

Supreme Court of the Kingdom of Thailand

S.C. 9600/2011

Public Prosecutor v. Vannarat Keechareon

Court : Supreme Court
Case : Criminal
Date of Judgment : November 11, 2011
Plaintiff : Public Prosecutor
Defendant : Vannarat Keechareon
Concept : Copyright Infringement
Statute : Copyright Act B.E. 2537 (1994)
Panel of Justices :

Prinya Deepadung, Aram Senamontri, Dhajaphan Prabhudhanitisarn

Case Background

R.S. Promotion Public Company Limited, the injured person, is the author and the copyright owner of musical and audiovisual works. The plaintiff alleged that the defendant infringed the copyright of the injured person by copying, adapting, and transferring the MP3 files of the copyright works from a computer into CDs without consent of the injured person which is an offense against section 69 of the Copyright Act B.E. 2537 (1994).

The defendant pleaded not guilty.

Procedural History

The Central Intellectual Property and International Trade Court found the defendant guilty of copyright infringement according to section 69 paragraph one

appurtenant to sections 27(1) and 28(1) of the Copyright Act B.E. 2537 (1994) and shall be fined 40,000 baht in total.

The defendant appealed to the Supreme Court.

The Intellectual Property and International Trade Division of the Supreme Court dismissed the case.

Issue

Is the defendant guilty of copyright infringement?

Rationale

Even though the defendant copied the copyright songs of the injured person into CDs and Karaoke VCDs which is deemed to be a reproduction of the copyright musical works, sound recording, and audiovisual works without the consent of the injured person, it was due to the fact that the sub-attorney of the injured person had hired the defendant to do such reproduction. In other words, the defendant would not have produced the CDs and VCDs in question without the order of the sub-attorney. It did not appear that the defendant had already made copies of the CDs and VCDs and later sold those copies to the sub-attorney who was the agent provocateur, which would otherwise be considered as evidence-finding in order to prove that the defendant infringed the copyright of the injured person. The sub-attorney of the injured person who ordered the defendant to commit copyright infringement of the injured person's work is therefore not a legal injured person who had the right to lodge the complaint in order to prosecute the defendant for such offence according to section 26 of the Act of the Establishment of the Intellectual Property and International Trade Court and the Procedure for Intellectual Property and International Trade B.E. 2539 (1996) and sections 2(4), 123 of the Criminal Procedure Code.

Besides, the CDs and VCDs that the defendant has produced out of the sub-attorney's order and the video footage recorded by the sub-attorney containing the event when the defendant was producing the pirated CDs are unlawfully produced and unlawfully obtained evidence and therefore inadmissible to prove the accusation according to section 26 of the Act of the Establishment of the Intellectual Property and International Trade Court and the Procedure for Intellectual Property and International Trade B.E. 2539 (1996) and sections 226, 226/1 of the Criminal Procedure Code. Hence, the court could not convict the defendant of copyright infringement as accused by the plaintiff. The lower court's judgment shall be overturned and the charge shall be dismissed.

Keywords legal injured person, entrapment, agent provocateur, unlawful evidence

Summarized and translated by Ruangsit Tankarnjananurak

Edited by Kamonchanok Katinasamit