

Emerging Issues in Copyright: Thailand Perspective*

Dr.Thammanoon Phitayaporn, **

I. Introduction

In this era of the Fourth Industrial Revolution, transformation of various technologies continues to move at a swift and disruptive pace. Laws require update to be compatible with newer technologies, and there is currently a need to make change in many aspects of technology to facilitate oversight in accordance with the rule of law.

II. Some Emerging Issues in Copyright

At the WIPO Judges Forum, panelists were assigned different topics and asked to make presentation on key issues under conditions constrained by time. The author will review several important themes organized around two topic headings as follows:

1. Artificial Intelligence (A.I.) and Copyright Law
2. Taking-down content and Site Blocking in case of alleged online copyright infringement

1. Artificial Intelligence (A.I.) and Copyright Law

Current development trends indicate that A.I. programs have an autonomous ability to gather information in various fields and develop creative works. In the case that A.I. creates its own work, there is a potential problem in clear identification of the author where the work is protected by copyright. There are several different positions for

approaching this question. Position#1 considers that creation protected by copyright must have human origin, and A.I. programs cannot be authors of such works; such works may therefore be considered public domain that society can appropriate and use. Position#2 holds that the authorship belongs to the developer of the A.I. program, or the company that produced and sold the A.I. program. Position#3 holds that authorship of works created by the A.I. program belongs to the owner or operator of the A.I. program during the time of works creation. And Position#4 holds that the law should recognize an autonomous A.I. program as a legal entity and thereby be identified as an author of the works under copyright law.

The European Parliament has proposed the primacy of Position #4 as stated in European Parliament Resolution of February 2017 on Civil Law Rules of Robotics and its recommendation to the European Commission in its paragraph 59f : “Creating a specific legal status for robots in the long run, so that at least the most sophisticated autonomous robots could be established as having the status of electronic persons responsible for making good any damage they may cause, and possibly applying electronic personality to cases where robots make autonomous decisions or

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** Deputy Chief Judge, The Central Intellectual Property and International Trade Court, Bangkok, Thailand.

otherwise interact with third parties independently;”

Notwithstanding actions of the European Parliament, there is disagreement on these matters among A.I. and robotics experts, industry leaders, law, medical and ethics experts, and a consortium of interests put forth a document known as Open Letter to the European Commission Artificial Intelligence and Robotics. The document expressed opposition of the European Parliament’s 2017 resolution. It will be necessary to follow up on how the European Commission will proceed in this regard.

In the U.S., the subcommittee on Information Technology of the House Committee on Oversight and Government Reform states in the paper, “Rise of the Machines” of September 2018: “... any regulatory approach to A.I. should consider whether the risks to public safety or consumers already fall within any existing regulatory frameworks and, if so, whether those existing frameworks can adequately address the risks. Where a risk falls outside an existing regulatory framework, an approach should consider whether modifications or additions are needed to better account for the addition of A.I.”¹ We will have to wait to see how the United States will consider regulating A.I. matters in the future.

More evaluation of this topic can be found in the United Kingdom’s Copyright, Designs and Patents Act (CDPA). Section 9(3) of the CDPA states: “In the case of a literary, dramatic, musical or artistic work which is computer-generated, the author shall be taken to be the person by whom

the arrangements necessary for the creation of the work are undertaken.” And Section 178 of the CDPA states that “Computer-generated” in relation to a work means the work is generated by computer in circumstances such that there is no human author of the work.

Laws of the Kingdom of Thailand do not specifically regulate in A.I. matters, and until now there is no apparent judgments in relation to A.I.

2. Taking-down content and Site Blocking in case of alleged online copyright infringement

In case of alleged online copyright infringement, many countries provide for legal remedy including removal of alleged copyright infringing content and induce operations by Internet Service Providers (ISPs) to block users access to the content.

In the United States there are means of applying copyright law in digital technologies under the Digital Millennium Copyright Act of 1998. Legal considerations in the E.U. are informed by the Directive on Copyright in the Digital Single Market; this law was approved by the European Parliament on 12 September 2018.

In Thailand, important provisions in these matters can be found at two statutes, namely Section 32/3 of the Copyright Act² and Section 20(3) of the Computer Crime Act.³ The Central Intellectual Property and International Trade Court has responsibility for enforcing these laws.

The most effective measure for curbing damages due to online piracy is to leverage

¹ Subcommittee on Information Technology Committee on Oversight and Government Reform, U.S. House of Representatives, “Rise of the Machines”, p.1.

² Section 32/3 of Copyright Act 1994(revised in 2015); Currently, new copyright law is drafted using the Notice and Takedown principle similarly to the DMCA of the United States; the draft legislation would repeal Section 32/3 of Thailand’s current copyright law.

³ Section 20(3) of Computer Crime Act 2017.

injunctive relief by taking-down content alleged to be copyright infringement. This is because the cutting off access via file servers will preclude continued infringement that will otherwise occur with digital technologies. However, measures involving court-ordered takedown of the content can be difficult since copyright owners are often unable to conduct investigations or have specific knowledge regarding the location of file servers holding the content. In many cases the content is located on foreign websites; working with foreign courts to enforce copyright protection via court-ordered takedown may not be practical.

While use of website blocking injunctions is an efficient remedial action, and courts are able to order all domestic ISPs to comply, the measure has at several limitations. Specific obstacles that can inhibit implementation are as follows:

1. Foreign internet users do not use ISPs in Thailand to access content.

2. Per statute, an order for Website Block may be limited in purpose, serving to provide temporary protection only. In these situations, the court will require the copyright owner to file a complaint in the court as part of a condition for injunctive relief; deadline for such proceeding will be stipulated by the court, with injunctive orders terminated on the specified date. Unfortunately, this kind of condition may be untenable for many copyright owners since the identity of person(s) responsible for infringement may be difficult to ascertain. The stipulation for filing a complaint may be particularly difficult if the violator resides in a foreign country.

3. In the case of orders for website block, where only a part of the website represents al-

leged copyright infringement, courts may issue an order to ISPs to block only the alleged infringing content, without blocking the whole website. Websites using the protocol called Hypertext Transfer Protocol (http) will allow selective blocking; in this operational environment a court-ordered blocking of selective content will be effective. However, websites using Hypertext Transfer Protocol Secure (https) involve encryption technologies. In case of servers locating in foreign countries, it is difficult to block content on a selective basis if it remains encrypted. Blocking the whole websites carrying encryption is not always an ideal solution. This is because websites often serve a large number of users, for example, Google and YouTube, and many of these users are not involved in copyright infringement and should not be affected by website blocking.

4. In general, technologies used in Thailand for website blocking involve screening the URL (Uniform Resource Locator).⁴ In practice, the infringers use discreet methods for modification of the URL such as adding “/1” to the original URL. Courts in many countries, including the Central Intellectual Property and International Trade Court of Thailand, have responded by including in their injunctive orders an expansive listing of URLs so as to identify every known URL that carries association, together with an inclusive “... and other URLs containing similar content”.

5. Submission a copy of summons and complaint to a defendant residing abroad is time consuming and costly. The current efforts for summons law in Thailand allows a plaintiff to send a copy of summons and complaint to the defendant via international express mail.

⁴ Courts may also issue an order to block an IP address.

III. Recommendations

Discussion regarding author identity in the A.I. environment is controversial and not supportive of the development of new technologies; its factors carry abstraction that may negatively impact the economy and society. For these reasons, it is believed that WIPO's position as an organization involved in developing international agreements would be useful in promoting consensus in these matters.

Online piracy is a major problem in many countries around the world. As meetings are planned, WIPO should seek involvement from a broad array of stakeholders that include computer experts, related business organizations, ISP consortiums and the like, bringing these entities together to find solutions and abate infringements around the world.