

## **New Computer Crime Bill: New State regulation and potential problems**

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In March 2011, the Ministry of Information and Technology (“**MICT**”) published the draft new computer crime bill with purpose to tackle cyber crime on internet, e.g., Lese Majesty, pornography, terrorism, copyright infringement, and etc. However, after the draft bill was disclosed, a number of academicians, netizens, ISPs, hosting companies, those who engage in dot com business as well as media and general public, have widely criticized and opposed the said bill. The question raised among them was the necessity and urgency of the Government to pass and enforce such law in Thailand. This article is aimed to analyze and point out some potential problems, which may arise should the draft bill is passed and effective,

### **Potential Problems:**

#### **i) Establishment of a new regulatory body not in line with the concept of the Computer Crime Law**

This draft bill intends to abolish power of MICT ( which has unsuccessfully dealt with dissemination of illegal contents promptly and efficiently, especially, Lese majesty and terrorism in southern provinces ), which shall be replaced by a newly established “*Government Regulated Body*” under the cabinet’s control entitled “*Committee for Prevention and Suppression of Computer Crime*” (“**CPSCP**”), consisting of Prime Minister, various Ministers from MICT, Ministry of Justice, Ministry of Defense, Chief of Royal Thai Police, Secretary of National Security Division, Chief of DSI, National Intelligence Agency and other national security entity. CPSCP has an exclusive power to issue any rules or regulations, block website, take legal actions and perform any other operations under this bill and any other laws to prevent, enforce and suppress all computer crimes on internet, focusing on Lese majesty and terrorism. This seems to considerably change the concept of the “*Computer Crime Act of 2007*” (“**CCA**”) from dealing with computer crimes to deal with national security instead. With this regard, US and UK, the countries confronting with more cyber crimes, on daily basis than Thailand, have never implemented any substantive law similar to what are provided in the draft bill.

#### **ii) More criminal offences and severe punishment are provided**

To promptly suppress the said computer crime in Thailand, this draft bill provides some new criminal offenses and higher imprisonment, beyond standard of international countries, such as, possession of child pornography (either in physical or electronically form) shall be subject to 6 years imprisonment pursuant to Section 25; copying computer data into mobile and/or computer device, without consent from owner of each data shall be subject to 3 year imprisonment pursuant to Section 16; disseminating untrue statement on internet shall be subject to 5 years imprisonment pursuant to Section 24; providing other personal data without owner’s consent and causing humiliation shall be subject to 3 year imprisonment pursuant to Section 26, and etc.

Further, under Section 16 of this draft bill, it imposes criminal liability against any person(s), for instance, computer user, mobile owner, P2P websites, social media websites (facebook or twitter), search engine ( google, yahoo), who copies any computer data of another person without consent, whether temporarily or permanently and store it on their computer system or mobile. This contrasts with nature of computer communication. In fact, every time you send or contact somebody via mobile or internet, your computer and mobile will automatically make a copy to display on screen of your devices. Should this bill become effective, internet users, whether inside or outside the country, using P2P or caching technology, will inevitable be affected by this law.

In addition, Section 26 of this draft also prohibits all persons and media to disseminate any picture, personal data or any computer data, in electronic form without consent in case such dissemination will cause damage, humiliation or fame devaluation of another person regardless of whether or not such picture, personal data or any computer data is true picture or data. This is definitely contrary to the Thai Constitution regarding Freedom of Speech of Media since this restricts the media right to do their work, including making a report to public about bad behaviour of any politician or celebrity. Besides, it may be rather difficult for the media to clearly identify the correctness of information obtained. Even website wikipedia.org, a well-known website, still has some incorrect information. It is highly unlikely to find a website which has 100% true statement.

### **iii) The principle of fair use under Copyright Law would be destroyed**

This draft bill also destroys the concept of “*Fair Use*” under the copyright law, which allows any person to make a reproduction of copyrighted material for certain purposes without obtaining permission from the copyright owner, such as, , for personal use, news reporting, teaching, research including, distribution of musical works, photographs, videos, and computer programs on internet for comment or criticism. Another concern is a definition of “**Computer System Controller**”, which means “*any person(s),having the right to access any computer system ,which can provide or facilitate people to communicate among each other via computer*” .Under such definition, an owner and user of facebook website or twitter shall be liable to imprisonment four and half year under this bill .

In conclusion, the promulgation of the new draft bill may not be “*a silver bullet*” for the Government to trigger. A more proper solution to tackle the computer crimes problems may be the improvement on expertise and efficiency of cyber police and MICT . If all countries provide severe punishment in laws governing cyber transactions, including intensive filtering of information in their territories, it would be impossible for the world wide web or internet to function properly.