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Paper No. 7
Supervising Internet in Thailand

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With the advent of new computer and telecommunications technology, a new world is unfold before us. A world in which ideas can be exchanged electronically almost instantaneously around the world among millions of people using computers. A world in which expressions as varied as print, graphics, photographs, audio or video can be communicated in combinations unheard of only a scant few years ago.

This information technology revolution, like the industrial revolution, is reshaping the world and creating new paradigms in the social, cultural, economic and political domains. People located on different continents can now do research, communicate with each other and exchange goods and services without time or space barriers and with fewer intermediaries than was previously the case.

This new world of communications is made possible through the evolution of what commonly known as the Internet.

Methodology

The Present paper on "Supervising Internet in Thailand" consists of a total of five Parts as follows:

Part I Internet Phenomenon will present the growth of the Internet in Thailand and the world as well.

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Part II Internet Characteristics analyze the particular nature of the Internet in comparative with the traditional media.

Part III Is the Cyberspace a "No Law Land" proves whether traditional legal regulations can be applicable to the messages on the Internet.

Part IV The Sustainable Internet identifies that, in supervising the Internet, other than to regulate the Internet or not, we have to use legal mechanism to facilitate the use of the Internet to enhance the prosperity and well-being of all Thai people at large.

Part V Conclusion

I Internet Phenomenon

In Thailand, the Internet can be treated as a pre-multimedia service since it offers such features as the World Wide Web, a service which can provide Internet users with images, voice and text information. The use of Internet is growing very rapidly. The world had about 30 million users in 1995. It is estimated that there were 70 million users in 1996, and that there will be more than 100 million users worldwide by 2000. In Thailand, the number of the Internet users rose from about 9,500 in 1994 to 50,000 in 1995. The number of personal computers in use in Thailand has risen about 25-30% annually since 1994. About 680,000 personal computers were in use in 1994. In 1996, it was estimated that this figure has risen to about 1 million and that about 10 percent of these personal computers were connected to the Internet. The past few years has seen explosively growth in the Internet traffic. At present, there are 16 ISPs providing internet services, serving 250,000 users in Thailand. All this ISPs have totally 30 Mbps international links. Currently, the most common way of accessing the switching system and trunking system of the Public Switched Telephone Network (PSTDN). After reaching the Point of Presence of an ISP, such call are converted into data format so that they can be piped directly into a local Internet gateway. In provincial area, Internet users can access the ISPs in some cities. For example, Internet users in Udorn Thani and surrounding areas can access Internet through three ISP including Internet Thailand, KSC, and Loxinfo. Although the commercial use of Internet currently focuses on the
advertising aspect, it is expected that a transaction-based the Internet use will proliferate when public acceptance and security have been issues have been resolved.

The Internet has therefore become a very powerful medium for the exchange of ideas and for the advancement of social, economic, cultural, political, scientific and personal objectives.

However, in supervising the Internet, it is necessary to know technical characteristics of the Internet.

II Internet Characteristics

The Internet is not a network; it is rather an interconnection of innumerable networks of all sizes: a network of networks. As a communication tool, the Internet could be assimilated to other media. But the Internet incontestably presents particular characteristics in comparison with traditional media as follows:

1. A decentralized, but global network

The structure of the Internet is acentric or polycentric, which has no center. Because this network has several centres that are not submitted to a "nervous centre", if a part of the network is damaged, what is left will not be affected. Regulatory power should consider it as a global entity. In fact, even if service providers can prohibit the access of certain of their own sites, they cannot impede individuals to reach litigious services that exist on other parts of the network. If you can connect to one part of the Internet, then ultimately you can connect to all of it. Now, the Internet can be compared to the hologramatic principle according to which each part is in the whole, the whole is in each part at the same time. The Internet transcends national boundaries and makes local censorship almost impossible.

Therefore the expression "Think globally and act locally" is appropriate one to understand the characteristics of the Internet. We have to keep a great margin to act locally, but we have to think about the global community to which they belong to avoid an imbalance between the interests in presence.
2. An interactive medium

What is the main difference between the Internet and the other media? The Internet is said to be the interactive medium par excellence. Interactive means that the user has the ability to influence the flow of information or to modify its contents. But the Internet is not interactive by itself: the amount of control the users have is due to the computers themselves, which enable the users to send and receive information to the network. In fact, many other media allow a kind of interactivity, from the selection of options to searching for links to input of new information. For instance, the media difference between television and the Internet is that the latter provides a mechanism so that the user can decide at any time to make different choices, without depending upon a fixed program. Moreover, the user can import new material and modify the structure of proposed information, e.g. by establishing new links among system elements. The Internet is not only a one-way public communication device. It does accept information in the opposite direction: each user can communicate with the public. Thus, Internet services are not invasive as radio and television programs, because their users have a better control on the flow of information.

Self-regulation: The Appropriate Paradigm for the Internet

Because of the decentralized and global nature of the Internet the states have to be very careful before acting blindly. Thus, every nation's government should adopt a regulatory paradigm, notably by taking into account the fact that the Internet is an interactive medium that enables self-regulation. Therefore, interactivity also means that an internet user can choose the components and the programs thank to which his computer allows him to access the global network. Because individual as well as SYSOPs (System Operator) have great control on information, software and hardware, self-regulating culture might develop on the Internet. Such a culture emerged not only because of the lack of state controls, but also due to the interactive environment of the Internet, which contributes to enforce the various form of the "Netiquette". For instance, <<flaming>>, that punishes bad users could consist of a flood of e-mail from other users in the mail-box to the "sentenced" person so that his address becomes unusable. Such an action would have been unthinkable and impossible with traditional media, because
users cannot spread information in the opposite direction. Messages can also be controlled using new software which filters out unwanted people or information e.g. Netnanny, Cybersitter, Cyberpatrol and etc. These program can be adopted by users and SYSOPs and thus provide protection at the distribution level and reception levels.

III Is the Cyberspace a "No Law Land"

As with any such powerful "invention", there comes some challenges. The Internet is a formidable tool for people to knowingly or unknowingly violate the rights of others. These violations include copyright and trade-mark infringements, attacks on the reputation of others, communication of hate propaganda and distribution of obscene material including child pornography. In the following analysis, we will consider whether the main abuses occurred in the cyberspace can meet the existing traditional legal regulations or not.

Penal Law

Computer networks like the Internet or networks providing major on-line services can in theory be abused by a wide variety of criminals for their purposes. The wide range of offences in which networks into play a part can be roughly divided into 2 categories as follows:

1. **Computer Crime**: crime geared specifically to the network and the connected data-processing systems; and

2. **Crime under classic criminal law**: crimes for which networks are used as a communication channel.

**Computer Crime**

At present, NECTEC has initiated the Information Technology Law Development Project in which the drafting of Computer Crime Law is underway.

**Crime under Classic Criminal Law**

1. Obscenity

   Section 287 of the Penal Code provides that

   "Whoever:
(1) for the purpose of trade or by trade, for public distribution or exhibition, makes, produces, possesses, brings or causes to be brought into the Kingdom, sends or causes to be sent out of the Kingdom, takes away or causes to be taken away, or circulates by any means whatever, any document, drawing, print, painting, printed matter, picture, poster, symbol, photograph, cinematograph film, noise tape, picture tape or any other thing which is obscene."

Therefore any person transmitting obscene material on the Internet could be guilty of offence under Section 287 of the Penal Code. This would cover persons posting obscene materials to a bulletin board, Web site, newsgroup, mailing lists or on-line services.

Now the Penal Code is being amended to include child pornography offence. However this Section 287 can be interpreted to cover such offence.

2. Defamation

Under Section 326 of the Penal Code, a defamation action is made up of three elements:

1. Offending statements made known by someone other than the other;
2. The defamation refers to the plaintiff; and
3. The statements are false and discredit the plaintiff.

Once proof of publication has been made, it is presumed that the statements are false, that they were intended to defame and that the plaintiff suffered damages.

Eventually, every defamatory message that is passed in Bulletin Broad or sent to a Newsgroup, or via e-mail, and spread from public web-sites, is not only breach the right to others, but also threaten national security and public order.

3. Money Laundering

The rapid expansion of the Internet also raises the question of whether money laundering offences apply to this sector. Financial transactions are possible not only in closed networks but also on the Internet.
Concealment measures punishable under laws related to money laundering can also be committed via the Internet; the transfer of criminal assets from an account with bank A to an account with bank Y is just one example of this. The application of such laws to transactions conducted via Internet is not in dispute. However, universal networks in particular provide an opportunity for rapidly conducting a large number of worldwide transactions which it would be difficult for penal authorities to trace.

Copyright

Section 6 of Copyright Act B.E. 2537 provides that

"The copyright work by virtue of this Act means a work of authorship in the form of literary, dramatic, artistic, musical, audiovisual, cinematographic, sound recording, sound and video broadcasting work or any other work in the literary, scientific or artistic domain whatever may be the mode or form of its expression."

The definition of copyright work is defined broadly under this Section 6. In preliminary, therefore, copyright works online on Internet is protected under the Copyright Act B.E. 2537.

However the application of traditional copyright law to open public global networks such as the Internet is bedevilled by the roots of copyright being in the protection of information contained in tangible media such as book. There are various issues to solve by interpreting or amending such traditional copyright law.

Domain names

The new branding issue which arises with the Internet is the question of domain names. One of the interesting things which one first has to address in relation to domain names is identifying their nature. First and foremost, in the context of the Web, they are the unique indicators on the indices for the Internet which identify the address of the homepage of any given.

However, in Thailand, the domain name policy is in development process. In such a circumstance, the neutral and appropriate organization should be established to responsible for registration and dispute settlement related to domain names systematically.
**Jurisdiction and Governing Law applicable to Internet**

This is both a delicate and complex question which involves contractual and torts rules as well as penal law. Depending on the act committed, the Thai party may seek sanctions against the offending party and compensation for damage suffered on both civil and penal law grounds.

**Civil grounds**

**Tort** - Section 15 of Act on Conflict of Laws provides that

"An obligation arising out of a wrongful act is governed by the law of the place where the facts constituting such wrongful act have taken place."

In Thai private international law in tort situations (such as, in present instance, a situation involving an overseas site and a Thai citizen), the governing law is the law of the place where the tort was committed (lex loci delicti).

**Contractual Obligation** - Section 13 of Act on Conflict of Laws provides that

"The question as to what law is applicable in regard to the essential elements or effects of a contract is determined by the intention of the parties thereto. If such intention, express or implied, cannot be ascertained, the law applicable is the law common to the parties when they are of the same nationality, or, if they are not of the same nationality, the law of the place where the contract has been made."

In contractual situation, the question is easier to resolve as the parties (in this case the overseas site and the Thai residence) may have determined the governing law in the contract binding them, or, if the contract does not designate such law, the law common to the parties when they are of the same nationality shall be applicable law, or, if they are not of the same nationality, the law of the place where the contract has been made.

**Penal offences**

The essential sections of the Penal Code provide a fairly simple response to this problem.
First Section 5 provides that:

"Whenever any offence is even partially committed within the Kingdom, or the consequence of the commission of which, as intended by the offender, occurs within the Kingdom, or, by the nature of the commission of which, the consequence resulting therefrom should occur within the Kingdom, or it could be foreseen that the consequence would occur within the Kingdom, it shall be deemed that such offence is committed within the Kingdom."

To illustrate this article, we will refer to two concrete examples: an overseas site which broadcasts defamatory information concerning a Thai citizen; and an overseas site which broadcasts from its server works infringing Thai copyright.

These two offences are subject to sanction by fine and imprisonment, and in the two cases, the attachment to a Thai element is easy to prove. However, for the overseas site to be found liable for a penal offence, the physical and intentional aspects of the offence must be proven. The far from simple problem of enforcing the decision rendered against the overseas site nevertheless remains.

In conclusion, the Cyberspace is not "No Law Land. In preliminary, the main abuses that occur in the Cyberspace are likely to meet existing legal regulations. However such traditional legal regulations should be developed in conformity with the progress of technology. And in accordance with the global characteristics of the Internet international cooperation is the most importance for law enforcement against abuses occurred on the Internet.

IV Sustainable Internet

It goes without saying that Internet is a symbol and a most dynamic mechanism in the Information Society. In such a circumstance, the question is not only how to regulate Internet but also how to develop and use Internet in a sustainable way. With acknowledgement of such a problem, NECTEC(National Electronics and Computer Technology Center) as National Information Technology Committee Secretariat having the mandate to prepare, facilitate, monitor the implementation of IT development plan has initiated the Information Technology Law Development Project.
The Information Technology Law Development Project emanate from the necessity of Thai society. In Internet or Information society, our country have to have legal infrastructure to enhance both economic and social development concurrently. Therefore objectives of the IT Law Development Project are as follows:

1. **Competition**: Legal infrastructure should facilitate the use of Internet to enhance electronic commerce. To achieve such an objective, The Electronic Data Interchange Law, Digital Signature Law and Electronic Funds Transfer Law have to be drafted systematically.

2. **Competitiveness**: Thailand as a developing country, cannot effectively and fairly compete with other countries particularly developed countries, if we ignore the promotion of competitiveness to our private sectors and all Thai people as a whole. To achieve such objective, the legal mechanism and appropriate organization should be established by drafting the bylaw of the Article 78 of the Constitution to guarantee the universal access to the National Information Infrastructure.

3. **Common Good**: other than to use legal infrastructure to promote prosperity and well being of our people, the law can be use to enhance the national security and public order, or morals and public health. To achieve such social solidarity objective, the IT law Development Project have to draft the Computer Related Crime Law and Data Protection Law.

Other than considering whether the Internet will be regulated or not, the IT Law Development Project always confirms that Internet can be used to enhance national prosperity and well-being of all Thai people as a whole.

V Conclusion

In supervising the Internet, we have to recognize the fact as follows:

1. The fundamental characteristics of the Internet is decentralized, global and interactive.
2. With its fundamental characteristics, particularly interactive nature, the self-regulation paradigm is the most appropriate in supervising the Internet. In such a paradigm, we should enhance the following activities:
   - Promote to develop the Internet Code of Conduct.
   - Enhance all parties related to the Internet to use filter softwares e.g. Netnanny, Cybersitter, Cyberpatrol and etc.
   - Promote to use standard contracts having some clauses that oblige the access provide to use all means to block access to unwanted material.
   - Etc.

3. Because of decentralized nature of the Internet, each legal institutions related to abuses on the Internet should be developed or strengthened to meet the progress of technology.

4. With global characteristics of the Internet, the international cooperation should be promoted to combat with the offences occurred on the Internet efficiently and effectively.

5. Other than concentrating on how to regulate the Internet, the legal infrastructure should be developed to facilitate the use of Internet to enhance the national prosperity and well-being of all Thai people in a sustainable way.