

Supreme Court of the Kingdom of Thailand

S.C. 10673/2010

Public Prosecutor v Mrs. Thanchanok Rattanaivibulkul

Court : Supreme Court
Kind of Case : Criminal Case
Date of Judgment : 2010/11/16
Prosecutor : Public Prosecutor
Accused : Mrs. Thanchanok Rattanaivibulkul
Area of Law : Copyright, Film and Video Act and Video
Statute : Copyright ACT B.E. 2537 (1994)
Film and Video Act B.E.2551 (2008)

Panel of Justices

Maitree Sriarun – Aram Senamontri – Somkuan Vichienwan

Background

Prosecutor charged that injured person was the copyright holder of literary work kind of computer program, game spiderman 3 the game and spiderman game. Accused run video shop named ICE GAMES for business purpose and remuneration without the permit from the Registrar. Accused infringed copyrighted work belonged to injured person by bringing DVD spiderman games and game spiderman 3 the games with sound and image recorded for 2 discs installed into game device and connected with electric cable to television in order to let, offer to let, communicate to public which the accused knew or ought to know that such works made by infringing copyright belonged to injured person and making profit or commercial purpose without permission from injured person. Prosecucutor requested the court to make sentence against accused according to the law

Accused pleaed guilty.

Issue

Whether Prosecutor described all element of the offence in the charge according to Film and Video Act B.E. 2551 (2008) Section 53 or not.

Procedural History

The Central Intellectual Property and International Trade Court judged that accused was guilty according to Copyright Act B.E. 2537 (1994) but suspension of the determination of punishment for one year according to Penal Code Section 56. For the offence according to Film and Video Act B.E. 2551 (2008) Section 54 and Section 82, prosecutor described in the charge merely accused run video business without details about exhibit as to element of law of the word “video” according to Section 4 therefore the charge was illegally. The court dismissed this offence and other requests.

Prosecutor appealed to the Supreme Court.

The Intellectual Property and International Trade Division of the Supreme Court amended that accused was guilty according to Film and Video Act B.E. 2551 (2008) Section 53 paragraph one, 82 and fined 10,000 baht. Accused pleaded guilty, therefore, the punishment reduced to one – half, fined 5,000 baht and dismissed offences of infringing copyright of other person for commercial purpose according to Section 31 (1) (2), 70 paragraph two.

Analysis

The issue to be considered was whether prosecutor described all element of the offence in the charge according to Film and Video Act B.E. 2551 (2008) or not. Film and Video Act B.E. 2551 (2008) Section 53 paragraph one legislated that any person was prohibited to establish or run video shop for commercial purpose or receiving interest in return except for receiving permit from the Registrar. And Section 4 legislated meaning of the word “video” that material which recorded image or image and sound in order to show moving image continuously in the manner of playing game... and meaning the word “video shop” that place where providing tools or equipments including facilities for showing or seeing video. Prosecutor described the acts of accused according to the charge (1) that accused run video shop business named “ICE GAMES” for business purpose and receiving remuneration without permit from the Registrar and described the charge according to the charge (2) which was the same act for one part that accused brought DVD spiderman game and game spiderman 3 the games which recorded sound and image for 2 discs installed into game device and connected electric cable to television in order to let by customer to

play game. When police arrested accused, they confiscated play station 2 game device, color television, joy stick, AV cable, electric cable exhibit and DVD game disc which were considered as equipments or devices including facilities for computer program game. When listened facts all together, it was heard that accused run ICE GAMES shop for business by letting disc of game computer program to customer to play via computer and television. Hence exhibit computer game DVD discs in this case were materials which were recorded image and sound in manner that player could play by projecting images and sound in manner that player could play by projecting images and sound via play station 2 game device and television continuously which could be classified as video according to meaning in Section 4 of Film and Video B.E. 2551 (2008). Therefore prosecutor's charge was the charge that prescribed all acts accused committing wrong, having enough details and facts about time and place of the acts including concerning things for accused to understand the charge. Prosecutor also requested the court to punish accused according to Film and Video Act B.E. 2551 (2008) Section 4, 53, 82 and accused pleaded guilty without missing to defend. Hence prosecutor's charge was comprised of element of the offences according to the Act on the Establishment of and Procedure for Intellectual property and International Trade Court B.E. 2539 (1996) Section 26 appurtenant to Penal Code Section 158 (5) and being heard that accused run video shop for business and receiving interest in return without permit from the Registrar which was offence subsequently made in Thailand or in a country which is member of the Convention on the Copyright Protection of which Thailand is a member within thirty days as from the first publication, or the author has the qualifications as prescribed in (1) at the time of the first publication. Therefore regulation or component which made creative work to be copyrighted creative work according to Copyright ACT B.E. 2537 (1994) as mentioned before was element of the offence of copyright infringing as an essence. The facts in the charge appeared that injured person had residence in the United State of America and published its computer program game in B.E. 2546 (2003) and B.E. 2549 (2006). Prosecutor did not prescribe the charge whether the United State of America was member of the Convention on Copyright Protection of which Thailand was member or not which as an essence and a part of element of offence as to prosecutor mentioned in the charge. Hence the charge lacked of element of the offence and become illegally. Even if accused pleaded guilty, the court could not render punishment to accused. This issue was problem of law which concerning to public

order though the parties did not raise in this stage. The Intellectual Property and International Trade Division in the Supreme Court had the power to raise it for adjudication and correcting it.

Key words

Element of the offence, public order, permit

Translated

Ruangsit Tankarnjananurak