

SUPREME COURT CASE

Undecided No. (Criminal case) 567/2004

Decided No. (Criminal case) 1453/2005

Dika 3741/2006 (1/6/2006)

Date : 29/8/2006

Appellee (Plaintiff): Prosecutor of the Office of the Attorney General

Appellant (Defendant): Ms.Orasa Sengchoonworapong

Title : Appeal against IP&IT court's judgment

Under the Copyright Act section 31(1)

The Decision: IP&IT court dismissed the appellant's case. The Supreme Court agreed with the IP&IT court. Therefore, the Supreme Court affirmed the judgment.

Fact: The appellee filed the plaint that the appellant infringed the copyright in cinematographic work “**Taloompuk (ตะลุมพุก)**” and “**Old Mad Rock (พันธุ์ร้อยหน้า ย่น)**” of R.S. Promotion Co.,Ltd.(public) who was an injured person. The appellant let or offered for lease VCDs and CDs for profit, which infringed the injured person's copyright to the public and without permission. The officers searched a premise, arrested and seized infringed copyright's VCDs and CDs of injured person to the exhibit total 20 CD. In the apprehending, the appellant pleaded not guilty. After the investigation's the appellee, the appellant specifically pleaded guilty as letting and distributing tape or photographic work without permission's injured person. However, the appellant pleaded not guilty in other charges. The IP&IT court judged to punish the appellant on ground of copyright infringement for profit and let and distribution of tape or photographic work without permission. However, the appellant understood that she could let these CDs. Hence, The appellant appealed that she was not guilty to infringe the copyright for profit to the Supreme Court.

There was an issue to the Court that whether the appellant infringed an injured person's copyright by letting or offering for lease VCDs and CDs for profit. The appellant had known that these VCDs and CDs are infringe an injured person's copyright or not

The court considered and found that the appellee charged on Secondary Infringement's copyright to the appellant by letting or offering for lease VCDs and CDs according to the Copyright Act section 31(1). Pongsaap public company limited had an exclusive right to reproduce an injured person's copyright. Also, United home entertainment had an exclusive right to let or offer for lease. Therefore, the appellant bought pirated VCDs and CDs to let to customers. The appellant claimed that there is not prohibition so that she could let pirated VCDs and CDs. This claimant was inadmissible and contradicted with the Copyright Act and lease performance. Additionally, the appellant let VCDs and CDs for 13 years. Therefore, it could not believe that the appellant was not aware that letting the exhibit VCDs and CDs, reproduced by infringing the copyright, was infringement the copyright. When the exhibited VCDs and CDs infringed the copyright and the appellant knew that these were infringing the copyright VCDs and CDs but she let these things. Therefore, the

appellant was guilty to infringing the copyright according to the Copyright Act section 31(1).

The quorum in courts : Mr.Aram Senamontri
: Mr.Suwat Wattanahathai
: Mr.Somsak Natemai