THE REMEDIAL MEASURES FOR LINE STICKERS COPYRIGHT INFRINGEMENT PROBLEMS

[1]NATTHATHAKSAPAPHON BUACHANOAT, [2]NANTHANA THAOCHALEE, [3]WANNISA SATKUMBUNG, [4]TANIDA BOONMEE, [5]NATASORN AUEKARN

[1,2,3,4,5]Law Department, College of Politics. And Governance, Suan Sunandha Rajabhat University
E-mail: [1]s62123440141@ssru.ac.th, [2]s62123440135@ssru.ac.th,[3]s62123440139@ssru.ac.th,
[4]s62123440128@ssru.ac.th,[5]natasorn.au@ssru.ac.th

Abstract - This research is conducted to study the acts that are considered as copyright infringement and remedial measures for copyright owners. The problem of copyright infringement is a problem that can occur frequently. Although there are copyright laws to protect copyright owners and the work that has been created, after the study, it was found that there should be additional measures to remedy copyright owners as well. It is because the infringement may cause repercussions to the copyright owner to their created work, or it may cause damages from being too much violated. The purpose of this study is to study the problem of infringement regarding LINE stickers and suggesting remedial measures for copyright owners.The results presented that although the Copyright Act provides protection for owners of copyright and the stickers created, it was found after studying that the Copyright Act of Thailand still prescribes insufficient civil and criminal remedies to deal with copyright infringement. It is only to define according to the true damage value such as loss of income, loss of profit, royalties, expenses necessary to enforce the rights only. This is unlike the United States Copyright Act which imposes special remedies on infringed copyright owners. Therefore, the researcher is of the view that the Thai Copyright Act should increase civil and criminal remedies similar to the Copyright Act of the United States to give the copyright owner fairness in terms of receiving compensation for being infringed as the copyright owner deserves to receive. Moreover, Section 76 requiring the infringer to pay a fine for the infringement to the court according to the judgment in order to share the money with half of the copyright owner, should be cancelled as the aforementioned fines were set too high and stipulating punitive damages instead of canceling Section 76.

Keywords - Copyright Infringement, Remedial Measures, LINE stickers

I. INTRODUCTION

At present, society in Thailand and abroad, for teenagers and working people or even the elderly, social media is used to communicate a lot over the internet. People communicate with others through various applications; for instance, Instagram, Facebook, Snapchat, Tiktok, Line, or WeChat. These applications have been used as a mediation to make conversations for people of all ages. People participate in exchanging ideas on electrical devices that support the use of applications; for instance, desktop computers, laptops, tablets, and smartphones. The usage of communication in the form of stickers distinguishes the LINE application from various other programs.[1]

LINE sticker is a creative work of shape that consists of lines, lights, colors or anything else with many combinations on one or more materials. Such works are inevitably characterized as works of art. These stickers are used by users to express their basic emotions and feelings. [2] When it becomes apparent that copyright infringement on LINE stickers has occurred, the copyright owner can take civil and criminal remedies against the infringer for modifying, reproducing or publicizing the work of the copyright owner. This article; therefore, focuses on searching for and comparative studies of remedial measures so that copyright owners can apply civil and criminalmeasures for copyright benefits to their work and study actions that are considered copyright infringement. In researching and studying the law on copyright infringement of LINE stickers, the researcher aims to study the laws relating to LINE stickers copyright infringement under the Copyright Act of Thailand and propose solutions to the problems involved.

Objectives of Study

1. To study the problems regarding infringement of LINE stickers.
2. To suggest remedial measures for copyright owners.

Scope of the Research

This research is a study of measures to protect and remedy the owner of LINE sticker's work as a creator to have the sole right to reproduce, modify, and advertise such stickers as well as giving a permission to others to use their rights so that the owner of such work can obtain benefit from copyright according to the Copyright Act 1994.

Research Methodology

Research methodology is conducted in the form of research documents from textbooks, articles, research papers, as well as verdicts regarding LINE sticker copyright infringement caused by actions that are considered infringement in various forms, and it is considered from the violation of the protection of the work and the owner of the work according to the

Copyright Act of Thailand to analyse remedial measures for the copyright owner in order to determine the appropriate measures for the copyright owner.

II. THE NATURE OF THE OFFENSE THAT CONSTITUTES COPYRIGHT INFRINGEMENT

Nowadays, it is undeniable that the LINE application is a very popular application for communication. The main highlight of this application is to have stickers to use to express emotions and feelings instead of texting.[3] The LINE application is opened for people to create LINE stickers for their own use, use with friends or create for sale. The creation of creator stickers must be created on their own initiative without copying other people's work, creating stickers, even if created with the LINE Sticker application, the creator owns the copyright in that sticker.

The LINE application shall only provide consent to approve the sale of stickers, but not the creator according to the Copyright Act, Section 4, prescribing ""Author" is defined as a person who makes or creates any work, which is a copyright work as determined by this Act."[4] Therefore, LINE Application is not the copyright owner. The copyright owner has the exclusive right to reproduce, modify, or distribute to the public. If other people have done such actions on the work, it is considered an infringement of copyright.

An action that is considered an infringement is an action that affects the rights of the copyright owner without authorization as follows:

2.1 Direct copyright infringement is that the infringer takes any action which is the right of the copyright owner in a manner that directly acts on the copyrighted work which is the right that the copyright owner can only do whether it is reproduction as follows:

Reproduction which means, “imitate, duplicate, mold, sound recording, video recording, or sound and video recording, from the original, from the copy, or from advertising in the material either in whole or in part.”[5]

Adaptation which means, “to reproduce by transforming, improving, modifying, adding or duplicate the original work in the part materially without the nature of creating a new work, either in whole or in part.”[6]

Communication to public is “to make publicly available by performance, narration, chanting, playing, sound and/or visual appearance, construction, distribution, or by any other means to create such work.”[7]

These actions are the exclusive rights of the copyright owner. If the infringer does any of the aforementioned actions against the copyrighted work, it would be considered that such person is infringing the copyright.

2.2 Indirect copyright infringement, according to section 31 of Copyright Act 1994 is an action that the offender already knows which work has been done infringing the copyright of others, and it also acts for profit, whether it is for sale, propose to sell, for rent, propose to rent, for hire, propose to hire or purchase and sale as well as distributed in a way that might cause damage to the copyright owner, the action of bringing or ordering into the Kingdom or such action is an act for profit or trade which this indirect copyright infringement. Thus, the doer must have reasonable grounds to know that the work is infringing someone else's copyright and must intend to profit from the infringement. [8]

III. LINE STICKER INFRINGEMENT PROBLEM MANAGEMENT MEASURE IN THAI LAW

3.1 Civil Problem Management Measure

If the copyright owner has been damaged by copyright infringement, the copyright owner should receive remedy. Section 64 of the Copyright Act of 1994 established the copyright owner's right to sue for damages.

“In case of having the infringement on copyright or performer's rights, the court has the jurisdiction to order the infringer to pay damages to the owner of copyright or performer's rights in the amount that the court deems appropriate by considering the severity of the damage, including the loss of benefits and expenses necessary to enforce the rights of the owner of copyright or performer's rights as well."[9]

Additionally, when calculating damages from infringement, the damage value will be based on all actual damages, regardless of any costs the copyright owner may have to pay if the infringement happens, such as the loss of future benefits, or any costs that are incurred as a result of the infringement, including the loss of income, the loss of benefits, royalties, lawyer fees.[10] From the foregoing, it can be seen that the measure to deal with copyright infringement of Thai LINE stickers is to prescribe measures to remedy civil damages by requiring the copyright owner to claim damages from the infringer who infringed the copyright owner of the copyright of LINE stickers, that is, when the offender has imitated Line sticker modification, the copyright owners can

claim damages from those who copy or modify their work.

3.2 Criminal Problem Management Measure

In terms of measures to deal with the problem of infringement of LINE stickers in a criminal way has imposed criminal penalties, the Thai Copyright Act B.E. 2537 contains provisions for remedies for damages. The preliminary measure to the copyright owner is to stipulate that the fines that the defendant must pay to the court will be shared in half to pay for the copyright owner.

According to Section 76, it prescribes
"One half of the fine paid in accordance with the judgement shall be disbursed to the owner of copyright or performer's rights, provided that the right of the owner of copyright or performer's rights to bring a civil action for damages for the amount which exceeds the fine that the owner of copyright or performer's rights has received shall not be prejudiced."[11]

From the foregoing, that is, when the infringer pays the fine to the court according to the judgment of the court, half of such fine will be paid to the copyright owner, and if the damage is greater than the fine; the case may also be prosecuted as a civil matter. [12] Moreover, in section 76 there is also a section that mentions rights of copyright owners to be disbursed for damages from criminal fines, that is, it also mentions the rights of copyright owners of LINE stickers to be disbursed for damages from criminal fines. In many cases, it is unable to prove the civil damages, the owner of the copyright has received a smaller amount of damages, accordingly. Lawmakers therefore have set higher damages or fines in criminal cases according to the nature of the offence to raise the said fines to share with the copyright owners who have been infringed. Even if the fine is imposed on the copyright owner, it does not deprive the copyright owner of the right to take civil remedies. The copyright owner can also bring a civil lawsuit later.[13]

IV. THE CIVIL AND CRIMINAL COPYRIGHT INFRINGEMENT MANAGEMENT MEASURES IN THE U.S.LAW

In the United States, the Copyright Act 1976 is used to apply in relation to copyright by prescribing civil and criminal remedies for copyright owners, that is, when copyright infringement occurs, the measures to deal with civil problems are as follows:

1. Copyright owners can request for temporary protection at the time the court complaint is filed or afterward. [14]
2. Copyright owners can claim for damages by proving actual damages. The plaintiff is entitled to obtain any profits made by the defendant as a result of copyright infringement, as long as those profits are excluded from the calculation of damages. In addition, the plaintiff has the right to demand statutory damages in the amount of not less than $750 and not more than $30,000 in place of actual damages and profits. [15]

In addition to civil remedies, United States copyright law gives copyright owners the option of criminal prosecution against infringers in addition to civil remedies. These offenses typically carry a maximum fine of $250,000 and a maximum prison sentence of up to one year, both determined by the Federal Sentencing Guidelines. Although this provision aims to apply it to use with the infringement on computer software, videotapes, and sound recordings, the maximum penalty is 5 years in prison in cases involving reproduction or distribution over a period of 180 days or at least 10 copies of the infringing work valued at least $2,500. [16] From the above details, it can be seen that in the United States, it is stipulated that copyright owners receive compensation for infringement in various ways. Hence, when the research has studied the US measures to deal with the problem of copyright infringement, it was found that, when compared to the copyright law of Thailand, Thai copyright law only determined the actual damages, but there is no measure to remedy statutory damages for copyright owners who are infringed in Thailand; contrarily, the US copyright law set statutory damages for the owners of copyright. [17] In this instance, Thai copyright law may cause copyright owners to be unfair in terms of receiving reasonable compensation for infringement.

V. SUMMARY

In the case of the aforementioned set of LINE stickers, the owner of the work is protected immediately since the creation of the copyrighted work. The copyright owner shall have the sole right when it appears that another person takes the design to copy, edit, modify, reproduce, and distribute to others without any permission from the owner of the work. Such actions are likely to infringe upon the copyrighted work modification. The owner of the work has the right to proceed both civilly and criminally. However, the law of Thailand prescribes the right of the copyright owner to claim damages. Hence, the researcher wants to study and consider from violating measures for the protection of the work and the owner of the work according to the Copyright Act of Thailand compared with the principle of copyright law of the United States that it has civil case and criminal case separately.

The United States Copyright Law specified statutory damages to owners of copyrights that have been

infringed. On the other hand, Thailand's copyright law provides no statutory damages to the copyright owner, but only providing the damages are determined according to the damage that has occurred, that is, according to the actual damage only. As part of criminal remedies, United States copyright law provides copyright owners with criminal prosecution against copyright infringers. In general, there is a penalty of imprisonment or/and a fine, but in Thai copyright law; criminal law only imposes a fine that the infringer must pay to the court according to the judgment, and half of it will go to the copyright owner without giving any other penalties. Therefore, it is considered that a solution should be proposed, and the copyright law of Thailand should be prescribed to have statutory damage rules to compensate the copyright owner as it is deserved to be received and to cancel measures to pay half of the fine to the owner of the work in copyright infringement cases and to propose additional punitive damages measures instead. This is to make it similar to the copyright law of the United States that has imposed punitive damages.

VI. SUGGESTION

From the study, the researcher suggests that the provisions should be added to determine the rules on the damages that must be paid to the owner of the rights that have been infringed, including the profits due to the infringement. That means the criteria of statutory damages shall be calculated to the copyright owner who is infringed as same as those prescribed in the United States Copyright Law. The punitive damages should be imposed to prevent those who infringe upon the copyright owner.

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