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Entrapment in Cartoon Character Copyright Infringement

Loi Krathong is one of the most popular festivals in Thailand, taking place across the country every year in November, in which people gather at night to release elaborately decorated candle-floats called *krathong* into bodies of water. Although normally a joyful occasion, an incident during 2019's Loi Krathong unexpectedly brought copyright infringement to the fore.

The issue revolved around a 15-year-old girl living in Nakhon Ratchasima province, who was making *krathong* and selling them online. A man contacted the teenage seller via social media and ordered 136 *krathong* decorated with Japanese cartoon characters for the upcoming festival. When she delivered the *krathong* as instructed, the man was waiting with the police and informed the seller that he was a copyright agent for a Thai company acting for the copyright owner of Japanese cartoon characters in Thailand. The girl was escorted to the police station, where the man demanded damages of THB 50,000 in exchange for not filing legal charges based on the alleged copyright infringement.

Understandably, the case raised many legal issues regarding entrapment in copyright infringement cases, and was a much-discussed topic in Thai news and on social media.

Entrapment

Using a pretext or test purchase of alleged infringing products, for the purpose of gathering evidence to assess actual infringement or to obtain details about the infringer,

is an accepted practice. The act of entrapment, on the other hand, occurs when a law enforcement agent improperly induces a person to commit a criminal offense.

There are Thai Supreme Court precedents ruling that a plaintiff who acquires evidence by entrapment—whereby a defendant is duped into committing a criminal offense—cannot be regarded as an injured party entitled to prosecute the defendant.

In Supreme Court case *Microsoft Corporation v. First Comp System Co., Ltd. et al.*, the plaintiff secured evidence of infringement by sending an investigator to purchase a personal computer, specifically asking for unlicensed software owned by the plaintiff to be installed, without being offered the software otherwise. The Supreme Court ruled that this method was a form of entrapment, because the plaintiff's investigator chose to have the unlicensed software installed on the computer for the purpose of prosecuting the defendants. According to the Supreme Court in this case, the plaintiff caused the third defendant (i.e., the seller) to commit a criminal offense. As a result, the plaintiff could not be regarded as the injured party in this case.

In the *krathong* characters case, the teenager argued that she normally produced flower-patterned *krathong*. The girl further asserted that, in this particular case, she agreed to the customer's order for specifically designed *krathong* to be adorned with copyrighted cartoon characters. However, the man claiming to be an authorized representative argued that he did not lure the girl into the copyright violation, as the girl had previously posted on the Facebook page that she would be able to produce *krathong* decorated with various patterns, including copyrighted cartoon characters.

The *krathong* characters case has indeed highlighted the need to draw the line between entrapment of an innocent person and investigation of a criminal by purchasing sample wares. Based on Thai Supreme Court rulings, a copyright infringer must be held liable for their offense, unless their action lacked free will and occurred as a direct result of the inducement. This principle is the basis for a strong but fair mechanism of copyright enforcement in Thailand. 🚲