

# **Criminal Liability of the Internet Service Provider and Mobile Network Operator on Online Gambling in Thailand**

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## **ABSTRACT**

The objective of this Independent Study is to learn the problems of concerning with gambling and online gambling in Thailand included with prescribing the legal measurement to identify the criminal liability of the online gambling to the Internet service provider and Mobile network operator and improve the Gambling Act B.E. 2478, Computer Crimes Act B.E. 2550 and Criminal Liability of Corporate Representatives Act.

It was found that the internet technologies have growth rapidly to the point that everyone can access through any website, become the center of exchange/transfer and process information, also most of the transaction anywhere and anytime is made literally the internet which becomes one of the ultramodern technologies in this generation by using service from the Internet Service Provider (ISP) and the Mobile Network Operator (MNO). The problem from online gambling is the one circumstance, which can be dramatically increased when compared with the other gamble toward the other problems such as liabilities on debt, the strain from poverty and forward to suicide decision, and etc. Because of the Disruptive Technologies increased the way to gambling, and changing the related person from the traditional gambling to the online gambling. Like the traditional gambling that can be a person who support, facilitate, and being on the alert for their customers but the online gambling, a gambler must

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connect to the internet to gambling. To connect the internet or mobile phone network, the user should ask for the service from the operator that called Internet Service Provider (ISP) and Mobile Network Operator (MNO) or Mobile Network Virtual Operator (MNVO).

But Thailand have not made any measurement or law that will eliminate and determine the punishment to the related person in the activity of online gambling directly and effectively since online gambling in Thailand is completely illegal and must not accessible in the Thailand. The principles of this study are to identify the definition of online gambling and the way to implicate or impose the ISP and MNO as the online gambling access provider, to eliminate the gateway of online gambling site that will make the online gambling in Thailand is impossible.

In Singapore, where has been introduced Remote Gambling Bill proposes a general ban on remote gambling in the country. The Bill provided all gambling activity which is conducted not just over the Internet, but also through the telephone, interactive television, radio or any other communication technology. Particularly, this bill will grant to the liability for the Internet Service Provider or any other related provider to block access to the online gambling site and that Internet Service Provider will face the liable for failure to block access the online gambling contents. In these parts, it have been described in term of the reliable method which is capable of decreasing or eliminating the access of online gambling in Thailand.

## **Introduction**

The tremendously data on the internet and data flow rate have been increasing drastically with the internet freedom which is currently unable to control the restrictions on online activity perfectly. An unable to control the restrictions of accessing the internet makes people to use their internet to perform the illegal internet activities in some countries i.e. online gambling.

The basically of online gambling is all about. To eliminate the meeting difficulty of people for a specific place and facilitate the player to gambling anywhere

and anytime with no age restriction for online gambling while anyone can register through the online access. More importantly, the Thai Gambling Act has not applied to the online gambling. Online gambling can bring the advantage of Gambling Act B.E.2478's loopholes in such, type of gambling that in List A and List B are specify inflexibly. That makes Gambling Act B.E.2478 unable to catch the evolution of technologies in case of the communication system. The result is the way to gambling is evolving as if the evolution of communication system such as using internet, computer and mobile phone for gambling. Since there is no such a specific place to gambling face to face, it will be much more difficult to control the gambling due to problem of identifying the gamblers and the tools for gambling.

Related person in Online Gambling can be formed in the following sections.

1. Player: still the same as Traditional Gambling but doesn't require playing Face-to-Face.
2. Dealer and Place: from the person and building to a server, program or application that doesn't require a specific place and time.
3. Gambling Tools: a computer or mobile phone with the application.
4. Gambling Junket: to make the meeting of Player and Dealer Server possible, it needs the connection from the like of Internet service provider.

The gambling process in an online casino differs from the one in traditional casino, even though it imitates some of the latter's elements. The most obvious similarity between an online casino and a traditional casino is in the selection of games. The whole selection of games typically offered by traditional casinos, e. g. poker, roulette, blackjack and slot machines, is mimicked by online casinos' high quality graphics and special visual and sound effects.

Furthermore, the corporate activities have become global through network systems from an advancement of information and communication technologies, which making commission of corporate crime more complicated. From what happened is some action done by the online service providers. Also, it can be caused for serious damage to the country and the people. Its impact wasn't as worse as that of ordinary

crimes, but it will be soon for beginning of the disaster to the one who became with pathological gambling for themselves and other people. The current or incoming situation and issues of concerning the offenses which done by the online service providers, without an intention purposes, there must be the criminal liability of legal persons and persons responsible for the online service providers to eliminate the illegal action. Additionally, it is entirely appropriate that all businesses under the command and direct from the corporate representatives. The form of liability is where the online service provider is held liable for the subscriber's illegal action, even though that provider did not commit the act itself. Compare to the case of the employer and employee, the wrongdoer must be the provider (the employees who do their duty), the employee (the director who issue the orders or the policies) must considered to be committed in the course of business because they know and witness the business activity and if it support the subscriber's illegal action, that said director must issue an order to take down the subscriber's action.

The gambling advanced too much in this generation, people can gamble anywhere when they would like to play and it doesn't require a specific place or playing face to face in the certain area. The technologies changed the way of gambling completely, and the related person in the online gambling will change together. The online gambling doesn't require the specific place anymore but there will have the other person who connected the player to the dealer's server. The technologies changed, the related person changing, and the law must change also. There need to revise the acts that can enforce or give liability to the new related person, especially the liability to the person who help or facilitate the connection to the internet user to access the online gambling site.

### **Thai law concerning on Gambling in Thailand**

According to the Gambling Act, B.E.2478, there are two types of gambling. First, Prohibited Types that stated in List A. Annexed but they are not completely prohibited. If reconsidered the law in Section 4, Paragraph 1. That means the

government can give the permission by means of issuing a royal decree. Second, the types that can be permitted to organize that stated in List B. Annexed. The other types that don't legislated in both List A. and B. Annexed shall be illegal because they cannot get any permission to operate or play. It means Online Gambling that can play on the Internet doesn't legislated in The Gambling Act B.E.2478 is illegal.

Furthermore, the Section 5 of the Gambling Act B.E.2478 give details about the relate person. Any organizers, dealers or the gamble hosts have a duty to disprove the assumption that they are not organized it for their own benefit, while any person who plays the game are not gambled money or other possessions. If both organizers and players have been arrested in the same case, the organizer must disprove both of the assumptions but the player only disproves the assumption of not gambled money or other possessions. But when the Online Gambling occurred, The Organizer becomes the server that can be reside anywhere and it is impossible to arrest if the server is in the oversea or in the other countries that Online Gambling is legal. The player is pretty need to stay the same but can play anywhere, anytime and as long as possible according to their internet services provided. The Section 6 give details about .The players are any one are playing or watching in the gambling ensemble. The exception of this Section is the play in public festivities or in festivals or in public places. In the Online Gambling, the player can play anywhere or even in the public festivities but Online Gambling is not the activities that held in the public festivities and is not the type that can grant to permission to play. Also any players who committed the play in Online Gambling are committed the illegal act.

In any consideration of the current law in Thailand with the matter of facts and laws, while the provisions dealing with an online gambling are still not enough to control or eliminate online gambling from Thailand. Especially, to eliminate the accessible from the internet to the online gambling website. The primary attention of the legislative measures on the ISPs and MNOs are services that grant to their subscribers for assessing the website, and some website is illegal but still let their subscribers access the online gambling site that is an illegal offense. With the law

lacking of the meaning of online gambling, related person who should be liable for making online gambling become accessible, proper liability to sanctions the related person that have not been legislated in the law, especially in the Gambling Act. Therefore, the main problems of the law come from that the law hasn't been updated since Thailand was still the Kingdom of Siam and there are no laws that addressing the exposition and explanation of the related person why should be liable for the providing an access to the online gambling.

### **Foreign law concerning on Gambling**

The Singapore Remote Gambling Bill has been governed the gambling activity which is conducted not just over the Internet, but also any other communication technologies. This Bill has many parts that can be applied to make the imposed sanction to the online gambling in Thailand but those parts will be applied to enforce the ISP and MNO in Thailand from the Remote Gambling Bill, which is only the internet service such as the arranged sections that will be provided any general definition of the offences, the blocking of access and payment transactions, any exemption and miscellaneous information. The detail of the concepts has been used in the Bill with the set out of any offences and providing for access and payment blocking orders. Moreover, this bill will grant to the liability for the Internet Service Provider or any other related provider to block access to the online gambling site and that Internet Service Provider will face the liable for failure to block access the online gambling content.

The Act prohibits all forms of remote gambling activities, unless exempted, and enables the Singapore Government to introduce a comprehensive set of blocking measures, such as website blocking, payment blocking and advertising bans.

The Act will only focus on making gambling and wagering through all forms of communication such as internet and telephone illegal. That means any convert in-game credits to money in a form of something that is staked on an uncertain outcome to make a bet is illegal.

Not only the acts explain the illegal term, the Remote Gambling Bill 2014 also go in the detail of the meaning of gambling and associated term. The parts that will bring will be considered to apply to the online gambling in Thailand.

The part of Online Gambling definition, which is including as follow;

1. The meaning of gambling, in this act will group the betting, gaming and lottery participation.

2. The meaning of gambling services that are including with the conduct or supply any related lottery and its ticket, any services for operating of bets like making or accepting, and a service for the conduct of a game of chance that played for money purpose.

3. The meaning of Remote Gambling that give the details as gambling by the use of remote communication and the Bill also give the definitions of remote communication means communication through the internet, telephone, television or radio, or any other kind technologies for communication. It also stated that for the remote gambling service is a gambling service provided to customers that participating in gambling by the use of remote communication.

4. The meaning of a person provide gambling service that also give the description of action that provide facilities, organizes, distribute a prize or money, participation, or use anything for the purposes of enabling remote gambling.

5. The meaning of remote gambling advertising that will focus on the person who includes the advertisement on an online location that the advertisement accessible from the internet.

The part of blocking to access through online remote gambling, since the services of an Internet service provider being used to access for facilitate to access to an online location which a remote gambling service related contents is provided, the “*authorized officer*” or the Media Development Authority (MDA) to order the ISP to disable access to that online location called an access blocking order and MDA must then give that ISP an access blocking order.

Since the Media Development Authority was a statutory board of the Singapore Government, under the Ministry of Communications and Information

by setting the standard and regulating the Singapore media sector, are the one who give an order to the ISP an order. That means the ISP must comply the access blocking order issued by the MDA, otherwise the ISP will be punish if did not comply with any access blocking order.

## **Problems and Analysis**

First is the problem about gambling situation in Thailand. Today's children and adult in Thailand are the first generation of youth to grow up and live in a society where a multiplicity of types occurred included gambling exists, and not only broadly appeared but also heavily advertised through the internet. While, Kasikorn Thai Research Center Co., Ltd. conducted a survey and they found that 21.4% of the responding football audiences were gamblers; the amounts wagered varied between 200 and 10,000 baht while estimated total amount of gambling debt was at least 6,000 million Baht. Thai youth dare to engage in the underground digital world because they feel safe, nobody knows them there; they can go to a public internet cafe or even get into online activities while at their dormitory place. Such an environment makes the youth feel safe as their parents do not know of their behavior entirely. Thai youth who have seen the advertisements in the underground digital economy often feel that these have become a commonplace in society. As a result, they get attracted by the content designed to influence emotions, attitudes, values and behaviors of consumers. Especially teenagers, who have the ability to learn, understand, analyze and synthesize but do not hesitate or consider the situation carefully and are likely to search for new things regardless of how risky it is to engage in such behavior.

Secondly, the problem about laws that Thailand have not occurred the criminal liability for the online service providers in the position of letting their providers commit illegal act in Thailand, even though it was able to implicate the player and gamble host, but it will be never-ceasing problem because the number of player and gamble host will arise more, as long as the online gambling site can access from Thailand. First of all, there are no laws to govern the problems of online gambling and



the related persons, especially the current laws that already are out of date to compare with the current situation, also it has not fulfill the definition of online gambling exactly and the related persons who must be penalized for not obstruct the online gambling activity. Secondly, some countries such as Singapore has the law with good model to enforce and implicate the online gambling situation while Thailand still lack this kind of law. Singapore has the specific written in the meaning of using remote gambling, which included the online and internet type, and the liability for whoever violate the act. Lastly, Singapore faced with the same situation from past in case of the out of date law before their government issued the Remote Gambling Bill 2014. As Singapore is one of the most developed country in Asia and realize how bad the situation can be happened from addicting to the online gambling, so it would be effective for Thailand to adopt and apply their legal frameworks to enforce the online gambling in Thailand. For the legal contents, there are many problems that should be concerned. Firstly, the form of online gambling such as Slot Machine and Card Game is forbidden as legislated in List A of Gambling Act, B.E. 2478, but the problem is the law can't enforce the person who is the Gambling Dealer, because online is not just the specific place in a country but it is all over the world for the player to choose the dealer. The player can gamble at home and meet the dealer in Australia that makes the law is unenforceable to the dealer. Secondly, the tools for gambling in Gambling Act B.E., 2478 legislated that the court must use the judicial discretion. It is hard to make a decision that the device for online gambling such as mobile phone is really a gambling tool or not, even is using for gambling with the dealer. It's not like the Card Deck and Roulette Ball that is the gambling tools by nature. Thirdly, the wagering of money is the illegal asset for gambling and can forfeit according to Gambling Act B.E., 2478, but in the online gambling, the wagering of money is transferred online to the dealer is intangible. The money for online gambling can come from credit card or wire transfer. Lastly, the middleman that in Gambling Act B.E., 2478 legislated such as the promoter or in gambling is called Gambling Junket. These people are the connector between the player and the dealer by providing the superior priorities to the player or become the middleman between the player and the dealer while gambling. But in online gambling,

there are no needs for the Gambling Junket. The players can meet the dealer on their own by accessing the internet that the users are using service from their providers.

Third is the people that must be also responsible for the offence that ISPs or MNOs commit are the corporate representatives, especially the managing director or any others responsible who issue or have the power to issue the terms and agreement to take down the contents that considered as the illegal websites after witnessed without prior notice to their customer. Due to the fact that the corporate representatives are the group of people who conduct and direct the operation of juristic person, including behind the content in terms of service that make an agreement with the subscriber must agree to abide in order to use a service. Since they are the members of a business entity who formally empowered by that entity to conduct on business on its behalf. They are also the person that response the government policy or order. If the government issue an order to the authorized officers of that business to take downer blocked the gateway for access to the online gambling website. After the purpose of the Act Amending the Law on the Criminal Liability of Representatives of Juristic Persons came into effect, the online service providers that are the operation of a juristic person under the Limited Company Act cannot commit a criminal offense. If a juristic person commits a criminal offense, the managing directors, or any person who responsible for the operation of a juristic person are presumed from the beginning to have criminal liability, unless they can prove that they were not involve in the commission of the offenses. Such as, one of the directors didn't sign to support that commission of the offenses, that director won't be liable for those offenses.

Forth is the preventive measures for the offense on the internet Service Providers (ISPs) and Mobile Network Operators (MNOs) on Online Gambling. Thailand can develop the Gambling Act B.E.2478 by designated to strictly regulate the various forms of online gambling that accessible or operate in Thailand. Then, the act can issue the order of empower the authorities as acquired the ISPs and MNOs to block access gambling websites. The authorities may review and update a list of websites that will be blocked and order ISPs and MNOs to comply with an order. After that, the law can create the subject of the specific meaning of the legal authority to issue orders

for ISPs and MNOs to block access to online gambling sites by proposing an act that will authorize such orders, referring to online gambling and bring the following order that issue to enforce the online service provider, requiring online service provider blocks to gambling sites by issued the orders will require that the online service provider take reasonable steps to disable access to websites. An online service provider which does not block any website specified in an access blocking order is liable for an offence.

Finally, the online service provider should have a consumer-focused process system or section for identifying and notifying their customer who participated in the online gambling activity, in an effort to educate customers about the treat that can be happened to them. It would be effective for reducing both intentional and unintentional access to the online gambling website. By providing the system alerts such as; the initial alerts notified subscribers that their Internet account has been used to access to the online gambling website, and provided an explanation of how to avoid the offenses by not trying to access the kind of website. If the subscriber accessed again and again after a few alerts, the online service providers will take mitigation measures like temporary reductions of Internet speeds, blocked the online gambling website. If there are the offenses after many alerts, the provider will anticipatory breach of contract because the subscriber uses the internet service to violate the law.

## **Conclusion**

The problems for this article has been found the Gambling Act., B.E. 2478 becomes out of dated law that cannot be applied to the online gambling, because the act can only be applied to the conventional gambling. The introduction of the technologies that can be changed the form of gambling. There is a lot of online gambling type that modified from the traditional gambling like a living casino, some types are basically prohibited as it provided in the Gambling Act., B.E. 2478. Because of the technology that change the gambling made the related person changed too, but

the Act doesn't legislate the offense of the related person that grant the service of the connection for the online gambler.

Additionally, this research has found that Singapore has a law that regulates the online gambling, including with the introduction of a new structure of online meaning, the related person with online gambling activity and the penalty for whoever commit an offense, as well as included with the introduction of a structure of protections for children and vulnerable persons, which will be useful part for Thailand to apply and adapt on the out of date Gambling Act. Not only the law individually, Singapore's situation from the past before enacted the Remote Gambling Act, also suffered with the out of date law but also manage to enact the law later.

within contrast, the Remote Gambling Bill from Singapore, the law will criminalize the entire spectrum of remote gambling from individual gamblers to the operator, and provided the authorized officer to order the ISP to disable any access of the online gambling website with the criminal liability the providers if they are not comply with the order. Same as in Thailand can learn and bring the useful part from Remote Gambling Bill by applying the online definition of gambling and what the law provided. The MICT can provide the blocking ordered to the online service provider, but there are the online gambling websites still remained in the provider's server that allowed the subscribers access at free will because of the Thai Gambling Act doesn't prescribe the liability to the online service provider like Singapore. If apply the legal measurement from the Remote Gambling Bill in the section of the liability of the ISP and the liability of the corporate representative officer with the concept of vicarious liability as the supporter of the offense from their subscriber to make them realize the criminal sanction that can happened to their personal level of the responsible person for the controlling of the connection to the internet.

## **Recommendation**

1. To amend the legislative measure on the offense of Gambling Act, B.E.2478, adding the new section in case of the gambling type by putting the online

gambling category in the Act, and provide the legislature that any gambling in which a person participates by using of the internet, telephone or any other kinds of electronic or other technology for facilitating communication is prohibited, if whoever violate this, will be criminal liable.

2. The legislative measure by adding with new section in case of the relate person who connect the online gambling website for the player. The only way to connect the website is connect to the internet, and the person who connects the internet for the user is the online service provider; the Internet Service Provider and Mobile Network Operator. The Act should amend by putting the definition of facilitate as *“in relation to the commission of an offense, means any conduct by a person that enables or aids the commission of the offense by another where either – the person intends that the conduct would enable or aid the commission of the offense or the person is reckless as to whether or not the conduct would enable or aid the commission of the offense.”*

3. The Gambling Act should increase the facilitate on an online gambling means in the new section such as, *“Whoever provide the facilitate or support as in relation to the commission of an offense by enable or aid the player to connect the internet to an online gambling site when notice or receive the take down order issued by the government, must be liable for the supporting the player to commit an offense, if the provider doesn't comply”* with the penalize to supporter on the specific person; *“the employee who responsible or have the power to the controlling the internet data traffic in the workplace as the first wrongdoer in case of facilitator, if doesn't try to prevent the real culprit from access the online gambling”*; and *“the employer, managing director as the inherent authority to control the employee's action within the scope of employment must be punish as the supporter or facilitator of the offense for the employee's action.”*

4. The preventive measures that should be concerned and make them officially. For the online service provider, the government need to present the duties that the online service providers must realize that they are the public infrastructure and must maintain the stability of the public order, duty to educate their subscribers if they

witness that the subscriber's action is using their service to do the illegal things, duty to cooperate with the government section to prevent or eliminate the illegal gateway as much as possible, and notify the subscriber to comply with a service agreement strictly and will rescind the service when the subscriber attempted to use the service to violate the law after the initial warnings from the online service provider respectively.