

Thailand: Cybercrime Acts vs. the Right to Freedom of Expression

How Thai state policies, laws, and their enforcements affect civil and political rights, freedom of expression, freedom of associations, and the life of individual citizens and human rights defenders.

This document has ten pages, in three-part structure: **Legal Framework**, **Proposal for Legal Reform**, and **Notable Cases** (15 cases in total). Content based on researches by Freedom of Expression Documentation Center (a project by iLaw), Thai Netizen Network, and a Joint CSO UPR Submission to the Office of the High Commissioner of Human Rights (March 2010) with additional individual cases – updated on 2 June 2011, with the latest case of 30 May 2011.

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Legal Framework

Thailand ratified the International Covenant on Civil and Political Rights (ICCPR) in 1996. Article 19 of the ICCPR mandates the right to freedom of expression. The Constitution of the Kingdom of Thailand of 2007 also has a number of sections affirming the right to freedom of expression.ⁱ

In Thailand, three sets of laws primarily affect the right to this freedom: 1) defamation (Sections 326 and 328 of the 1956 revised criminal code); 2) lèse-majesté (Section 112 of the code, as revised in 1976); and 3) the Computer-related Crime Act of 2007. Thailand's position internationally in terms of freedom of expression has dropped to its lowest in a decade. According to Reporters Without Borders' World Press Freedom Index, Thailand fell from a ranking of 59 in 2004, to that of 153 (out of 178 nations) by 2010.ⁱⁱ

Computer-related Crime Act

In 2007, the military-appointed legislative body passed the Computer-related Crime Act (CCA). Section 14 (2) of the act prohibits electronic transmission of “*of false computer data in a manner that is likely to damage the country's security or cause a public panic,*” (3) prohibits transmission of any material “*related with an offence against the Kingdom's security under the Criminal Code.*” Intermediaries imposition is clearly in Section 15 of the act, where there is an offence “*of intentionally support or consent to an offence under Article 14, allegedly committed by an Internet user.*” Violators of the act may be imprisoned for up to five years and fined up to 100,000 baht per infraction.ⁱⁱⁱ

The computer crime act is becoming a primary tool in suppressing freedom of expression

and as a whole is becoming an indirect way of applying lèse-majesté-like legal provisions. More than a quarter of million websites have been blocked by the state, many of which have been deemed by the state as critical of the monarchy.^{iv}

Within three years after the enforcement of the CCA, there have been 117 court orders to block access to 74,686 URLs. While the rest of them either blocked illegally without court order or blocked legally during the State of Emergency where court order is not necessary (for example, during the April-May 2010 crackdowns.)

From 2007 through the middle of 2010, there have been 31 “lèse-majesté-content” cases pursued under the Computer-related Crime Act.^v Of these, all four cases in which the court has handed down a decision have resulted in conviction, and in no case documented have public prosecutors dropped or courts dismissed a case.

The most notable current case of CCA/lèse-majesté is that of *Chiranuch Premchaiporn*. As a webmaster, she has been charged under CCA for having not taken down comments deemed as critical of the monarchy from a web board quickly enough. She faces up to 50 years in prison.

Lèse-majesté

The lèse-majesté law remains Thailand’s greatest obstacle to freedom of expression. The amended 1976 law reads: “*Whoever defames, insults or threatens the King, the Queen, the Heir apparent or the Regent shall be punished with imprisonment of three years to fifteen years.*”^{vi} As Section 112 is considered as a violation of national security, the law is interpreted quite broadly by Thai courts.^{vii}

The number of new lèse-majesté cases has jumped from an average of less than five cases per year from 199 in 2004, to 126 in 2007, 84 in 2008, and an all-time high of 164 in 2009. Since the 2006 coup, there has been an unprecedented number of lèse-majesté cases. From 2006 to 2009, the Court of First Instance received a total of 396 cases and handed down 213 decisions. The Appeals court over the same period received 36 new cases of lèse-majesté, and handed down 40 decisions. The Supreme Court has received eight cases, and has yet to hand down a decision.^{viii}

As a whole, the vagueness of the language used in the law, the lack of guidelines on arrests and prosecutions of lèse-majesté cases, and the ability of any citizen to make the charge all contribute to a grave abuse of the lèse-majesté law. The movement of the United Front Against Dictatorship For Democracy (UDD) has been portrayed by many state officials as part of an anti-monarchist conspiracy. The vast majority of those charged or sentenced with lèse-majesté are connected in some way to the UDD.^{ix}

The scope of the lèse-majesté law has gone well beyond protecting the reputation of the king, queen, and heir-apparent, and has been used indiscriminately against any opponent of the government.^x The police and the prosecutors are part of an apparatus that is biased toward the

interests of the state. Police, prosecutors, and judges are given no guidelines in interpreting lèse-majesté. As a result, police, perhaps fearful of being charged themselves for not acting on an accusation, must make the arrest, the prosecutors must prosecute, and the judges must hand down their decisions. Without any guidelines or debates on the topic, the courts have tended to interpret lèse-majesté quite broadly and out of context, making convictions almost certain.^{xi}

The State has yet to provide clear guidelines governing the use of the lèse-majesté law.

Proposal For Legal Reform For Laws Concerning Freedom Of Expression

To Thai Government:

- While there has been no amendment to CCA, lèse-majesté, and related laws as yet, those who have been charged with the laws must be granted bail and opportunities to defend themselves in transparency.
- Provide list of blocked websites and full details regarding the necessity and justification for blocking each individual website.
- Stop “asking for voluntary cooperation” from intermediaries to filtering content. And stop using licensing / regulatory power to influencing such the action.
- Stop the plan to establish an Internet governing body which dominated by national security, state intelligence, and crime suppression officers (according to the new draft of CCA in April 2011).
- Amend the CCA by eliminating all content-related provisions (i.e. making CCA to cover only violations to computer systems).
- Amend the CCA by adding exemptions or exclusions from guilt, and making certain kinds of intermediaries to be completely exempted from guilt.
- Amend the defamation law by decriminalizing it, and adding exemptions or exclusions from guilt.
- Amend the lèse-majesté law by lessening the maximum sentence of 15 years to levels in line with other constitutional monarchies (e.g. 5-years’ maximum in Norway), and/or eliminating minimum sentence.
- Amend the lèse-majesté law by making prosecution contingent upon consent of the king, queen, or heir-apparent (as in Norway).
- Amend the lèse-majesté law by adding exemptions or exclusions from guilt.

To United Nations, Embassies, and International NGOs:

- Raise the concerned issues with the Thai government at the Universal Periodic Review (UPR) meeting in October 2011.
- Raise the concerned issues at relevant sessions at Human Rights Council.
- Pressure Thai government to allow all the relevant Special Rapporteurs to visit the country.

Notable Cases in Thailand Regarding Freedom of Expression Online

The number of CCA & LM cases has risen dramatically since the military coup of 2006. Cases shown here are focused on those related to the Internet and the abuses of CCA.^{xii xiii}

It should also be noted that these laws are not only used by the state to intimidate and silent political dissidents. The records show a growing trend of companies, interest groups, and individuals using these laws to stop legal reform campaigns, social movements, and trade unions.

1. **Suwicha** [REDACTED], 36, was arrested in January 2009 after being accused of posting clips deemed lèse-majesté on YouTube website. He was convicted and sentenced to 10 years in jail. He begged pardon and was released June 2010.
2. **Prachatai news office** was raided by the police on 6 March 2009. Since then **Chiranuch Premchaiporn**, the director of this on-line news service, has had to manage her defence against a barrage of LM-type charges with sentences totaling around 20 years in prison. According to Chiranuch the Police have been using the Computer-related Crime Act “to avoid international media attention regarding lèse majesté”.

Against the background of the heavily self-censoring mainstream media, great numbers of Thai people needed Prachatai.com, one of the only reliable Thai sources of independent news about Thai social movements.

The attractive Prachatai.com chat board was a place where people could share their frustrations about the political madness in Thailand, from the corruption charges against Thaksin in 2005, to the military coup in 2006 and all that followed, Thailand’s growing, critical cyber army made the Prachatai chat board their home, increasingly sharing their frustration over the role of Monarchy in Thai politics.

Chiranuch’s impossible task was to attempt to oversee this chaos of opinions. Returning from the ‘Internet at Liberty’ conference in Budapest, in September 2010, Chiranuch was arrested at Bangkok airport.

Immediately many groups sent out messages about her arrest, and she was bailed out within a few hours for 200,000 Baht, but she must now present herself once-a-month at the police station where the case was filed – which is 400 kms from her home. On 5 November 2010 the Asian Human Rights Commission launched a campaign page for Chiranuch: www.humanrights.asia/campaigns/chiranuch-prachatai

3. **Nat** [REDACTED], 29, was arrested on 15 October 2009 after being accused by DSI of sending video clips deemed lèse-majesté via email to an English man living in Spain, called *Emilio Esteban*. Esteban is believed to have been associated with Suwicha Thakor for jointly disseminating information deemed lèse-majesté on YouTube under the name

“stoplesemajeste”.

On 14 December 2009, Nat was sentenced for computer crimes and LM for 9-year imprisonment. With confession, his jail term was reduced to 4 years and 6 months.

4. **Thiranan** [REDACTED], **Khatha** [REDACTED], **Somjet** [REDACTED], and **Thatsaporn** [REDACTED] were arrested between October to November 2009 for ‘spreading false news about the King’s health’. Thiranan, a former director of a finance and securities trading firm, was charged for her translation of Bloomberg reports that mentioned the King’s health that she got from the Internet. She posted the translation to *Prachatai*’s web board. Khatha, an employee in the trading a securities trading firm, was said to have posted the similar message to *Fa Diew Kan*’s web board. Somjet and Thatsaporn got charged for disseminating the information as well. All four of them were out on bail.
5. **Thanthawut** [REDACTED], 38, a website designer and single father of a ten year old boy was arrested in 2 April 2010, accused of “posting” messages deemed lèse-majesté on a website. He also accused to be a “service provider of the website” himself whose role was to oversee any messages with alleged contents. However, regardless of the fact that he was merely a web designer, he was convicted for lèse-majesté and computer crimes with 13-year imprisonment.

Thanthawut is one of the very few cases who have chosen to appeal. He denied all the allegations as there has been no actual electronic evidence to prove his guilt. For example, the information on the Internet traffic used by investigation officers show different date and time with the alleged messages on the website. Also the log-in name of Thanthawut differs from that of the person who posted the messages. It was only the assumption by the police that he was an administrator, and therefore guilty, because he accessed the website through Files Transfer Protocol (FTP). FTP access is a common service that any Internet user can has.

Like many other lèse-majesté-related cases, he has not been granted bail to fight his charges.

6. **Wiphat** [REDACTED] was a businessman. He was arrested on 29 April 2010 for posting status on his own Facebook page. He has denied insulting the King. He bailed himself out.
7. **Pruay Salty Head** (pseudonym) directs TV advertisements and was active in post comment on the Prachatai.com and Same Sky (We Are All Human) chat boards. After being arrested and interrogated in May 2010 by the Department of special investigations, he discovered he had been monitored since 2008. Twelve DSI police raided his home in late May 2010 and took him and two computers for several hours of interrogation. His computers were returned after two weeks. He sold his house and car, left his job and submitted his case as an asylum seeker at a UNHCR office in Asia. His family is frequently

questioned by the DSI as to his whereabouts. He is in exile and hiding.

8. **Ampol** [REDACTED], 61, was a worker. He was arrested on 3 August 2010 for “*sending SMS messages considered offensive to the Monarchy and the Prime Minister*”. Despite his age and his serious illness (cancer), his bail got refused and now he is in prison. He denies the charges, saying the SIM-card used by the police to trace the calls was not his.
9. **Thanapol** [REDACTED], 32, an ordinary Red Shirt businessman, was arrested on 13 September 2010 for posting comments regarded as offensive act on his own Facebook page. He is out on bail and his case is pending.
10. **Wiset** [REDACTED], was arrested on 15 September 2010 on charges of LM by immigration police at Suvarnabhumi Airport while leaving the country. *No further information about his case.*
11. **Chanin** [REDACTED], now ex-Royal Thai Air Force officer, was reported to police on 17 November 2010 by fellow officers for outspoken comments on his Facebook page. He has been suspended from duty. *His case has been brought to the military court and conducted in a secret trial.*
12. On 29 April 2011, Thai patient rights activist **Preeyanan Lorsermvattana**, from *Thai Medical Error Network (TMEN)*, was accused of “forging computer data” (CCA 14 (1)). The data in question is from the Network's campaign to support Medical Malpractice Victims Protection Bill. *Prachumporn Booncharoen*, a medical doctor who filed the charge, is a vice president of Federation of Healthcare Workforce of Thailand. Preeyanan had to travel 486 km away from her residence in Bangkok to report herself to the police station in Surin province, where the charge was filed. *This is the first known case of a civil society organization using Computer-related Crime Act to stop a legal reform campaign.*
13. Since his public lecture about the Monarchy on December 10, 2010, **Somsak Jeamthirasakul**, a university professor, has faced intimidation. Immediately after he posted his two open letters to *Princess Chulabhorn* on his Facebook page, regarding her interview on the Public TV Channel 9 aired on 3 April 2011, the intimidation against Somsak and his wife was increasingly frightening. He then received official notice from the Nang-Loeng Police station to report on 11 May 2011, after the Army filed a LM case against him. It is very important to note that Criminal Code Section 112 is not actually cover Princess Chulabhorn, but the police failed to recognize this.

Somsak is a well-known history professor, who has been reviewing and sharing many documents on the monarchy in the modern Thai politics, especially in the period after the death of King Ananda (Rama VIII). After the 2006 military coup, Somsak has been more active in revealing documents and historical records of the monarchy in the *Fa Diew Kan* (‘Same Sky’) web board (now changed its name to ‘We Are All Human’, at weareallhuman2.info) and his Facebook page. He has proposed eight demands to reform

the Monarchy – mostly to prevent the monarchy from interfering in politics and being used by the conservative to take control of the country.

The editor of *Fa Diew Kan* journal, **Thanapol Eiamsakul**, who used to be responsible for the Same Sky web board, was also accused and charged with LM in 2006, and then later again in 2011. *Fa Diew Kan* is a printed, quarterly political review. It was one of the first publications, circulating mainly amongst academics and young intellectuals, to begin contemporary, critical analysis of the role of the monarchy in Thai politics.

14. On 24 May 2011, “**Joe Gordon**”, 54, has been arrested by the Department of Special Investigation in Nakhon Ratchasima province for LM and computer crimes. The DSI alleges that he owns a blog, called *bahtdew.blogspot.com*, which offers a link to download a book ‘*The King Never Smiles.*’ Over 20 DSI officials went to arrest him at his house and seized his desktop computer and mobile phone. He has been charged with lèse-majesté (criminal code 112), inciting unrest and disobedience of the law in public (criminal code 116), and disseminating computer data which threatens national security (CCA 14 (3), (5)). Currently he is being detained in Bangkok Remand Prison and does not allow bail.

Gordon lived in Colorado, USA, for over 30 years, and has acquired American citizenship. He returned to Thailand because of the death of his wife and also for the medical treatment for his illness of having high blood pressure and gout.

In 2006, *Paul Handley*’s ground-breaking book ‘*The King Never Smiles*’ was published in the USA by Yale University and promptly banned in Thailand.

15. On 30 May 2011, prosecuting attorney filed the case on **Songkram Chimcherd**, a subcommittee member of *Thai Industrial Gases Labour Union*. Thai Industrial Gases PLC accused Songkram of defamation and “involves import to a computer system of false computer data” (CCA 14 (1)), from his activity of sending e-mails to various organizations to make a complaint.

In the past several years, the trade union and the company have continuous conflicts, e.g. cases of union workers got fired without compensation. Moreover, the company have filed charges to the union members in many different cases, claimed that they causing frightening and damaging the company reputation.

This document will be available online at
<http://thainetizen.org> and <http://ilaw.or.th>

- i Sections 4, 5, and 30 uphold the principle of equality of “all persons” who shall not suffer “unjust discrimination” for “difference in...constitutionally political view.” Section 45 guarantees that “A person shall enjoy the liberty to express his opinion, make speech, write, print, publicise, and make expression by other means,” and Section 50 ensures academic freedom “provided that it is not contrary to his civic duties or good morals.” Sections 28 and 29 forbid to the State to “affect the essential substances” of the “rights and liberties” that every person may exercise as long as it is not “contrary to this Constitution or good morals.” Finally, Section 6 upholds the principle that “The Constitution is the supreme law of State” and that laws contrary to the Constitution “shall be unenforceable.” Office of the Council of State (Thailand), Constitution of Kingdom of Thailand 2007, . The restrictions on the liberty described in Section 45 are rather extensive, allowing the state to restrict the freedom of expression when there is “law specifically enacted for the purpose of maintaining the security of State, protecting the rights, liberties, dignity, reputation, family or privacy rights of other person, maintaining public order or good morals or preventing or halting the deterioration of the mind or health of the public.”
- ii Freedom House reports rated Thailand moving from “Free” from 2002-2005 to “Not Free” in 2007, to “Partly Free” until the present. <http://www.freedomhouse.org/template.cfm?page=22&year=2010&country=7932>
- iii Computer-related Crime Act, B.E. 2550 (2007), Government Gazette (Vol. 124, Section 27 kor. (18 June 2007), pp. 4-12.
- iv Within three years after the enforcement of the CCA, there have been 117 court orders to block access to 74,686 URLs. The reasons of the order for the blocking of websites can be ranked as follows: 1) lèse-majesté content (57,330 URLs); 2) pornographic content (16,740 URLs); 3) information about abortion (357 URLs); 4) content related to gambling (246 URLs); 5) other reasons such as blasphemy, phishing/pharming (making fake websites), and even websites with content seeing the government differently on issues related to the dispersal of protesters thus were deemed to create chaos and division within the public.
- v iLaw report on the Situational Overview on the Control and Censorship of Online Media. <http://ilaw.or.th/node/632>
- vi Raatchakitjaanubeksa [Royal Gazette] Special Issue, Vol. 93, Part 134, (21 October 1976), p. 46. The law’s legal status is further complicated by Section 8 of the 2007 Thai Constitution (and a similarly-worded provision in past Thai constitutions) reads: “The King shall be enthroned in a position of revered worship and shall not be violated. No person shall expose the King to any sort of accusation or action.”
- vii David Streckfuss, “The Intricacies of Lèse-Majesté: A Comparative Study of Imperial Germany and Modern Thailand,” in, Soren Ivarsson and Lotte Isager, eds., (Copenhagen: NAIS Press, 2010.)
- viii Annual Judicial Statistics, Thailand 2005 / Rai-ngan statiti khadi san thua ratcha-anajak prajam pi 2548, Annual Judicial Statistics, Thailand 2006 / Rai-ngan statiti khadi san thua ratcha-anajak

prajam pi 2549, Annual Judicial Statistics, Thailand 2007 / Rai-ngan statiti khadi san thua ratcha-anajak prajam pi 2550, Annual Judicial Statistics, Thailand 2008 / Rai-ngan statiti khadi san thua ratcha-anajak prajam pi 2551, Annual Judicial Statistics, Thailand 2009 / (Excel sheet version) Rai-ngan statiti khadi san thua ratcha-anajak prajam pi 2552.

- ix In November 2009, Thai Foreign Minister Kasit Piromya claimed Thaksin “is using a helping hand from a neighboring country as a tool to overthrow the monarchy and the Thai government.”
<http://asiancorrespondent.com/24784/>
- x Streckfuss, *Truth on Trial* in Thailand, pp. 310-11.
- xi Somchai Preechasilpakul, “Konkai thi ‘ayutitham’ khaung krabuankan yuttitham thai,” *Fa Diew Kan* 4:2 (mesayon-mithunayon 2459), p. 72.
- xii Some of the cases in this report was based on a report by Kwanrawee Wangudom and David Streckfuss of the *Article 112: The Lèse-Majesté Law Awareness Campaign Research Group*; and Janya Yimprasert, “Some cases of lèse majesté,” in *Prachatai*, May 13, 2011
- xiii Many of these cases are covered and keep updates in websites like
<http://thaipoliticalprisoners.wordpress.com/> (English), <http://lmwatch.blogspot.com/> (Thai),
<http://article112.blogspot.com/> (Thai), and <http://thainetizen.org/> (English and Thai)