

The Conceptual Framework of Intermediary Censorship in Social Media in Thailand

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Abstract -- Following the enactment of computer crime law in Thailand in 2007, OSPs and online intermediaries in the context of social media are compelled to control illegal content including content that are deemed *lèse majesté*. This situation leads to induced self-censorship of intermediaries, often resulting in overblocking or excessive removal of content to avoid violating the law. Such filtering flaw both infringes users' freedom of expression and impedes the business of OSPs in Thailand. The conceptual framework of intermediary censorship is developed to investigate intermediary censorship on the most popular online discussion forum in Thailand on what are censored and why they are censored. The influences and impacts of intermediary censorship are also revealed in the case study.

Keywords: *Content, Intermediary Censorship, Innovation, Legislation, Social Media*

I. INTRODUCTION

Intermediary censorship has emerged as a contentious issue in the scholarly area of Internet filtering in recent years. In the context of Web 2.0, online service providers (OSPs) or social media like online discussion forums, social networking services and blogging services have become important public sphere whereby users are provided with space to generate their own content. It seems users have more freedom of expression on the Internet. However, many regimes around the world have made OSPs new choking points for Internet control by transferring to them the liability related to content published online, which Zuckerman (2009) refers to as "intermediary censorship". In fact, cyber crime laws in some countries have made intermediary liability a major regulatory component. Such is the case with Thailand's relatively new, yet highly controversial, Computer-Related Offence Act B.E. 2550 (2007) which requires online intermediaries to

remove potentially infringing content, particularly those that may fall under *lèse majesté* – damaging or defaming the king and royal family – a historically serious crime in Thailand (Bangkok Post, 2009).

Based on reviews of related research and unobtrusive observation, however, the emerging filtering scheme at the intermediary level has led to a subjective censorship practice of sort (MacKinnon, 2009). Also, with the rapid growth of social media and dynamic participation from online users, some intermediaries have resorted to excessive removal of content or overblocking to avoid violating the law. Inevitably, media freedom and Net users' freedom of expression have been violated as well. According to a local research on control and censorship of online media through the use of laws and the imposition of Thai state policies (iLaw, 2010), censorship and lawsuits have dramatically increased particularly under charges of defamation and *lèse majesté* as shown in Figure 1 and Figure 2. According to the study by impact of defamation law on freedom of expression in Thailand by ARTICLE 19¹ (2009), the Ministry of Information and Communications Technology (MICT) indicated that it has shut down more than 2,000 websites alleged to have contained *lèse majesté* material.

¹ ARTICLE 19 was established in 1987 in the UK and has worked and partnered with many international organizations such as UN, Amnesty International and International Media Support, and governments such as the UK and Brazil. ARTICLE 19 monitors, researches, publishes, advocates, campaigns, sets standards and litigates on behalf of freedom of expression wherever it is threatened to strengthen national capacities, and build or reform institutions and policies to protect transparency and the free flow of information.

This situation of Internet problem in Thailand and filtering flaw in social media has raised following research questions: What types of content are filtered by intermediaries? What are the criteria of censorship in online social media? And what is the Impact of filtering practice to user and OSP?



Figure 1. Number of cases under Computer Crime Act in 2007 - 2010 (iLaw, 2010)

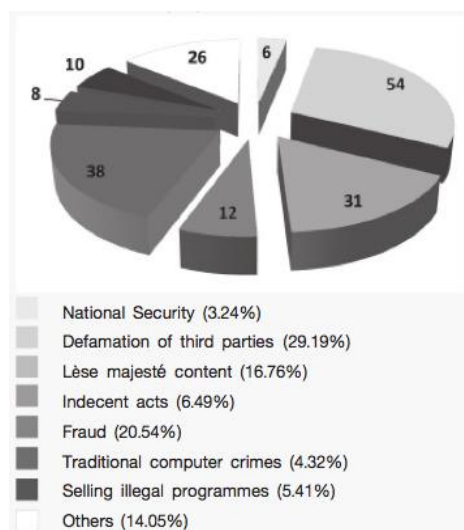


Figure 2. Numbers of cases segregated by content (iLaw, 2010)

To answer those questions, a framework of Innovative Retrieval System (IRS) is introduced to investigate the intermediary censorship scheme by exploring and retrieving the content filtered by OSPs. The classification of filtered content will be identified to show what context of content is blocked and what influence has induced the censorship. Also, the intermediary censorship index will be created to show the level of filtering scheme in major social media services in Thailand.

The result of this study is expected to expose or identify pattern of censorship in

social media and to increase accountability and transparency of OSPs to users, which would likely contribute to users' informed judgment in use selection of social media websites. Also the content filtered by OSPs will be identified and analyzed to reveal how self-censorship of intermediary is administered. The results of this research contribute to the base-line knowledge on censorship scheme or criteria practiced by OSPs.

II. INTERNET CENSORSHIP IN THAILAND

The Ministry of Information and Communications Technology (MICT) is Thai authority regulating the Internet and has used some of ONI's approaches mentioned earlier to filter the Internet content. However, after the Computer Related Offence Act B.E. 2550 (2007) was enacted in 2007, online censorship has steadily been on the rise. Online content intermediaries i.e. blogging services, social networking services and online discussion forums have become prime targets for the censorship due to the open nature and high participation of users who wish to mobilize political action or just share similar ideologies (Bunyavejchewin, 2010). According to a local research on control and censorship of online media through the use of laws and the imposition of Thai state policies (iLaw, 2010), the suppression on the dissemination of computer data by Court orders have dramatically increased from 2007 to 2010 as shown in Figure 3.

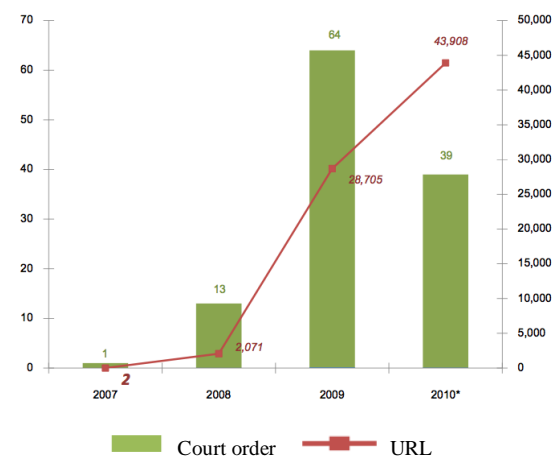


Figure 3. Content suppression by Court orders in 2007 – 2010 (iLaw, 2010)

According with the study by Freedom House (2011), Thailand is at particular risk of suffering setbacks related to Internet freedom in 2011 and 2012. The Internet in the country

is now not free and in significant danger of repression (Freedom House, 2011). Moreover, filtering or censorship is inconsistent due to the provisions of the computer crime law in 2007 are vague and overbroad allowing the subjective interpretation by ISPs and OSPs. For example, the provisions in Article 14 and 15 of Computer-Related Offence Act B.E. 2550 (2007) allow the prosecution of any content providers or intermediaries – such as Webmaster, administrators, and managers – who are accused of posting or allowing the dissemination of content that is considered harmful to national security or public order. Therefore, OSPs or online intermediaries in the context of Web 2.0, also known as social media, are compelled to control illegal content including content that are deemed *lèse majesté* (defaming the royal family). In some cases, Webmaster or administrators have indeed been charged under Article 15 for content posted by other users on websites or discussion board they hosted. This situation leads to induced self-censorship of intermediaries, often resulting in overblocking or excessive removal of content to avoid violating the law. Such filtering flaw both infringes users' freedom of expression and impedes the business of OSPs in Thailand.

Not only websites that are considered *lèse majesté* have been removed, Webmaster or moderators can also be sentenced to a maximum of five years imprisonment and a THB 100,000 fine according to Section 15 of the Computer Crimes Act for intermediary liability. In March 2009 police arrested the director and moderator of the political news site www.prachatai.com for allegedly allowing a comment defaming the royal family to remain on the site for 20 days (Macan-Markar, 2009; Head, 2009). Chiranuch Premchaiporn was arrested under Section 15 of the Computer Crimes Act, and, if convicted, she could face up to 50 years in prison (Macan-Markar, 2009). However, there is a criticism that *lèse majesté* are frequently used as a “political tool to discredit opponents” (ARTICLE 19, 2005). What happens is intermediaries and their users with the views of political opposition have resorted to self-censorship to avoid prosecution.

The impact of induced self-censorship in intermediaries might be higher than one thought. Community and diversity of users basically mobilize most of OSPs or social media like Facebook, Twitter, YouTube, Blogger, Wikipedia and local Thai discussion forum Pantip.com. When users feel lack of free

speech online or cannot speak out in social media, they would move to another easily and that would diminish the business of the OSP itself. But if an OSP develops a reputation for aggressively defending user rights, it is likely to attract more users who generate infringement claims (Zuckerman, 2009). However, infrastructures and engineering effort have to be added up with some expense to defend user rights and avoid violating the law in the same time. If the costs exceed profit margins, which actually are quite tight in a highly competitive market, OSPs are likely to sacrifice a handful of customers in exchange for avoiding legal review (Zuckerman, 2009). Therefore, an approach to investigate the overblocking in intermediaries would be useful to affirm the justification of censorship, which cause to transparency of filtering scheme of OSPs. This transparency advantage would attract more users and reduce the costs of defending infrastructure required.

III. CONCEPTUAL FRAMEWORK

From the literature review, the conceptual framework is developed as shown in Figure 4. The intermediary censorship in Thailand is influenced by several factors, mainly governmental sector, private sector, society and user. The content that is to be censored is illegal and problematic content, which the latter is the main area of this research study. And the impact of such censorship would lead to inconvenience and inefficient of Internet use, lack of diversity of opinions, violation of citizen's rights in public sphere and inhibition of innovation.

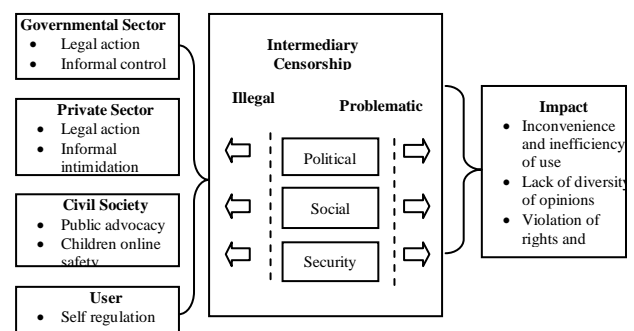


Figure 4. Conceptual framework of Intermediary censorship in Thailand

In Figure 4, illegal and problematic content could be categorized into three groups: political, social and national security. Content that tends to be illegal is removed under the computer crime law, while content that tends to be problematic is removed under the

judgment of OSPs. Table 1 shows the categories of content subject to intermediary censorship based on review of related research and the Computer-Related Offence Act B.E. 2550 (2007).

TABLE 1. CONTENT SUBJECT TO INTERMEDIARY CENSORSHIP

Content	Illegal	Problematic
Political	-	<ul style="list-style-type: none"> Hate speech and political satire Political dissent
Social	<ul style="list-style-type: none"> Alcohol and drugs Defamation Gambling Piracy Pornography Privacy Provocative attire 	<ul style="list-style-type: none"> Cyber bullying Conflict Dating Economic, environmental, and public issues Free expression and media freedom Gay/lesbian content Human rights Minority faiths Minority rights and ethnic content Sensitive or controversial history, arts, and literature Sex education and family planning
Security	<ul style="list-style-type: none"> National security <ul style="list-style-type: none"> Lèse majesté Religious commentary and criticism Spam Terrorism and separatism 	<ul style="list-style-type: none"> Foreign relations and military Militants and extremists

IV. A CASE STUDY OF PANTIP.COM

Pantip.com is the most popular discussion forum website, which had attained a traffic rank of 9th in Thailand (Alexa, 2011). It was one of the first websites established in Thailand when the Internet was being introduced in the country in the 1990s. Pantip.com has several features and its subsidiaries e.g. Tech-Exchange, PantipMarket, Chat, Pantown and BlogGang. But the most popular feature of the site is PantipCafe, which consists of 25 separate discussion forums dedicated to particular topic as shown in Table 2.

TABLE 2. DISCUSSION FORUMS IN PANTIPCAFE

Discussion Forum	Description
Siam Square	Teenager
Chalermthai	Film, television, radio and other media
Chalermkrung	Music and art
Jathujak	Pet, gardening, hobby
Gonkrua	Food and drink
Chaikha	Property, furniture and electrical appliance
Rachada	Car
Maboonkrong	Communication
Supachalasai	Sport
BluePlanet	Travel
Klong	Photography and camera
Suanlumpini	Health
Ruammit	All topics
Toa Krueng Pang	Fashion and cosmetic
Chanruen	Family
Klaiban	Foreign issue
Hongsamut	Book and literature
Sassana	Religion
Whakor	Science and technology
Silom	Business and management
Sinthorn	Finance and investment
Ratchadamnoen	Politics
Sala Prachakom	Social, economic and law issue
Rai Sungkat	Not subject to any tables
Toa Khao	News

A. Methodology

A semi-structured, in-depth interview was conducted with Wanchat Padungrat – managing director – in July 20, 2011 and Worapoj Hirunpraditkul – Webmaster in August 30, 2012. In order to best achieve the aim of answering the research questions relating to intermediary censorship, it was important to use the research framework described above as a guide to data collection. Thus, interview questions were broadly related to the framework. Questions were open-ended giving interviewee the opportunity to develop his answers and to provide narratives as broad as he deemed appropriate.

B. Data Analysis

Analysis of data was undertaken in two ways. First, exploratory data was analyzed to provide an indication of the website detail. Secondly, for the purposes of generating an understanding of intermediary censorship, qualitative data collected during in-depth interview were inductively analyzed, which involved the reading and re-reading of transcripts and field notes, the search for similar emergent themes and the use of codes to bring order, structure and meaning to raw data (Shaw, 1999). These emergent themes were allocated to appropriate research questions and thus to their respective components of the research framework. In addition, secondary data and the literature were

used to compared and contrasted to analyze the result of this research.

V. FINDINGS AND ANALYSIS

A. Exploratory data

The first stage of analysis provided a useful description of the demographics of users, traffic, policy and current issues of the website as follows:

- Total users are more than 600,000 unique IPs per day.
- Most registered users are aged between 25-34 years old. Next groups are 35-44, 65+, 45-54, 55-64 and 18-24 years old respectively.
- There are female users more than male in the website.
- The largest proportion of users has a higher degree than bachelor.
- Users browse the website from their home rather than work and school.

This suggests that most users of Pantip.com are quite literate and have qualification in their professions. These findings have a resonance with the nature of discussion forum and the aim of PantipCafe, which is the landscape for sharing knowledge, experience and skill with the community. Therefore, users are willing to collaborate without compensation. Moreover, Pantip.com has a strong membership system due to its policy, indicating that all members should be accountable and responsible for their expression on the forum. Such activities as defamation, rudeness, cyber-bullying, topic flooding and commercial use are prohibited in the PantipCafe. Thus, Pantip.com has started requiring national ID number or passport number for subscription. At the beginning this rule lead to a great of criticism about privacy. However, users have accepted that there is no impact on them and the rule has been used until today.

B. In-depth interview

The in-depth interview questions were conducted regarding to the research framework. The data collected were then analyzed descriptively as follows:

1) Influence from governmental sector

In the recent political crisis, Pantip.com has received a few notifications from the ministry of information and communication technology (MICT) and ad-hoc security body like the Center for Resolution in Emergency Situation (CRES) to remove ‘problematic’ content in the forum. Wanchat admitted that the websites has to comply with the requests regardless of the legal and moral justifications.

“There are two times that we received a call from the authorities to take some action on the PantipCafe. The first time was from the MICT and the second was from the military junta.”

“Even we have a strict rule about political expression, there will still be a lot of satire, especially in Ratchadamnoen forum. However, we won’t censor as long as it is not obviously an infringing content except lèse majesté that we would not let it go.”

2) Influence from private or business sector

Wanchat stated that most of the notifications, follows with legal actions, were not originated from governmental sector, but rather from private sector. And some are not reasonable.

“Most of notices are from businesses rather the government. We would consider whether the notices are reasonable. If not, we would keep the content and that could probably cause the lawsuit. We got many lawsuits in a year, mostly about defamation case.”

Worapoj also stated that since Pantip.com contains a large amount of commercial content, which oftentimes include infringement or defamation issue, the content would then be deleted immediately to prevent offense under computer law. Worapoj indicated that although defamation issue is not directly addressed in the Computer-Related Offence Act B.E. 2550 (2007) but it could be claimed under Section 326 in the Criminal Code, which states that any person commit an offence in a manner that is likely to impair the third party’s reputation or cause that third party to be isolated, disgusted or embarrassed, shall be subject to imprisonment for not longer than one year or a fine of not more than 20,000 baht, or both. This, according to Worapoj, would lead to chilling effect of intermediary like Pantip.com, follows with overblocking in the website even

if the take-down notifications were not reasonable.

3) Influence from civil society

Not only does Pantip.com comply with the law, the website also bases its content filtering criteria on issues which are public concern as advocated by civic society particularly children protection groups and other underlying moral standards.

“Gambling-related content and other moral concerns are not founded in Pantip.com since we have made clear our policy and have strong filtering schemes against those kind of content. However, commercial use still exists. We usually found that some users post content for their own benefit. Most of them are marketing officer or business owner.”

Worapoj indicated that users and civic group should become more involved in regulating the forum to inhibit cyberbullying and other immoral issues. Direct influence or intervention from civil society in Pantip.com is actually hardly found but instead social sanction from user is prevalent.

4) Influence from user

Pantip.com has built self-regulation scheme in the forum using flagging system. Users can flag the problematic or illegal content to notify the moderator. If the flagging takes place more than three times, the flagged content will be removed. Not only illegal content e.g. pornography or gambling is prohibited, but also absurd or nonsensical content is considered problematic, which tends to be removed from the website. This is because the great expectation of Pantip.com is to create culture of knowledge and credibility in the website, as Worapoj mentioned. On the other hand, users can notify the good content or comment, same as “like” in Facebook, so the content owner would get self-esteem and award from the websites.

“We are usually notified by users who have learnt what is illegal and not acceptable in community. There is social norm in PantipCafe that is strong enough to regulate users’ practices and we believe it is a good sign for what is called self-regulation.”

Wanchat and Worapoj believe that self-regulation is the way to balance filtering

scheme and user’s freedom of expression. However, there must be monitoring system by moderator as well. So co-regulation of the website by OSP is the best choice to achieve the Internet governance.

“Usually we give users freedom to express their political view. However, in some situation we considered it would cause chaos or heavy conflict in the forum when the debate was too intense or related to security concerns. So, we censored or even shut down some forums, if necessary. We believe in freedom of expression but there should be a limit. I would call regulation rather than filtering. There were many cases that we had to sacrifice some users to keep order of the community and keep our business going.”

VI. DISCUSSION

Internet filtering schemes are usually generated through a combination of manual and automatic search for targeted content. The error, thus, could happen from both human error and technological limit. In the same way, this research has shown the error of filtering scheme in Pantip.com with the high level of overblocking. As designed to collect output data on the webpage, IRS gathers only what is removed by the secondary manual filtration, not the primary automatic filtration in back office of the website. The secondary manual filtration is proceeded under the judgment of website administrator, which is basically subjective and potentially inaccurate according to Weckert (2000) and CDT (2012) stating that nowadays there is no effective technology or enough resources, both human and financial, to provide a certain Internet content filtering.

High level of overblocking in Pantip.com also implies that OSP tried to protect its interests rather than users’ interests, which is similar to the statement of Wanchat and Worapoj indicating that it is acceptable to sacrifice some users to protect the social order in the website and to keep the business run. Similarly, Zuckerman (2009) stated that OSPs might cut off some users to avoid legal review and avoid adding up some expense in filtration if it affects to the profit margins of the business. In addition, Pantip.com has tried to build self-regulation scheme and involved multiple stakeholders in order to create co-regulation according to Akdeniz (2004), Kleinsteuber (2004), and Marsden (2004)

stating that co-regulation with all relevant stakeholders, for instance governmental sector, private or business sector, civil society, and users, is more effective and flexible than censorship by conventional law or government regulation. However, the level of overblocking of Pantip.com is still high. This might be because of what is called chilling effect as mentioned earlier, which attributes to three main factors as follow:

- 1) Chilling effect from government interference. According to Kleinstauber (2004), co-regulation is the best way for Internet governance where the government is not involved. In case of Pantip.com, Wanchat and Worapoj accepted that there were intimidation from the governmental sector and the military junta (during the coup period in 2006).
- 2) Chilling effect from threats of lawsuits. Wanchat stated that Pantip.com has received several notices or lawsuits concerning the problematic content. He accepted that it is necessary to remove such problematic content if the litigation expenses exceed the legal budget of the website.
- 3) Chilling effect from intermediary liability provision in computer crime law. The provisions in Article 14 and 15 of Computer-Related Offence Act B.E. 2550 (2007) allow the prosecution of any service provider who intentionally support or consent to the dissemination of computer data that cause damage or harmful to national security, third party or the public. It is not clear what type of content is deemed harmful as ARTICLE 19 (2011) indicating that filtering or censorship is inconsistent due to different interpretations of the provisions of the computer crime law, which are generally vague. Also, OSP like Pantip.com is suppressed by fear of heavy penalty (imprisonment for not more than five years or a fine of not more than one hundred thousand baht or both under the provision in Article 15 for intermediary liability) as CDT (2012) also indicated that chilling effect could happen in the level of intermediary due to fear of potential liability.

VII. CONCLUSION

This research shows that overblocking is still prevalent in Pantip.com even though co-regulation is administered. It is because of chilling effect attributing to several influences intervening censorship practices of the website. However, external influences are not only the problems in intermediary censorship, it is also the criteria of censorship that could not be overlooked. With different judgment of website administrator, the criteria of censorship would be inconsistent. In case of Pantip.com, it is apparently found that pattern of censorship is quite different in each forum depending on several factors e.g. types of content and users characteristics. Even in the same website, the criteria of censorship is dissimilar in each forum. Consequently, users cannot acknowledge whether their content disseminating to the public will be censored or not or under which criteria.

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