

MAY 2010 Thailand: Standards of proof in criminal litigation

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In Thailand, most IP owners prefer to proceed with their cases under criminal law due to the uncertainty of obtaining compensation, costs to litigate the full court case, delays of trials and other difficulties often associated with civil litigation. The advantage of prosecuting an IP case as a criminal action is that it can result in seizure of the infringing products. The infringer would cease or hold manufacturing and distributing their infringing products and would be prosecuted in a criminal lawsuit by the police and the public prosecutor.

Nevertheless, the nature of criminal IP cases is complex and demanding. One of the most fundamental theories in criminal cases is that the accused would be deemed to have committed any offence and be convicted only if there is sufficient evidence and the plaintiff can prove such offence beyond reasonable doubt. This standard of proof, outlined in Section 227 of the Criminal Procedure Code, requires two critical elements for the plaintiff to satisfy the court: sufficient weight of evidence, and proof beyond reasonable doubt.

The example described below is a criminal case that was dismissed on the basis of Section 227.

In Supreme Court Judgment no 13/2007, the defendant operated a rental service for use of computers and internet at the rate of B20 (\$0.60) an hour. The plaintiff's unauthorised computer game Ragnarok Online was found on 13 computers, but no verifiable information existed as to who installed the program. During the proceeding, the plaintiff was not able to prove whether the computer program Ragnarok Online was installed temporarily or permanently, nor could the plaintiff prove the exact date of the program's first installation. In addition, the plaintiff had no evidence to prove that the B20 fee collected by the defendant from his customers was specifically the rate for renting the Ragnarok Online game.

The Supreme Court dismissed the case based on the fact that there was insufficient proof that a copyright offence had occurred. The Court also deemed that the B20 fee was merely the rate for using the computer and internet in general. In light of this, reasonable doubt existed as to whether the defendant provided rental service of the computer program Ragnarok Online in the course of trade, which would qualify as an offence under the Copyright Act. The Court therefore ruled that the defendant did not infringe the plaintiff's copyrighted game.

Similar to IP laws in other countries, Thai IP laws allow legitimate IP owners to enforce their IP rights in both civil and criminal proceedings. The case example above, however, offers an important lesson for IP owners and practitioners to keep in mind before formulating an IP infringement case strategy.



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