

Statement of Thai Netizen Network Requesting Representatives to Consider Urgent Amendment to Article 15 of the Computer-Related Crime Act 2007

Since before the Computer-Related Crime Act 2007 was enacted, Thai Netizen Network already began calling for an amendment to this law, as we saw that the enforcement of this law would result in depriving people's right to freedom of expression, which is fundamental for democracy. Furthermore, this law contradicts the characteristics of the Internet in many aspects, thereby allowing abusive enforcement. However, the government has never realised and taken this issue seriously to amend this freedom-infringing law.

In addition, amidst crucial political conflicts in the past three years, we found that the Act especially its most problematic Article 14 and Article 15 has been used to attack political dissidents. One clear example is the arrests and charges against Chiranuch Premchaiporn, director of Prachatai online newspaper (<http://www.prachatai.com/english>), in two separate incidents.

The Arrest by Crime Suppression Division Police

In the first case, the police charged Chiranuch for an offence according to Article 15 of the Computer-Related Crime Act: intentionally support or consent to an offence under Article 14, allegedly committed by an Internet user. The offence in this case is the posting on Prachatai webboard a piece of text that the authority deemed to be defaming, insulting, or threatening the King, the Queen, the Heir-apparent, or the Regent.

Nevertheless, ***that webboard post was removed for several months before the arrest.*** It was removed right after Chiranuch received a summons from the Crime Suppression Division asking for information of the post author. This shows her intention not to support any content of that post. Moreover, the period of 20 days, for which the topic was present, that the police claimed as proof of "intentional support," does not appear in any part of the law. It was just a number cited in the arrest report.

The Arrest by Khon Kaen Provincial Police and Immigration Police

In the second case, Khon Kaen provincial court issued an arrest warrant in 2009 for the police according to a complaint lodged by Sunimit Jirasuk¹, a Khon Kaen citizen. Sunimit read an interview of Chotisak Onsoong², a man who refused to stand for the Royal Anthem, on Prachatai and found some third-party comments following the interview agreeing with what Chotisak has done. He felt that those comments were offensive so he lodged a complaint consisting of many severe charges against Chiranuch as the director, who was in charge for the webboard, as follows:

- Assisting in defaming, insulting or threatening the King, the Queen, the Heir-apparent or the Regent (Article 112 of the Criminal Code)
- Assisting in making an appearance to the public by words, writings or any other means which is not an act within the purpose of the Constitution or for expressing an honest opinion or criticism in order to raise unrest and disaffection amongst the people in a manner likely to cause disturbance in the country (Article 116 (2) of the Criminal Code)
- Importing to a computer system of any computer data related with an offence against the Kingdom's security under the Criminal Code (Article 14 (3) of the Computer-Related Crime Act)
- Intentionally supporting or consenting to an offence under Article 14 within a computer system under their control (Article 15 of the Computer-Related Crime Act)

In this case, ***the editor team of Prachatai already decided to remove some of the comments by themselves soon after discovering them.*** This shows that the team had no intention and did not consent to any offence, but rather cooperated with the authorities when asked.

1 <http://www.manager.co.th/Local/ViewNews.aspx?NewsID=9510000049421>

2 <http://www.prachatai.com/node/16466>

Defects in the Law

The cases of Chiranuch point to several defects in Article 15 of the Computer-Related Crime Act 2007 as follows:

1. *Burden of Conduits*

Article 15 sees a service provider or an “intermediary” as an editor of a newspaper who has both responsibility and ability to screen all the contents before publishing. However, one crucial characteristic that renders the Internet as useful as it is nowadays is that information flows rapidly. An intermediary is therefore “mere conduit”. If Thai authorities hold intermediaries liable for all information and content passing through them, intermediaries must have the capacity to filter everything. Even with normal speed and amount of information, this task is already hard to achieve without tampering with proper functioning of the computer system and the Internet.

2. *Crime Scene: “Kingdomwide”*

Article 15 refers to criminal offences described in Article 14. One notable offence is disseminating information deemed “likely to damage the country’s security” or “against the Kingdom’s security” which includes an offence described in Article 112 of the Criminal Code on defamation to the Royal family. Being criminal offences means that anyone can lodge a complaint, and due to the fact that the Internet is accessible from virtually anywhere, such complaint can be lodged at any police station in Thailand. Consequently, there is a possibility that the law would be used to harass individuals. There have been similar cases of “defamation by publication” charges lodged in faraway provinces to put unnecessary burden on the suspect³.

3. *An Intermediary as A Scapegoat*

In cases involving intermediaries like both of Chiranuch’s, there has not been a judgement by the court whether the problematic text violates the law or not. In fact, so far only one post author has been arrested and taken to the court, and that case is still ongoing. Also in the case of this post author, Prachatai has cooperated in every way according to the law. For other authors, the authorities must not try to hold intermediaries liable if they have cooperated but the actual offender cannot be found.

³ An example is when Pol.Gen. Seripisut Temiyavet lodged a complaint on defamation by publication against Pol.Gen. Wasit Dejkunjorn in a deep south province for Pol.Gen. Wasit’s article in a newspaper.

Obligation to comply with the law and, if necessary, fight cases, requires significant time and effort. Together with the authorities' determination to hold intermediaries liable, all of these have put them at an unnecessary high risk. This caused a tendency to conduct self-censorship and adopt a "delete first, ask questions later" mindset. Intermediaries might avoid such risk by shutting down spaces for user-generated contents, like the shutdown of Prachatai webboard in July 2009, which immediately affects a vast majority of normal users.

We must not forget that projects like Wikipedia and many open source softwares happened because of the characteristic of the Internet that allows users to create content conveniently from any possible place. Restriction on intermediaries to limit freedom to discuss and create surely causes more harm than good.

Safe Harbour

In countries where Internet law takes the public's right to freedom of expression seriously, there are clear rules that are based on "safe harbour" principle. In other words, the law assumes intermediaries to be innocent by default as long as there is no proof that intermediaries have the intention to assist in such offence. Because intermediaries act as a "space" that normally has no knowledge of potential offences, this principle exists to protect them from unnecessary legal liability.

Nevertheless, this principle does not grant intermediaries excessive freedom. Authorities can always notify websites for offensive content and request a court warrant to force a removal (following notice-and-take-down procedures). Yet the process must allow for sufficient response time for each step⁴.

⁴ More details about the safe harbour principle can be found in a paper "Intermediary Liability: Protecting Internet Platforms for Expression and Innovation" from Center for Democracy and Technology.
<https://www.cdt.org/paper/intermediary-liability-protecting-internet-platforms-expression-and-innovation>

Proposal to Amend the Computer-Related Crime Act

The aforementioned facts show that current enforcement of Article 15 of the Computer-Related Crime Act has been abused to restrict *intermediaries* who play an important role to encourage discussions and debates which are fundamental to democracy.

Thai Netizen Network deem Article 15 of this law a threat to freedom of the people. We propose for an amendment of the Compute Crime Act 2007 as follows:

1. The law must consider and deal with “intermediary” as an information tube, a cache, or a buffer. It must also understand the nature of the internet in which information flows rapidly that *any filtering or controlling measure is hardly made possible yet worth the effort. It will just cause more harm than good.*
2. The law must assume an intermediary to be innocent by default until it is proven to intentionally assist in the offence, after which a court process can start.
3. Unless and until the court has sentenced that a controversial content actually violated the law and/or the suspect was guilty, the law cannot be applied to an intermediary.
4. If an intermediary is sentenced guilty, the penalty must vary on reasonable degrees of involvement.
5. There must be an extension of the law to define notice-and-take-down procedures and ensure a safe harbour for intermediaries. For example, a webmaster can be held as suspect only if they received a takedown notice from the authorities and refuse to comply within the time period specified in notice-and-takedown procedures.

Thai Netizen Network requests the government led by PM Abhisit Vejjajiva, the House of Representatives, and the public to immediately consider an amendment to Article 15 of the Computer-Related Crime Act and other related legislations according to the proposal explained above. The amendment will prevent this law from being abused to threaten political dissidents and restrict the public’s right to freedom of expression as it currently is.

For online freedom,
Thai Netizen Network
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