

Thesis Title	The Problems of Copyright Law Related to Electronic Transactions
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ABSTRACT

The objectives of this study are to examine the development, concepts and theories relating to the copyright protection of electronic transaction in Thailand. Its is also a study about the problems of copyright law with regard to electronic transactions, including the United Nations Commission on International Trade Law – UNCITRAL – and the relevant laws of the United States. The aim of the study is to learn about the problems and solutions related to copyright laws regarding electronic transactions in order to obtain information necessary to improve the laws in this area.

The study found that the copyright law in Thailand (the Copyright Act, B.E.1994) still has many problems in practice, especially with regard to electronic transactions.

1) The first problem relates to the liability of an Internet service provider (ISP) to a server holders where a third person or user infringes a digital work by linking his webpage to a server or website of the ISP. There is no provision in the current copyright law addressing the foregoing problem. Therefore, the copyright holder has no protection for such infringements. It is recommended that the copyright law be amendment be modeled after the laws of the USA and the Copyright bill B.E. that provides liability for ISPs only when they know or should have know of a possible infringement.

2) The second problem regards Right management Information and Technical Measures. Since it is easy to violate copyrights involving digital information, the copyright holder must take

action to prevent unauthorized access to the information by using Right Management Information. However, there may still be problems for a copyright holder if a third person deletes or alters the digital information. In addition, the copyright law is still deficient with regard to Technical Measures where there is an attempt to access copyrighted data. Therefore, there is a problem with the current copyright law regarding digital work since the copyright holder has no protection against infringements due to issues regarding Right Management Information and Technical measure. Therefore, there is a gap in this area of the copyright law. It is recommended that the copyright law can give adequate protection to copyright holders by modeling the amendment after the provisions of the WIPO Copyright Act 1996 (WCT) and the draft Copyright Bill B.E....relating to Right Management Information and Technical Measures.

3) Third, there are problems relating to the types of copyrighted work in digital forms, especially with regard to setting up websites by using hyperlinks, embedding links and caching. These problems also involve creating content, framing, uploading homepages and computer generated dramatic work. These problems also constitute a gap in the copyright law. In addition, there is also a problem regarding the unauthorized copying and downloading of copyrighted dramatic and literary works, including computer programs. The Internet makes the foregoing copyright violations easy to accomplish, thereby increasing the risks to copyright holders when digital works are communicated to the public. These risks are even greater in view of peer to peer file sharing. Therefore, this thesis recommends improving the new law by following the WCT and the draft Copyright Bill B.E... which extend copyright protection for communications to the public and reproduction rights in any manner, form or Temporary Copy, including copies on LAN systems.

4) The final issue concerns legal problems relating to computer programs, which is a very important element of electronic transactions. These problems include sending and receiving data, and managing data systems and other services. Since there is no relevant law in this area regarding the steps, processes, systems, concepts, principles, and discovery there is a Gap in the current copyright legislation. Therefore, it is recommended that computer programs be protected only under patent law-not copyright law-in order to protect all steps, processes, systems, concepts, principles, and discovery.

This thesis also recommends that the Draft Copyright Bill B.E.... be amended to include current technological advancements with regard to computers and to support electronic transactions. Also, the new provisions should comply with the following core principles : (1) the law must have the same impact on industrialized and developing countries; (2) the access to information and knowledge is the key factor for developing an information technology society and Internet network; and (3) the law should protect the rights of copyright holders while considering the rights of the society as well as the rights of people who access information.