

**International Uncertainty in the Exceptions for
Individual Use in Copyright Law:
A Comparative Study of Australia and Thailand**

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ABSTRACT

The exceptions for individual use give rise to interesting and fundamental concerns drawing both international and national attention. There is uncertainty in the application of the individual use exceptions both in the international copyright treaties, particularly the three-step test of the Berne Convention, and in the national copyright legislation.

To have a better understanding of this concerns, this thesis aims to: investigate whether the exceptions for individual use can still maintain the balance of interests between the copyright holders and users; analyse the contribution that international copyright agreements and national copyright legislation may have made to assist in solving the conflict of interest between right holder countries and user countries in applying the exceptions for individual use; and conduct a comparative study of the application of the individual use exceptions in developed and developing countries.

The understandings that are found within this study are informed by relevant literature and by analysis of the application of the individual use exceptions. The thesis examines the application of the individual use exceptions in the international copyright treaties, namely, the Berne Convention, the TRIPS Agreement, and the WIPO Copyright Treaty in order to determine the appropriate “balance” between the rights of owners and users in the three-step test. To explore the uncertainty in the individual use exceptions at the national level, a comparative case study is made between the exceptions for individual use in Australia, a developed country, and Thailand, a developing country.

The results of the study reveal three major answers. First, the exceptions for individual use are able to still maintain the balance of interest between right holders and users in the digital environment, if some amendments are made to keep pace with the digital environment. Secondly, to assist in the solution to the conflict of interest between right holder countries and user countries in applying the exceptions for individual use, the international copyright agreements can make a contribution by making some minor changes, mainly in the three-step test of the Berne Convention, and by continuing to provide special treatments for developing countries. Nationally, the contribution may be made by thoroughly protecting the right holders whilst also still allowing individual use by amending the copyright legislation to update to the digital age when necessary, enacting the relevant Acts, and establishing a collecting society.

Finally, from the comparison of the application of the exceptions for individual use as well as problems found and solutions proposed in developed and developing countries, in which Australia and Thailand are used as case studies, the comparison of the application of the exceptions for individual use can be divided into four categories: fair use exceptions (Australian fair dealing and Thai private use exceptions), free use exceptions, licences (Australian statutory licences and Thai compulsory licence), and limitation of legislative individual use provisions. In addition, the problem of different interpretations of the exceptions for individual use, the problem of conformity in the application of the exceptions for individual use according to the real purpose of the three-step test, which exists in Thailand, and the problem of response to the digital environment are all used as the frame for the comparison of the problems found and proposed solutions.

The findings of the study are significant as they can provide contributions to the copyright areas primarily in the legal aspect: amendment of the exceptions for individual use. In addition, they also contribute to the related aspect in the copyright areas: the economic aspect: the balance between developed and developing Countries; and the moral aspect: developing countries' development. In addition, the thesis proposes four useful recommendations to enable the balance of interest between the right holders and the users to be maintained: amendment of the wording in the three-step test of the Berne Convention, amendment of domestic copyright law and its exceptions for individual use, encouragement of the role of collective management organisations, and raising public awareness on the issue of copyright and its exceptions for individual use.

The thesis considers the law up to 31 December 2006.



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ABBREVIATIONS

AUSFTA	The Australia-United States Free Trade Agreement
CADA	The Copyright Amendment (Digital Agenda) Act 2000 No. 119, 2000
CLRC	The Copyright Law Review Committee
DIP	The Department of Intellectual Property (Thailand)
FTA	The Free Trade Agreement
IP&IT Court	The Central Intellectual Property and International Trade Court (Thailand)
TAFTA	The Thailand-Australia Free Trade Agreement
TPMs	Technological Protection Measures
TRIPs	The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs), Annex 1C, 1994
USFTAI	The US Free Trade Agreement Implementation Act 2004
WCT	The WIPO Copyright Treaty (WCT), December 20 1996 No. 33
WIPO	The World Intellectual Property Organization
WPPT	The WIPO Performances and Phonograms Treaty (WPPT), December 20, 1996, No 34
WTO	The World Trade Organization