

## ABSTRACT

Thesis Title : Problems Relating to the Enforcement  
of Rights under Copyright, Patent and  
Trademark Licences

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The licensing agreement is a private contract which has played an increasing role in national economic systems. However, the licensing agreement appears as a new development in Thai society and the business sector, and only concerns a few groups of people i.e., such as lawyers, international trade advisors, public prosecutors, judge, and policemen. Furthermore, provision of the law governing the enforcement of licensing agreements is also limited in comparision with other specific contracts in the Civil and Commercial Code for example, sales, Hire of Property, and hire purchase contracts.

In fact, the licensing agreement is different from the above-mentioned contracts. The law concerning

licensing agreements is covered by the Civil and Commercial Code, and, also by the law on intellectual property. The licensing agreement has to consider fairness between the parties because of their powers of negotiation may not be equal. Moreover, any third person who may be affected by such licensing agreement should also be protected.

The results of this study indicate that the licensing agreement is different from general contract in both the character of the property and it deals with the specific procedures required for intellectual property. Therefore, the enforcement of any licensing agreement may entail the following problems:

1. The problem of the licensee's lack of standing to enforce his right against a third party who infrings his licensing right. Does the licensee have a right to sue such person? By the provision of law, the licensing agreement is a personal right, the right can't be used against third party. The licensee is not considered an injured person with the right to sue either in civil or criminal cases. On the contrary in an exclusive licensing agreement, it is the economic right that belongs to the licensee; the licensor cannot exercise the licensing right during the term of the contract. This problem hampers

economic growth and development and is unfair to the licensee.

2. The problem of exercising the licensee's right, when an intervening event occurs during the term of the contract, such as, an assignment or the death of either parties. Do such events have any effect on the relation of the parties to the contract? The law is still not clear on this matter, and this issue has never been addressed in Thai courts. Generally, the opinion of lawyers on this matter is still unresolved.

3. The problem of enforcing a licensee's right to copyrights on derivative works, and performance rights which are separate from the original work, for example, collection, adaptation, phonogram and audiovisual works. According to Thailand's copyright law, derivative works are independent from each other. The owner of the derivative works cannot exercise his right so as to prejudice the original copyright owner. The limits of each copyright owner right is separate. There is still a significant question as to how derivative right owner can exercise his right, especially the co-creator, singer, musician. This problem is the result of ambiguity in the law on this issue.

In order to remedy the above-noted problems, this study makes recommendations regarding licensing agreements and concerning the exercise of the licensing rights.

1. The law should be amended to make it less ambiguous and more fair to all beneficiarly parties and consumers.

2. All parties to a Licensing agreement should be fully informed as to the nature and consequences of the agreement.

2.1 Parties should protect themseves by stating the substantial conditions in the contract in precise and unambiguous language.

2.2 Training sessions, seminars, and meetings, regarding licensing agreements for personnel working in the justuce system should be promoted. Such gatherings will result in a clearer interpretation, and greater consensus concerning the law on licensing agreements and those assist in acheiving the objectives of law on Intellectual Porperty.