



**CLICKBAITS:
LIABILITY UNDER COPYRIGHT LAW IN THAILAND**

BY

SECOND LIEUTENANT NARA TINNAITHORN

**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

COPYRIGHT OF THAMMASAT UNIVERSITY

**CLICKBAITS:
LIABILITY UNDER COPYRIGHT LAW IN THAILAND**

BY

SECOND LIEUTENANT NARA TINNAITHORN

**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

COPYRIGHT OF THAMMASAT UNIVERSITY



THAMMASAT UNIVERSITY

FACULTY OF LAW

THESIS

BY

SECOND LIEUTENANT NARA TINNAITHORN

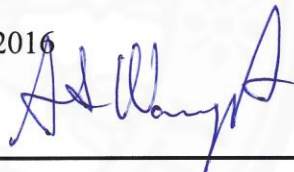
ENTITLED

CLICKBAITS: LIABILITY UNDER COPYRIGHT LAW IN THAILAND

was approved as partial fulfillment of the requirements for
the degree of Master of Laws in Business Laws (English Program)

on August 11, 2016

Chairman



(Professor Amnat Wongbandit, D.Jur.)

Member and Advisor



(Assistant Professor Munin Pongsapan, Ph.D.)

Member



(Assistant Professor Khemapoom Bhumithavara,
Doctorat d' Université)

Member



(Assistant Professor Nilubol Lertnuwat, Ph.D.)

Dean



(Professor Udom Rathamarit, Docteur en droit)

Thesis Title	CLICKBAITS: LIABILITY UNDER COPYRIGHT LAW IN THAILAND
Author	Second Lieutenant Nara Tinnathorn
Degree	Master of Laws
Major Field/Faculty/University	Business Laws Program (English Program) Faculty of Law Thammasat University
Thesis Advisor	Assistant Professor Munin Pongsapan, Ph.D.
Academic Years	2015

ABSTRACT

At present, the internet has become one of the most important information sources. Moreover, the price of communication devices is cheaper than before. Therefore, people are able to access interesting information via internet. Unfortunately, some people who understands a modernist behavioral lifestyle has discovered a method earning money from this and seeks benefit by using a tactic called “Clickbait”.

“Clickbait” consisted of two words. One is “click” means “an instance of selecting an item in a website or app by clicking or tapping on a mouse, touchscreen, or other input device.” Another is “bait” means “to entice or provoke, especially by trickery or strategy.” Once they are merged, it means “[a] provocative or sensationalistic headline text that entices people to click on a link to an article, used as publishing tactic to increase webpage views and associated ad revenue.”

Because clickbait websites aim only on increasing webpage views, hence, it needs more and more contents to fulfill its sites. Unfortunately, many of these sites do not create contents by themselves, but steals contents from legitimate and hardworking authors. This execution may deem as a copyright infringement.

After conducting comparative study on Thai and foreign copyright laws, namely US law and UK law, it was found that clickbait websites are not in favor of

fair use and fair dealing doctrine and being considered as a copyright infringement. Furthermore, it was found that the US law is effective to tackle online copyright infringed contents and suitable for applying to click-baiting offences.

In Thailand, the Thai Copyright Act B.E.2537 (1994) is a main statute to deal with copyright infringement offence. Even though it was recently amendment in B.E.2558 (2015) but it is unable to tackle click-baiting problems effectively, since clickbait websites abruptly generate a huge amount of income to clickbait website owner within a short period. In addition, the Computer Crime Act B.E.2550 (2007) has no measure for tackling online copyright infringed contents. Thus, the revision of the Thai Laws should be seriously taken into consideration. In this regard, the author provided not only proposed solutions to resolve this fashionable issue but also a recommendation format for a good digital online content.

Keywords: Clickbait, Copyright, Copyright Infringement

ACKNOWLEDGEMENTS

A two years program of Master Degree of Law in Thammasat University gives me a great opportunity to write my thesis. I would like to express my gratitude to my advisor, Assistant Professor Dr. Munin Pongsapan for his useful comments, remarks and engagement through the learning process of this master thesis. Without his valuable assistance, I will not be reached my destination. His kindheartedness is deeply appreciated. Furthermore, I would also like to thanks to my thesis committee members, Professor Dr. Amnat Wongbandit, Assistant Professor Dr. Khemapoom Bhumithavara, and Assistant Professor Dr. Nilubol Lertnuwat for serving as my committee members with cheerfulness and encouraging me through this tough process until it is became this notable and valuable master thesis. If there are any defects on this thesis, it is solely my responsibility.

Special thanks to Mister Piset Chiyasak, General Manager of Thai Entertainment Content Trade Association (TECA) for supporting me and sacrificing his valuable time to provide the useful updated data for this thesis, to both beloved aunts, Assistant Professor Dr. Sriwimon Manochiopinig and Assistant Professor Dr. Sudarat Manochiopinig for their professional language proofing, and to Miss Thanaphorn Atikij, Instructor at Library and Information Science, Faculty of Liberal Arts, Thammasat University for dedicating her knowledge on citations and references, supporting me throughout the entire process, keeping me harmonious, and sharing many ideas. I am grateful forever for your love and care.

I also wish to express my acknowledgement with love to my family. Mom and Dad are the best morale for me. I cannot find any word in the universe to enunciate how lucky I am to being your son. This accomplishment is not for me, anyone, but for both of you. To my dear parents, I thanks for all your sacrifices.

Lastly, thanks for all friends in this amazing program. You all are so fabulous companions. Even though, our academic route is ended, but our friendship will be everlasting.

Second Lieutenant Nara Tinnaithorn
Thammasat University
Year 2015

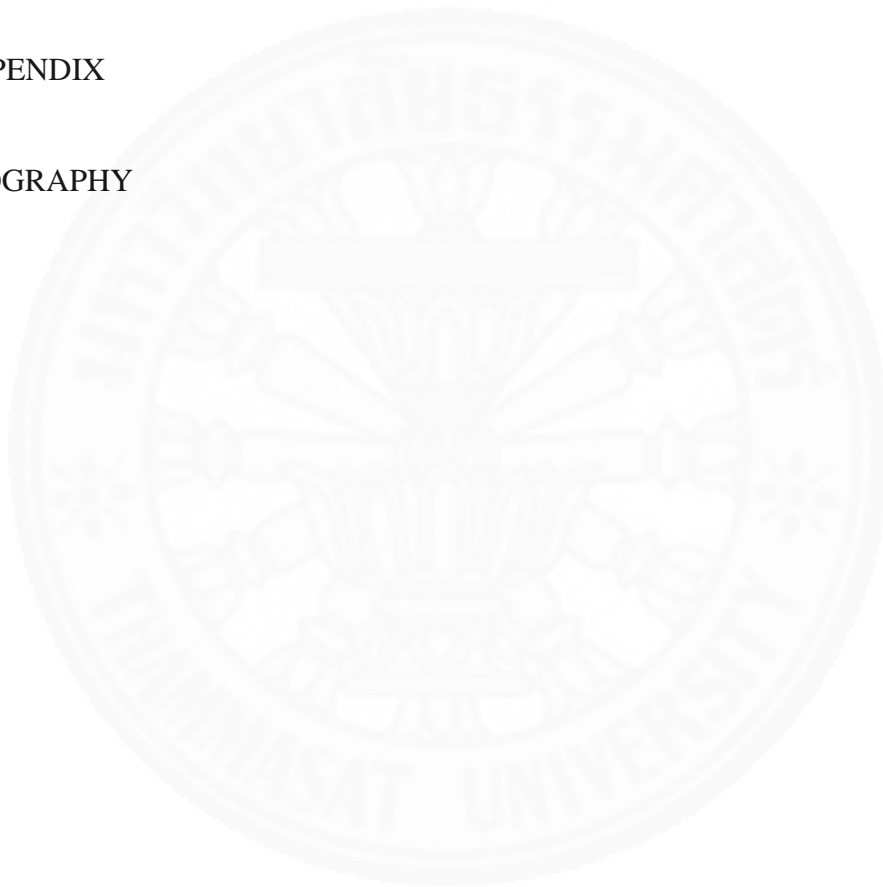
TABLE OF CONTENTS

	Page
ABSTRACT	(1)
ACKNOWLEDGEMENTS	(3)
LIST OF FIGURES	(8)
CHAPTER 1 INTRODUCTION	1
1.1 Background and Problems	1
1.2 Hypothesis	6
1.3 Objectives of Study	6
1.4 Scope of Study	7
1.5 Methodology	7
1.6 Expected Results	7
CHAPTER 2 CHARACTERISTICS OF CLICKBAIT	8
2.1 Scope and Definition of Clickbait	8
2.2 Development of Clickbait	9
2.3 Process of Making a Website	12
2.4 Ways to Make Money from Website	13
2.5 How Do Clickbait Generates Revenues on Website	17
2.5.1 Contextual Advertising	18
2.5.1.1 Google AdSense (AdSense)	19
2.5.1.2 Yengo	31
2.5.2 Banner Advertising	33
2.6 Characteristic of Clickbait	34

CHAPTER 3 LIABILITY FOR CLICKBAIT UNDER FOREIGN COPYRIGHT LAW	41
3.1 Overview of Liability for Clickbait under Copyright Law	41
3.2 U.S. Law	41
3.2.1 The Code of Laws of the United States of America (U.S.C)	42
3.2.1.1 Works Protected under U.S.C.	42
3.2.1.2 Exclusive Rights of the Copyright Owner	43
3.2.1.3 Fair Use Doctrine	46
3.2.2 The No Electronic Theft Act 1996 (the NET Act)	47
3.2.3 Digital Millennium Copyright Act (DMCA)	48
3.3 English Law	51
3.3.1 English Copyright, Design and Patents Act 1988; CDPA 1988	51
3.3.1.1 Works Subject to Copyright under CDPA 1988	51
3.3.1.2 Rights of Copyright Owner under CDPA 1988	52
3.3.1.3 Exceptions to Copyright Infringement and Fair Dealing	53
3.3.1.4 Intellectual Property Offences	58
CHAPTER 4 LIABILITY FOR CLICKBAIT UNDER THAI COPYRIGHT LAW	60
4.1 Digital Contents under Thai Copyright Law	60
4.2 Non-Copyrightable Works under the Thai Copyright Act B.E.2537 (1994)	62
4.3 Rights of the Copyright Owner	63
4.4 Exceptions to Copyright Infringement	64
4.5 Safe Harbor for Service Providers	66
4.6 Punitive Damages in Thai Copyright Law	71
4.7 Penalties for Copyright Infringement	71
CHAPTER 5 CRITICAL ANALYSIS	73

5.1 Clickbait under Copyright Law	73
5.2 Are the Existing Legal Mechanisms Sufficient for Dealing with Clickbait?	76
5.2.1 Legal interpretation on “committed for commerce” under Section 69 paragraph two of the Thai Copyright Act B.E.2537 (1994)	76
5.2.2 Liability of Each Party Related to Clickbait	77
5.2.2.1 Liability of Clickbait Website Owner	77
5.2.2.2 Liability of Internet Users Who Click Clickbait Link	78
5.2.2.3 Liability of Contextual Advertising	78
5.2.2.4 Liability of Sharing Users	78
5.2.2.5 Liability of Other Clickbait Websites Owners Who Use the Contents from Others Clickbait Websites	79
5.2.3 Safe Harbor for Service Providers	79
5.2.4 Countermeasures of Leading Service Providers	83
5.2.4.1 Countermeasure of Facebook	84
5.2.4.2 Countermeasure of Twitter	85
5.2.4.3 Countermeasure of Websites	85
5.2.4.4 Countermeasure of Users	86
5.3 Should We Need More Legal Mechanisms to Tackle Clickbait?	86
5.3.1 Increment of Penalties for Copyright Infringement Offence	86
5.3.2 Having Specifically Provision for the Copyright Owner to Demand for Statutory Damages	87
5.3.3 Amendment of Safe Harbor for Service Providers Provision	89
5.3.4 Amendment Section 20 of the Computer Crime Act B.E.2550 (2007)	90
5.3.5 Having Particular Legal Provision About Click-Baiting	90
5.4 Discussion and Recommendation Format for Digital Content	92
5.4.1 Headline	92
5.4.2 Author’s Name	92
5.4.3 Published Date	93
5.4.4 Body	93

	(7)
5.4.5 References	93
5.4.6 Contextual Advertising	94
5.4.7 Copyright Statements	94
CHAPTER 6 CONCLUSION AND RECOMMENDATIONS	96
REFERENCES	99
APPENDIX	110
BIOGRAPHY	113



LIST OF FIGURES

Figures	Page
1. Number of Facebook Users in Thailand (updated May 2016)	2
2. Ranking of Thailand Facebook Users	3
3. www.allgopro.com Home Page	14
4. Happy Cleaning Home Page	15
5. BTSstation Home Page	16
6. Khaosod Home Page	17
7. Selecting ads type	20
8. Choosing where the ads to appear	20
9. Watch the highest paying ads go live	21
10. Get the revenue from Google	21
11. The example of advertisement shows on website	22
12. Text ads	23
13. Large rectangle Style	24
14. Leaderboard Style	24
15. Wide skyscraper Style	24
16. An overview progress for advertisers	26
17. Natural Search and AdWords	28
18. How Yengo works	32
19. Example of Yengo Advertisement	32
20. Banner Advertisement in Cool Fahrenheit 93° Website	34
21. Long screenshot of a page of Tamsabye	35
22. Divided long screenshot of a page of Tamsabye	36
23. Lowcostcosplay post shows that some website stole his works for commercial benefit	38
24. Lowcostcosplay comment shows that there is no permission for use his works	39
25. Criminal liability for making or dealing with infringing articles etc. according to Copyright, Designs and Patent Act 1988	59
26. Notification of blocked website	82

27. Leading social networks worldwide as of April 2016, ranked by number of active users (in million)	83
28. Copyright Statements at the end of contents	95



CHAPTER 1

INTRODUCTION

1.1 Background and Problems

“ You will Never Believe ... what’s contained in this thesis!!! ”

Are you familiar with this type of headline? If you do, then you may have once faced with it; Clickbait.

Two decades ago, computers and the internet mark the new era of communication and information, but not many people are able to reach it yet, due to the high price of the platform and the low speed of the internet connection. Then came the modern technologies that made computers cheaper, the invention of smartphones, including faster internet speed. These innovations allow people to connect with each other more easily. At first, website can only display information; users are unable to communicate with each other. We call it the web 1.0 period. Since the coming of the web 2.0 period websites in 2004,¹ applications, and programs allow people to respond to and interact with each other. This leads to internet becoming a popular society, as we call the “Social Network.”

Social network is a community, connected through application or website, that brings people together: talk, share ideas, interests, or make new friends. There are many social networks choices to choose from, e.g. Bebo, Classmates, Friendster, LinkedIn, MySpace, Orkut, Path, Pinterest, StumbleUpon, Twitter, Yik Yak, YouTube, or Facebook. From these choices, the statistic shows that Facebook is the most popular social networking from leading social networks worldwide as of April 2016, ranked by number of active users.² It is a popular destination for users to setup their personal web pages, connect with friends, share pictures, movies, or talk about what one is doing at the moment, etc. When Facebook is logged in, it will show

¹ Simon Stokes, **Digital Copyright Law and Practice** 192 (4th ed. 2014).

² Statista, “*Leading social networks worldwide as of April 2016, ranked by number of active users (in millions)*”, available at <http://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/> (last visited May 21, 2016).

statuses or pictures of the people you chose to follow, or the pages you have subscribed to. Users can press the “Like” button if they like any content and also able to write their opinions in the comment boxes on any content posted or shared on the site. Facebook is a popular social network in Thailand. Statistics shows that the numbers of Thai Facebook user count as the 9th rank of the world in 2014 with 28 million users³ and grow up to 41 million users in 2016 (as shown in figure 1) with 3rd rank of South East Asia and 8th rank of the world⁴ (as shown in figure 2).



Figure 1 Number of Facebook Users in Thailand (updated May 2016)

³ คนไทยใช้เฟซบุ๊กติดอันดับ 9 ของโลก, เดลินิวส์, 27 พฤษภาคม 2557, (Thailand is in 9th rank of the Number of Facebook Users, Dailynews), available at <http://www.dailynews.co.th/it/240663> (last visited Jun. 9, 2015).

⁴ คนไทยติดหนึบ ‘โซเชียล มีเดีย’ ยอดเฟซบุ๊กทะลุ 41 ล้านราย ติดอันดับ 8 ของโลก, Positioning, 18 พฤษภาคม 2559, (Thai People Addicted to ‘Social Media’ Facebook Account Reaches 41 Million Account Become the 8th Rank of the World, Positioning, May 18, 2016), available at <http://positioningmag.com/1092090> (last visited May 18, 2016).



Figure 2 Ranking of Thailand Facebook Users

Clickbaits are often found on Facebook pages. Administrators of these pages will post seemingly interesting contents to persuade users to “like” their contents and “follow” (subscribe to) their page. The more followers they have, the more famous they are. There will be no problem if the contents under the link posted on these pages are created by the administrator themselves and possessed certain quality. Since, the followers will be more than glad to access the link to read those interesting substances. This is how website owners earn their cash; in these sites, advertisers post their banners or advertisement to be seen by visitors. Owners of the sites will be paid according to how many clicks the page has received; meaning that the more the page is being accessed, the more income the site owner generates. To this end, some crafty page owners will draw your attention by create seemingly intriguing topics such as “*You Won’t Believe What Happened Next!*”, “*This Three-Legged Man Is Not What You’re Thinking, But The Fact Will Blow Your Mind*”, “*You Won’t Believe What A Three-Legged He Is Until You Click. It’s a Real Third Leg, Not a Crutch, I Promise*”⁵. If you are lucky enough, you would find interesting contents that fulfills your curiosity. However, most of the times, you will be disappointed by an image of a man standing with a crutch. Now what can you do after being disappointed by these pages, if not just leave. On the other side, the page owner has already earned your visit, and also the promised cash from the advertiser.

⁵ James Hamblin, “*It’s Everywhere, the Clickbait*”, Nov. 11, 2014, available at <http://www.theatlantic.com/entertainment/archive/2014/11/clickbait-what-is/382545/> (last visited Jun. 10, 2015).

Moreover, most of these clickbait contents are not created by the owner themselves. Some clickbait sites download video from YouTube and reposted on their web,⁶ some copied articles from Portal Web⁷ (website that gather all interesting article in one place)⁸ and make only minor rephrasing, both without the original owners' permission. Contents that are created by its owner, can also be considered as Clickbait when the link leads to a page containing either insubstantial or unrelated contents, or in some cases may be completely devoid of the content stated in the headline.

Making money methods similar to clickbait are also used in the past in the form of useless websites. These sites are made especially for the purpose of being clicked: called MFA or Made For AdSense website.⁹ There are as many as millions of these websites, and Google punished them by demoting from its search database.

Clickbait becomes a problem for the internet culture for two major reasons. Its widespread on online media contents is undesirable. With the ever growing numbers of these contents, user's newsfeed will be flooded with clickbait rather than news from the sources that the users have subscribed to. Sadly, this is how Clickbait generate its revenue. Page administrators usually deceive users into accessing these contents by any means necessary. Aside from all the manipulations, copyrights infringement laws should be taken into consideration, since most of these contents are reposted without an acknowledgement of the original creator.

In the author's opinion, these fields of laws may involve with clickbait problems:

⁶ Charath Petthongchai, "Clickbait and Content Copier", available at <http://www.charathbank.com/2015/04/click-bait-and-content-copier/> (last visited Jun. 10, 2015).

⁷ *Id.*

⁸ Yugioh2500, "เว็บไซต์พอร์ทัล (Web Portal) คืออะไร? มาทำความรู้จักกัน", 11 กันยายน 2557, (Yugioh2500, *What is Web Portal? Let's know about it*, Sep. 11, 2014), available at <http://ireview.in.th/what-is-a-web-portal/> (last visited Jun 9, 2015).

⁹ อุนุชา ลีวรกุล, **Advanced Google AdSense** ต่อยอดให้รวยอย่างยั่งยืน 13 (2551) (Anucha Leeworakul, **Advanced Google AdSense Make life last rich** 13 (2008)).

1. **Tort Law:** Due to insubstantial and useless articles which show up on user's newsfeed, this unwanted information may be considered to be nuisance because users expect to read informative articles but these links disappoint them. Thus, clickbait website owner may commit an offence as states in Section 421 of the Civil and Commercial Code of Thailand that "*The exercise of a right which can only have the purpose of causing injury to another person in unlawful.*" Some contents are based on their opinions without any solid evidences or references,¹⁰ which may be against the infringement law in Section 423 of the Civil and Commercial Code of Thailand that "*A person who, contrary to the truth, asserts or circulates a fact that which is injurious to the reputation or the credit of another or his earnings or prosperity in any other manner...*"

2. **Criminal Law:** The Criminal Law is involved since the owner of the website gain benefits from people clicking their deceptive links. Clickbait website owners may be considered fraudulent as they are intent to commit an offence as states in Section 341 of the Thailand Penal Code that "*Whoever, dishonestly deceives a person with the assertion of a falsehood or the concealment of the facts which should be revealed, and, by such deception, obtains a property from the person so deceived or a third person...*", and may commit an offence as states in Section 342(2) of the Thailand Penal Code that "*If the offence of cheating and fraud be committed: by taking advantage of the lack of intelligence of the deceived person who is a child, or by taking advantage of weakness of mind of the deceived person...*" Moreover, Section 344 of the Thailand Penal Code conforms to the infringement, because it stipulated that "*Whoever, dishonestly, deceiving ten persons upwards to perform any work for oneself or for the third person with the intent not paying the wages or remuneration to such persons....*" These descriptions match the acts of those owners

¹⁰ นักข่าว-ช่างภาพ “โมโน 29” โวย “ohozaa.com” นั่งเทียนพาดหัว “บ๊ิกไบค์” ใหว่ตำรวจหลังโดนจับ, ASTV ผู้จัดการออนไลน์, 20 เมษายน 2558 (*'Mono 29' Journalist and Photographer Outcry to 'ohozaa.com' After it makes a fake topic and contents in picture they were taken, ASTV Online Manager, Apr. 20, 2015*), available at <http://www.manager.co.th/HotShare/ViewNews.aspx?NewsID=9580000045092> (last visited Jun. 9, 2015).

of website that frauds people into clicking (or to make money from them) without paying any wages.

3. **Intellectual Property Law (IP Law):** This field of law directly involves with clickbait topics, because clickbait website owner took articles from others and made little rephrasing, hence, is this appropriate or not, legal or illegal? The answer to this question will be the focus of this thesis. There is a lawsuit by The Central Intellectual Property and International Trade Court that states that ohozaa.com is alleged of piracy; violating Section 272(1) of the Thailand Penal Code by “Whoever: uses a name, figure, artificial mark or any wording in the carrying on trade of the other person....”¹¹ This case is still in process and has no judgement yet.

“Are you willing to help someone gain lots of money while they do nothing, except for waiting for your click? Is it O.K. for you?” – this question brought me to this remarkable topic, called ... Clickbait.

1.2 Hypothesis

Clickbait is an infringement of copyright and we should examine whether our existing legal provisions are adequate to tackle this problem. If it is not, then we may look for models to tackle the problem, and the U.S. Law and the U.K. Law may provide suitable examples.

1.3 Objectives of Study

To understand what clickbait is, why multiple websites are incline to create such contents, how income is generated from clickbait websites and why should we avoid it. Moreover, to whom should the liability of clickbait be addressed to; solely the website’s owner or including others being involved with. Besides, to examine our existing legal provisions whether they are enough for tackle with clickbait issue.

¹¹ *Famous news-website can’t bear anymore!! Gathering to sue Ohozaa website, Dailynews, May 15, 2015, available at <http://www.dailynews.co.th/it/321489> (last visited Jun. 9, 2015).*

1.4 Scope of Study

This thesis will focus on the Intellectual Property Law (IP Law) in the field of Copyrights, the most important elements, sections concerning infringement. What kind of contents should be deemed as infringed or not infringed, what is the liability of the website owners who run clickbait website, what are the foreign concepts about the Copyrights Law which may be a proper principle to tackle with this problem that we should follow.

1.5 Methodology

This thesis will employ a comparative method to achieve the objectives. The author decided to choose the Copyright Law of the United States of America (U.S.) and English Law. Since the U.S. Copyright Law has provisions to tackle with modern type of copyright infringement, and also has fair use doctrine. While English Law has fair dealing doctrine which are able to determine the infringement of contents under clickbait website. The author aims to study which type of contents may be deemed as clickbait and which is not. Then perceive both Copyright Laws to find the proper process for tackle with clickbait issue in Thailand.

1.6 Expected Results

The author aims to find the proper method to tackle with clickbait websites, provide a clear definition of what clickbait is and why users should understand these contents. When we are aware of these contents, we will be more careful before clicking these links which will both reduce the amount of insubstantial information we consume and also protect the copyrights owners' work from being infringed.

CHAPTER 2

CHARACTERISTICS OF CLICKBAIT

2.1 Scope and Definition of Clickbait

“Clickbait” consisted of two words. One is “click”, Oxford Advanced Learner’s Dictionary 7th edition defined as: “*to choose a particular function or item on a computer screen, etc., by pressing one of the buttons on a mouse*”¹² which states about the action on a mouse with computer, while The Free Dictionary defined the meaning as: “*an instance of selecting an item in a website or app by clicking or tapping on a mouse, touchscreen, or other input device*”¹³ which includes action on smartphone’s touch screen also. Another is “bait”, Oxford Advanced Learner’s Dictionary 7th edition defined as: “*a person or thing that is used to catch somebody or to attract them, for example to make them do what you want*”¹⁴ while The Free Dictionary defined as: “*to entice or provoke, especially by trickery or strategy.*”¹⁵

Once they are merged, it means “[a] *provocative or sensationalistic headline text that entices people to click on a link to an article, used as publishing tactic to increase webpage views and associated ad revenue.*”¹⁶

“Clickbait” is the new one word added into the Merriam-Webster Unabridged Dictionary defined as: “*Something (such as a headline) designed to make readers want to click on a hyperlink, especially when the link leads to content of dubious value or interest.*”¹⁷

¹² Sally Wehmeier, ed., **Oxford Advanced Learner’s Dictionary** 275 (7th ed. 2005).

¹³ The Free Dictionary by Farlex, *click*, available at <http://www.thefreedictionary.com/click> (last visited Jun. 19, 2015).

¹⁴ *Supra* note 12, at 102.

¹⁵ The Free Dictionary by Farlex, *bait*, available at <http://www.thefreedictionary.com/bait> (last visited Jun. 19, 2015).

¹⁶ The Free Dictionary by Farlex, *clickbait*, available at <http://www.thefreedictionary.com/clickbait> (last visited Jun. 19, 2015).

¹⁷ Mark A. Cohen, “*Legal Clickbait?*”, Jun. 2, 2015, available at <http://legalmosaic.com/2015/06/02/legal-clickbait/> (last visited May 18, 2016).

There are many sources that give definition of clickbait. Facebook-owned website called newsroom, being a website to inform news and information about Facebook itself also gave a meaning of clickbait. According to newsroom, an act of click-baiting is “*when a publisher posts a link with a headline that encourages people to click to see more, without telling them much information about what they will see.*”¹⁸ A site called Backdoor Survival has identified that clickbaits are “*sites that use catchy photos that have nothing to do with the article, pop-up reminders that come right back after clicking close, and/or fear-mongering headlines that use scare tactics to persuade you to purchase an overpriced, marginally useful video course or 30 page eBook.*”¹⁹

Even though there are many sources that give different meanings of clickbait, all has the same model. Its headline leaves out information to create a “curiosity gap” for readers.²⁰ In conclusion, the basic concept of clickbait is to lure people to click, get more webpage views, and transform it into money on ad revenue.

2.2 Development of Clickbait

“You’ll never believe what happened when...”

“This is the cutest thing ever...”

“This is the biggest mistake you can make...”

“Take this quiz to see which character are you...”

¹⁸ Khalid El-Arini & Joyce Tang, “*News Feed FYI: Click-baiting*”, Aug. 25, 2014, available at <http://newsroom.fb.com/news/2014/08/news-feed-fyi-click-baiting/> (last visited Aug. 22, 2015).

¹⁹ Gaye, “*How to Seek the Truth and Avoid Clickbait*”, available at <http://www.backdoorsurvival.com/how-to-see-the-truth-and-avoid-clickbait/> (last visited Aug. 22, 2015).

²⁰ Emily Shire, “*Saving Us from Ourselves: The Anti-Clickbait Movement*”, Jul. 14, 2014, available at <http://www.thedailybeast.com/articles/2014/07/14/saving-us-from-ourselves-the-anti-clickbait-movement.html> (last visited Aug. 23, 2015).

These types of clickbait titles are frequently found on current Thai social media. However, this trend has not just arisen. It started in 2006, by a site named BuzzFeed.²¹ BuzzFeed uses viral technique, discovered by Jonah Peretti.²²

In 2001 the story began, while he studied at Massachusetts Institute of Technology (MIT). He ordered a pair of “Nike” shoes from Nike’s website, in which he is able to request to print personal message on the shoes ordered. He decided to request to print “sweatshop” (meaning “The Slave Factory”) on his shoes, to devote to workers in developing countries who may be treated unfairly by the shoes factory. His order was objected, so he sent e-mail to Nike’s customer service support to discuss about the appropriateness of that word. Nike explained that it was inappropriate, while Peretti insisted that it was an ordinary word. After no satisfactory conclusion, he wrote about his problem with Nike and sent to his close friends on e-mail. In that period, the forward mail was the most popular method of sharing stories. His e-mail was widely spread and he was invited to debate with the executive of Nike on television.²³

He got an idea from this incident about the spreading of something that does not want to be made controversial, so he made a website to learn about a phenomenon called “viral.”²⁴

Peretti is one of the four persons who established an online newspaper website named “The Huffington Post” in 2005. His team found that colored headlines is one factor to increase traffics (the number of visitors) of the website. Peretti made viral lab to experiment about viral information named “BuzzFeed Labs” which at last became “BuzzFeed.” At first he spent one day per week to manage BuzzFeed, others for Huffington Post. However, when Huffington Post was sold to American Online,

²¹ Buzz Feed Home Page, www.buzzfeed.com.

²² Mk, “รู้จัก BuzzFeed และ Upworthy ต้นกำเนิดของเว็บไวรัลที่จะทำให้คุณต้องทึ่ง”, 12

เมษายน 2558 (Mk, “*Knowing BuzzFeed and Upworthy: The original website of viral that will blow your mind*”, Apr. 12, 2015), available at <https://www.blognone.com/node/67521> (last visited Aug. 14, 2015).

²³ *Id.*

²⁴ *Id.*

Inc. (AOL.),²⁵ he directed his focus to BuzzFeed instead. After that, BuzzFeed made a leaping growth, receiving 200 million visitors, beating the previous leaders of site traffics that were famous at that time.²⁶

BuzzFeed found a technique to spread their contents by focusing on “bored-at-work” people (who has nothing to do or does not want to do their job and surf the internet to relax), these people want interesting or odd news to get rid of their boredom. After they found such news, they will send it to others (which are also the same bored-at-work type.)²⁷

BuzzFeed develops a technology to collect statistics in calculating the position of buttons, style of pictures and wording of the titles that attracts one’s attention.²⁸

Even though BuzzFeed’s contents are mostly nonsensical, but the business factor of this website is a remarkable case, because the expected target is, to generate massive website traffic in exchange for advertisement revenue.²⁹

As BuzzFeed’s business model succeeded, many new websites followed BuzzFeed’s footsteps. One is Upworthy,³⁰ established in 2012 with a slogan – “Things That Matter. Pass ‘Em On.” This website’s basic idea resembles BuzzFeed, i.e. awesome, meaningful, and visual. Besides BuzzFeed and Upworthy, there are others viral websites, e.g. Dibly,³¹ Distractify,³² Faithit,³³ TwistedSifter.³⁴ Moreover, more specific viral websites which focus on pet or animal emerged, e.g. PetFlow

²⁵ Jeremy W. Peters & Verne G. Kopytoff, “*Betting on News, AOL Is Buying The Huffington Post*”, Feb. 7, 2011, available at http://www.nytimes.com/2011/02/07/business/media/07aol.html?_r=0 (last visited Aug. 14, 2015).

²⁶ Mk, *supra* note 22.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ Upworthy Home Page, www.upworthy.com.

³¹ Dibly Home Page, dibly.com.

³² Distractify Home Page, www.distractify.com.

³³ Faithit Home Page, www.fait hit.com.

³⁴ Twisted Sifter Home Page, twisted sifter.com.

(Now has changed the name to LittleThings³⁵), Bored Panda.³⁶ Also are the types of websites focusing on quizzes, in which one of the very famous of them, PlayBuzz,³⁷ has already beaten Buzzfeed.³⁸

2.3 Process of Making a Website

What is a website? Freeservers.com describe as “A *website is a collection of web pages (documents that are accessed through the Internet). A web page is what you see on the screen when you type in a web address, click on a link, or put a query in a search engine. A web page can contain any type of information, and can include text, color, graphics, animations and sound.*”³⁹

Having your own website there will be costly. Because there are three steps have to be done.⁴⁰

1. Register website’s domain name

It is the most important part of making a website, because if you have a well, short, easy to remember, and recognizable characters for your website, users can easily recall your website’s domain name. You have to check whether the domain name was registered by others or not yet on the www.godaddy.com. Then, you have to decide how long you want to keep your registration. It can be one to ten years. Fortunately, registration fee for one or ten years is not much different. But choosing a long registration is more beneficial, since this will help prevent your domain name from unintentional expiration. After the domain name be registered, you have to deal with the DNS Nameserver in order to link the domain name with the storage for your website.

³⁵ Little Things Home Page, www.littlethings.com.

³⁶ Bored Panda Home Page, www.boredpanda.com.

³⁷ Play Buzz Home Page, www.playbuzz.com.

³⁸ Mk, *supra* note 22.

³⁹ Freeservers, “*What Is a Website?*”, available at <http://www.freeservers.com/WebHosting101/WhatIsAWebsite.html> (last visited Dec. 5, 2015).

⁴⁰ กฤติน ยังปรีชา, สร้างเงินล้านด้วยการเป็นเจ้าของธุรกิจ (เว็บไซต์) 148 (2557) (Kridtin Youngpreecha, **Making Millions by Becoming a Website Owner** 148 (2014)).

2. Rent website's storage

It is the storage of website's contents, e.g. article, picture, link, or media file. The fee of renting website's storage starts from 500 Thai Baht per year. If you registered a domain name and rented website's storage from the same provider, they will manage yours DNS Nameserver automatically.

3. Install website's creation tools

In the past, making website is quite difficult for many people because you have to learn about HTML code to be able to write. However, now there are many website creating tools, such as WORDPRESS, which is a Content Management System (CMS), is available to assist making a website.

The above 3 steps are not sufficient of making a powerful website because a good website has to constantly update contents, managed by the experts, and make advertisement to let people know and come to visit.⁴¹ Of course, there will be another costs.

2.4 Ways to Make Money from Website

As you know, there are tremendous costs of making one website. Thus, how would the owners of those websites can still operating theirs? There are many ways to earn income from website.⁴² For example,

a) From selling goods on the website

Websites can earn income from selling goods for profit. You should prepare your products information, warranty, even pictures of your products. If possible, you should register for e-commerce website also. The example of website

⁴¹ กิตติ ภูวนิธิธนา, “การสร้างเว็บไซต์ในเชิงธุรกิจ เพื่อหารายได้จากช่องทางต่างๆ”, ใน ศรีวิไล สมทรง และ เกรียงไกร รัชตามุขยพันธ์, รายการ Modern Market, 21 กรกฎาคม 2557 (Kitti Phuanithithana, “*Making Website for Commercial, from many Ways Income*”, In Sriwilai Somsong & Kriengkrai Rachatamukhayanun, Modern Market Program, Jul. 21, 2014) available at <http://www.thaiload.com/newsdetail.asp?id=1737> (last visited Dec. 3, 2015).

⁴² *Id.*

that make money directly from selling goods that is www.allgopro.com which aim to sell cameras and camera's accessories as shown in figure 3.



Figure 3 www.allgopro.com Home Page

b) From providing services

There are many services are advertised in the website, such as cleaning services, security services. The website owner of cleaning service should be ready to send housekeeper to clean up customer's place. Security services website should have information of their services and the service cost also clearly be stated. The example of website that make money directly from providing services that is www.happycleaning.net which provide house cleaning service as shown in figure 4.⁴³

⁴³ Happy Cleaning Home Page, www.happycleaning.net.

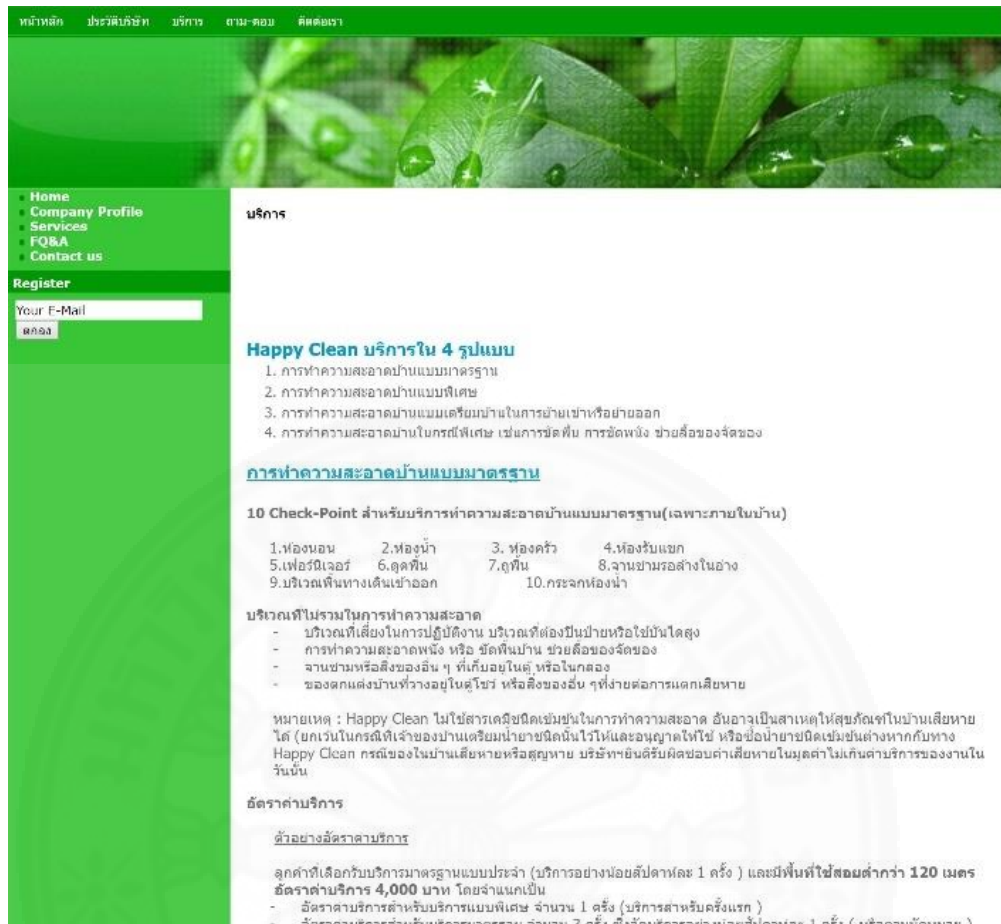


Figure 4 Happy Cleaning Home Page

c) From selling membership

Unsubscribed user will only see partial information of the website, while being a member (registered and paid membership fee) will be able to access more information than normal user, such as discounts and special offers.

d) From selling banners

If a website has valuable information, is famous, or is interested by users, product owners may request to buy space on a webpage to advertise their product. The example of website that make money from selling banner space is BTSstation.com website which shows banner from tutoring academy, digital printing, food deliver, and heavy vehicle service as shown in figure 5.⁴⁴

⁴⁴ BTS Station Home Page, www.btsstation.com.

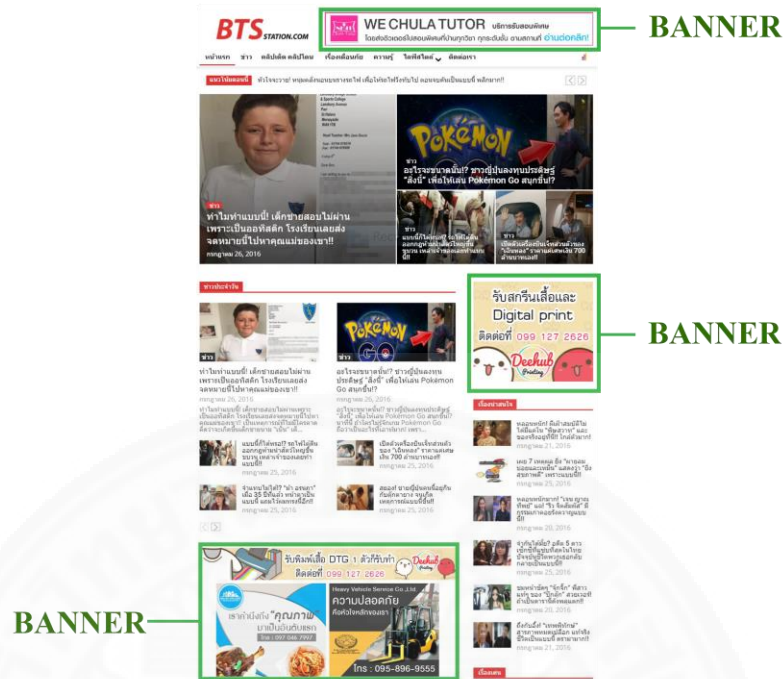


Figure 5 BTSstation Home Page

e) From donation

This type of income is very successful in foreign countries. Users who took the useful information given by that website and found that it can be effectively applied to real situation; they will make donation to that website.

f) From Google AdSense

Websites owners may take advertiser’s code from Google and put it on their website to display advertisement with Google AdWords contractors. The example of website that make money from Google AdSense is www.khaosod.co.th as shown in figure 6.⁴⁵

⁴⁵ Khaosod Home Page, www.khaosod.co.th.

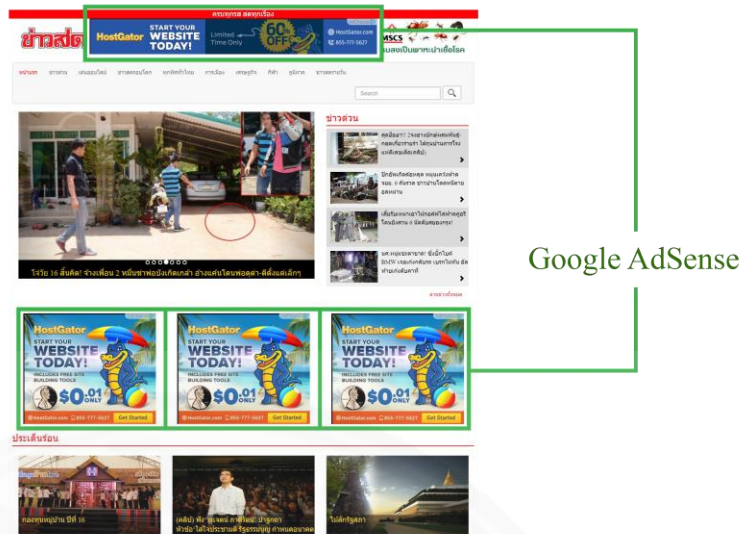


Figure 6 Khaosod Home Page

g) From Short Messages Service (SMS)

Website may throw activity to persuade users to send SMS to participate in, the website's owner will receive part of the SMS revenue from mobile network operator.

h) From selling users information

Website owners may sell users' information e.g. name, address, phone number to others company for advertising purpose.

2.5 How Do Clickbait Generates Revenues on Website

According to the previous topic, there are many ways to earn money from websites. Clickbait websites' main source of income is selling advertising area on their pages because this solution works with every user. The website owners do not have to produce any products, nor prepare for any services. They need only prepare for online contents to feed their readers. This is the easiest way to earn income with a little investment. The website contents creators always use interesting picture which may not relate to the subject matter and may blow up the title in order to entice users to click. Users have to do nothing except click on the link to see the contents. Moreover, nowadays most internet packages are unlimited, meaning that they can

search any wanted contents without an extra charge from the service provider. This made users to search any contents as they want without having the least to zero awareness that they are the generating revenue for those clickbait websites. Clickbait headlines typically aim to exploit the “curiosity gap”, providing just enough information to make the reader curious, but not enough to satisfy their curiosity without clicking through the linked content. There are two ways of selling precious space on website pages: by Contextual Advertising and by Website’s Banner.

2.5.1 Contextual Advertising

Brafton website defines contextual advertising as:

“ Contextual advertising is a targeted advertising form that displays advertisements on different web pages based on the content of the page. Automated ad networks insert ads onto websites based on the subject of the content a user is viewing.”⁴⁶

While Brick Marketing website defines and clearly describes about contextual advertising as:

“ Contextual advertising is a concept different than normal paid inclusion. Where methods such as pay per click and other links appear on search engine results pages, contextual advertising campaigns place banners and links on webpages that have a contextual relationship to the product or service being sold. For example, a banner ad for baking pans might be placed on a web page that has a recipe for a cake on it. Contextual advertising does not require a keyword search to bring up the ad; it is simply there every time a particular page is viewed.

⁴⁶ Brafton, “Contextual Advertising”, available at <http://www.brafton.com/glossary/contextual-advertising/> (last visited Aug. 15, 2015).

Contextual advertising works when webmasters order Java code from companies such as Google AdWords that will provide them with advertisements that pertain to the topic of their web pages. Once this code is entered into the HTML of the web page, each time the page is viewed, an advertisement, usually a banner ad, will appear on the page. Contextual advertising systems scan the web pages that it has been written into for certain keywords and phrases that have a direct connection to the product or service being sold, and then place the appropriate ad on the page. The banner ad that appears on the web page can be different each time a person visits the page, but many advertisers keep it to one or two per page, so that interested parties can always come back to the ad if they do not feel like reading it the first time it appears.

*Advertising with contextual ads are one of Google's major sources of revenue. As the advertisement is contextual, and actually has something to do with the topic of the web page, people are more likely to click on the ad and visit another website, or even become a conversion. Search engines have seen how well contextual advertising works and have begun placing contextual ads on their search engine result pages as well. When someone searches for a certain keyword, banner ads and other contextual ads that may not match the keyword but pertains directly to it can appear. While there is room for spamming with third party linking, **contextual advertising** is still a growing business and a good choice for many companies thinking about paid inclusion.”⁴⁷*

2.5.1.1 Google AdSense (AdSense)

⁴⁷ Brickmarketing, “What is Contextual Advertising?”, available at <http://www.brickmarketing.com/define-contextual-advertising.htm> (last visited Dec. 5, 2015).

“AdSense is a free, simple way to earn money by placing ads on your website.”⁴⁸ This is the simplest way to describe about AdSense. These are explanations about “How easy it is to use AdSense” as described on Google AdSense page.

1. Select the ad you want on your site

More options mean more opportunities for revenue. Choose the right ad types and formats for your site. Ad types include text, display, or a mix of the two as shown in figure 7.⁴⁹

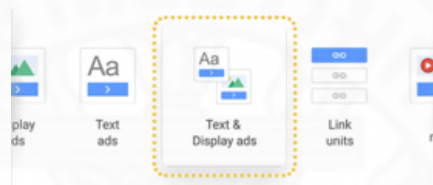


Figure 7 Selecting ads type

2. Choose where you want ads to appear.

Copy and paste a piece of code on your site where you want to show the ads as shown in figure 8.⁵⁰

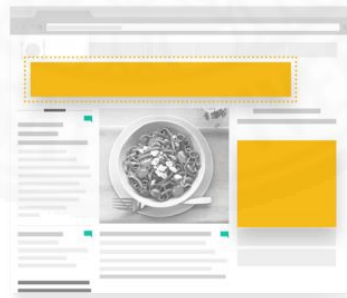


Figure 8 Choosing where the ads to appear

⁴⁸ Google AdSense, “Google AdSense”, available at http://www.google.com/adsense/start/#?modal_active=none (last visited Dec. 5, 2015).

⁴⁹ Google AdSense, “How It Works”, available at <http://www.google.com/adsense/start/how-it-works/> (last visited Dec. 5, 2015).

⁵⁰ *Id.*

3. Watch the highest paying ads go live.

Advertisers bid for your ad space in a real-time auction as shown in figure 9.⁵¹



Figure 9 Watch the highest paying ads go live

4. Leave the money stuff to us.

We will handle the process of billing the advertisers and networks. When ads are seen or clicked, you will automatically earn money. You get paid once you have accrued a certain minimum amount as shown in figure 10.⁵²



Figure 10 Get the revenue from Google

The principle of AdSense is to display an advertisement on your web. First, you have to register for AdSense account, then get a code to use with your website, when users come to visit website the advertisement will be shown at the position where the code was placed.

⁵¹ *Id.*

⁵² *Id.*

There are many types of advertisement, such as text, Picture, or Link Units. Besides, you can edit the advertisement in any form as you want, in order to harmonize with your website's style.

The advertisement will be relevant to your content or audience, even when viewed on smartphones and tablets.⁵³

This is the example of advertisement shown on a website as shown in figure 11.⁵⁴

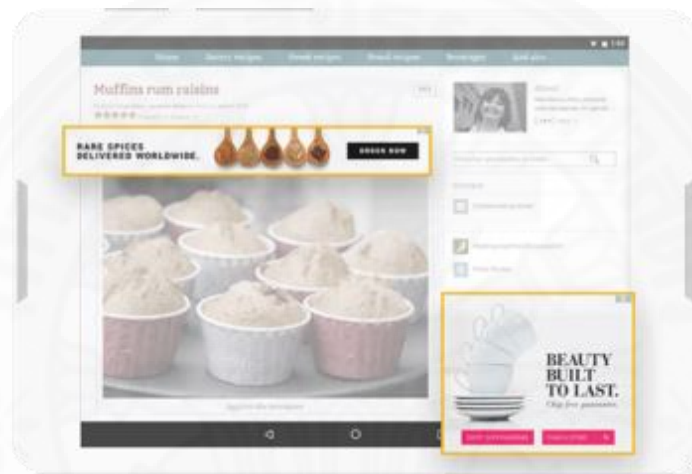


Figure 11 The example of advertisement shows on website

This site talks about “Muffins rum raisins,” of which the contents are about food, dessert, or bakery products. When users access to see the contents about Muffins rum raisins, Google will select the advertisement which is most related to the website's content, in this case; ingredients “RARE SPICES DELIVERED WORLDWIDE” (shown with above long yellow frame), and a set of beautiful and enduring glasses “BEAUTY BUILT TO LAST.” (in the right hand yellow frame), because Google thinks that if you are interested in cooking, you may be interested in ingredients for the next time you cook or may want some enduring glasses for the next occasion.

⁵³ Google AdSense, *supra* note 48.

⁵⁴ *Id.*

There are many types of AdSense Products.⁵⁵ For example,

a) AdSense for content

AdSense for content is a way for website publishers of all sizes to earn money by displaying Google ads on their website's content pages. The ads are related to what your users are looking for on your site. Google will help you enhance your content pages while earning from them. You can place a maximum of three content units on a page.⁵⁶

For this type of AdSense there can be different types of contents. e.g.

a.1) Text Ads

This type of advertisement is purely textual, which easily blends with your website; making it more difficult for users to notice as shown in figure 12.⁵⁷



Figure 12 Text ads

⁵⁵ Google AdSense, “AdSense for Content (AFC)”, available at <https://support.google.com/adsense/answer/17470> (last visited Dec. 5, 2015).

⁵⁶ Harsh Agrawal, “Maximum Allowed AdSense Ad Units on a Web Page”, Aug. 21, 2015, available at <http://www.shoutmeloud.com/maximum-number-of-adsense-units-in-a-single-page.html> (last visited Dec. 7, 2015).

⁵⁷ Durant Imboden, “5 - Earning revenue”, Jul. 29, 2010, available at <http://travelwritten.com/4---revenue/> (last visited Dec. 7, 2015).

a.2) Display Ads

Display Ads are graphical ads offered in several ad formats. These are examples of Display Ads by Google's AdSense website as shown in figure 13 - 15.⁵⁸

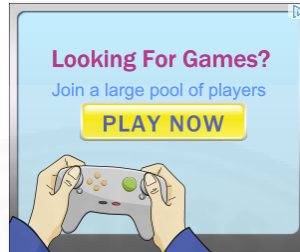


Figure 13 Large rectangle Style



Figure 14 Leaderboard Style

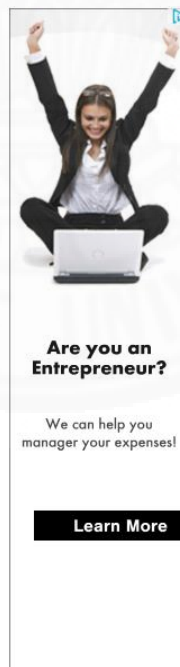


Figure 15 Wide skyscraper Style

⁵⁸ Google AdSense, "Customize Your Ads", available at <https://support.google.com/adsense/answer/185666> (last visited Dec. 7, 2015).

b) AdSense for search

AdSense for search is a free product that allows you to place Custom Search Engine on your site to provide users with web search. You will also earn revenue from relevant ads on the search results page. You can add up to two AdSense-for-search units on a page. For a big website, AdSense-for-search units perform really well.⁵⁹

c) AdSense for video

AdSense for video allows you to monitor your web-based video content. AdSense for video uses Google's Interactive Media Ads (IMA) SDK. The technology will request ads from your Flash-based video player.

d) AdSense for games

AdSense for games allows you to earn money from your web-based games. AdSense for games uses Google's Interactive Media Ads (IMA) SDK. The technology will request ads from your Flash-based game launcher.

The payment of AdSense is come from the owner of advertisement who contacted with Google to display their advertisement from Google AdWords. When their ads are shown on your website, the payment of advertisement's owner divided into two parts, one for the website's owner having displayed their advertisement, and another for Google who acts as middleman bringing ads to you.

There are two types of calculation of income.⁶⁰

1. Pay Per Click – PPC

This income occurs when users click on the advertisement. If users visit your website, but did not click on the link, the payment will not be added.

⁵⁹ Agrawal, *supra* note 56.

⁶⁰ ปภาดา อมรณรัตน์กุล, “รวย” ด้วยคลิก Google AdSense ขุมทรัพย์โลกออนไลน์ 23 (พิมพ์ครั้งที่ 2 2549) (Papada Amornuratkul, **Get Rich with Clicks from Online Treasures** 23 (2nd ed. 2006).

(The author will further describe this type of payment model in the issue of Google AdWords)

2. Pay Per Impression – PPM

This income occurs when the advertisement is shown. The payment will be added with every 1,000 times the ad shows up no matter if users have clicked on it or not, this method is also called “Cost Per Thousand Impression – CPM.”

For further understanding about AdSense we have to know about another service by Google which directly involves Google AdSense; the Google AdWords.

Google AdWords (AdWords)

Google AdWords is Google's online advertising program that allows you to reach new customers and grow your business. With AdWords, you choose where your ad appears, set a budget you're comfortable with, and measure the impact of your ad. There's no minimum spending commitment. You can pause or stop anytime. These are the explanation about AdWords by Google’s official website as shown in figure 16.⁶¹



Figure 16 An overview progress for advertisers

⁶¹ Google AdWords, “*Google AdWords: An overview for advertisers*”, available at <https://support.google.com/adwords/answer/1704410?hl=en> (last visited Dec. 7, 2015).

AdWords is a Contextual Advertising⁶² - targeted advertising that typically occurs on a banner or pop-up ad on a website.⁶³ AdWords is a website advertisement that appears on the results search page of Google. These websites have to pay Google whenever the advertisement is clicked. AdWords in a nutshell can be described as “*Website owner rent space on Google’s website and has to pay for Google when the advertisement is clicked.*”⁶⁴

The old channels of advertisement like television ads, or radio ads results cannot be exactly analyzed. Unlike AdWords, in which you can see the result of advertising by yourself; how many clicks have your ads got, how many times have it shown. Moreover, AdWords can offer the best product which conforms to the need of users and also at the time users need.⁶⁵

For a clear understanding the author will give one scenario to explain what AdWords is.

Example: Mister A. wants to buy a new mobile phone. He searches on www.google.co.th with a keyword “มือถือ” or “mobile phone” in English, he will see this result as shown in figure 17.

⁶² ตราวุธที เหลืองสมบุญ, **Google AdWords โพรโมทเว็บ (ไซต์) ให้ดังศาสตร์** บทบรรณาธิการ (2550) (Trawut Luangsomboon, **Google AdWords Let's advertise your website** editorial page (2007)).

⁶³ Larry Kim, “*10 Facts and Trends about Contextual Advertising*”, Sep. 15, 2010, available at <http://www.searchenginejournal.com/10-facts-and-trends-about-contextual-advertising/24098/> (last visited Dec. 7, 2015).

⁶⁴ Trawut Luangsomboon, *supra* note 62, at 2.

⁶⁵ *Id.* at 5.

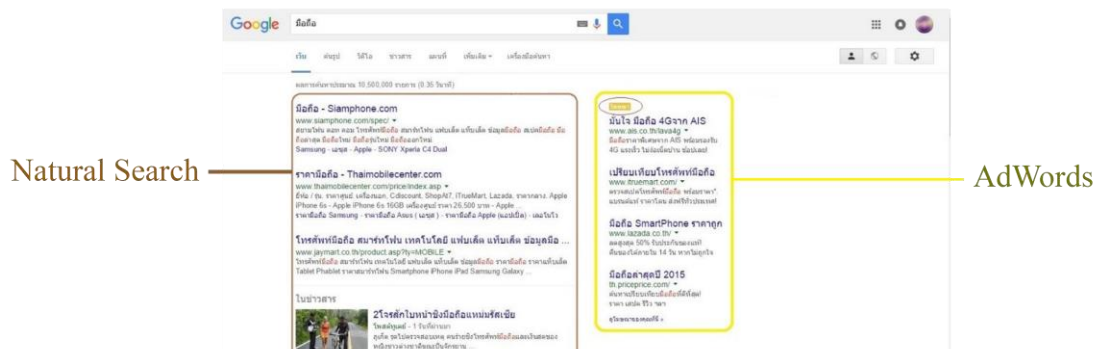


Figure 17 Natural Search and AdWords

Search results on Google will show two different types of results.⁶⁶

1. **Natural search** (in brown border) is the websites associated with the keyword that the writer has searched, these websites were arranged by PageRank according to Google. The higher ranking on PageRank is, the higher it will be on the search list. One can gain website's PageRank by managing Search Engine Optimization (SEO). SearchEngineLand.com describes the meaning of SEO as

SEO stands for “search engine optimization.” It is the process of getting traffic from the “free,” “organic,” “editorial” or “natural” search results on search engines.⁶⁷

SEO is the strategy of adjusting your website for making it easy for both users and search engine robots to understand what contents is contained in that page.⁶⁸ For example, using bold style letter to allow the system to notice that

⁶⁶ *Id.* at 3-4.

⁶⁷ Search Engine Land, “What Is SEO / Search Engine Optimization?”, available at <http://searchengineland.com/guide/what-is-seo> (last visited Dec. 7, 2015).

⁶⁸ Rand Fishkin et al., “Chapter 3 Why Search Engine Marketing is Necessary”, available at <https://moz.com/beginners-guide-to-seo/why-search-engine-marketing-is-necessary> (last visited Dec. 7, 2015).

this is the keyword of an article,⁶⁹ using letters instead of picture because system can only understand letters – it cannot understand the meaning of what a picture file in your website is associated with.⁷⁰

2. **Sponsored Link/AdWords** (in yellow border) which is the advertisement that an advertiser contacted Google to have their ad show up when users search by that particular keyword. You will see a white letter “โฆษณา” on the yellow square area; this sign allows us to know that these links on the right hand side are from Google’s advertisement.

Therefore, he may click on the top natural search to see more information about mobile phone, or click on Sponsored Link/AdWords to see about 4G smartphone from a mobile network operator, who uses the AdWords service.

As seen, there are more than one advertisement displayed on Sponsored Link/AdWords. Then, how does Google manage these links? The answer is that Google uses **Ranking Number** to decide which link should be the first. The formula for calculating a Ranking Number is

$$\text{Ranking Number} = \text{Max CPC} \times \text{Quality Scores}$$

Max CPC is the highest cost per click which you assign

Quality Scores is the quality of your advertisement which Google gathered five factors into consideration, that are;

1. Historical Data Performance

⁶⁹ สุธี จันทร์แต่งผล, **SEO Search Engine Optimization ปรับเว็บไซต์ให้แรง แต่งให้ติดอันดับ** 84 (2551) (Sutee Chantangphol, **SEO Search Engine Optimization: Adjusting website for better ranking** 84 (2008)).

⁷⁰ *Id.* at 67.

2. Keywords To AdText Match

3. CTR (Click Through Rate)

4. Landing Page

5. Other Relevant Factors

What will happen after the writer click on a Sponsored Link/AdWords? The answer is that mobile network operator has to pay Google for a click made on their advertisement link. They have to pay when users click on it; this is considered the Pay Per Click Model (PPC Model). With AdWords using PPC Model, a flaw identified with this model is – **Click Fraud**.

Wordstream⁷¹ (Online Accessed on May 22, 2016) explained about Click Fraud as

“ Click fraud is a black-hat technique of falsely inflating the number of clicks on a pay-per-click ad. Click fraud is usually driven by one of two incentives:

- *Advertisers are trying to sabotage their competitors by driving up their costs and meeting their budget caps early on in the day*
- *Ad publishers are clicking on the ads displayed on their own sites to generate more revenue for themselves.”*

Paid Search Best Practice Guide describes that click fraud happens when “A *third-party generates invalid clicks on a paid advertising link to*

⁷¹ Erin Sagin, “4 Powerful Ways to Eliminate Click Fraud in Your Account”, Aug. 17, 2015, available at <http://www.wordstream.com/blog/ws/2015/08/17/click-fraud> (last visited Dec. 7, 2015).

*drive up advertising costs with no intention of conducting business with the advertiser.”*⁷²

Let’s suppose that the writer personally opposes the mobile network operator which had an advertisement on AdWords and intends to make them pay more on PPC Model. I may click nefariously on their ads to drive up their click counts, which leads to more cost for that search term and therefore push them out of the market. Then my own business can overtake or replace them in the sponsored listing.⁷³

Click Fraud functions in an opposite direction to clickbait. Click Fraud have the advertiser pay as users click on Sponsored Link/AdWords on Google, while clickbait earns money for the publisher with each users seeing or clicking on ads in their website.

2.5.1.2 Yengo

Yengo is a type of Contextual Advertising likes Google AdSense. Both share the same principle; have users get code and pasted on their website to receive advertisement. Google separates AdWords and AdSense, but Yengo operates for both advertisers and publishers in one service.

For advertisers, Yengo presents their service as “*Gain[ing] access to millions of potential visitors worldwide by uploading content or advertisements online*”⁷⁴ which works in a similar manner as Google AdWords as shown in figure 18.⁷⁵

⁷² Christopher Ratcliff, “*What is Click Fraud and How can You Prevent It?*”, Nov. 19, 2013, available at <https://econsultancy.com/blog/63818-what-is-click-fraud-and-how-can-you-prevent-it/> (last visited Dec. 7, 2015).

⁷³ *Id.*

⁷⁴ Yengo Home Page, <http://www.yengo.com/?lang=en>.

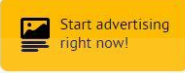
⁷⁵ Yengo, “*For Advertisers*”, available at <http://www.yengo.com/text/advertisers> (last visited Dec. 7, 2015).

Where are your advertisements displayed?

Your ads are displayed in ad blocks on Yengo's partners websites

Yengo has over 15,000 high quality partners which provide more than 22 million clicks per month from active users with a demonstrated interest in online shopping and content

Among Yengo's partners are information, business, media, news and entertainment sites and organisations.



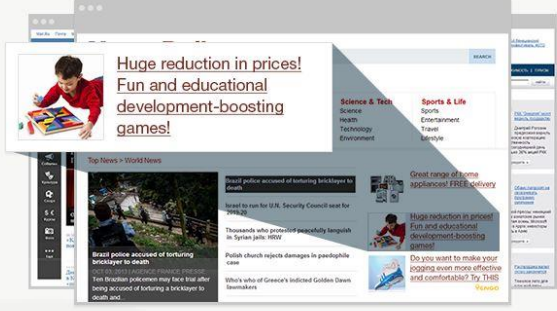


Figure 18 How Yengo works

For publishers, Yengo presents their service as “*Earn[ing] extra income by displaying fresh interesting content on your site*”⁷⁶ which works in a similar manner as Google AdSense as shown in figure 19.⁷⁷

Examples of Yengo blocks

Standard
Pop-up
Refreshing
Overlay
Mobile

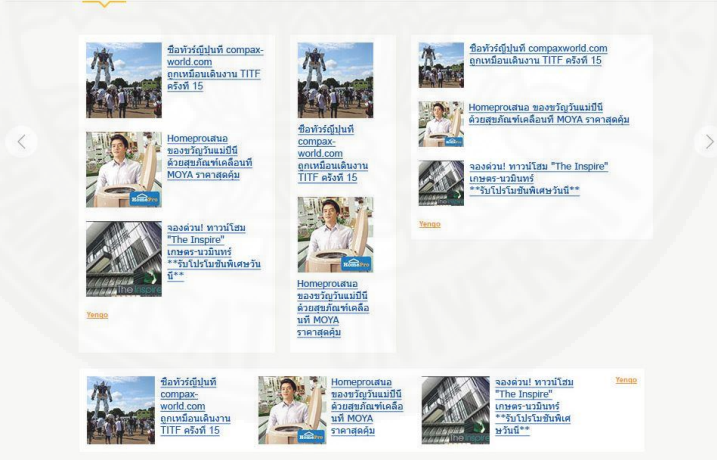


Figure 19 Example of Yengo Advertisement

In conclusion, Yengo is similar to Google AdWords and Google AdSense but the quality of contents in Yengo’s links are worse than and not as interesting as Google’s.

⁷⁶ *Supra* note 74.

⁷⁷ Yengo, “*For Publishers*”, available at <http://partner.yengo.com/> (last visited Dec. 7, 2015).

Other than Google AdSense and Yengo, there are many contextual advertising such as, Shareaholic or Adnow which has similarity working process like those two above.

2.5.2 Banner Advertising

Investopedia.com gave definition of a banner as “*Banner is a rectangular graphic display that stretches across the top or bottom of a website or down the right or left sidebar. The former type of banner advertisement is called a leaderboard, while the latter is called a skyscraper. Banner ads are image-based rather than text-based and are a popular form of website advertising. The purpose of banner advertising is to promote a brand and to get visitors from the host website to access the advertiser's website.*”⁷⁸

The host is paid for the banner advertisement through one of three methods: cost per impression (payment for every website visitors seeing the ad), or cost per click (payment for every website visitor who clicking on the ad and visits the advertiser's website) or cost per action (payment for every website visitor clicking on the ad, goes to the advertiser's website and completes a task such as filling out a form or making a purchase).⁷⁹

This is the example of website banner as shown in figure 20.⁸⁰

⁷⁸ *Banner Advertising*, Investopedia, available at <http://www.investopedia.com/terms/b/banneradvertising.asp> (last visited Dec. 7, 2015).

⁷⁹ *Id.*

⁸⁰ Cool Farenheit 93 Home Page, <http://www.coolism.net/index.php>.



Figure 20 Banner Advertisement in Cool Fahrenheit 93° Website

This is www.coolism.net, a website of Thailand's Radio Station name COOL fahrenheit 93°. This website has many sponsors such as Systema, AirAsia, and Bangkok Airways. You can see their advertisement banners in the green rectangles. These banners on the website are always blinking to attract user's attention.

2.6 Characteristic of Clickbait

As mentioned that the purpose of clickbait is to lure people into accessing an article that is basically not very interesting by using devious titles.⁸¹ Clickbait site owners want your click because every click usually equals to ad revenue. The comments on their page also generate more attention in the piece itself. Even if those comments are along the lines of "I don't like your pathetic click-bait!"⁸²

The main purpose of clickbait sites is earning more page views for advertising purpose. Therefore, you always see the Google AdSense or Advertisement Banner on these websites as shown in figure 21.⁸³

⁸¹ Arguman, "Clickbait is Wrong", Nov. 2015, available at <http://en.arguman.org/clickbait-is-wrong> (last visited Dec 7, 2015).

⁸² Jessica Glassberg, "Avoid Creating Clickbait Headlines; Your Jaw will Drop from these Incredible Tips", Sep. 3, 2014, available at <http://torquemag.io/avoid-creating-clickbait-headlines-jaw-will-drop-incredible-tips/> (last visited Dec. 7, 2015).

⁸³ หล่ออมตะ 22 ปีผ่านไป 3 ดารานำ เป่าบั้นจิ้น ไม่แก่เลย, ตามสบาย, 18 พฤศจิกายน 2558 (Everlasting Handsome: 22 Years passed but cannot do anything with these 3 leader

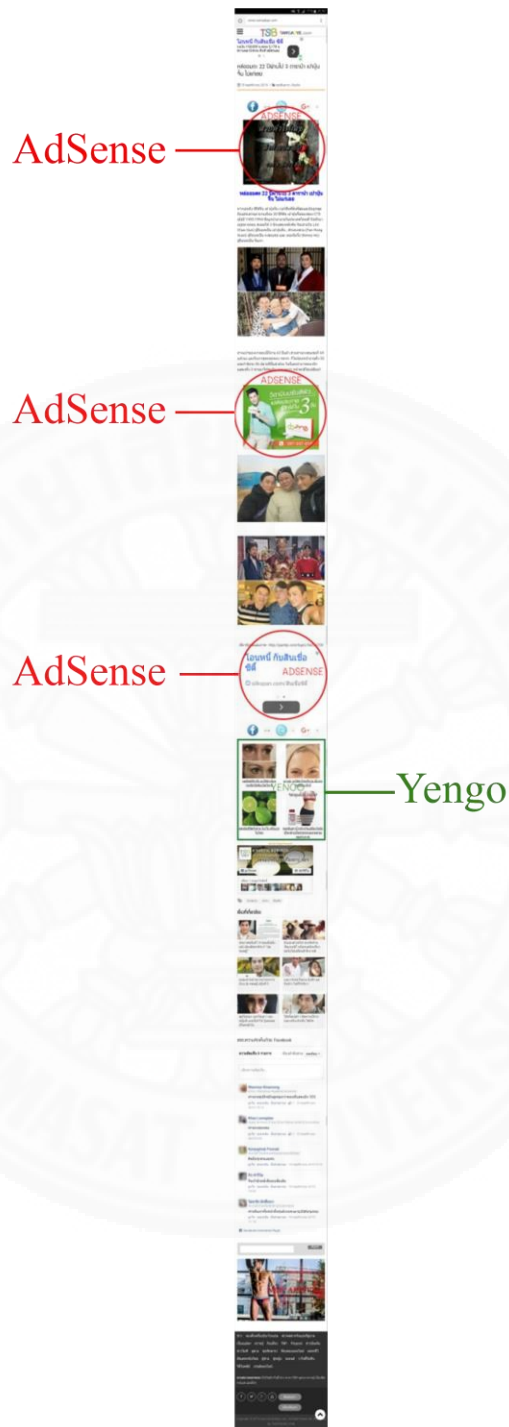


Figure 21 Long screenshot of a page of Tamsabye

actors of Justice Pao Series, Tamsabye, Nov. 18, 2015), available at <http://www.tamsabye.com/dara-11/> (last visited Dec. 7, 2015).

The screenshot shows that this page contained many of advertisements from different services. There are three AdSense Display Ads Units (in red circle), and four slot of Yengo (in green square). The author divided the long screenshot into 3 parts to be viewed more easily as shown in figure 22.



Figure 22 Divided long screenshot of a page of Tamsabye

The author captured this screenshot from Tamsabye.com,⁸⁴ which the headline of this page translates “*Long Lasting Handsomeness, 22 Years passed, and these 3 lead actors of Justice Pao Series Doesn’t Age.*”

They use this topic because at this time channel 3 of Thailand Television brings back the Justice Pao Series (包青天) or, in that Pao Boon Jin (เปาบุ๋นจิ้น), to be on aired again. Even if there are many versions of this series, the most famous version is from CTS (Chinese Television System), which has 3 lead actors: Jin Chao Qun: as Bao Zheng, Kenny Ho: as Zhan Zhao, and Fan Hung-hsuan: as Gongsun Ce.⁸⁵ This version was first aired about 20 years ago and had been re-on aired every once a while.

The topic of this clickbait is chosen to exploit the reader’s curiosity gap. After one has read the topic, the immediate thoughts that follow are expected to be “How can these actors be still handsome” or “I want to know how they look like nowadays.” Following these thoughts, the user will click on the link to see the full contents. When a user clicks on link to see this page, they will see some pictures and then leave the page, but for site owner, they already got one webpage view in exchange of clarifying the visitor’s curiosity, of which, if not concealed from the title image, could be simply viewed.

Please notice that this content is not created by the site owner. The images are taken from Pantip.com. And that they only make a tiny text cites “*Source and pictures from <http://pantip.com/topic/34226720>*” while in fact, the text should be in the **link form** which allows users to view the original contents. Moreover, the text is protected from copying, which in turns prohibits user to copy and paste on their web browser to see the source also.

Tracing to the link, contents in Pantip.com are also linked from another source. Tamsabye website took only 3 pictures out of 8 in Pantip to use in their page.

⁸⁴ *Id.*

⁸⁵ ย้อนรอย เปาบุ๋นจิ้น หนังจีนที่ดังที่สุดในไทย, MThai, 24 กันยายน 2558 (*Remind the most Chinese series in Thailand - Justice Pao the Series*, MThai, Sep. 24, 2015), available at <http://gossipstar.mthai.com/hollywood/inter/52635/> (last visited Dec. 7, 2015).

Continuing on tracing the Pantip, it is found that MThai.com is the original source writing a long-winded article with descriptions and many pictures of the TV series on their page.⁸⁶

Therefore, the Tamsabye website did not create anything for their content. What they do is only copy and paste on their page, then wait for coming users to come in to increase page views and profits from ads revenue on Google AdSense and Yengo.

Another example is from boxza.com. This website took the works from “Lowcostcosplay” Facebook page and post on their page.

The Lowcostcosplay page works by dressing oneself to resemble a cartoon character or anything else with the least cost. To entertain his follower (at this time (December 8, 2015) he has 403,151 followers) he has to work hard in using his imagination to create his “cosplay” work. But boxza.com compiles pictures from this Facebook page into a single webpage without asking for permission and named the title “*With a little budget, these 23 cosplay pictures are very funny.*” - <http://news.boxza.com/view/43146>

The picture (figure 23) shows how “Lowcostcosplay” condemns boxza.com without asking copyright permission.



Figure 23 Lowcostcosplay post shows that some website stole his works for commercial benefit

⁸⁶ *Id.*

The Lowcostcosplay Page added in his comment, although this website has written in the page “*photo courtesy from Lowcostcosplay,*” however, this site has never asked permission from the page owner as shown in figure 24.

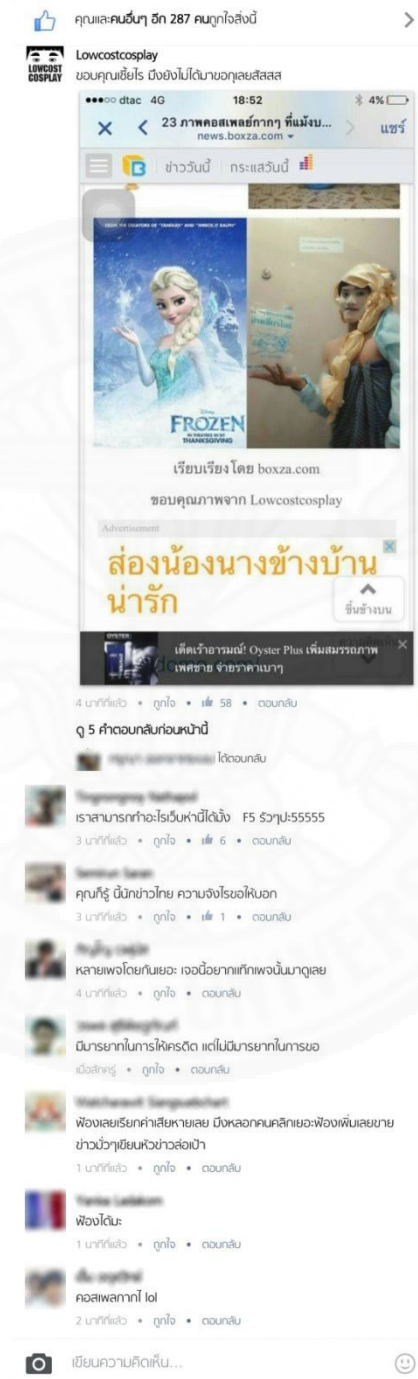


Figure 24 Lowcostcosplay comment shows that there is no permission for use his works

These two websites are only few examples of clickbait websites. Today, there are more clickbait websites such as;

<http://www.meekhao.com>

<https://www.yaklai.com>

<http://petmaya.com/>

www.khaozaza.com

<http://www.ohozaa.com/> (now closed, and was sued for lawsuit case)⁸⁷

NOTE: Some of the clickbait websites always has domain name ending with “za” or “ซ่า” in Thai, which mean showoff or funny.

In conclusion, clickbait has no beneficial use, is an infringement of intellectual property, is a waste of electronic data, and is only for making money. Therefore, what should we do with this phenomenon. How should they be liable for? We will find out in the next Chapter.

⁸⁷ อวสาน *OHOZAA* โฉิโหซ่าส์ ดอทคอม นักดูดในตำนาน ที่คุณรู้รายได้แล้วคุณจะอึ้ง!!!!, ไทยอินโฟเน็ต, 17 พฤษภาคม 2558 (*No more OHOZAA.com, the great stealing content website. If you know their revenue you will shock*, Thaiinfonet, May 17, 2015), available at <http://dev.thaiinfonet.com/ทั่วไป/อวสาน-ohozaa/> (last visited Dec. 7, 2015).

CHAPTER 3

LIABILITY FOR CLICKBAIT

UNDER FOREIGN COPYRIGHT LAW

3.1 Overview of Liability for Clickbait under Copyright Law

The purpose of clickbait websites is to earn money from ad revenue by creating an interesting headline and pictures on a link to persuade users to click to gain numbers of page views. These websites hardly care for the quality of the inside contents. Most contents of these websites are often short strange news, weird pictures, nonsensical story, or copyright infringed contents. Clickbait websites copy contents from others websites, then pasted without the consent of the copyright owner and make a little rephrase before posting on their page. Therefore, there will always be problems about Copyright infringement on contents posted.

3.2 U.S. Law

The author decided to choose the U.S. Law because the Copyright Law of the United States of America has a long complicated history, dating back to colonial times. Since America has knowledgeable resource and was able to create many original works, therefore they invent a solution to protect their works by developing copyright law. U.S. Copyright Law was first established as federal law with the Copyright Act of 1790 and has many amendments followed.

The “Fair Use” doctrine in U.S. copyright law system is a good concept to describe the exceptions of copyright infringement on the contents in Clickbait websites.

In the era of modern technology, most of the works becomes digitized, so it becomes an easier target for copyright infringement; the criminal only has to “copy” contents from the source and “paste” on their site. The infringed work is a complete imitation to the original work or has been made only little difference. Moreover, as the internet becomes a popular communication platform since 1994 until present. One cannot deny that the internet itself helped made copyrights infringement

a world wide spread crime since it serves as a “vehicle” that carries the digitized work to others without territory. Internet is considered as “Networks of Networks” because it connects many sites and users to many others, which is different from radio or television communication that connects a single source to many viewers.⁸⁸ Therefore, in 1998 there is a “Digital Millennium Copyright Act” which states the “Notice and Takedown Measure” to handle with the copyright infringements on the internet. This measure allows the copyright owner who has found any other user infringed his copyrighted work on the internet, to inform the Internet Service Provider (ISP) to take that infringed work out of the system or disallow user to access.

3.2.1 The Code of Laws of the United States of America (U.S.C.)

The Code of Laws of the United States of America (variously abbreviated to Code of Laws of the United States, United States Code, U.S. Code, or U.S.C.) is the official compilation and codification of the general and permanent federal statutes of the United States. It contains 54 titles, Copyrights is in the title 17 and there have 13 chapters.

Under U.S. Copyright Law, a work is automatically protected by law since it was created. Specifically, “A work is created then it is ‘fixed’ in a copy or phonorecord for the first time”⁸⁹

3.2.1.1 Works Protected under U.S.C.

The Title 17 of U.S. Code Section 102 - Subject matter of copyright: In general, states about 8 types of protected works under U.S. Code that are:

(1) literary works;

⁸⁸ Decha, “การป้องกันการละเมิดลิขสิทธิ์ในทรัพย์สินทางปัญญาที่เผยแพร่ทางอินเทอร์เน็ต”, 16 กันยายน 2552, (Decha, “*How to Prevent Content Copyright Infringement on Internet*”, Sep. 16, 2009), available at <http://www.decha.com/main/showTopic.php?id=2123> (last visited Jan. 14, 2016).

⁸⁹ Lahle Wolfe, “*Copyright Laws: What is Automatic Copyright Protection?*”, Feb. 27, 2016, available at <http://womeninbusiness.about.com/od/copyrightlaws/f/FAQlaw-autocr.htm> (last visited Dec. 10, 2015).

- (2) musical works, including any accompanying words;
- (3) dramatic works, including any accompanying music;
- (4) pantomimes and choreographic works;
- (5) pictorial, graphic, and sculptural works;
- (6) motion pictures and other audiovisual works;
- (7) sound recordings; and
- (8) architectural works.

3.2.1.2 Exclusive Rights of the Copyright Owner

The owner of copyright under Section 107 through Section 122 has the exclusive rights to do and to authorize any of the following:

- “(1) to reproduce the copyrighted work in copies or phonorecords;*
- (2) to prepare derivative works based upon the copyrighted work;*
- (3) to distribute copies or phonorecords of the copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;*
- (4) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly;*
- (5) in the case of literary, musical, dramatic, and choreographic works, pantomimes, and pictorial, graphic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly; and*

(6) in the case of sound recordings, to perform the copyrighted work publicly by means of a digital audio transmission.”

Most clickbait websites are involved with copyright infringement contents. There is a case study between a California-based photographer Jeff Werner who filed a copyright infringement lawsuit against a popular clickbait website, ViralNova, for publishing and gaining profit from his photo without permission. ViralNova earned the huge amount of traffic from Facebook users. Eventually, this website was sold for a reported of \$100 million.⁹⁰

Jeff Werner worked as a professional photographer with many notable works for the world’s biggest publications (e.g. Life, Time, Newsweek, People, and National Enquirer.) In his legal complaint, Werner accuses ViralNova of publishing many of his photos for many posts, all without his knowledge or consent.⁹¹

Moreover, there is a case study between Peter Menzel who filed a similar lawsuit against the viral website name EliteDaily for posting his photos in a blog post without permission.⁹² The article was published on April 15th, 2014 with title “*See the Incredible Differences in the Daily Food Intake of People around the World (Photos).*” These pictures are taken from Menzel’s photobook name “*What I Eat: Around the World in 80 Diets*”, which features 80 portraits and profiles of people and their meals from 30 countries around the world.⁹³

EliteDaily is a blog which became successful with a BuzzFeed-style strategy, and became one of the world’s top 1,000 websites by focusing on viral stories. This site was sold to a UK-based news agency Daily Mail

⁹⁰ Michale Zhang, “*This is What It Looks Like to Sue a Viral ‘Clickbait’ Site for Photo Copyright Infringement*”, Jul. 7, 2015, available at <http://petapixel.com/2015/07/31/this-is-what-it-looks-like-to-sue-a-viral-clickbait-site-for-photo-copyright-infringement/> (last visited Dec 10, 2015).

⁹¹ *Id.*

⁹² *Id.*

⁹³ Michale Zhang, “*EliteDaily Sued by Photographer for Sharing Photos in Blog Post Without Permission*”, Mar. 19, 2015, available at <http://petapixel.com/2015/03/19/elitedaily-sued-by-photographer-for-sharing-photos-in-blog-post-without-permission/> (last visited Dec. 10, 2015).

for a reported of \$47 million. In his newly filed lawsuit, he accuses that the blog does not only publish his photos without permission, but also cropping a copyright notice from the lead image and stating that the photos were “courtesy” of Menzel even though he had not given the consent.⁹⁴

American Photo magazine shares this statement from Menzel about his work and copyright:

“ As a freelance photojournalist that self-funds his own hugely expensive multi-year global projects, my team chooses those projects carefully, copyright the images and text, and then works very hard after publication to recoup the considerable expense. One of the chief ways we do this is to license the images and writings for print and web. We charge a licensing fee for feature stories and large portfolios—whether in print or online. Use of our copyrighted intellectual property without permission guts the value of our work, greatly diminishing our ability to finance our project debts, and endangers our ability to undertake future projects.”

This statement explicitly shows that he wants to claim exclusive right for his works because he had spent money, time, and ideas on this project. Therefore, he has the rights to earn money from his work to pay for his expenses in the future projects.

On the very front page of Menzel’s website,⁹⁵ appears a disclaimer saying

“ As you browse, please remembers that none of these photographs are within the public domain. They are protected under domestic and international copyright laws and cannot

⁹⁴ *Id.*

⁹⁵ Menzel Photo Home Page, <http://www.menzelphoto.com/>.

be used without permission. You can read all about it in terrifying detail [HERE](#).”

When users click on the “HERE” button, they will direct to the copyright information page (<http://www.menzelphoto.com/copyright.php>).⁹⁶

There is an information showing that the infringed post by EliteDaily has pulled a huge amount of traffic over the past 11 months since it was published, attracting over 3,400 shares through Facebook alone.⁹⁷

3.2.1.3 Fair Use Doctrine

The fair use is any copying of copyrighted material done for a limited and “transformative” purpose, such as to comment upon, criticize, or parody a copyrighted work. Such usages can be done without permission from the copyright owner. In other words, the fair use is a defense against a claim of copyright infringement. If your usage qualifies as a fair use, then this would not be considered an illegal infringement.⁹⁸

Provision of fair use is in the Title 17 of U.S. Code Section 107 - Limitations on exclusive rights: Fair use

“ Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include —

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ Rich Stim, “What Is Fair Use?”, available at <http://fairuse.stanford.edu/overview/fair-use/what-is-fair-use/> (last visited Dec. 10, 2015).

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;

(2) the nature of the copyrighted work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.”

The fair use can be an appropriate principle to decide whether or not contents of such viral websites or clickbait websites are an infringement of copyright.

3.2.2 The No Electronic Theft Act 1996 (the NET Act)

The United States No Electronic Theft Act (NET Act) is a federal law passed in 1997. This act provides for criminal prosecution of individuals who engage in copyright infringement under certain circumstances, even when there is no monetary profit or commercial benefit from the infringement. Maximum penalties can be five years in prison and up to \$250,000 in fines.⁹⁹

This law is designed for improving the previous Copyright Law, because in the United States v. LaMacchina 871 F. Supp. 535 (D. Mass.1994) case, the defendant encourages his users to use the bulletin board to post announcements, comments, or other works. Later, these contents were moved to another bulletin board which allows users to download comments or works onto that board. Because the

⁹⁹ Cram101 Textbook Reviews, **e-Study Guide for Criminal Justice in Action: The core, textbook by Larry K. Gaines: Emergency services**, Emergency services, (Kindle Edition Jan. 1, 2014).

posted or uploaded object is a computer software of which has not been acquired the permission for distribution. For example, LaMachina - the website owner, allows users to download an infringed game without any payment, under only one condition that the users must be a membership and obtains a password to access its contents. Judging this case, the court dismissed the defraud issue of the Federal Wire-Fraud Statute because it lacks guilty elements (the defendant does not benefit from any financial interest involved with that offense.) The defendant was only liable for a criminal charge on copyright infringement.

This issue (to copy or distribute copyrighted work on the internet without financial purpose act) was updated with the NET act. This act amended the definition of “*commercial advantage or private financial gain*” to include the “*receipt, or expectation of receipt, of anything of value, including the receipt of other copyrighted works.*” In addition, a threshold for criminal liability where the infringer neither obtained nor expected to obtain anything of value for the infringement – “*by the reproduction or distribution, including by electronic means, during any 180-day period, of 1 or more copies or phonorecords of 1 or more copyrighted works, which have a total retail value of more than \$ 1,000*” (17 USC 506(a)(1)(B))¹⁰⁰ is added.

3.2.3 Digital Millennium Copyright Act (DMCA)

The Digital Millennium Copyright Act (DMCA) enacted in 1998 implemented treaties (the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty) signed at the 1996 World Intellectual Property Organization (WIPO) Geneva conference. DMCA was signed into law by President Clinton on October 28, 1998.¹⁰¹

The DMCA is divided into five titles:¹⁰²

¹⁰⁰ *NET ACT*, eBook Cloud Library, available at <http://www.iphonelibrary.net/article/WHEBN0000685053/NET%20Act> (last visited Dec. 10, 2015).

¹⁰¹ U.S. Copyright Office Summary, “*The Digital Millennium Copyright Act of 1998*”, Dec. 1998, available at www.copyright.gov/legislation/dmca.pdf (last visited Dec. 10, 2015)

¹⁰² *Id.*

“Title I, the “WIPO Copyright and Performances and Phonograms Treaties Implementation Act of 1998,” implements the WIPO treaties.

Title II, the “Online Copyright Infringement Liability Limitation Act,” creates limitations on the liability of online service providers for copyright infringement when engaging in certain types of activities.

Title III, the “Computer Maintenance Competition Assurance Act,” creates an exemption for making a copy of a computer program by activating a computer for purposes of maintenance or repair.

Title IV contains six miscellaneous provisions, relating to the functions of the Copyright Office, distance education, the exceptions in the Copyright Act for libraries and for making ephemeral recordings, “webcasting” of sound recordings on the Internet, and the applicability of collective bargaining agreement obligations in the case of transfers of rights in motion pictures.

Title V, the “Vessel Hull Design Protection Act,” creates a new form of protection for the design of vessel hulls.”

Clickbait issue is involved with the Title II, the “*Online Copyright Infringement Liability Limitation Act*” concerning Notice and Takedown Measure. This measure allows the copyright owners to inform the Internet Service Provider (ISP) to take a file out of the system, or disallow users’ access to the file. Once ISP take out the file from the system or obstruct the accessing of the users, the ISP will not have to liable for an infringement of users. For the copyright owner, it is a voluntary measure. The owner may file the lawsuit against user in the court instead of using the Notice and Takedown Measure. The copyright owner has to inform the ISP

with the specific form and covered the main point as stated in the Title 17 of U.S. Code Section 512(C)(3)(A)

“(3) Elements of notification.

(A) To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider that includes substantially the following:

(i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

(ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.

(iii) 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 which is to be disabled, and information reasonably sufficient to permit the service provider to locate the material.

(iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.

(v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.

(vi) A statement that the information in the notification is accurate, 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.”

The user may send “Counter-Notice” to ISP to demonstrate that the owner of that item falsely claims the exclusive right dishonestly claims, and may sue the copyright owner to bring that item back to the system. Moreover, within 14 days after a user have sent out the Counter-Notice, if the copyright owner did not inform the ISP that he would sue the user for the copyright infringement case, the ISP is able to bring that work back onto the system.

3.3 English Law

The author decided to choose English law because there is the “Fair Dealing” principle which is quite similar to the “Fair Use” doctrine of the U.S. Copyright Law.

3.3.1 English Copyright, Design and Patents Act 1988; CDPA 1988

Copyright, Designs and Patents Act 1988 can apply to the works created after August 1st, 1989.

3.3.1.1 Works Subject to Copyright under CDPA 1988

The works subject to copyright under CDPA 1988 are:¹⁰³

- (a) original literary, dramatic, musical or artistic works,
- (b) sound recordings, films or broadcasts, and
- (c) the typographical arrangement of published editions.

In Section 3(1) states about Literary work that “*Literary work*’ means any work, other than a dramatic or musical work, which is written, spoken or sung, and accordingly includes –

¹⁰³ English Copyright, Design and Patents Act 1988, sec. 1(1).

- (a) a table or compilation other than a database,*
- (b) a computer program; ...*
- (c) preparatory design material for a computer program and*
- (d) a database”*

In this fixation issue, copyright does not subsist in a literary, dramatic or musical work unless and until it is recorded, in writing or otherwise.¹⁰⁴

3.3.1.2 Rights of Copyright Owner under CDPA 1988

The owner of the copyright work has rights according to the Section 16 of CDPA

“ (1) The owner of the copyright in a work has, in accordance with the following provisions of this Chapter, the exclusive right to do the following acts in the United Kingdom—

- (a) to copy the work*
- (b) to issue copies of the work to the public*
- (ba) to rent or lend the work to the public*
- (c) to perform, show or play the work in public*
- (d) to communicate the work to the public*

(e) to make an adaptation of the work or do any of the above in relation to an adaptation; and those acts are referred to in this Part as the “acts restricted by the copyright.

¹⁰⁴ English Copyright, Design and Patents Act 1988, sec. 3(2).

(2) Copyright in a work is infringed by a person who without the licence of the copyright owner does, or authorises another to do, any of the acts restricted by the copyright.”

Therefore, the owner of the copyrighted work has the exclusive right to do such acts, and if any one does any of the acts restricted by the copyright without the license, it is copyright infringement.

3.3.1.3 Exceptions to Copyright Infringement and Fair Dealing

Even if the works are copyrighted, however, one may wish to make use of someone else’s copyright protected works. In some situations, may be permitted to do so without seeking permission from the owner. These are some situations allow by CDPA:¹⁰⁵

a) Non-commercial research and private study

If you are genuinely studying (like you were taking a college course), you are allowed to copy limited extracts of works when the use is non-commercial research or private study. If you copy the whole work, this would not generally be considered as fair dealing. This allows students and researchers to make limited copies of all types of copyright works for non-commercial research or private study.

If your usage is for the non-commercial research, you must ensure that the work you reproduce is supported by a sufficient acknowledgement.

b) Text and data mining for non-commercial research

Text and data mining is the usage of automated analytical techniques to analyze text and data for patterns, trends and other useful informations. Text and data mining usually requires copying of the work to be analyzed.

c) Criticism, review and reporting current events

¹⁰⁵ Intellectual Property Office, “*Exceptions to Copyright*”, available at <https://www.gov.uk/guidance/exceptions-to-copyright> (last visited Dec. 10, 2015).

The fair dealing for criticism, review or quotation is allowed for any type of copyright work. A fair dealing with work for the purpose of reporting current events is allowed for any type of copyright work other than a photograph. In each of these cases, a sufficient acknowledgment will be required.

As stated, a photograph cannot be reproduced for the purpose of reporting current events. The intention of the law prevents newspapers or magazines to reproduce photographs for reporting current events which have been appeared in competitor's publications.

d) Time-shifting

The recording of a broadcast can be made in domestic premises for private and domestic use to enable it to be viewed or listened to at the more convenient time.

The making of a recording of a broadcast for purposes other than to the time-shift a program for you or your family is likely to be illegal.

e) Parody, caricature and pastiche

There is an exception to copyright that permits people to use limited amounts of copyright material without the owner's permission for the purpose of parody, caricature or pastiche. For example, a comedian may use a few lines from a film or song for a parody sketch; a cartoonist may reference a well-known artwork or illustration for a caricature; an artist may use small fragments from a range of films to compose a larger pastiche artwork.

It is important that one must understand. However, there is an exception that can be applied to only permitted usage of the purposes of caricature, parody, or pastiche to the extent. It is considered as fair dealing.

The fair dealing is a doctrine which provides an exception to United Kingdom's Copyright Law, in cases where the copyright is infringed for the purposes of non-commercial research or study, criticism or review, or for the reporting of current events. This principle is narrower than the U.S.'s fair use

doctrine. There is no statutory definition of fair dealing. It will always be a matter of fact, degree and impression in each case.¹⁰⁶

The U.K. legislation states that a person is not liable for copyright infringement if the amounts of usage is fair dealing for the purposes of:¹⁰⁷

- a) non-commercial research or private study
- b) criticism or review
- c) reporting current events
- d) illustration for instruction, quotation, or parody, caricature or pastiche

If the usage falls within one of these categories, the fairness of the usage must also be proven for the exception to be applied.¹⁰⁸

There are factors that have been identified by the courts as relevant in determining whether a particular dealing with a work is fair include:¹⁰⁹

- 1) does using the work affect the market for the original work? If the usage of a work acts as a substitute for it, causing the owner to lose revenue, then this is not likely to be fair.
- 2) is the amount of the work taken reasonable and appropriate? Was it necessary to use the amount that was taken? Usually only part of a work may be used

The relative importance of any one factor will vary according to the case in hand and the type of dealing in question.

¹⁰⁶ *Id.*

¹⁰⁷ Rachel Collins, “*Fair Use: Copyright differences in the UK and US*”, Mar. 20, 2015, available at <https://www.dacs.org.uk/latest-news/us-fair-use-uk-fair-dealing-differences-law?category=For+Artists&title=N> (last visited May 20, 2016).

¹⁰⁸ *Id.*

¹⁰⁹ Intellectual Property Office, *supra* note 105.

Joycefoundation.osu.edu website has quoted some interesting paragraph from Intellectual Property Office website that is:¹¹⁰¹¹¹

“ For example, ‘fair dealing’ with a literary, dramatic, musical or artistic work, for the purposes of non-commercial research or private study does not infringe any copyright in these works or the typographical arrangement of published editions of these works. Fair dealing has been interpreted by the courts on a number of occasions by looking at the economic impact on the copyright owner of the use; where the economic impact is not significant, the use may count as fair dealing. So, it is probably within the scope of the above fair dealing exception to make single photocopies of short extracts of a copyright work for the purposes of non-commercial research or private study. [FAQ note: that is, multiple reprographic copies of a protected work made in the course of instruction are not fair dealing.] It may be possible to ask a librarian to copy a short extract from a copyright work for you if you are not able to do it for yourself in a library.

The other fair dealing exception covers use of a copyright work for criticism, review or news reporting.”

Moreover, a webpage hosted by the Society of Authors offers the following discussion of the U.K. fair dealing:¹¹²

“ It is not possible to give specific guidelines on what constitutes ‘fair dealing’ [for criticism or review]; it is a matter of impression and common sense according to the

¹¹⁰ International James Joyce Foundation, “*Legal Definitions: ‘Fair Use’ and ‘Fair Dealing’*”, Apr. 2012, available at <https://joycefoundation.osu.edu/joyce-copyright/fair-use-and-permissions/about-law/legal-definitions> (last visited May 17, 2015).

¹¹¹ Intellectual Property Office Home Page, <https://www.gov.uk/government/organisations/intellectual-property-office>.

¹¹² *Supra* note 110.

circumstances. However, it may be relevant to take into account the following:

- *the length and importance of the quotation(s)*
- *the amount quoted in relation to your commentary*
- *the extent to which your work competes with or rivals the work quoted*
- *the extent to which works quoted are saving you work.*

Some years ago The Society of Authors and the Publishers Association stated that they would usually regard as 'fair dealing' the use of:

a single extract of up to 400 words or a series of extracts (of which none exceeds 300 words) to a total of 800 words from a prose work or extracts to a total of 40 lines from a poem, provided that this did not exceed a quarter of the poem.

"The words MUST be quoted in the context of 'criticism or review.'"

"NOTE: While this statement does not have the force of law, it carried considerable weight with a judge experienced in copyright in a leading infringement case. It does not mean, however, that a quotation 'for purposes of criticism or review' in excess of these limits cannot rank as 'fair dealing' in some circumstances."

It should be noted that the U.K. fair dealing is less flexibility and less broadly construed than the fair-use doctrine in the U.S.; the fair dealing tends to be categorically limited to the various express purposes.¹¹³

3.3.1.4 Intellectual Property Offences

A person who infringing copyright which committed for commerce shall has liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale, or both.¹¹⁴

The standard scale of fines for summary offences states in Criminal Justice Act 1982 Section 37 that is:

“ *The standard scale of fines for summary offences.*

(1) There shall be a standard scale of fines for summary offences, which shall be known as “the standard scale”.

(2) The standard scale is shown below—

<i>Level on the scale</i>	<i>Amount of fine</i>
<i>1</i>	<i>£200</i>
<i>2</i>	<i>£500</i>
<i>3</i>	<i>£1,000</i>
<i>4</i>	<i>£2,500</i>
<i>5</i>	<i>£5,000”</i>

Therefore, if a person commits an offence who, without the license of the copyright owner in the course of a business – exhibits in public (Section 107(1)(d)(iii)) is liable on summary conviction to imprisonment for a term not

¹¹³ *Id.*

¹¹⁴ English Copyright, Design and Patents Act 1988, sec. 107(5).

exceeding three months or a fine not exceeding £5,000, or both as shown in figure 25.¹¹⁵

2. Copyright, Designs and Patent Act 1988

2.1 Criminal liability for making or dealing with infringing articles etc.

Offence	Section	Sentence	Indictment
(a) makes for sale or hire, or (b) imports into the UK otherwise than for his private and domestic use.	107(1) (a)+(b)	6 months and/or a £50,000 fine.	10 years and/or a fine.
(c) possesses in the course of a business with a view to committing any act infringing the copyright.	107(1) (c)	3 months and/or a £5,000 fine.	-
(d) in the course of a business - (i) sells or lets for hire, or (ii) offers or exposes for sale or hire, or (iii) exhibits in public.	107(1) (d)(i)- (iii)	3 months and/or a £5,000 fine.	-
(d) in the course of a business - (iv) distributes.	107(1) (d)(iv)	6 months and/or a £50,000 fine.	10 years and/or a fine.
(e) distributes otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright.	107(1) (e)	6 months and/or a £50,000 fine.	10 years and/or a fine.
(2) a person commits an offence who - (a) makes an article specifically designed or adapted for making copies of a particular copyright work, or (b) has such an article in his possession.	107(2)	3 months and/or a £5,000 fine.	-
(2A) A person who infringes copyright in a work by communicating the work to the public - (a) in the course of a business, or (b) otherwise than in the course of a business to such an extent as to affect prejudicially the owner of the copyright, commits an offence if he knows or has reason to believe that, by doing so, he is infringing copyright in that work.	107(2A)	3 months and/or a £50,000 fine.	2 years and/or a fine.
(3) Where copyright is infringed (otherwise than by reception of communication to the public) - (a) by the public performance of a literary, dramatic or musical work, or (b) by the playing or showing in public of a sound recording or film, any person who caused the work to be so performed, played or shown is guilty of an offence if he knew or had reason to believe that copyright would be infringed.	107(3)	3 months and/or a £5,000 fine.	-

Figure 25 Criminal liability for making or dealing with infringing articles etc. according to Copyright, Designs and Patent Act 1988

¹¹⁵ Intellectual Property Office, “*Guidance: Intellectual property offences*”, Oct. 1, 2014, available at <https://www.gov.uk/government/publications/intellectual-property-offences/intellectual-property-offences#copyright-designs-and-patent-act-1988> (last visited May 16, 2016).

CHAPTER 4

LIABILITY FOR CLICKBAIT UNDER THAI COPYRIGHT LAW

4.1 Digital Contents under Thai Copyright Law

Copyright works protected under the Thai Copyright Act B.E.2537 (1994) have 9 types of work as states in Section 6 as follow:

1. Literary works¹¹⁶
2. Dramatic works
3. Artistic works¹¹⁷
4. Musical works
5. Audiovisual works
6. Cinematographic works
7. Sound recordings
8. Broadcasts
9. Any other work in the literary, scientific, or artistic field

These 9 types of work are protected, regardless of the method or form in which such works are expressed. For example, a book is literary work (as states in Section 4), also the book in the digital form, we call an electronic book (E-Book) is protected under the Thai Copyright Act B.E.2537 (1994).

¹¹⁶ “Literary works” means any kind of literary work such as books, pamphlets, **writings**, printed matter, lectures, sermons, addresses, speeches, and shall include computer programs.

¹¹⁷ “Artistic work” means a work which has one or more of the following characteristics:

...

(5) **A photographic work**, namely, a picture created by the use of image recording devices which allow the light to pass through the lens to a photographic film or a mirror, and developed by a specific formula of the developing fluid or any process which creates an image, or a recording of an image by other devices or methods.

The substance of clickbait content always be news, story, or picture. Therefore, in this thesis will focus on literary works (Writings) and artistic works (Photographic work).

Writings are literary work, no matter the writer wrote them on paper or typed in the digital form,¹¹⁸ both are protected under the Thai Copyright Act B.E.2537 (1994).

A photographic work is one type of artistic work. Prior the digital camera age, people take photo by film. Film processing is very complicate and have to use many chemicals in the process. Therefore, making a copy of photographic work is quite difficult in the past. When the scanner is available, the reproduction of a photographic work is easier by scanned it into a digital file. A tremendous changed came, since the digital cameras are familiar because they have a built-in camera a computer unit, and all of them record images electronically¹¹⁹ which be able to transfer the files from a memory card in a digital form to the computer. These digital files are very convenience to share, only copy and paste into the flash drive, or send to each other over the internet. Digital file of photo is protected under the Thai Copyright Act B.E.2537 (1994) because the definition of “A photographic work” includes a recording of an image by other devices or methods, not only a picture created by the use of image recording devices which allow the light to pass through the lens to a photographic film or a mirror, and developed by a specific formula of the developing fluid or any process which creates an image.

In conclusion, both writings and photographic works in the digital form are protected under the Thai Copyright Act B.E.2537 (1994) and may be pirated by click-baiting.

¹¹⁸ อำนาจ เนตยสุภา และ ชาญชัย อารวีวิทยาเลิศ, คำอธิบายกฎหมายลิขสิทธิ์ 23 (พิมพ์ครั้งที่ 2 2558) (Amnart Netayasupha & Chanchai Arreewittayalerd, **Copyright Law Description** 23 (2nd ed. 2015)).

¹¹⁹ Karim Nice, Tracy V. Wilson, & Gerald Gurevich, “How Digital Cameras Work”, 2008, available at <http://electronics.howstuffworks.com/cameras-photography/digital/digital-camera.htm> (last visited Jan. 24, 2016).

4.2 Non-Copyrightable Works under the Thai Copyright Act B.E.2537 (1994)

Although not every works be considered as copyright works to this Act (Section 7)¹²⁰ even if it is a kind of work under Section 6 because if these works are not protected under copyright law, it will fulfill the objective of copyright law more than protect them.¹²¹

Subsection 1 of the Section 7 is the works which always involved with clickbait issue. The news of the day and facts, having the character of mere information is non-copyrightable works under the Thai Copyright Act B.E.2537 (1994) because the law follows the principle of free flow of information, means that people should have rights to access news and information. Moreover, the news and facts are happened by itself, and no one created them. Therefore, no one should have exclusive rights in that news or facts.¹²²

However, only the news and facts that be considered as non-copyrightable works. But the news or facts in the created works such as in the literary, scientific or artistic field, are copyrightable works. For example, Mister A use the fact in a news to write a novel or write a review about the fact in the news, that novel and review are also literary work which is protected under the Thai Copyright Act B.E.2537 (1994).¹²³

¹²⁰ Thai Copyright Act B.E.2537 (1994) Section 7 states that

“The following shall not be considered as copyright works according to this Act:

(1) news of the day and facts, having the character of mere information, which are not works in the literary, scientific or artistic field;

(2) the constitution and legislation;

(3) regulations, rules, notifications, orders, elucidations, and official correspondence of the Ministries, Bureaus, Departments or any other governmental or local agency;

(4) judgments, orders, judicial decisions and official reports;

(5) translations and compilations of subsection (1) to subsection (4) which are commissioned by Ministries, Bureaus, Departments or any other governmental or local agency.”

¹²¹ Amnart Netayasupha & Chanchai Arreewittayalerd, *supra* note 118, at 50.

¹²² *Id.*

¹²³ *Id.*

In news reporting, only the fact of that news (that are who did what, where it happened, how it was, when it occurred) are not protected, other parts which are reviewed or criticized are protected. A reproduction or adaptation of these parts without permission from copyright owner, one has to liable both for civil and criminal.¹²⁴

Therefore, clickbait site may infringe copyright work if its contents contained not only news of the day or facts but also other parts of the news.

4.3 Rights of the Copyright Owner

The copyright owner has 5 rights to deal with the copyright works as states in Section 15 of the Thai Copyright Act B.E.2537 (1994).

“ Subject to Section 9 Section10 and Section 14, the copyright owner shall have the exclusive rights of:

(1) reproduction and adaptation;

(2) communication to the public;

(3) rental of the original or the copies of a computer program, an audiovisual work, a cinematographic work and a sound recording;

(4) giving benefits accruing from copyright to other persons;

(5) licensing the exclusive rights as mentioned in subsection (1) subsection (2) or subsection (3) to other persons with or without conditions, provided that such conditions shall not be prescribed in such a way which unfairly restricts competition.

Whether or not the conditions as mentioned in subsection (5) in the first paragraph constitute an unfair restriction on competition shall be determined in accordance with the rules, methods and conditions set forth in the Ministerial Regulations.”

¹²⁴ *Id.*

Clickbait website always make reproduction and adaptation to copyright work. Thai clickbait website often translated the news or short article from foreign language to Thai language and posted on website, which is considered as adaptation.¹²⁵ Besides, photos on that news or article also copied and pasted with translated version, which is considered as reproduction.¹²⁶

Reproduction without the license of the copyright owner shall be deemed an infringement of copyright as states in Section 27 of the Thai Copyright Act B.E.2537 (1994).¹²⁷

4.4 Exceptions to Copyright Infringement

The Thai Copyright Act B.E.2537 (1994) states about the exceptions to Copyright Infringement in Section 32 as follow

“ Section 32. Any act against a copyright work of another person under this Act, which does not conflict with a normal exploitation of the copyright work by the copyright owner and does not unreasonably prejudice the legitimate interests of the author, shall not be deemed an infringement of copyright.

¹²⁵ Thai Copyright Act B.E.2537 (1994) Section 4 states that

“‘Adaptation’ means a reproduction by means of transforming, modifying or replicating a substantial part of an original work without any manner of creating a new work, whether in whole or in part.

(1) In relation to a literary work, it shall include a translation of a literary work, a transformation of a literary work or a compilation of literary works by means of selection and arrangement...”

¹²⁶ Thai Copyright Act B.E.2537 (1994) Section 4 states that

“‘Reproduction’ shall include any means of copying, imitating, duplicating, moulding, sound recording, video recording, or sound and video recording an original work or a copy or a publication of any substantial part of the work, whether in whole or in part. In relation to a computer program, reproduction means copying or duplicating a computer program for a substantial part from any medium by any means, without any manner of creating a new work, whether in whole or in part.”

¹²⁷ Thai Copyright Act B.E.2537 (1994) Section 27 states that

“Any act against a copyright work under this Act, carried out without the licence of the copyright owner according to section 15(5), shall be deemed an infringement of copyright provided that such act is any of the following:

- (1) reproduction or adaptation;
- (2) communication to the public.”

Subject to the provision in the first paragraph, any act against a copyright work referred to in the first paragraph shall not be deemed an infringement of copyright provided that such act is any of the following:

(1) research or study of the work provided that such act is not for profit;

(2) use for personal benefit or for the benefit of the user and his family members or close relatives;

(3) criticism, review or recommendation of the work, accompanied by an acknowledgement of the ownership of copyright in such work;

(4) news reporting through mass communication, accompanied by an acknowledgement of the ownership of copyright in such work;

(5) reproduction, adaptation, exhibition or presentation for the benefit of judicial proceedings or proceedings by authorised officials, or reporting the result of such proceedings;

(6) reproduction, adaptation, exhibition or presentation by a teacher for the benefit of his teaching provided that such act is not for profit;

(7) reproduction, adaptation of part of the work or abridgement or making a summary by a teacher or an educational institution for distributing or selling to students in class or in an educational institution provided that such act is not for profit;

(8) use of the work as part of questions and answers in an examination.”

Section 32 paragraph one states the main principle of the act which will not infringe copyright, even if person act against the exclusive rights of copyright

owner as states in Section 15 without permission, it shall not be deemed an infringement of copyright if

(a) does not conflict with a normal exploitation of the copyright work by the copyright owner and

(b) does not unreasonably prejudice the legitimate interests of the author,

The example of the act which does not conflict with a normal exploitation of the copyright work by the copyright owner is make a copy of preface and references pages of literary work.¹²⁸ There is no provision clearly stated that which act does not conflict with a normal exploitation of the copyright work by the copyright owner, it has to be considered in each circumstance.¹²⁹

The act which does not unreasonably prejudice the legitimate interests of the author is the act which affect to the rights of the author but not in a huge amount, besides the law uses “unreasonably” word in order to show that it has to be considered in each circumstance also.¹³⁰

Clickbait website has main purpose of earn money from webpage views with infringed contents, hence the exceptions to copyright infringement will not apply to these websites.

4.5 Safe Harbor for Service Providers

The Safe Harbor for Service Providers is the new legal provision which recently added to the Copyright Act B.E.2537 (1994) by the Copyright Act (No.2) B.E.2558 (2015). Section 32/3 states that:

“In the case where there is reliable evidence showing that there is a copyright infringement in the computer system of a service provider, a copyright owner may submit a petition

¹²⁸ Amnart Netayasupha & Chanchai Arreewittayalerd, *supra* note 118, at 131.

¹²⁹ *Id.*

¹³⁰ *Id.*, at 133.

requesting the court to order the service provider to cease such copyright infringement.

For the purposes of this section, a service provider means:

(1) a person who provides to another person a service enabling the service recipient to access the internet, or to connect with other persons by other means via a computer system, regardless of whether the service is provided under the name of the service provider or under the name, or for the benefits, of another person;

(2) a person who provides a service to store a database for another person's benefits.

The petition under paragraph one shall have explicit details about the information, the evidence and the relief sought, as follows:

(1) name and address of the service provider;

(2) the copyrighted work that is allegedly infringed;

(3) the allegedly infringing work;

(4) the detecting process, date and time when the act was discovered, as well as the act committed or circumstances, including evidence relating to the copyright infringement;

(5) damage that may occur from the alleged copyright infringement;

(6) the request to order the service provider to remove the infringing work from service provider's computer system or to suppress copyright infringements by other means.

Upon receipt of the petition under paragraph one, the court shall hold an examination. If the court holds that the petition is complete as specified under paragraph three, and, if there are necessary grounds for the court to approve the petition, the court shall order the service provider to cease said infringement or remove the alleged infringing work from the computer system of the service provider for the period of time prescribed by the court. The court's order shall be enforced against the service provider immediately, and shall be notified to the service provider without delay. In this regard, the copyright owner shall file legal proceedings against an infringer of copyright within the period of time ordered by the court to cease the alleged infringement or remove the alleged infringing copy from the computer system.

In the case where the service provider is not a person controlling, initiating or ordering alleged infringement in the computer system of the service provider and such service provider has proceeded the court's order as prescribed under paragraph four, the service provider shall not be liable for alleged infringement occurring prior to the issuance of the court order and after the expiry of the court's order.

The service provider shall not be liable for any damage arising from implementing the court's order under paragraph four.”

The purpose of Safe Harbor for Service Providers principle is to protect service providers from liability to the infringed work which summited into a computer system by users. There are two types of service providers according to the Thai Copyright Act B.E.2537 (1994), those are:

1) a person who provides to another person a service enabling the service recipient to access the internet, or to connect with other persons by other means via a

computer system, regardless of whether the service is provided under the name of the service provider or under the name, or for the benefits, of another person

This type of service provider is a kind of internet provider such as, CS Loxinfo, 3BB Broadband, True corporation.¹³¹ They only prepare internet connection for users who only want to connect the internet, not provide services for uploading files to the system.

2) a person who provides a service of storing the database for another person's benefits

This type of service provider is provided services for keeping the computer information for other persons' sake. For example, YouTube which provided service for users to upload video to the system and publicize to internet. If copyright owner found that his work was infringed and uploaded on YouTube, copyright owner may submit a petition requesting the court to order the service provider to cease such copyright infringement. Others example of this type service provider are Pantip.com, 4Shared.¹³²

If copyright owner found that there is infringement in service provider's computer system, he may submit a petition requesting the court to order the service provider to cease such copyright infringement.¹³³

Copyright owner has to express explicit details of information, the evidence and the relief sought as states in (1) – (6) under paragraph three of Section 32/3. In order to make clear which work the copyright owner want to cease, and to

¹³¹ เปิดได้ใน “กฎหมายลิขสิทธิ์” ใหม่ บัญญัติ 8 ประการ “สังคมออนไลน์” ต้องรู้, ประชาชาติธุรกิจออนไลน์, 3 สิงหาคม 2558, (*Unboxing the New “Copyright Law”: the must know of 8 “Online Social” issues*, Prachachat.net, Aug. 3, 2015), available at http://www.prachachat.net/news_detail.php?newsid=1438571444 (last visited May 17, 2016).

¹³² Amnart Netayasupha & Chanchai Arreewittayalerd, *supra* note 118, at 183.

¹³³ *Id.*, at 184.

save time for service provider, one must give enough incidence and details so they do not have to spend time to verify the infringement.¹³⁴

The court shall hold an examination of that petition complete as specified under paragraph three, and, if there are necessary grounds for the court to approve the petition, the court shall order the service provider to cease infringement or remove the alleged infringing work from the computer system of the service provider for the period of time ordered by the court. The court's order shall be enforced against the service provider immediately, and shall be notified to the service provider without delay.¹³⁵

After the court's order, the copyright owner shall file legal proceedings against an infringer of copyright within the period of time ordered by the court to cease the alleged infringement and or remove the alleged infringing copy from the computer system. The background of this process is to proof that there is an infringement as copyright owner claim.¹³⁶

Section 32/3 do not state the result of the case that if copyright owner does not file legal proceeding against an infringer of copyright, anyhow it may imply that the court has power to rescind such order.¹³⁷

In the case where the service provider is not a person controlling, initiating or ordering alleged infringement in the computer system of the service provider and such service provider has proceeded the court's order as prescribed under paragraph four, the service provider shall not be liable for alleged infringement occurring prior to the issuance of the court order and or after the expiry of the court's order. Even if, there is evidence shows that copyright owner has damage, service provider shall not be liable for any damage according to paragraph five of Section 32/3.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.*

4.6 Punitive Damages in Thai Copyright Law

Punitive Damages principle has just added by Section 9 of Copyright Act (No.2) B.E.2558 (2015) into paragraph two of Section 64 of the Thai Copyright Act B.E.2537 (1994) which designed to punish a defendant and deter the bad conduct.

Section 64 paragraph two of the Thai Copyright Act B.E.2537 (1994) states that *“In the case where there is clear evidence that infringement of a copyright or performers’ right was committed with intent to enable the public to access the copyrighted work or the performers’ right widely, the court shall have the power to order the infringer to pay additional damages not exceeding twice the amount of damages under paragraph one.”*

4.7 Penalties for Copyright Infringement

Penalties for infringes copyright states in Section 69 of Copyright Act B.E.2537 (1994) that is:

“ Any person who infringes copyright or performers’ rights according to Section 27, Section 28, Section 29, Section 30 or Section 52 shall be liable to a fine of twenty thousand baht to two hundred thousand baht.

If any offence referred to in the first paragraph is committed for commerce, the offender shall be liable to imprisonment for a term of six months to four years or to a fine of one hundred thousand baht to eight hundred thousand baht, or to both.”

This provision demonstrates that if infringement committed for commerce, the offender shall be liable more severe than without a purpose of commerce.

Clickbait websites always commit infringement with the purpose of commerce, therefore it shall be liable to imprisonment for a term of six months to four

years or to a fine of one hundred thousand baht to eight hundred thousand baht, or to both as states in Section 69 paragraph two of Copyright Act B.E.2537 (1994).



CHAPTER 5

CRITICAL ANALYSIS

5.1 Clickbait under Copyright Law

As the clickbait is “[a] provocative or sensationalistic headline text that entices people to click on a link to an article, used as publishing tactic to increase webpage views and associated ad revenue”,¹³⁸ this is a very popular phenomenon at present. Many clickbait websites such as www.ohozaa.com, petmaya.com or www.catdumb.com are the websites that make a living on Portal Web, which is known as Parasite Web. These clickbait websites do not create contents by themselves, but lean on others websites by filching contents from others, changing the words, and use provocative or sensationalistic headline text to make them being excited and entices people to click on a link to the article. These technique is also popular in foreign websites because it really works well and increases the webpage views.¹³⁹

There are two stealing methods employed by clickbait websites. One is by translating from the foreign news, and another is by copying contents from the local website within the country.¹⁴⁰

Mister Tham Chuasathapanasiri, a scholar of Academic Institute of Public Media (AIPM) gave the suggestion about the characteristic of clickbait websites as:¹⁴¹

1) Copy contents from original source and modify the wording;

¹³⁸ The Free Dictionary by Farlex, *supra* note 16.

¹³⁹ ทายนอะออนไลน์ “เว็บปรลิต” ก้อปข่าวจนยอตวิวกระจาย!, ASTV ผู้จัดการรายวัน, 10

พฤษภาคม 2558, (*Online Disaster: “Parasite Web” Earned webpage views from stolen contents!*, ASTV Daily Manager, May 10, 2015), available at <http://www.manager.co.th/Daily/ViewNews.aspx?NewsID=9580000053326> (last visited May 17, 2016).

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

2) *Not prepare hyperlink to the original source because they want to increase their webpage views;*

3) *Using a headline that encourages people to click, to see more, without telling them much information about what they will see;*¹⁴²

4) *There is no editorial department to control the quality of journalism, no pressman, and also no editor-in-chief.*

Stealing contents from others websites is copyright infringement by reproduction and communication to the public.¹⁴³ Other than copyright infringement, clickbait websites sometimes copy or translate contents from others sources without verify the truth of those contents and makes detriment to the original source of information.¹⁴⁴ Moreover, some clickbait websites create nonsense contents and or contents without any subject matters there are only some contents for click-baiting purpose.¹⁴⁵

Clickbait has no any condition which be the act under exception to copyright infringement according to Section 32 of the Thai Copyright Act B.E.2537 (1994) because contents of clickbait website has been stolen from others websites are conflict with a normal exploitation of the copyright work by the copyright owner and does not unreasonably prejudice the legitimate interests of the author, the original websites also want to increase their webpage views. Therefore, we do not need to consider that whether the act is under (1) – (8) in paragraph two of Section 32 of Copyright Act B.E.2537 (1994) or not, because paragraph two is subject to the provision in the first paragraph.

If clickbait applied with four factors of fair use doctrine in the U.S. Law, it's result shall be like these as follow:

¹⁴² El-Arini & Tang, *supra* note 18.

¹⁴³ Thai Copyright Act B.E.2537 (1994), *supra* note 127.

¹⁴⁴ Obassblog, “*Clickbait คืออะไร? ทำไมเราไม่ควร Click?*”, 28 มิถุนายน 2558, (Obassblog, *What is Clickbait? Why We should Avoid It?*”, Jun. 28, 2015), available at <http://obass.orgfree.com/index.php/2015/06/28/clickbait/> (last visited May 11, 2016).

¹⁴⁵ *Id.*

(1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational study.

Clickbait website aims to use others copyright work in order to gain benefit from webpage views, this use is a commercial purpose. Fair use is more likely to be found when the copyrighted work is “transformed” into something new or of new utility or meaning, while clickbait website often does no change to others works or only make a little change. Hence, clickbait is not favor for this factor.

(2) the nature of the copyrighted work

This factor concerns about works itself whether it is fictional or non-fictional. A judge is more likely to find a determination of fair use if the copy material is taken from a factual work such as a biography than from a fictional work such as a novel.¹⁴⁶

The stolen contents by clickbait website always be a fictional work which has to use idea and effort to create such work. Thus, clickbait is not favor for this factor.

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole

Clickbait always use all of copyright work for their contents, both writing and photograph work. Therefore, clickbait is not favor for this factor.

(4) the effect of the use upon the potential market for or value of the copyrighted work

The last factor is concerning on the effect of the usage of the copy work in the potential market. Contents which internet users have read already tend to never read twice, this effect potential market for copyrighted work – internet users, and made the copyright owner loss profit from earning income from webpage views.

¹⁴⁶ Rich Stim, “*Fair Use: The four factors*”, available at <http://www.nolo.com/legal-encyclopedia/fair-use-the-four-factors.html> (last visited May 11, 2016).

Being considered all factors in the fair use principle, click-baiting is no favor for the fair use.

Considering click-baiting under the fair dealing principle in the U.K. Law, it has no purpose in non-commercial research or private study, criticism or review, reporting current events, or illustration for instruction, quotation, or parody, caricature or pastiche. Therefore, click-baiting is also no favor of the fair dealing principle.

Click-baiting problem may have many issues to discuss, however, this thesis will focus only on the issue about copyright infringement.

5.2 Are the Existing Legal Mechanisms Sufficient for Dealing with Clickbait?

A clickbait website is very easy to generate, only a computer with internet connection, one is able to generate his own clickbait websites. Nowadays, this type of website is produced more and more and tend to increase consecutively because there are many users who still be bait and produce a large number of profit from them.

First of all, the author will contemplate on the issue that, whether or not clickbait shall be the infringement which committed for commerce.

5.2.1 Legal interpretation on “committed for commerce” under Section 69 paragraph two of the Thai Copyright Act B.E.2537 (1994)

Copyright Act B.E.2537 (1994) Section 69 stated on penalties for copyright infringement offense that:

“ Any person who infringes copyright or performers’ rights according to section 27, section 28, section 29, section 30 or section 52 shall be liable to a fine of twenty thousand baht to two hundred thousand baht.

If any offence referred to in the first paragraph is committed for commerce, the offender shall be liable to imprisonment for a term of six months to four years or to a

fine of one hundred thousand baht to eight hundred thousand baht, or to both.”

The copyright law aims to dissuade any person from infringing by settle fine penalties for copyright infringement, but if any copyright infringement offense is committed for commerce there will have more punishment by imprisonment or fine, or to both. The offense which is committed for commerce. Herein, an example of copyright infringement judged by the Supreme Court in the decision number 876/2548. In this case *“the Plaintiff claimed that, defendant committed the copyright infringement by playing copyrighted Karaoke CD – Do Re Me song which sang by P., to entertain its customers and collecting money or other commercial benefits from them. This means that the defendant infringes copyrighted Karaoke CD for commercial purposes which is contrary to the Thai Copyright Act B.E.2537 (1994) Section 69 paragraph two and Section 28 (2)”*

This Supreme Court decision shows that copyright infringement which is committed for commerce is the act that trying to collect money or other commercial benefits directly from the infringed work. Although, in case of clickbait, the website owner did not collect money or other commercial benefits directly from webpage visitors, thus there is no infringement committed for commerce. In present, there is no court decision about click-baiting. However, in authors’ opinion, the action of clickbait website owner is clearly shows that they use such infringed work for profit, even if it is not the direct profit collecting from viewers. Therefore, clickbait websites should liable as the copyright infringement which committed for commerce.

5.2.2 Liability of Each Party Related to Clickbait

As clickbait websites are involved with copyright infringement, this following part the author will analyze on the liability to each party who related to click-baiting.

5.2.2.1 Liability of Clickbait Website Owner

Clickbait website owner is the person who purposely commit copyright infringement by reproduced others contents without the license of the

copyright owner and communicated that infringed contents to the public via the internet¹⁴⁷ for commerce and shall be liable to imprisonment for a term of six months to four years or to a fine of one hundred thousand Baht to eight hundred thousand Baht, or both as stated in Section 69 paragraph two of the Thai Copyright Act B.E.2537 (1994).¹⁴⁸

5.2.2.2 Liability of Internet Users Who Click Clickbait Link

Internet users who click through link with purpose for reading that article should have no liability to copyright infringement, because the readers do not know or having reason to have known that such article is created by infringing another person's copyright till they click on link to read them.

5.2.2.3 Liability of Contextual Advertising

The contextual advertisement companies should have no liability to copyright infringement also, because these companies only prepare the advertisement unit for the website owner or blogger to earn income from webpage views without knowing or having reason to have known that such article is created by infringing another person's copyright. The offence of website owner is over control of contextual advertisement companies.

5.2.2.4 Liability of Sharing Users

The readers who shares such copyright infringed works for non-profit purpose such as sharing on Facebook or others social media should not be deemed to infringe the copyright. Because whether or not they know or having reason to have known that such article is created by infringing another person's copyright. They did not make profit from it.

¹⁴⁷ Thai Copyright Act B.E.2537 (1994) *supra* note 127.

¹⁴⁸ Thai Copyright Act B.E.2537 (1994) Section 69 states that

“Any person who infringes copyright or performers' rights according to section 27, section 28, section 29, section 30 or section 52 shall be liable to a fine of twenty thousand baht to two hundred thousand baht.

If any offence referred to in the first paragraph is committed for commerce, the offender shall be liable to imprisonment for a term of six months to four years or to a fine of one hundred thousand baht to eight hundred thousand baht, or to both.”

5.2.2.5 Liability of Other Clickbait Websites Owners Who Use the Contents from Others Clickbait Websites

Even though others clickbait websites owners who use the contents from others clickbait websites are not the person who directly infringe others copyright works, but these clickbait websites owners have known or having reason to have known that a work is created by infringing another person's copyright, performing any act against such work for profit, which is considered as secondary infringement and shall be deemed to infringe the copyright by communication to the public as stated in Section 31 (2) of the Thai Copyright Act B.E.2537 (1994).¹⁴⁹

5.2.3 Safe Harbor for Service Providers

In case of click-baiting, service provider which be concerned with this issue is the service provider who keeps the computer information for other persons' sake - Hosting Provider.

Since operating website has 3 steps to be done as shown in Chapter 2 those are:

1. Register website's domain name
2. Rent website's storage (Hosting Provider)
3. Install website's creation tools

Hosting, also known as web hosting or website hosting is a business that offers sever space for websites to host/save their files, so they are accessible

¹⁴⁹ Thai Copyright Act B.E.2537 (1994) Section 31 states that

“Any person, knowing or having reason to have known that a work is created by infringing another person's copyright, performing any act against such work for profit, shall be deemed to infringe the copyright provided that such act is any of the following:

- (1) selling, holding for sale, offering for sale, renting, offering for rent, selling on hire purchase or offering for hire purchase;
- (2) communication to the public;
- (3) distribution in a manner which may cause damage to the copyright owner;
- (4) self-importation or importation by order into the Kingdom.”

online for 24 hours.¹⁵⁰ Therefore website hosting is a service provider¹⁵¹ under Section 32/3 paragraph two (2) – “a person who provides a service to store a database for another person’s benefits.” Here is the place where clickbait websites gather their copyright infringement contents.

There are two sorts of hosting, local hosting and international hosting. If the target (viewers) are in Thailand, website owner should pick local hosting service because it is more quickly in accessing to data than keeping data with international hosting, on the other hand if targets are in other country, website owner should pick website hosting in or nearby country in order for the best performance in data accessing.¹⁵²

The located place of a website hosting is significant to proceed Section 32/3. If clickbait website is hosted by local hosting, it is easily to find hosting provider to proceed Notice and Take Down process, but when the clickbait website is hosted by international hosting provider, it is rather difficult to carry out this process.

In order to solve this problem, Mister Piset Chiyasak, General Manager of Thai Entertainment Content Trade Association (TECA) suggests that it would be great if we are able to run “website blocking” to clickbait websites which hosted by international web hosting.¹⁵³

¹⁵⁰ Orbiting Web, “*Dealing with Online Copyrights Infringement in Accordance with DMCA*”, available at <http://www.marketingdock.com/copyrights/dealing-with-copyright-infringement.php> (last visited May 21, 2016).

¹⁵¹ กระทรวงเทคโนโลยีสารสนเทศและการสื่อสาร, สำนักงานปลัดกระทรวงเทคโนโลยีสารสนเทศและการสื่อสาร, *ความรู้เกี่ยวกับพระราชบัญญัติว่าด้วยการกระทำความผิดเกี่ยวกับคอมพิวเตอร์ พ.ศ. 2550 10 (2551)* (Ministry of Information and Communication Technology, Office of the Permanent Secretary, **Summary of the Computer Crime Act B.E.2550 10 (2008)**).

¹⁵² ดารากร จิรันดร, “*เว็บไซต์ตั้งของไทยหรือของต่างประเทศน่าใช้กว่ากัน*”, 9 สิงหาคม 2555, (Darakorn Jirundon, “*Local or International Web Hosting: Which one is more likely to use?*”, Aug. 9, 2012), available at <http://www.hostsearch.co.th/Thailand-web-hosting-articles/...99> (last visited May 16, 2016).

¹⁵³ Interview with Piset Chiyasak, General Manager of Thai Entertainment Content Trade Association (TECA), (Feb. 12, 2016).

At present, website blocking could be done under Section 20¹⁵⁴ and Section 14¹⁵⁵ of the Computer Crime Act B.E.2550 (2007) which has no offense about copyright infringement, there has only offence that might have an impact on the Kingdom's security as stipulated in Division 2 type 1 or type 1/1 of the Criminal Code, or that it might be contradictory to the peace and concord or good morals of the people that is able to run website blocking. Hence, if copyright infringement become one offense under Section 20 that can request the court to restrain the dissemination of infringed data, this will help us to block these clickbait websites from accessing.

When a website was blocked, the website browser will show this notification as shown in figure 26.

¹⁵⁴ Computer Crime Act B.E.2550 (2007) Section 20 states that

“If an offence under this Act is to disseminate computer data that might have an impact on the Kingdom's security as stipulated in Division 2 type 1 or type 1/1 of the Criminal Code, or that it might be contradictory to the peace and concord or good morals of the people, the competent official appointed by the Minister may file a petition together with the evidence to a court with jurisdiction to restrain the dissemination of such computer data.

If the court gives an instruction to restrain the dissemination of computer data according to paragraph one, the relevant competent official shall conduct the restraint either by himself or instruct the Service Provider to restrain the dissemination of such computer data.”

¹⁵⁵ Computer Crime Act B.E.2550 (2007) Section 14 states that

“If any person commits any offence of the following acts shall be subject to imprisonment for not more than five years or a fine of not more than one hundred thousand baht or both:

(1) that involves import to a computer system of forged computer data, either in whole or in part, or false computer data, in a manner that is likely to cause damage to that third party or the public;

(2) that involves import to a computer system of false computer data in a manner that is likely to damage the country's security or cause a public panic;

(3) that involves import to a computer system of any computer data related with an offence against the Kingdom's security under the Criminal Code;

(4) that involves import to a computer system of any computer data of a pornographic nature that is publicly accessible;

(5) that involves the dissemination or forwarding of computer data already known to be computer data under (1) (2) (3) or (4);”



Figure 26 Notification of blocked website

The next suggestion is to amend Section 32/3 of the Thai Copyright Act B.E.2537 (1994) to be clearer, because at this moment, the Section 32/3 allows a copyright owner to ask for a court to command the service provider to cease the infringement or to remove the alleged infringing work from the computer system. Mister Piset Chiyasak gave an opinion that if we can make it clearer that website blocking is equal to “to cease the infringement”; it would be helpful to block clickbait website which hosting outside Thailand.¹⁵⁶

The principle of Safe Harbor for Service Provider in the Section 32/3 of Thai Copyright Act B.E.2537 (1994) is different from the U.S. and the European Union: EU, because the Section 32/3 allows the court to examine the copyright owner’s petition, but the service provider in the U.S. and the EU, has the duty to remove the alleged infringing work from the computer system of the service provider upon received notification of claimed.¹⁵⁷¹⁵⁸ The author views that Safe Harbor for Service Provider should be able to stop the process rapidly to prevent the more damage of the copyright owner. Therefore, the copyright owner should have the right to send claim notification directly to service provider. This will protect copyright owner’s right in a good time, rather than waiting for the court’s order.

¹⁵⁶ Interview with Piset Chiyasak, *supra* note 153.

¹⁵⁷ 17 U.S.C. § 512(C)(3)(A)

“To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider that includes substantially the following: ...”

¹⁵⁸ Amnart Netayasupha & Chanchai Arreewittayalerd, *supra* note 118, at 185.

5.2.4 Countermeasures of Leading Service Providers

Since Copyright Law is an ineffective mean to tackle with the clickbait problem. So the social media providers came to take some roles. Many of these clickbait sites steal content from legitimate, hardworking authors and, when challenged, set up hate mail campaigns to spam comments and Facebook feeds.¹⁵⁹

Clickbait always involved with social media. The two leading social medias which are ranked by number of active users (in millions) are Facebook and Twitter, as shown in figure 27.¹⁶⁰

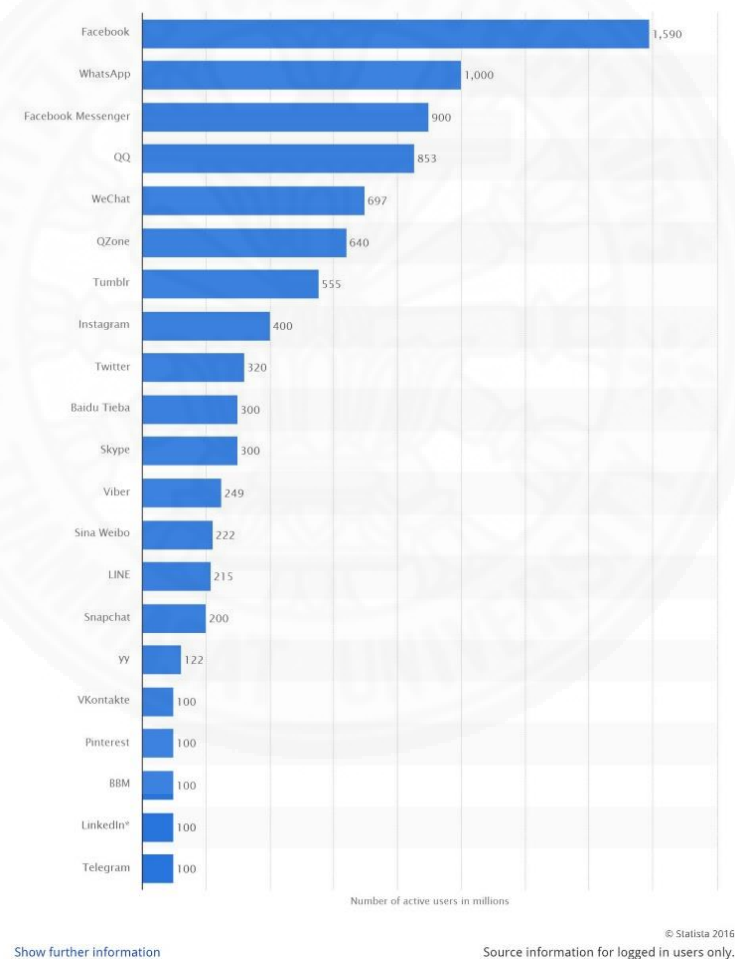


Figure 27 Leading social networks worldwide as of April 2016, ranked by number of active users (in million)

¹⁵⁹ Gaye, *supra* note 19.

¹⁶⁰ Statista, *supra* note 2.

*Note: 1. QQ, WhatsApp, Facebook Messenger, and WeChat are deemed as instant messaging (IM) not social media.

2. Since Facebook is prohibited in China, thus Chinese developer created social media called QZone to use instead of Facebook.¹⁶¹

Because the law does not state about the liability of Clickbait activities. There are only countermeasures from social networks providers themselves that are;

5.2.4.1 Countermeasure of Facebook

Clickbait problem is one of the biggest issues of Facebook users. So Facebook improved herself on the process of news feed in order to help people find the posts and links from publishers that are most interesting and relevant, and to continue to weed out stories that people frequently informed Facebook that they are spammy ones and do not want to see them.¹⁶²

Facebook made an initial survey on what types of content people prefer to see on their News Feeds. It was found that 80% of the time people preferred headlines that would help them to decide if they wanted to read the full article or not before they had to click through them.¹⁶³

Facebook determines a time spent on a clickbait. Fortunately, it was found that if people click on an article and spent some reading times, this suggests that they clicked through to something valuable. If they click through to a link and then come right back to the Facebook, this suggests that they did not find something they wanted. Another factor used by Facebook was the ratio of people

¹⁶¹ Zcooby, “Qzone คืออะไร? ทำไมถึงฮิตในประเทศจีน?”, 19 มีนาคม 2557 (Zcooby, “What is Qzone? Why it Famous in China?”, Mar. 19, 2014), available at <http://www.zcooby.com/qzone-china-social-network/> (last visited Aug. 29, 2015).

¹⁶² El-Arini & Tang, *supra* note 18.

¹⁶³ Ashley Feinberg, “Facebook is Finally Cracking Down on Upworthy-Style Clickbait”, Aug. 25, 2014, available at <http://gizmodo.com/facebook-is-finally-cracking-down-on-upworthy-style-cli-1626542378> (last visited Aug. 16, 2015).

clicking on the content compared to people discussing and sharing it with their friends. If there was a lot of people click on the link, but relatively few people click “Like”, or comment on the story when they return to Facebook, this also suggested that people did not click through to something that was valuable to them.¹⁶⁴

5.2.4.2 Countermeasure of Twitter

As the twitter, there is an account named @SavedYouAClick, the twitter feed devoted to “saving you from clickbait”¹⁶⁵ which amassed 125,000 followers in only few months, or @HuffPoSpoilers, and @UpworthySpoiler, which designed to call out and mock clickbait culture.¹⁶⁶ This is the spoiling way that destroy websites in order to let other users know about information behind that clickbait links.

5.2.4.3 Countermeasure of Websites

There are many websites built up to make fun of the clickbait culture, such as The Onion’s ClickHole which lured many readers and praise for its skewering of BuzzFeed and Upworthy-esquelisticles and quizzes.¹⁶⁷ Some users may download special web browser plug-in for Chrome named “Downworthy” which translates certain common words in viral headlines to their more accurate equivalent.¹⁶⁸

For example:

“Literally” becomes “Figuratively”;

“Incredible” becomes “Painfully Ordinary”;

¹⁶⁴ El-Arini & Tang, *supra* note 18.

¹⁶⁵ Shire, *supra* note 20.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ Robinson Meyer, “Get Rid of 'Viral' Headlines with This One Weird Browser Extension”, Jan. 24, 2014, available at <http://www.theatlantic.com/technology/archive/2014/01/get-rid-of-viral-headlines-with-this-one-weird-browser-extension/283320/> (last visited Aug. 29, 2015).

And the most famous phrase “Will Blow Your Mind” becomes “Might Perhaps Mildly Entertain You For a Moment” would have been seen.

5.2.4.4 Countermeasure of Users

Some sources give recommendations for website writers in order to make their headlines click-worthy without having their audience hate them.¹⁶⁹ These are their recommendations,

a) Be honest

Don’t make readers feel like they fell for a bait and switch. Don’t write something that is so misleading that made your readers’ eyes become permanently affixed to the backs of their sockets because they rolled them hardly.

b) Ease up on the Hyperbole

You should not use exaggerative headlines, e.g. The Headline of video is “*This Made My Jaw Drop – Absolute Insane*”, could just be video of gymnasts doing some fancy gymnastics without any absolutely insane as suggested by the headline.

c) Keep Your Bangorreaah in Check

You should not over use exclamation marks. Please put it in your headline to an absolute minimum. Or better yet, avoid them completely.

5.3 Should We Need More Legal Mechanisms to Tackle Clickbait?

According to the analysis part, it signified that at this moment the legal provision is not enough to take charge of click-baiting offence. So, the author views that we need more legal mechanisms to tackle clickbait website. These are the author’s recommendation.

5.3.1 Increment of Penalties for Copyright Infringement Offence

¹⁶⁹ Glassberg, *supra* note 82.

According to Section 69 of the Thai Copyright Act B.E.2537 (1994) stipulated about penalty that “*Any person who infringes copyright ... shall be liable to a fine of twenty thousand baht to two hundred thousand baht*” and “*If any offence referred to in the first paragraph is committed for commerce, the offender shall be liable to imprisonment for a term of six months to four years or to a fine of one hundred thousand baht to eight hundred thousand baht, or to both.*” It means that, if the offence is committed for commerce, such as click-baiting, then the offender shall be liable to imprisonment for a term of six months to four years or to a fine of one hundred thousand Baht to eight hundred thousand Baht, or to both. Someone may think that the penalties are quite low, in addition, click-baiting can make high profit. Therefore, it worth to take risk for committed the offence.

To weaken the offence, penalties should be set in high-rate by prolong the imprisonment and increase the fine to the point that it was not worth for commit this offence.

5.3.2 Having Specifically Provision for the Copyright Owner to Demand for Statutory Damages

Because the cost of clickbait is so little compared to the high profit in returned. It was found that the popular clickbait websites earn an income of a six digits Baht per month¹⁷⁰ which worth to take risk from being suited. Even if there is Punitive Damages principle in paragraph two of Section 64¹⁷¹ which has just added by the Copyright Act (No.2) B.E.2558 (2015) that “*In the case where there is clear evidence that infringement of a copyright or performers’ right was committed with intent to enable the public to access the copyrighted work or the performers’ right*

¹⁷⁰ MewSocial, “*Clickbait ยังไม่ตาย*”, 3 กรกฎาคม 2558, (MewSocial, *Clickbait is Still Alive*, Jul. 3, 2015), available at <https://www.facebook.com/MewSocial/posts/927819347260151> (last visited May 8, 2016).

¹⁷¹ Thai Copyright Act B.E.2537 (1994) Section 64 paragraph two states that “*In the case where there is clear evidence that infringement of a copyright or performers’ right was committed with intent to enable the public to access the copyrighted work or the performers’ right widely, the court shall have the power to order the infringer to pay additional damages not exceeding twice the amount of damages under paragraph one.*”

widely, the court shall have the power to order the infringer to pay additional damages not exceeding twice the amount of damages under paragraph one”, clickbait website owners ignored this principle and still continue to operate their websites.

The punitive damage is a new legal concept for Thai law, because normally the law does not allow an injured person to get remedy more than actual damages. This provision will make injured person get remedy more than actual damage they suffered. The purpose of this concept is to deter bad actions on the part of possible future defendants and to ensure that the defendant is appropriately punished for wrongdoing.¹⁷² Whether or not this principle will effective, the court’s decision is waited, because the court has discretion to settle this damages according to condition of each case.¹⁷³

In the U.S.A., in addition to demanding for “Actual Damages”, copyright owner who won the case can demand for “Statutory Damages”, which give the choice to copyright owner not to prove the actual damages but a chance to use criterion per work to calculate statutory. The court has discretion to award this damage from \$750 – \$30,000 per one work.¹⁷⁴

If that infringement was willfully committed, the court in its discretion may increase the award of statutory damages to a sum of not more than \$150,000.¹⁷⁵ Conversely, in a case where the infringer sustains the burden of proving,

¹⁷²FreeAdvice Staff, “*Punitive Damages: What they are and how they work*”, available at http://law.freeadvice.com/litigation/legal_remedies/punitive-damages.htm (last visited May 15, 2016).

¹⁷³ Amnart Netayasupha & Chanchai Arreewittayalerd, *supra* note 118, at 206.

¹⁷⁴ 17 U.S.C. § 504(C)(1)

“Except as provided by clause (2) of this subsection, the copyright owner may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to any one work, for which any one infringer is liable individually, or for which any two or more infringers are liable jointly and severally, in a sum of not less than \$750 or more than \$30,000 as the court considers just. For the purposes of this subsection, all the parts of a compilation or derivative work constitute one work.”

¹⁷⁵ 17 U.S.C. § 504(C)(2)

“In a case where the copyright owner sustains the burden of proving, and the court finds, that infringement was committed willfully, the court in its discretion may

and the court found that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$200.¹⁷⁶

The author views that punitive damages principle is the one effectively measure to punish the defendant for outrageous misconduct and to deter the defendant and others from the similar misbehavior in the future.¹⁷⁷ However, to recover punitive damages according to Section 64 paragraph two of the Copyright Act B.E.2537 (1994), the copyright owner has to provide evidences to proof the actual damage as paragraph one states before getting additional damages, which is more complicate and difficult of proving, besides in some cases there are too many clickbait websites infringing one copyright work. If the copyright owner is able to recover statutory damages the same as Section 504 of U.S. Code, it will help the copyright owner to recover damages easier and also decrease the court's work load.

5.3.3 Amendment of Safe Harbor for Service Providers Provision

Even if the Safe Harbor for Service Providers provision is a new provision which had just added in 2015, however this provision may not provide completely the capability in dealing with clickbait and copyright infringement offences.

The characteristic of clickbait is different from other formats of copyright infringement, because making clickbait website is only copy and paste the contents into it which always be the interesting substance of people in that period. For example, the news about a raping which draw user's attention and raise the emotion.

increase the award of statutory damages to a sum of not more than \$150,000. In a case where the infringer sustains the burden of proving, and the court finds, that such infringer was not aware and had no reason to believe that his or her acts constituted an infringement of copyright, the court in its discretion may reduce the award of statutory damages to a sum of not less than \$200. The court shall remit statutory damages in any case where an infringer believed and had reasonable grounds for believing that his or her use of the copyrighted work was a fair use under Section 107

...

¹⁷⁶ *Id.*

¹⁷⁷ The Free Dictionary by Farlex, "*Punitive Damages*", available at <http://legal-dictionary.thefreedictionary.com/punitive+damages> (last visited May 15, 2016).

This type of contents may attract many users and remained the popularity for one or two days, then fading out. This incident is quickly happened and gone, that is why we need a quick method to cease the click-baiting. Consequently, Section 32/3 should be amended that the copyright owner shall able to send claimed notification directly to the service provider to remove the alleged infringing work from the computer system of the service provider without examination of the court which will save time, cost, and cease the click-baiting as soon as possible.

Another point is obviously identify the meaning of “to cease the infringement” that included the “website blocking” which will able to block website which contained infringing contents.

5.3.4 Amendment Section 20 of the Computer Crime Act B.E.2550 (2007)

Section 20 of the Computer Crime Act B.E.2550 (2007) has no offense about copyright infringement, it should be amended by adding copyright infringement offence to become one offence that can request the court to restrain the dissemination of infringed data, which will be advantageous to block the accessing of these clickbait websites.

In order to control some clickbait websites that create nonsense contents and or contents without any subject matter, only some contents for click-baiting purpose but not infringe others copyright work, there should has provision that “if contents in the website is not illegal to any provision but it might be contradictory to the peace and concord or good morals of the people, or only have purpose for increasing webpage view and associated ad revenue, and Computer Data Screening Committee has unanimous decision to restrain the dissemination of such computer data” to delete nonsense contents and or contents without any subject matter.

5.3.5 Having Particular Legal Provision About Click-Baiting

At present, there is no provision clearly states that click-baiting is illegal. Click-baiting is also not an illegal offence under the Computer Crime Act B.E.2550 (2007), because this act is not up-to-date enough to cover offence which

using new tactic of technology. In the author's opinion, there should have a legal provision in the Computer Crime Act B.E.2550 (2007) states in click-baiting offence, because the characteristic of clickbait is a bad conduct executed on the internet which resemble to others offences stated in such act.

Other than the Copyright Law, the author speculated that there may have others field of law involved with clickbait issue, those are Criminal Law and Torts Law.

The author views that clickbait is involved with the Criminal Law too because Section 341 of the Thailand Penal Code states about cheating and fraud, since the owner of the website gain benefits from people clicking their deceptive links, *“dishonestly deceives a person with the assertion of a falsehood or the concealment of the facts which should be revealed, and, by such deception, obtains a property from the person so deceived or a third person.”* Even if clickbait website owner did not obtain any property directly from the deceived person or third person, but they earn money indirectly from the increasing of webpage views by the innocent users. Besides, clickbait website owners are *“taking advantage of the lack of intelligence of the deceived person who is a child, or by taking advantage of weakness of mind of the deceived person”* as states in Section 342(2) of the Thailand Penal Code, because there are lots of people who did not know that what they are encountered with and click on the clickbait links. Another aspect is the Section 344 of the Thailand Penal Code, because it stipulated that *“Whoever, dishonestly, deceiving ten persons upwards to perform any work for oneself or for the third person with the intent not paying the wages or remuneration to such persons....”* These websites owners attempt to fraud people (which always has more than 10 people who clicked on these links) to click (or to make money from them) without paying any wages.

Another is the Torts Law, according to the useless articles which show up on user's social media newsfeed, this unwanted information may be considered to be nuisance because users expect to read the informative articles but these links always displayed. Although people has freedom to express their idea or opinion, but clickbait website always infringed other copyrighted works, create the

untrue story, make others people be disreputable – in the author views, clickbait has no good point. Hence, these websites are “*exercise of a right which can only have the purpose of causing injury to another person*” as states in Section 421 of the Civil and Commercial Code of Thailand which is very unlawful. However, there may have the problem about proving the actual damages because there have no certain damages occur from confronting with clickbait, besides, annoyance is a subjective emotion that may dissimilar in each person. Some contents are untrue and has no solid evidences or references,¹⁷⁸ some content may injure to the reputation or the credit of another or his earnings or prosperity in any other manner as states in Section 423 of the Civil and Commercial Code of Thailand.

Nevertheless, these are only the author’s opinion about the others field of law that may relevant to clickbait issues.

5.4 Discussion and Recommendation Format for Digital Content

Nowadays, digital contents are rapidly increasing. The author has noted that if we have a standard form in creating digital online article it would help readers to check the reliability of article or even making further references.

In author’s opinion, a good digital online content should have a format as following:

5.4.1 Headline

A good headline should be in 5W1H form those are “Who What Where When Why How”¹⁷⁹ This will help reader to catch the heart of the story prior to read the full article.

5.4.2 Author’s name

¹⁷⁸ ASTV Online Manager, *supra* note 10.

¹⁷⁹ วิจิตร ภัคนิกร, “เทคนิคการเขียนข่าว”, 3 พฤษภาคม 2553, (Vijit Puknikorn, “*News Writing Technique*”, May 3, 2010), available at http://region7.prd.go.th/ewt_news.php?nid=12 (last visited May 6, 2016).

An article should have the author's or contents editor's name, because readers will easily make decision on to read or not to read from the name of these people. If their articles always impressed reader, the reader will be willing to read again, but if not, they may close off that article for time saving. Having the authors' or contents editor's name will make them to take more responsible for their works and try not to infringing others works in order to avoid from being suited by copyright owner. Besides, it helps readers or other persons in making citation or reference.

5.4.3 Published Date

Date of publishing is an important part of article, because it helps readers to recheck with others sources that whether or not that news or story is out of date, and also can be used it for references.

5.4.4 Body

The article body should be useful, informative, or entertainment. It should not be an untrue story or thing just created up without sources. Recommended that website owner should create by themselves. Do not copy from others and pasted on your website.

5.4.5 References

References are the most important part for the digital online contents format, because reference is a mean of demonstrating of respecting the copyright of others works. Reference is states in Section 33 of the Copyright Act B.E.2537 (1994).¹⁸⁰ The author has an opinion that reference should be in hyperlink form¹⁸¹, in order to let reader to access to the original source. However, some

¹⁸⁰ Thai Copyright Act B.E.2537 (1994) Section 33 states that

“A reasonable citation, quotation, copying, imitation of or a reference to part of a copyright work under this Act, with an acknowledgement of the ownership of copyright in such work, shall not be deemed an infringement of copyright provided that the first paragraph of section 32 is complied with.”

¹⁸¹ A hyperlink is a word, phrase, or image that you can click on to jump to a new document or a new section within the current document. Hyperlinks are found in nearly all Web pages, allowing users to click their way from page to page. Text

clickbait websites show the name of source or hyperlink of original article but it cannot click on to access through, this action is considered as very improper and unblushing.

In addition, even if some clickbait websites state that “Thank you, website ...”, but in fact these websites using others contents without asking for permission. They have just pretended that they already asked for permission, or may think that only having reference is fine, which is not true.

5.4.6 Contextual Advertising

Advertisement is an important way of earning income by the website. Hence, the website owner will try to do every method to earn money from advertisement. Clickbait website always shows the advertisement units between contents while readers are reading from up to bottom – this method shows that website owners want users to interested in the advertisement more than the contents. The good quality websites will put the advertisement unit under the contents or on the left/right hand of contents in order to avoid bothering readers during reading the contents.

5.4.7 Copyright Statements

In the webpage, there should have a statements about copyright of that work and how others person be able to use such contents without be infringing. There is an example from www.vcharkarn.com states on what type of use is not infringing their work as shown in figure 28.

hyperlinks are often blue and underlined, but don't have to be. When you move the cursor over a hyperlink, whether it is text or an image, the arrow should change to a small hand pointing at the link. When you click it, a new page or place in the current page will open.

Hyperlinks, often referred to as just “links,” are common in Web pages, but can be found in other hypertext documents. These include certain encyclopedias, glossaries, dictionaries, and other references that use hyperlinks. The links act the same way as they do on the Web, allowing the user to jump from page to page. Basically, hyperlinks allow people to browse information at hyperspeed.

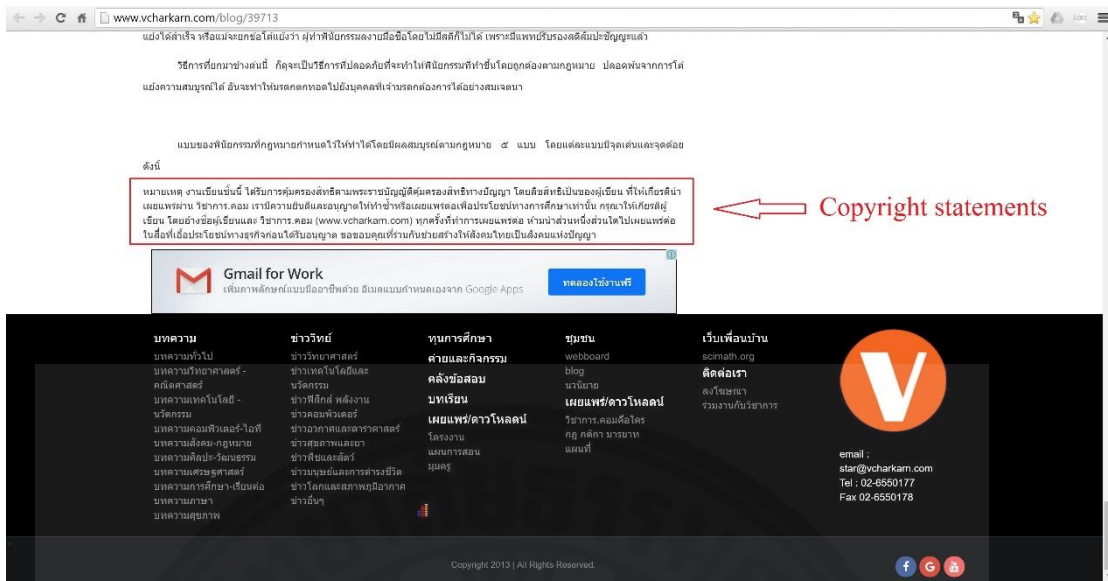


Figure 28 Copyright Statements at the end of contents

CHAPTER 6

CONCLUSION AND RECOMMENDATIONS

At present, clickbait problem is still easy to experience. If we do not control or take action on this problem, copyright owners will suffer and lose all enthusiasm in creating new works. The internet users will always feel annoy with these digital online garbage and be suspicious every time when they had to click through link in order to read the contents.

Apart from copyright infringement problem, clickbait is the worsen. Sometimes it creates an untrue story or trivial matter in order to deceive readers to read and spread out by abusing among others readers even they reprimanded. These distort stories makes some peoples believed in and spread out to others, after sharing it is difficult to correct that misunderstanding. Moreover, some contents are different from headline, furthermore, after click through, it is not content – shopping webpage instead! Clickbait is very annoyed and we should call that, this is the way of earning income by “swindling.”

Clickbait is more insidious than even some old ways of flogging newspaper stories, because “*readers are being treated as stupid.*” – said Beckman.¹⁸²

Wherefore, after conduct the comparative study, here come the proposed solutions and recommendations for tackle with click-baiting problem:

A) Increase the penalties for committed copyright infringement offence by prolong the imprisonment penalty and increase the penalty fine to the point that it is not worth for commit the offence;

B) Having regulations that allow the copyright owner to recover statutory damages like Section 504 of the U.S. Code.

¹⁸² Andrew Beaujon, “*The real problem with clickbait*”, Jul. 16, 2014, available at <http://www.poynter.org/2014/the-real-problem-with-clickbait/258985/> (last visited May 16, 2016).

C) Amending the Safe Harbor for Service Provider principle in the Thai Copyright Act B.E.2537 (1994) to allow the copyright owners to directly inform the Service Provider to take a file out of the system, or disallow users' access to the file. Another point is obviously identify the meaning of "to cease the infringement" that included "website blocking" which will able to block website which has infringing contents.

D) Amending Section 20 of the Computer Crime Act B.E.2550 (2007) by adding a copyright infringement offence that allows the Court to restrain the dissemination of infringed data.

E) Having particular legal provision about click-baiting in the Computer Crime Act B.E.2550 (2007), because the characteristic of clickbait is a bad conduct executed on the internet which resemble to others offences stated in such act.

F) Recommend the website owners to create contents by themselves and have the proper format for the article, such as provided clickable hyperlink that take the readers to the original source of the article. Moreover, please do not create nonsensical or carelessly contents with only purpose to earning webpage views.

Other than former proposed solutions and recommendations, the author would like to make everyone who read this thesis to aware of the clickbait problem, because not only the strictly law provisions might be able to solve this problem, but also the knowing of what the other is up to. Somehow, satisfaction guarantee based article may be able to tackle with this problem like Netherlands-based Blendle which allows people to read stories from a host of newspapers and magazines, and offers a pay per story set up with a money back guarantee if readers feel short-changed or dissatisfied.¹⁸³

Eventually, the author hope that this thesis will be able to provoke about clickbait problem and has a proper law provision to handle with it. Whenever we have

¹⁸³ Ben Frampton, *Clickbait: The changing face of online journalism*, Sep. 14, 2015, available at <http://www.bbc.com/news/uk-wales-34213693> (last visited May 16, 2016).

powerful law and conscious users, clickbait problem will annihilate from the internet. If we do not aware of this phenomenon and do not solve it right now, then, in the future, internet will full of these waste websites, quality contents will disappear, nonsensical, unscreened, and untrue story will occupy in every space. When we search for information on the internet, we have to waste time in screening these waste data and have some troubled in further reference. If the clickbait is still remaining, apart from us that be anxious with these scraps, our descendant who must confront with it will have a hard time to differentiate that which one is true, which one is untrue, which one is good, which one is bad,¹⁸⁴ from something called “**Clickbait.**”

¹⁸⁴ Obassblog, *supra* note 144.

REFERENCES

1. Books

1.1 English Books

Cram101 Textbook Reviews. **e-Study Guide for Criminal Justice in Action: The Core**, Textbook by Larry K. Gaines: Emergency Services. Emergency Services. Kindle ed. January 1, 2014.

Stokes, Simon. **Digital Copyright Law and Practice**. 4th ed. Oxford: Hart Publishing, 2014.

1.2 Thai Books

กระทรวงเทคโนโลยีสารสนเทศและการสื่อสาร. สำนักงานปลัดกระทรวงเทคโนโลยีสารสนเทศและการสื่อสาร. **ความรู้เกี่ยวกับพระราชบัญญัติว่าด้วยการกระทำความผิดเกี่ยวกับ**

คอมพิวเตอร์ พ.ศ. 2550. กรุงเทพฯ: กระทรวงเทคโนโลยีสารสนเทศและการสื่อสาร, 2551

(Ministry of Information and Communication Technology. Office of the Permanent Secretary. **Summary of the Computer Crime Act B.E.2550**.

Bangkok: Ministry of Information and Communication Technology, 2008).

กฤติน ยังปรีชา. **สร้างเงินล้านด้วยการเป็นเจ้าของธุรกิจ (เว็บไซต์)**. นนทบุรี: ริงค์ ปียอนด์ บุ๊คส์,

2557 (Kridtin Youngpreecha. **Making Millions by Becoming a Website**

Owner. Nonthaburi: Think Beyond Books, 2014)).

ตราวุทธิ์ เหลืองสมบูรณ์. **Google AdWords โปรมอทเว็บ (ไซด์) ให้ดังศาสตร์**. กรุงเทพฯ: ตลาด

ดอท คอม, 2550. (Trawut Luangsomboon. **Google AdWords Let's Advertise**

Your Website. Bangkok: Tarad Dot Com, 2007).

ปภาดา อมรณรัตน์กุล. “รวย” ด้วยคลิก **Google AdSense** ชุมทรัพย์โลกออนไลน์. พิมพ์ครั้งที่ 2.

กรุงเทพฯ: ตลาด ดอท คอม, 2549 (Papada Amornuratkul. **Get Rich with Clicks from Online Treasures**. 2nd ed. Bangkok: Tarad Dot Com, 2006).

สุธี จันทร์แต่งผล. **SEO Search Engine Optimization** ปรับเว็บให้แรง แต่งให้ติดอันดับ.

กรุงเทพฯ: โปรวิชัน, 2551 (Sutee Chantangphol. **SEO Search Engine Optimization: Adjusting Website for Better Ranking**. Bangkok: Provision, 2008).

อนุชา ลีวรกุล. **Advanced Google AdSense** ต่อยอดให้รวยอย่างยั่งยืน. กรุงเทพฯ: วิตตี กรุ๊ป,

2551 (Anucha Leeworakul. **Advanced Google AdSense Make Life Last Rich**. Bangkok: Witty Group, 2008).

อำนาจ เนตยสุภา และ ชาญชัย อารีวิททยาเลิศ. คำอธิบายกฎหมายลิขสิทธิ์. พิมพ์ครั้งที่ 2. กรุงเทพฯ:

วิญญูชน, 2558 (Amnart Netayasupha and Chanchai Arreewittayalerd.

Copyright Law Description. 2nd ed. Bangkok: Winyuchon, 2015).

2. Electronic Media

2.1 Government Documents

Collins, Rachel. “Fair Use: Copyright Differences in the UK and US.” March 20, 2015. <https://www.dacs.org.uk/latest-news/us-fair-use-uk-fair-dealing-differences-law?category=For+Artists&title=N> (accessed May 20, 2016).

Intellectual Property Office. “Exceptions to Copyright.” June 12, 2014. <https://www.gov.uk/guidance/exceptions-to-copyright> (accessed December 10, 2015).

-----, “Guidance: Intellectual Property Offences.” October 1, 2014. <https://www.gov.uk/government/publications/intellectual-property-offences/intellectual-property-offences#copyright-designs-and-patent-act-1988> (accessed May 16, 2016).

U.S. Copyright Office Summary. “The Digital Millennium Copyright Act of 1998.”
www.copyright.gov/legislation/dmca.pdf (accessed December 10, 2015).

2.2 Online Dictionary

The Free Dictionary by Farlex. <http://www.thefreedictionary.com/click> (accessed June 19, 2015).

2.3 Online Newspapers

Frampton, Ben. “Clickbait: The Changing Face of Online Journalism.” **BBC**.
 September 14, 2015. <http://www.bbc.com/news/uk-wales-34213693> (accessed May 16, 2016).

Peters, Jeremy W., and Verne G. Kopytoff. “Betting on News, AOL Is Buying the
Huffington Post.” **New York Times**, February 7, 2011,
http://www.nytimes.com/2011/02/07/business/media/07aol.html?_r=0
 (accessed August 14, 2015).

“Famous News-Website can’t Bear Anymore!! Gathering to Sue Ohozaa Website.”
Dailynews, May 15, 2015. <http://www.dailynews.co.th/it/321489> (accessed June 9, 2015).

“เปิดไส้ใน ‘กฎหมายลิขสิทธิ์’ ใหม่ บัญญัติ 8 ประการ ‘สังคมออนไลน์’ ต้องรู้.” ประชาชาติธุรกิจ
 ออนไลน์, 3 สิงหาคม 2558. http://www.prachachat.net/news_detail.php?newsid=1438571444 (สืบค้นเมื่อวันที่ 17 พฤษภาคม 2559) (“Unboxing the New
 ‘Copyright Law’: The Must Know of 8 ‘Online Social’ Issues.”
Prachachat.net, August 3, 2015. http://www.prachachat.net/news_detail.php?newsid=1438571444 (accessed May 17, 2016)).

“คนไทยใช้เฟซบุ๊กติดอันดับ 9 ของโลก.” เดลินิวส์, 27 พฤษภาคม 2557.

<http://www.dailynews.co.th/it/240663> (สืบค้นเมื่อวันที่ 9 มิถุนายน 2558)

(“*Thailand is in 9th Rank of the Number of Facebook Users.*” **Dailynews**, May 9, 2014. <http://www.dailynews.co.th/it/240663> (accessed June 9, 2015)).

“นักข่าว-ช่างภาพ ‘โมโน 29’ โวย ‘ohozaa.com’ นั่งเทียนพาดหัว ‘บ๊ิกไบค์’ ไร้อำนาจหลังโดนจับ.” **ASTV ผู้จัดการออนไลน์**, 20 เมษายน 2558. <http://www.manager.co.th/HotShare/ViewNews.aspx?NewsID=9580000045092> (สืบค้นเมื่อวันที่ 9 มิถุนายน 2558) (“*‘Mono 29’ Journalist and Photographer Outcry to ‘ohozaa.com’ After it makes a fake topic and contents in picture they were taken.*” **ASTV Online Manager**, April 20, 2015. <http://www.manager.co.th/HotShare/ViewNews.aspx?NewsID=9580000045092> (accessed June 9, 2015)).

“หายนะออนไลน์ ‘เว็บปรลิต’ ก๊อปข่าวจนยอดวิวกระจาย!” **ASTV ผู้จัดการรายวัน**, 10 พฤษภาคม 2558. <http://www.manager.co.th/Daily/ViewNews.aspx?NewsID=9580000053326> (สืบค้นเมื่อวันที่ 17 พฤษภาคม 2559) (“*Online Disaster: ‘Parasite Web’ Earned Webpage Views from Stolen Contents!*” **ASTV Daily Manager**, May 10, 2015. <http://www.manager.co.th/Daily/ViewNews.aspx?NewsID=9580000053326> (accessed May 17, 2016)).

2.4 Web blogs

Ratcliff, Christopher. “*What is Click Fraud and How can You Prevent It?*” Entry posted November 19, 2013. <https://econsultancy.com/blog/63818-what-is-click-fraud-and-how-can-you-prevent-it/> (accessed December 7, 2015).

Sagin, Erin. “*4 Powerful Ways to Eliminate Click Fraud in Your Account.*” Entry posted August 17, 2015. <http://www.wordstream.com/blog/ws/2015/08/17/click-fraud> (accessed December 7, 2015).

Mk. “*รู้จัก BuzzFeed และ Upworthy ต้นกำเนิดของเว็บไวรัลที่จะทำให้คุณต้องทึ่ง.*” นำข้อมูลขึ้นเมื่อวันที่ 12 เมษายน 2558. <https://www.blognone.com/node/67521> (สืบค้นเมื่อวันที่ 14 สิงหาคม 2558) (Mk. “*Knowing BuzzFeed and Upworthy: The Original*

Website of Viral That Will Blow Your Mind.” Entry posted April 12, 2015.

<https://www.blognone.com/node/67521> (accessed August 14, 2015)).

“*Clickbait คืออะไร? ทำไมเราไม่ควร Click?*” Obassblog. นำข้อมูลขึ้นเมื่อวันที่ 28 มิถุนายน

2558. <http://obass.orgfree.com/index.php/2015/06/28/clickbait/> (สืบค้นเมื่อวันที่

11 พฤษภาคม 2559) (“What is Clickbait? Why We Should Avoid It?”

Obassblog. Entry posted June 28, 2015. <http://obass.orgfree.com/index.php/2015/06/28/clickbait/> (accessed May 11, 2016)).

2.5 Websites

2.5.1 English Websites

Agrawal, Harsh. “*Maximum Allowed AdSense Ad Units on a Web Page.*” Entry posted

August 21, 2015. <http://www.shoutmeloud.com/maximum-number-of-adsense-units-in-a-single-page.html> (accessed December 7, 2015).

Arguman. “*‘Clickbait’ is Wrong.*” Entry posted November 2015.

<http://en.arguman.org/clickbait-is-wrong> (accessed December 7, 2015).

Beaujon, Andrew. “*The Real Problem with Clickbait.*” July 16, 2014.

<http://www.poynter.org/2014/the-real-problem-with-clickbait/258985/> (accessed May 16, 2016).

Charath Petthongchai. “*Clickbait and Content Copier.*”

<http://www.charathbank.com/2015/04/click-bait-and-content-copier/> (accessed June 10, 2015).

Cohen, Mark A. “*Legal Clickbait?*” Entry posted June 2, 2015.

<http://legalmosaic.com/2015/06/02/legal-clickbait/> (accessed May 18, 2016).

El-Arini, Khalid, and Joyce Tang. “*News Feed FYI: Click-baiting.*” Entry posted

August 25, 2014. <http://newsroom.fb.com/news/2014/08/news-feed-fyi-click-baiting/> (accessed August 22, 2015).

- Feinberg, Ashley. “*Facebook is Finally Cracking Down on Upworthy-Style Clickbait.*” August 25, 2014. <http://gizmodo.com/facebook-is-finally-cracking-down-on-upworthy-style-cli-1626542378> (accessed August 16, 2015).
- Fishkin, Rand, and et al. “*Chapter 3 Why Search Engine Marketing is Necessary.*” <https://moz.com/beginners-guide-to-seo/why-search-engine-marketing-is-necessary> (accessed December 7, 2015).
- FreeAdvice Staff. “*Punitive Damages: What They Are and How They Work.*” http://law.freeadvice.com/litigation/legal_remedies/punitive-damages.htm (accessed May 15, 2016).
- Freeservers. “*What Is a Website?*” <http://www.freeservers.com/WebHosting101/WhatIsAWebsite.html> (accessed December 5, 2015).
- Gaye. “*How to Seek the Truth and Avoid Clickbait.*” <http://www.backdoorsurvival.com/how-to-seek-the-truth-and-avoid-clickbait/> (accessed August 22, 2015).
- Glassberg, Jessica. “*Avoid Creating Clickbait Headlines: Your Jaw will Drop from These Incredible Tips.*” Entry posted September 3, 2014. <http://torquemag.io/avoid-creating-clickbait-headlines-jaw-will-drop-incredible-tips/> (accessed December 7, 2015).
- Google AdSense. “*AdSense for Content (AFC).*” <https://support.google.com/adsense/answer/17470> (accessed December 5, 2015).
- , “*Customize Your Ads.*” <https://support.google.com/adsense/answer/185666> (accessed December 7, 2015).
- , “*Google AdSense.*” http://www.google.com/adsense/start/#?modal_active=none (accessed December 5, 2015).
- , “*How It Works.*” <http://www.google.com/adsense/start/how-it-works/> (accessed December 5, 2015).
- Google AdWords. “*Google AdWords: An Overview for Advertisers.*” <https://support.google.com/adwords/answer/1704410?hl=en> (accessed December 7, 2015).
- Hamblin, James. “*It’s Everywhere, the Clickbait.*” <http://www.theatlantic.com/entertainment/archive/2014/11/clickbait-what-is/382545/> (accessed June 10, 2015).

- Imboden, Durant. "5 - *Earning revenue*." Entry posted July 29, 2010. <http://travelwritten.com/4---revenue/> (accessed December 7, 2015).
- International James Joyce Foundation. "*Legal Definitions: 'Fair Use' and 'Fair Dealing'*." April 2012. <https://joycefoundation.osu.edu/joyce-copyright/fair-use-and-permissions/about-law/legal-definitions> (accessed May 17, 2015).
- Kim, Larry. "*10 Facts and Trends about Contextual Advertising*." Entry posted September 15, 2010. <http://www.searchenginejournal.com/10-facts-and-trends-about-contextual-advertising/24098/> (accessed December 7, 2015).
- Meyer, Robinson. "*Get Rid of 'Viral' Headlines with This One Weird Browser Extension*." January 24, 2014. <http://www.theatlantic.com/technology/archive/2014/01/get-rid-of-viral-headlines-with-this-one-weird-browser-extension/283320/> (accessed August 29, 2015).
- Nice, Karim, Tracy V. Wilson, and Gerald Gurevich. "*How Digital Cameras Work*." 2008. <http://electronics.howstuffworks.com/cameras-photography/digital/digital-camera.htm> (accessed January 24, 2016).
- Shire, Emily. "*Saving Us from Ourselves: The Anti-Clickbait Movement*." Entry posted July 14, 2014. <http://www.thedailybeast.com/articles/2014/07/14/saving-us-from-ourselves-the-anti-clickbait-movement.html> (accessed August 23, 2015).
- Stim, Rich. "*Fair Use: The Four Factors*." <http://www.nolo.com/legal-encyclopedia/fair-use-the-four-factors.html> (accessed May 11, 2016).
- , "*What Is Fair Use?*" <http://fairuse.stanford.edu/overview/fair-use/what-is-fair-use/> (accessed December 10, 2015).
- Wolfe. Lahle, "*Copyright Laws: What is Automatic Copyright Protection?*" February 27, 2016. <http://womeninbusiness.about.com/od/copyrightlaws/f/FAQlaw-autocr.htm> (accessed December 10, 2015).
- Yengo. "*For Advertisers*." <http://www.yengo.com/text/advertisers> (accessed December 7, 2015).
- , "*For Publishers*." <http://partner.yengo.com/> (accessed December 7, 2015).
- Zhang, Michale. "*EliteDaily Sued by Photographer for Sharing Photos in Blog Post Without Permission*." March 19, 2015. <http://petapixel.com/2015/03/19/>

elitedaily-sued-by-photographer-for-sharing-photos-in-blog-post-without-permission/ (accessed December 10, 2015).

-----, “*This is What It Looks Like to Sue a Viral ‘Clickbait’ Site for Photo Copyright Infringement.*” July 7, 2015. <http://petapixel.com/2015/07/31/this-is-what-it-looks-like-to-sue-a-viral-clickbait-site-for-photo-copyright-infringement/> (accessed December 10, 2015).

“*Banner Advertising.*” Investopedia. <http://www.investopedia.com/terms/b/banneradvertising.asp> (accessed December 7, 2015).

“*Contextual Advertising.*” Braffon. <http://www.braffon.com/glossary/contextual-advertising/> (accessed August 15, 2015).

“*Dealing with Online Copyrights Infringement in Accordance with DMCA.*” Orbiting Web. <http://www.marketingdock.com/copyrights/dealing-with-copyright-infringement.php> (accessed May 21, 2016).

“*Leading Social Networks Worldwide as of April 2016, Ranked by Number of Active Users (in Millions).*” Statista. <http://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/> (accessed May 21, 2016).

“*NET ACT.*” eBook Cloud Library. <http://www.iphonelibrary.net/article/WHEBN0000685053/NET%20Act> (accessed December 10, 2015).

“*What is Contextual Advertising?*” Brickmarketing. <http://www.brickmarketing.com/define-contextual-advertising.htm> (accessed December 5, 2015).

“*What Is SEO / Search Engine Optimization?*” Search Engine Land, <http://searchengineland.com/guide/what-is-seo> (accessed December 7, 2015).

2.5.2 Thai Websites

Decha. “การป้องกันการละเมิดสิทธิในทรัพย์สินทางปัญญาที่เผยแพร่ทางอินเทอร์เน็ต.” 16

กันยายน 2552. <http://www.decha.com/main/showTopic.php?id=2123> (สืบค้นเมื่อ

วันที่ 14 มกราคม 2559) (Decha, “*How to Prevent Content Copyright*

Infringement on Internet.” September 16, 2009.

<http://www.decha.com/main/showTopic.php?id=2123> (accessed January 14, 2016)).

Yugioh2500. “เว็บไซต์พอร์ทัล (Web Portal) คืออะไร? มาทำความรู้จักกัน.” นำข้อมูลขึ้นเมื่อวันที่ 11 กันยายน 2557. <http://ireview.in.th/what-is-a-web-portal/> (สืบค้นเมื่อวันที่ 9 มิถุนายน 2558) (Yugioh2500. “What is Web Portal? Let’s Know About It.” September 11, 2014. <http://ireview.in.th/what-is-a-web-portal/> (accessed June 9, 2015)).

กิตติ ภูวนิธิธนา. “การสร้างเว็บไซต์ในเชิงธุรกิจ เพื่อหารายได้จากช่องทางต่างๆ.” ใน *Modern Market*. (ออกอากาศเมื่อวันที่ 21 กรกฎาคม 2557). <http://www.thaiload.com/newsdetail.asp?id=1737> (สืบค้นเมื่อวันที่ 3 ธันวาคม 2558) (Kitti Phuwanithithana. “Making Website for Commercial, from Many Ways Income.” In *Modern Market* (originally aired July 21, 2014) <http://www.thaiload.com/newsdetail.asp?id=1737> (accessed December 3, 2015)).

ดารากร จิรันดร. “เว็บไซต์ตั้งของไทยหรือของต่างประเทศน่าใช้กว่ากัน.” 9 สิงหาคม 2555. <http://www.hostsearch.co.th/Thailand-web-hosting-articles/...99> (สืบค้นเมื่อวันที่ 16 พฤษภาคม 2559) (Darakorn Jirundon. “Local or International Web Hosting: Which One is More Likely to Use?” August 9, 2012. <http://www.hostsearch.co.th/Thailand-web-hosting-articles/...99> (accessed May 16, 2016)).

วิจิตร ภัคนิกร. “เทคนิคการเขียนข่าว.” 3 พฤษภาคม 2553. http://region7.prd.go.th/ewt_news.php?nid=12 (สืบค้นเมื่อวันที่ 6 พฤษภาคม 2559) (Vijit Puknikorn. “News Writing Technique.” May 3, 2010. http://region7.prd.go.th/ewt_news.php?nid=12 (accessed May 6, 2016)).

“Clickbait ยังไม่ตาย.” MewSocial. 3 กรกฎาคม 2558. <https://www.facebook.com/MewSocial/posts/927819347260151> (สืบค้นเมื่อวันที่ 8 พฤษภาคม 2559)

(“Clickbait is Still Alive.” MewSocial. July 3, 2015. <https://www.facebook.com/MewSocial/posts/927819347260151> (accessed May 8, 2016).

“Qzone คืออะไร? ทำไมถึงฮิตในประเทศจีน?” Zcooby. 19 มีนาคม 2557.

<http://www.zcooby.com/qzone-china-social-network/> (สืบค้นเมื่อวันที่ 29 สิงหาคม 2558) (“What is Qzone? Why it Famous in China?” Zcooby. March 19, 2014. <http://www.zcooby.com/qzone-china-social-network/> (accessed August 29, 2015)).

“คนไทยติดหนึบ ‘โซเชียล มีเดีย’ ยอดเฟซบุ๊กทะลุ 41 ล้านราย ติดอันดับ 8 ของโลก.”

Positioning. 18 พฤษภาคม 2559. <http://positioningmag.com/1092090> (สืบค้นเมื่อวันที่ 18 พฤษภาคม 2559) (“Thai People Addicted to ‘Social Media’ Facebook Account Reaches 41 Million Account Become the 8th Rank of the World.” Positioning. May 18, 2016. <http://positioningmag.com/1092090> (accessed May 18, 2016)).

“ย้อนรอย เปาซุนจิ้น หนังจีนที่ดังที่สุดในไทย.” MThai. 24 กันยายน 2558.

<http://gossipstar.mthai.com/hollywood/inter/52635/> (“Remind the most Chinese series in Thailand - Justice Pao the Series.” MThai. September 24, 2015. <http://gossipstar.mthai.com/hollywood/inter/52635/> (accessed December 7, 2015)).

“หล่ออมตะ 22 ปีผ่านไป 3 ดารานำ เปาซุนจิ้น ไม่แก่เลย.” ตามสบาย. 18 พฤศจิกายน 2558.

<http://www.tamsabye.com/dara-11/> (สืบค้นเมื่อวันที่ 7 ธันวาคม 2558)

(“Everlasting Handsome: 22 Years Passed But cannot do Anything with These 3 Leader Actors of Justice Pao Series.” Tamsabye. Entry posted November 18, 2015. <http://www.tamsabye.com/dara-11/> (accessed December 7, 2015)).

“อวสาน OHOZAA ไอ้โหด คอทคอม นักดูดในตำนาน ที่คุณรู้รายได้แล้วคุณจะทำ!!!” ไทยอินโฟ

เน็ต. 17 พฤษภาคม 2558. <http://dev.thaiinfonet.com/ทั่วไป/อวสาน-ohozaa/> (สืบค้นเมื่อวันที่ 7 ธันวาคม 2558) (“No more OHOZAA.com: The Great Stealing Content

Website; If You Know Their Revenue You Will Shock!!!!” Thaiinfonet. May 17, 2015. <http://dev.thaiinfonet.com/ทั่วไป/อวสาน-ohozaa/> (accessed December 7, 2015)).

3. Other Materials

3.1 Dictionary

Wehmeier, Sally, ed. *Oxford Advanced Learner’s Dictionary*. 7th ed. Oxford: Oxford University Press, 2005.

3.2 Interview

Piset Chiyasak. Interview by author, Bangkok February 12, 2016.



**INTERVIEW WITH MR. PISET CHIYASAK
(FEBRUARY 12, 2016)**

Interviewer: How can we encounter with the clickbait website which hosts its contents by using international web hosting?

Interviewee: In the case that clickbait website hosts its contents by using international web hosting, it quite difficult to run Notice and Takedown process. The method to encounter with this case is running website blocking. At present, there is a controversy about Section 32/3 of the Thai Copyright Act B.E.2537 (1994) that whether it imply to website blocking, because in Section 32/3 *“the court shall order the service provider to cease said infringement or remove the alleged infringing work from the computer system of the service provider for the period of time prescribed by the court.”* Removing the alleged infringing work from the computer system is a Notice and Takedown process. The point is wording *“to cease the infringing contents”*, some interprets that it is a website blocking.

The good point for interpret the phrase *“to cease said infringement from the computer system”* to imply that this is including website blocking, then the court is able to order website blocking. However, there are some disadvantages because the law says that *“the copyright owner shall file legal proceedings against an infringer of copyright within the period of time ordered by the court to cease the alleged infringement or remove the alleged infringing copy from the computer system”* while in real practice, it is difficult for the copyright owner to file legal proceedings against an infringer because they are in the foreign country.

I recommend that Section 32/3 should be amended by clearly states that the word *“to cease said infringement from the computer system”* is including the *“website blocking.”*

At present, there is a provision about website blocking in Section 20 of the Computer Crime Act B.E.2550 (2007). Nevertheless, copyright infringement is not considered an offense under Section 20. Therefore, the court cannot restrain the dissemination of infringed contents. This section should be amended by including copyright infringement to be an offense that the court can restrain the dissemination of infringed contents.



BIOGRAPHY

Name	Second Lieutenant Nara Tinnathorn
Date of Birth	May 31, 1989
Educational Attainment	2011: LL.B., Thammasat University, Thailand
Work Position	The Judge Advocate General The Judge Advocate General's Department

