe, service provider’s liability for online activities can be found in the E-Commerce Directive and the Copyright Directive. Unlike the DMCA, however, the E-Commerce Directive pertains to any kind of illegal activity, not only copyright and related rights, but also defamation, misleading advertising, or infringement of trade marks. The online intermediaries could face as many different legal regimes.

Not all countries have adopted the Directives. The United Kingdom has implemented the E-Commerce Directive. In 2000, France amended its Liberty of Communications Act to protect online service providers. There were some differences already developed. For example, French legislation protects only hosting

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<sup>51</sup> Enrico Bonadio European Intellectual Property Review 2011 **File sharing, copyright and freedom of speech** pp. 599-608

<sup>52</sup> *Supra* note 18

intermediaries, not caching or access providers, from liability. Hosting providers are liable only if they ignore a court order to remove or block access to illegal material. Access and hosting providers must inform subscribers about technologies that would allow them to select or restrict access to certain services.

Online intermediaries can be found liable for hosting, storing or providing access to third party thus placing them in the role of online monitors. This part concludes that these developments are combining to foster an environment in which online intermediaries should, as a precautionary measure, consider monitoring online activities.

#### **4.2 The Notification procedure**

In Thailand the right owners need to get an order from the court and deliver it to the Internet Service Provider to take down the infringed content. But in other countries, for example, in the United States after the Internet Service Provider gets the notification from the copyright owners, the Digital Millennium Copyright Act takes down notice provision allows the right owners whose their works were infringed (by sending notification to the Service Provider) to take down that work. The right owners do not need to go to court to get the court order, like the right owners in Thailand. If the notification sent to the Internet Service Provider must contain the proper information, the Service Provider knows he is the owner of such content. This will expedite procedures so the right owners do not waste time going to the court.

#### **4.3 The notice and take down procedure in Thailand Copyright Act**

Apart from that, infringing content is not always visible at first. Non-professionals cannot always distinguish copyright infringements, so it might be difficult for judges to consider a petition from a copyright owner on an infringing matter, as infringing content often changes form. For example, if a user uploads an infringing Thai movie on the internet but changes the name of the content to another language, the rights owner will not know that his work has been infringed.

Copyright owners have the right to express, and to protect, their work available on the internet system, and their access web creators have the right to spread



their work freely without being removed or their access disabled. Internet Service Providers also have the right to specify the guidelines use, and have the right to transmit access to the system. A take down may not be in compliance with freedom of expression or the freedom of users. A take down procedure is based on the Copyright Act B.E.2537 amended by Copyright Act B.E.2558, Section 32/3. But content may be uploaded on the system many times, so if right owners have to send a petition to the court every time they find their works have been infringed, it will take much time, and the infringed content will still be running on the system available to any users.

Because Malaysia is under the common law legal system, knowledge of infringement is significant. The strong point of the copyright law in Malaysia concerns Notification. When a Service Provider receives Notification from a copyright owner, he has the right to protect himself from liability by taking down the infringed content, or disabling the access to the infringed.

The United Kingdom uses the notice and take down procedure to deal with infringement on the internet, because internet infringement causes massive problems in the United Kingdom.

The strong point of the notice and takedown procedure in the united Kingdom is the law provides the copyright owner to find the information involved with the infringement to show how he was damaged by that infringement, and to send it to the service provider. The service provider can then find the file sharer from the details that the rights owner gives him, and can send the notification to him.

Secondly, the law provides time for the copyright owner to send a report to the service, and the service provider has to send the Notification to the subscriber to share the infringed file. The timing will push the copyrights owner and the service provider to find the evidence to prove the infringement, and the notification will be delivered by the service provider within the time limit. The result is the service provider will immediately send the notification to the infringer so as not to be liable for infringement, and that will cause the contents to be removed faster with no time limit.

The weak point of the time limitation is the rights owner may not be able to find all the evidence to prove that someone infringed his contents, and that will cause

the infringed content to remain on the internet.

#### **4.4 The Notice and Notice procedure**

Canada is also under the common law system. Liability for copyright infringement is based on the knowledge of the Service Provider. The law governing the Service Provider in Canada is a notification system that warns a person who posts contents that infringe on someone else's rights on the system. But the notification procedure in Canada is quite different from other countries. It is called Notice and Notice system.

The Notice and Notice system states that Service Providers have a duty not only to tell a person that their contents have been infringed but also tell the rights owner that they have informed the person who uploaded infringed contents. The owner whose works was infringed will be informed by the Service Provider after the Service Provider delivers the Notification to the person who infringes the Copyright Owner's work. This will make the copyright owner confident that the person who infringed his work has gotten the Notification, and that the files will be taken down expeditiously, and to ensure the copyright owner that the Service Provider is not involved with the infringement.

One objective of the Notice and Notice system is to inform of online infringement on the part of the person who uploaded the infringed content, and to raise awareness in that person if the account's owner is not the one who uploaded the infringed contents, or that the accounts are being used for such purposes by others.

Delivering the notice to the person who infringed the content and informing the copyright owner will help them to better understand the details of the alleged infringement.

Receiving a notification that contains the relevant information will help them better to understand the details of the allegation, including the date and time of the allegation. In the notification a copyright owner alleges that you or someone else using your internet address has engaged in illegal downloading or illegally sharing of a song or movie.

A notification is suitable action undertaken against someone using an internet connection without an account owner's knowledge. Receiving a notification can be another way to protect a copyright owner's work, and the person who allegedly infringed it, whether the action was an actual infringement or not.

Knowing that there are many such cases in Thai courts of law, and the lengthy process to take down infringed content from the online system, a rights owner needs to get an order from the court. This process will at least decrease the time that the infringed content appears on the system.

In Malaysia, the law allows the Internet Service Provider to disable access so a user is not allowed access to that infringed content while in the process of removing on infringed contents. The good point in this is that Internet Service Providers have time to consider whether contents in the Notification have been infringed or not, and at the same time no one can access the contents.

#### **4.5 The Counter notification**

The DMCA law lets the person who posted the contents send a counter notification back to the Service Provider to ask him to put back any contents that were not infringed. The law allows the copyright owner to sue that person if he can prove that the person has infringed. The strong point is the person who moves against the rights owner has to show that the files he posted did not infringe anyone's rights, otherwise he can be sued by the rights owner for example China adopted the Notice and take down procedure from the Digital Millennium Copyright Act.

Other countries use a counter notification and put back procedure that give the subscriber who posts the alleged infringed content the opportunity to declare that they are acting in good faith to that content and believe that their action is warranted, or they believe that they are the owner of such a content, so the law should allow them to prove that they are innocent of infringement. Sometimes even the owner can clarify that someone is the owner of an account used for sharing the infringed content, but it doesn't mean that they will do such a thing.

Another strong point of the notice and take down procedure in Malaysia is that the law allows the person who uploaded the infringed content that was removed,

or was disabled from access to send a the counter notification which protects him from wrongful action by allowing that person to send the notification back to the Internet Service Provider informing him that the content has not been infringed, and asking the Service Provider to post it back on the network, or allow user access to that content.

From the notification and counter notification, the law provides the one who sends the notification to the Service Provider to determine if any statements in the notification or in the counter notification are false, or known to be false, or they will have to compensate the service provider with damages. This will compel the Copyright Owner or the person who sends the Counter Notification to the Service Provider to do it carefully, and to find evidence to ensure that he is the true rights owner of the contents that they uploaded. The disadvantage is that it might take time to prove that. And if the copyright owner or the person whose content was removed cannot soon find the evidence to prove that their work was infringed, they may not send the Notification to the Service Provider. That will allow the infringed content to remain on the network system. If that content has not been infringed, but the person who posted that content does not send the counter notification back to the Service Provider, it may cause the damage to the economic system.

#### **4.6 Monitoring**

In addition, the United States has a system that both detects and monitors suspected copyright infringement activity. It makes protection more effective with the system helping to search for infringed contents and sending the person who posted such contents electronic notification. It also saves time, so other people cannot access infringed files.

Another procedure to solve infringement on the internet is monitoring infringed contents being uploaded on the internet. The strong point of this procedure is it can decrease the time for removing the infringed files because the service provider can send electronic notification to the subscriber when they discover infringement.

The weak point of this monitoring procedure is that it focuses on the user

sharing the infringed content many time which is different from Monitoring in the United States. This can make protection of copyright infringement ineffective.

#### **4.7 The Duty of The Internet Service Provider**

The service provider in Thailand who gains benefit from the users has a duty not only to provide facilities for users, but also help the user by avoiding infringement that may arise in using their system. A monitoring procedure may be another option for protection from infringement, but sometimes the service provider's control is not enough to prevent infringement on the internet, which anyone can access and sharing infringed contents. The law should provide that the Service Provider has a duty to observe the use of the user on his system, and if they find such infringement he must send electronic notification to inform a rights owner of the existence of that content. He can then send electronic notification to any user who has uploaded the infringed content on the system to help the copyrights owner pay for any benefits to them, and to prevent further infringement on his system. Monitoring by checking all content running on his system will cost a lot of time and money. The copyright owner may have to be responsible for an extra service charge to get full protection from a service provider.

Limitation on Internet Service Providers in the law of Copyright Act does not specify the duties of an Internet Service Provider which would help prevent possible infringement.

##### **4.7.1 Liability to control repeating infringement**

Under French law, liability for infringement falls on the Host. The court specifies that before a user uploads content on the internet he must read the policy of the service provider before he uploads contents. This ensure that the Internet Service Provider can control the user before he puts any content on the system, and will thus decrease occurrences of infringement<sup>53</sup> without prior agreement from the copyright holders The subscribers must ensure that their accounts are not accessed and do not have any infringing action without the authorization of the copyright owner. If the Internet Service Provider fails to supervise the use of the subscriber the

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<sup>53</sup> Art. L. 336-3 French Intellectual Property Code

Hodopi I law empower the administrative agency to be an extra-judicial by impose sanctions, including the disconnection of internet access because judicial proceedings are usually expensive and slow speedier and cheaper “extra-judicial” approach was initially chosen as opposed to a standard court proceedings but in September 2009 to remedy the enforcement the sanctions of the alleged infringer will be decided by a court and not by the administrative agency

Under UK Law, ISP is require to send notifications to their subscribers to inform the allegations that their accounts have been used for copyright infringement, it proposes a Hadopi-like three-stage process for ISPs to inform subscribers of copyright infringements and provides that subscribers which have received two notifications within a year and have not stopped infringing copyright may be included in a list requested by a copyright owner. This would be useful to copyright owner to take legal action against the alleged infringers. The Digital Economy Act is s.17(1) grants powers to the Secretary of State to disconnect the access or slow connection if the user ignore warnings in cases of alleged infringement. The UK Digital Economy Act provides that disconnection of the internet in the case of online copyright infringement is to be decided by a judicial authority. Consideration the above decision from the French Constitutional Court<sup>54</sup>.

In Section 512 of the Digital Millennium Copyright Act provision of who should finally decide the sanction of the term repeat infringement is one may not be considered an infringer unless one has been found as such by a court. This term should refer to those against whom the infringement has been adjudicated, and not against whom it is merely alleged. This is to be in line with the second version of the Hadopi law of French Law and with the Digital Economy Act of the United Kingdom

Compare to the provision in Thailand, the law did not force the copyright owner to go to the court so the copyright owner can contact to the Internet Service Provider himself asking to take down the infringed content and if the Internet service provider did not do so then the copyright owner can go to the court or the copyright owner can go to the court without contacting with the internet service provider.

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<sup>54</sup> *Supra* note 47

#### **4.8 The Process in Court**

In the Copyright Act B.E. 2537 amended by Copyright Act B.E.2558 if the copyright owner decided to go to the court the law provides the Service Provider can take down infringed contents after the service provider gets a court order. Gathering all the evidence involved on the infringement to send to the court may take time because it is technical, and the rights owner may not know the way to get such evidence so the law should allow the rights owner to gather as much evidence as he can on his ownership and send it to the Service Provider : first, to temporarily limit access or take down the alleged infringed content. If the internet service provider does not take down the infringed contents or not limit access to that content, he can send a petition to the court for an order. This might be a better way for the rights owners prevent anyone from infringing his work, and be good for a Service Provider who is well versed in technology and can find the infringement more easily and for the courts which have many cases to consider. Sending a notice to the Service Provider will help decrease the number of cases in court.

And because the process in Section 32/3 of Copyright Act B.E.2537 amended by Copyright Act B.E.2558 involves technology and requires professional skill to understand the process, a judge may not be good at understanding technology with the process of uploading infringed content to the system changing all the time. So sending a notice to the Service Provider before sending a petition to the court means there will be a person with experience and skill limiting access, or if the copyright owner want to sue the person who infringed their work, the copyright owner can ask the Internet Service Provider write explaining the infringement to the court about the infringement to make the consideration of each petition easier. The court will not have to spend a great deal of time considering the petition. This will thus make protection for infringement far more efficient.

#### **4.9 After a court order discharged**

Under French law, the court also held that receipt of the notification once does not mean that the Internet Service Provider who is the host will get protection if there is someone reposting the infringed content. Even if they use a different account, the Service Provider may get another notification, and may need to take down the

infringed content again.

The DMCA law of the United States clearly appears to have a provision that many other countries follow. The strong point of this act is to protect the Service Provider by letting him take down contents that were uploaded on the network system without any liability if he conducts the take down and notice procedure, or if the Service Provider takes prompt action, as the French law provides. Or as in the legal procedure in Malaysia, if a user can access the internet network from anywhere. If a person who tries to infringe content is from a different country, the Malaysian copyright law allows the Service Provider to remove that content or disable access to that infringed content. This makes protection from infringement more effective.

In almost any country a Service Provider cannot deny that he is not involved in infringement because he is the host of a website that controls any material running on his system.

#### **4.10 Technology and the Court**

Section 32/3 involves technology that can be accessed by people who live outside Thailand, and face infringement. The law should state the penalties for a person who lives abroad as well. This is an example of blocking of access.

Every website has its own name, called “Domain Name”. Normally a user will access the website by its name.

Domain names are used to identify web pages, for example, the domain name [www.google.com](http://www.google.com). Domain names are used in URLs to identify particular web pages. For example, in the URL <http://www.google.com/index.html>, the domain name is [google.com](http://google.com).

Every domain name has a suffix that indicates which level it belongs to. There are only a limited number of such domains. For example :

- .gov** - Government agencies
- .edu** - Educational institutions
- .org** - Organizations (nonprofit)
- .mil** - Military
- .com** - commercial business



**.net** - Network organizations

**.ca** - Canada

**.th** - Thailand

The way to block access to the web pages : If a Service Provider knows the domain name of such web pages that contain infringed content, the Service Provider can limit access to the websites easily.

The weak point of limiting access to websites is that the website owner can change his domain name to avoid restrictions. For example, infringed content that was uploaded on a Youtube website when its content was reported, to be restricted of access. Other users can repost by using different domain names.

In Thailand, only two companies own the Service Provider Gateway, TRUE and CAT. When a user needs to access content that is shared by a server located outside the country, the request to access that content passes through TRUE or CAT. And if that web page content contains infringed material, and was reported, TRUE will send the user to the web pages of the Ministry of Information and Communication Technology.



The problem is the limitation is for web pages through a server that is located in Thailand, but if a user accesses infringed content, or web pages, through a server located outside Thailand, the user can easily access the infringed content.

When it is easy to block access to infringed content by using a domain name, the user can avoid access of web pages by using an IP address.

Because the Internet is based on IP addresses, not domain names, every Web server requires a Domain Name System (DNS) server to translate domain names into IP addresses.

An IP address is a product of computer technology that allows one computer (or other digital device) to communicate with another via the internet. Every electronic device has its own IP address different from other devices.

"IP" stands for Internet Protocol. An IP address is an Internet Protocol address. The Internet Protocol is a set of rules that governs internet activity on the World Wide Web.

An IP address consists of four numbers, each of which contains one to three digits, with a single dot (.). These numbers are the key to connections over the internet, ensuring that messages, requests for data and data requested will reach their correct Internet destinations. Without this numeric protocol, sending and receiving data over the World Wide Web would be impossible.

IP addresses<sup>55</sup> can be either static or dynamic. Static IP addresses never change. They serve as a permanent Internet address and provide a simple way for remote computers. Many websites provide IP address look-up services to their visitors, free of charge. If there is any uncertainty about an IP address, the user can locate these websites by performing a Google search.

After the restricting access by blocking a domain name, a web owner or user who wants to upload or download infringed content can will change the way he accesses such web pages, websites or content by using the IP address instead of the domain name. So infringed content can be easily accessed.

When the computer technology has developed, many defensive measure are used to limit the access to the contents, we called it the "Technological Measures", for example, password or encryption. Encryption is the conversion of electronic data into

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<sup>55</sup> What is an IP address - <http://whatismyipaddress.com/ip-address> (accessed June, 5 2016)

another form which cannot be easily understood by anyone except authorized parties. Encryption is a code between the users. For example, when sending the electronic mail through Gmail, the content is encrypted until it reaches to the receiver. When the electronic mail is on the way to the receiver no one can access that mail, so encryption is another way to avoid the restriction of or the blocking of the access. Every contents can be encrypted.

There are two protocols for encrypting the material on the internet, when the administrative network is securing data that is being sent between applications across an unsecured network. TLS/SSL can be used to authenticate servers and clients, and then used it to encrypt messages between the authenticated parties<sup>56</sup>.

1. SSL<sup>57</sup> stands for Secure Socket Layer, which is standard security technology for establishing an encrypted link between the server and the user, who are clients of such a website. SSL allows sensitive information, such as credit card numbers, social security numbers, and login certification to be transmitted securely.

2. TLS<sup>58</sup> stands for Transport Layer Security, which is a protocol that provides privacy and complete data transfer between two communicating applications. TLS is the most widely used security protocol today, and is used for web browsers and other applications that require data to be securely exchanged over a network, such as file transfers, VPN connections, instant messaging and voice over IP.

So there are many ways to hide by encrypting infringed content online. Last year (2015) Thai government purposed a single gateway project, which means all usage will pass through the government. This project will help censor infringed material but users who infringe will be able to encrypt material, so it will be impossible to determine whether such material were infringing or not.

In Thai organizations such as governments, data that is used in the

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<sup>56</sup> What is TLS/SSL : logon and authentication [https://technet.microsoft.com/en-us/library/cc784450\(v=ws.10\).aspx](https://technet.microsoft.com/en-us/library/cc784450(v=ws.10).aspx), (Accessed May, 25 2016)

<sup>57</sup> What is SSL (Security Sockets Layer), DigiCert.com, <https://www.digicert.com/ssl.htm>, (Accessed May, 25 2016)

<sup>58</sup> What is Transport Layer Security (TSL) – Definition from WhatIs.com <http://searchsecurity.techtarget.com/definition/Transport-Layer-Security-TLS>, (Accessed May 25,2016)

organization is transmitted through proxy servers, so it is easier to manage the people in the organization. Similar to the single gateway concept, the difference is that there are both encrypted and non-encrypted content that is transmitted.

When there is a lot of blocking and limit of access of domain name and IP Address, there still another option for accessing the internet via a VPN connection.

#### A VPN Connection

VPN<sup>59</sup> stands for Virtual Private Network, a network that is usually constructed by using the internet to connect to a private network, such as a company's internal network. The function of a VPN is like a tunnel to let a user access encrypted infringed content. The system uses encryption and other security mechanisms to ensure that only authorized users can access the network, and that the data cannot be blocked. The information transmitted between the two locations via the encrypted tunnel cannot be read by anyone else because the system contains several elements to secure both the company's private network and the outside network through which the remote user connects. So if someone tries to send infringed data through a VPN it will be more difficult to check. The technology at this time uses forensics to trace back to an account that is sending data through a VPN, but this can take time, and protection of the copyrighted work will not be effective.

The explanation above describes how to block or limit access to websites, web pages and contents on the internet system. But it may not be effective the long-term protection of copyrighted work, so a law should provide additional methods to find a faster and easier way for the copyright owner, the Service Provider and the courts to understand the real problems that they are facing nowadays.

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<sup>59</sup>What is Virtual Private Network (VPN) Webopedia Definition, <http://www.webopedia.com/TERM/V/VPN.html>, (Accessed May, 25 2016)

## **CHAPTER 5**

### **CONCLUSIONS AND RECOMMENDATIONS**

With the number of copyright infringement cases on the Internet rising, where any person in any part of the world can transmit, reduce or spread huge amounts of material of every type, the problems in Chapter 3 show that posting of material, and content of posted material, cannot be easily controlled.

#### **5.1 Conclusion**

##### **5.1.1 The Notice Procedure**

Not all countries maintain Notice and Takedown Legislation for copyright owners, for example, Argentina, Brazil, Canada, India, Israel, Mexico and Russia. Countries that are members of the Berne Convention have enacted notice and take down procedures including the United States, Australia, China, France, Italy, Germany, Japan, New Zealand, Singapore, South Africa, South Korea, Taiwan and the United Kingdom.

From the countries listed in Chapter 3 we see that many countries face problems with infringement on the internet, and are trying to find the best way to protect copyright owners.

Because the infringement appeared on the internet, which anyone in the world can access, legislation must protect owners from infringement, for example, by sending an electronic notice from a rights owner through the system. This will help rights owners to protect their work from infringement.

From the problems seen in Chapter 2, and the ways that diverse nations use to solve the problem of infringement on the internet, some countries use the system of Notice to Notice. In Thailand, being infringed by someone is still a the big problem. The system of Notice and Notice will help a copyright owner to be sure that he can identify the person who infringed will understand the details of such infringement, and the Service Provider who is not liable for any infringement will have the duty to send a notice to the person who allegedly infringed but if he is not

the one who infringed, the Service Provider should have the duty to find who used that account and posted that infringed content on the network system. Some countries use the system of Notice and Take Down which cause the infringed content to be removed after the Service Provider receives the Notice from the copyright owner. This is another effective way to solve the infringing problem but in the Copyright Act B.E.2558 the rights owner has to involved in the court system, and it will take time before the rights owner gets a court order. If the owner can send a Notification to the Service Provider himself and the notification provide all relevant details, it will save much time, and may provide a penalty for the person who provides false notification. This will impel the copyrights owner to provide accurate information he can be sued if he gives false information about the alleged infringed person.

#### **5.1.2 The increasing number of court cases**

The Law of Copyright B.E.2537 amended by Copyright Act B.E. 2558 allows the copyright owner to sue a person who alleged infringement his content if the person who uploaded the infringed content can send counter notification to the Service Provider. It will compel the person alleged to be infringed prove that he did not upload the infringed content, or that he is the account owner but he did not use the account when the alleged infringement indeed happened. Or that person may in good faith believe that he has a right to post the contents. Thus it will not increase the number of such cases to the courts.

In this section 32/3, if a copyright owners keeps sending petitions to the court, it will increase the number of cases and the time to consider each case. The problems of infringement will take longer and this may cause a rights owner to find other ways to solve this problem. Finally, section 32/3 will not be as effective as the law was intended.

## **5.2 Recommendation**

### **5.2.1 Technology and the infringement**

One suggestion, for blocking the infringed content is quite complicated. Perhaps a law could provide the Ministry of Information and Communication Technology (ICT) and the office of the National Broadcasting and Telecommunications Commission (NBTC), which are the agencies that specialize in technology to control activities on the internet, to check any material that runs on the internet, to control the actions of Service Providers. Because these two agencies specialize in technology, they can spend less time checking the infringed content, so the copyright owner can contact these agencies to help them block access to infringed content, or to tell the Service Provider to do such things. And if the agencies found the infringing content in a Service Provider system and tell the Service Provider to remove and if the Service Provider does not follow the directive of the agencies, then the rights owner can sue the Service Provider, or the person who uploaded infringed contents in court.

Thailand should learn how to solve the problem of copyright infringement on the internet from other countries because technology is constantly moving forward. The purpose of the Copyright Law is to decrease copyright infringement problems, so Thailand should improve the Copyright Act. In the meantime, in practice, it should not be too complicated. The method in Section 32/3 is to let the rights owner who created work that was stolen follow legal procedures. But it takes too much time to document how they were infringed. And what if the infringement did not occur in Thailand, how can they determine where was it took place.

In some countries, for example, Malaysia there is a law that allows the person whose file was removed or access disabled to prove his good faith. It protects such a person from any wrong doing if he can prove that the contents that he uploaded were not infringed. But the new Copyright Act B.E.2558 does not have this provision, but if a person whose contents were removed can send notification back to the Service Provider, he can protect his work. It would be a better way to decrease the

problem of infringement, and decrease the number of cases in the courts. Furthermore, a person involved with an infringement problem will not have to waste time in lengthy and costly court procedure.

Because time is vital in matters of digital technology, when a copyright owner knows that his content has been infringed and the Service Provider has taken down the infringed material, even so it may be seen or downloaded by many people around the world. Maybe the law should allow the Service Provider to protect from infringement by helping the rights owner from monitor an infringed content legally. If he finds that the content was indeed infringed, he should disable access to that content until the rights owner, or the person who uploaded the content, can show him that the content was not infringed, while waiting for evidence to prove that it is not an infringed content, so no one can access it. Thailand may thus be able to solve the problem of Pharmaceutical Patents as well as a more effective copyright law to solve infringement on the internet. It may also keep Thailand off the United States Priority Watch List and improve the image of the country.

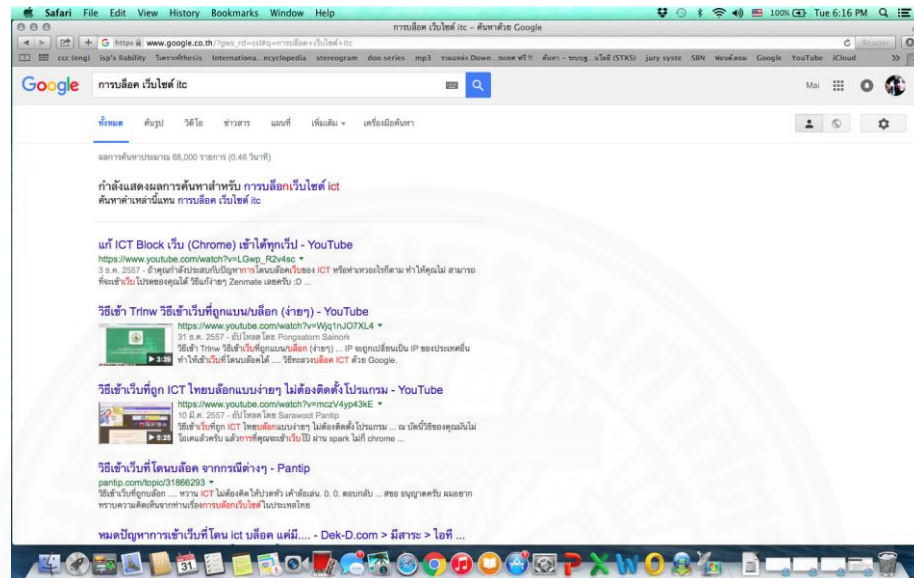
As mentioned in Chapter 4, Section 32/3 Copyright Act B.E.2537 amended by Copyright Act B.E.2558, the take down procedure involves technology. There are many different ways to limit access to infringed content. If a website is infringed, the Internet Service Provider can block the access to the website, or just take down the content alleged to carry infringed content. But how can a rights owner know if the user who uploaded the infringed content has then used a different name or a different language. We can see on the website that many people have uploaded a movie, for example, and are trying to avoid detection by changing the website name, or in another language; or by changing to a code name. On other websites, a user who wants to download infringing content has to buy a prepaid card, and that website sends the infringed content direct through that user. Any of these plays will make limitation of access or use of the take down procedure more difficult.

Users can also find ways to access websites that contain infringed material easily. The way to block access to the websites that contain infringed material is, for example, by using a blocking gateway, a firewall

This is an example of a website sharing access to a website whose



access had been limited by the Ministry of Information and Communication Technology like in pictures below.



## 5.2.2 Priority Watch List

Returning to the problems caused by copyright infringement on the internet, causing Thailand to be classified on the United States Priority Watch List

(PWL), The United States of America identifies each country by its efficiency and effectiveness in protecting the intellectual property rights. The United States Trade Representative (USTR) must conduct annual surveys on foreign countries' intellectual property laws and policies. Even Thailand has enacted the Copyright Act No.2 and 3 to cover the problem of camera recording in movie theatres and protection from infringement on the internet, seems it is not enough. The United States insists Thailand enforce the new law as soon as possible. And regarding camera recording in cinemas the United States not only demands Thailand enact a law against that but also to prevent movie attendees to carry phones into cinemas. Thailand hopes to move off the Watch List (WL), but has to show the United States that the new Copyright Law will be effective and can resolve Intellectual Property infringing.

In 2014 the United States of America removed some countries from the Priority Watch List where their protection of Intellectual Property rights was more effectiveness with decreased infringement, for example, the Philippines, which enforced civil sanctions and criminal punishment for people who infringed Intellectual Property rights. The United States of America sees this is as an effective remedy.

Thailand's goal last year (2015) was to improve its United State Trade Representative classification. The main reason was the issue of Compulsory Licenses in Pharmaceuticals, but to do that we need to make protection of copyright infringement more effective. We have to show the United States that infringement of Intellectual Property is decreasing.

This year (2016) Thailand is still on the United States Priority Watch List. The main reason is the problem of infringement on the internet, which has increased from the past, and which may cause Thailand more damage than piracy issues of the past. Online infringement is certainly an international problem now, so Thailand should improve its laws and enforcement relating to copyright infringement to make it more effective.

Considering all of the comments that appeared in the 301 Special Report, this year and last year, they are almost identical. Thailand should protect copyright work, especially on the internet to get off the United States Priority Watch

List to show that this country has made progress and shows ongoing concern for these problems.

### **5.2.3 The transformation of the Internet Service Provider**

Another suggestion specific to content that is easily infringed relates to Thai or international movies that risk infringement on many websites. There is demand for the content as soon as it is released. Asking for a court order takes time, and when the court orders the Internet Service Provider to take down the infringed content the demand will have already decreased. By that time, the order from the court may no longer be effective. So the Service Provider should have the right to limit access to infringed content.

As mentioned above, it is important that decisions ordering the disconnection of internet access of uploader in other countries be taken by courts. However, nowadays, copyright owners have entered into an agreement with Internet Service Provider to terminate the internet access of unauthorized users. Seems that suing the uploader in court is no longer the main solution especially in the United States. this regime indicates that the ISP is the judge. The “transformation” of ISPs into copyright enforcement agents is probably the better way to solve the infringing problem.

### **5.2.4 The duty to protect the repeat infringement**

Another requisite factor is because copyright work and copyright infringement are involved with benefits that may persuade people to infringe, that can cause protection to be ineffective. Punishment for the Service Provider if he does not help protect the rights of a copyright owner, or leaves infringed content running on his systems, or there are repeat infringement in their system would be far more effective.

Concerning the provision mentioned above from Section 32/3, it will take time if a rights owner goes to court so the law should provide a better way to limit access, and not unduly increase the number of cases in court, because “justice delayed is justice denied”.

The last point this thesis will make is having such effective legislation will be good for the country, and will helps solve the problem, but the law

should suitable for practical use. Section 32/3 provides protection from infringement, but can be improved to make it more effective, so in future this provision can truly help solve the problem of rampant online copyright infringement.



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