

Independent Study Title	Legal Problem on Technological Protection Measures for Copyright on Internet
Keyword	Technological Measures / Copyright on Internet
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Level of Study	Master of Laws
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Year	2007

ABSTRACT

Even though Thailand has the Copyright Law in accordance with the Copyright Act, 1994, to directly protect copyright works, however, the works which are eligible for protection under such Copyright Law must be a certain category of works exclusively prescribed by such Copyright Law. It neither covers technological mechanism or measures, which the owners of the copyright works have applied for use, to prevent the infringements against the copyright works on the internet nor is made use of, in the management on the rights of the owners of the copyright works in addition to the legal measures which have already been in force at the present or shall be in force in the future..

The result of the study revealed that the issue of the problem relating to the protection on technological mechanism or measures in order to protect the copyright works has arisen as a result of the legal measures having presently been in force no matter it is a protection provided for in accordance with the Penal Code, Civil and Commercial Code, Copyright Act, 1994, as well as the Act Governing Electronic Transactions, 2001. The Studier is of the view that there has been neither legal measure nor provision under any laws which can be adjusted for use in conformity with the facts thereto or in providing protection to cover the aspect of technological mechanism or measures applied for use by copyright owners to directly protect their copyright works. Though the copyright works have been protected under the Copyright Act, 1994, however, the works

eligible for protection under such Copyright Act, must be a certain category of works exclusively prescribed by such Copyright Law. But, when the nature of technological measures to protect the copyright works has been considered, the Studier is of the view that the technological measures to protect copyright works cannot be classified into any category of the works which can be considered to be the copyright works. But, if the meaning of the works being the copyright works has been thoroughly considered, it is found that the category of works having the nature close to the technological measures to protect the copyright works is Computer Program. But, due to the reason that the technological mechanism to protect the copyright works is merely a result arising out of the functioning of Computer Program and not the Computer Program itself. When considering the meaning of the technological mechanism or measures to protect copyright works together with the protection provided for in accordance with the Draft of the Act Governing Computer Crimes, A.D. ..., the Studier is of the view that, if the case of a destruction or evasion on a technological mechanism for use in the protection of the copyright works should arise, the principle on the offences in accordance with the Draft of the Act Governing Computer Crimes, A.D. ..., can be applied in entering an action for a claim on the indemnification and remedy of the relevant damage when the Draft of the Act Governing Computer Crimes, A.D. ..., has been duly put into force. However, the provision in accordance with the Draft of such Act does not provide any definitions of the technological mechanism or measures.

The Studier is of the view that if there should be an improvement on or a stipulation of an additional provision of the law having been presently put into force in order to make it in compatible with the above-mentioned problem issue, the provision of the Law in accordance with the Copyright Act, 1994, should be selected for such improvements because such is the Law relating to the protection of the copyright works most. The provision under such Act is the law having been promulgated for a period of over ten years, thus, it cannot be adjusted for use with or does not cover the problem issue under the present situation which is the era of the creations and storage of work outputs in digital data form and work disseminations widely on the world of internet. Or if a specific law shall be enacted to provide protection over technological mechanism or measures in order that it can directly provide protection over copyright works, the Studier is of the view that the Law to be enacted shall consist of the substances in compatible with the facts or the actually occurring problem issue and that the provision therein should be stipulated

accordingly in accordance with the essence of International Law. In addition, the stipulation of the provision of the Law relating to technology shall rely on more sensitive approach than the stipulation of the provision of the other law title and in corroboration with the commission of an offence where the offenders are knowledgeable in computers. It is necessary that persons playing the roles in stipulating the provision of the Law shall be knowledgeable and skillful on the academic knowledge of the computer and information technology in order that they can grasp the understanding on all steps of the processes relating to the technological mechanism or measures applied for use to prevent the infringements of the copyright works, as well.