

Responsibility of those who post links to content that infringes copyright ¹⁾

(Supreme Court en banc Decision 2017Do19025, decided on
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I Preface

The Supreme Court previously judged that the act of providing only a link to web pages, etc. that infringe the public transmission right²⁾ of a copyright holder did not constitute the aiding and abetting the infringement of public transmission right in any case (Supreme Court Decision 2012Do13748 decided on March 12, 2015) and after the ruling was made, the academia and relevant industries have discussed the issue significantly and the recent bill proposed for the whole revision of the Copyright Act touches upon this issue and includes provisions where the

1) The content in this article is the personal opinion of the author.

2) The terms used in Article 2 (Definition) of the Copyright Act have the following meaning.

7. “Public transmission” means transmitting or providing the copyrighted works, performance, music, broadcasting or database (hereinafter referred to as “copyrighted works, etc.”) for use via wireless or wired communications for the purpose of making the public receive or access such copyrighted works, etc.

management of websites that provide such link is regarded as infringement of copyrights and such act is subject to criminal punishment. .³⁾

Recently, the Supreme Court made an en banc decision that changes the previous ruling, and this article introduces the content of the Supreme Court's en banc decision (hereinafter referred to as the 'the judgment') and examines the meaning of the judgement briefly.

II Progress of the Case

1. Summary of the facts charged

In this case, the defendant was indicted with charges that the defendant, who had known that unnamed people infringed the right of transmission⁴⁾ of a copyright holder in a manner of uploading video files such as dramas and movies, which are the audiovisual works of a copyright holder (hereinafter referred to as 'audiovisual works in this case'), arbitrarily and posting them continuously for use on the video file sharing site whose server is located overseas for the purpose of allowing the public to access the audiovisual works at a time and place individually selected and using the method that sent the audiovisual works in this case individually when

3) Article 184 (Acts Deemed as Infringement) of the bill proposed for the overall revision of the Copyright Act (proposed by 13 lawmakers including lawmaker Do Jong-hwan on January 15, 2021, bill number 7440) ① Acts falling under any of the following subparagraphs are regarded as the infringement of copyrights or rights protected by the act. (subparagraphs 1 through 3 are omitted.)

4. Operation of an internet site, etc. (including the internet site that receives link information from users) for the main purpose of providing the link to the reproduced works to enable the public easily access the reproduced works even with the knowledge that the reproduced works infringe the copyrights or rights protected under the act (except for rights under Article 126) for profit purpose.

5. The act of providing a link to the reproduced works to make it easier for members of the public to access it while knowing that it is the reproduced works infringe copyrights or rights protected under Article 126."

(The intention of the legislation of the provision in the proposed bill is as follows:

"1) Despite the fact that internet sites that provide link address or link file to illegally reproduced works ('Torrent') are not eradicated recently, there is no clear regulation on whether the act of linking to illegally reproduced works constitutes the infringement of copyrights and precedents deny this without clear statement, making it hard to protect copyrights over the internet effectively.

2) Accordingly, it is intended to establish the provision that regards the act of providing a link to the illegally reproduced works and managing the internet site for the main purpose of providing the address of link to the illegally reproduced works as infringement of copyrights in order to prevent the act of copyright infringement").

4) In Article 2 (Definition) of the Copyright Act, following terms mean as follows.

10. "Transmission" is to provide the copyrighted works for use allowing the public to access copyrighted works at the time and place selected individually among public transmission and includes the transmission of copyrighted works accordingly.

users who accessed the uploaded files clicked them, posted a link (act of linking in this case) to the audiovisual works in this case on the site called 'Replay Link Site' which was opened and operated by the defendant to gain revenue from advertisement a total of 450 times from July 25, 2015 to November 24, 2015, let the users of the site find the posted link by searching the audiovisual works in this case based on titles, etc. and made the users move to the page where the play of the audiovisual works, which are used and provided by unnamed people, is ready and the audiovisual works are set to be transmitted individually when users click the link.

2. Original verdict

The original verdict kept the judgement of the first trial which declared not guilty of the fact charged mentioned above as it is. "The act of posting the audiovisual works in this case on the overseas video file sharing site without any permission from a copyright holder constitutes the infringement of the right of transmission of a copyright holder. The act of aiding and abetting infringement can be conducted in tangible and intangible ways until the posting of the audiovisual works is withdrawn but the act of aiding and abetting is possible only with the methods that make the execution of the infringement of right of transmission itself easier. However, the link stated in the facts charged is a mere indication of web location or path to a copyrighted work on the internet. Internet users can access a copyrighted work by clicking the link and visiting the website that infringes the reproduction and public transmission rights of a copyright holder. Accordingly, the act of the defendant cannot be regarded as the act of aiding or abetting as the defendant did not made the execution of copyright infringement easier and just utilized the state where the transmission right is infringed on the position regardless of copyright infringement."⁵⁾

3. Appeal

5) On the other hand, the original verdict referred to the Supreme Court Decision 2012Do13746 decided on March 12, 2015 that states "the link stated in the facts charged is a mere indication of web location or path to a copyrighted work on the internet. Internet users can access a copyrighted work by clicking the link and visiting the website that infringes the reproduction and public transmission rights of a copyright holder. Accordingly, the act of the defendant cannot be regarded as the act of aiding or abetting as the defendant did not made the execution of copyright infringement easier and just utilized the state where the transmission right is infringed on the position regardless of copyright infringement" as reference.

The prosecutor appealed to the Supreme Court in opposition to the original verdict.

III Judgement of the Supreme Court⁶⁾⁷⁾

1. Meaning and limitations of the act of linking

A. Freedom of linking and expression on the internet

First of all, the Supreme Court states that World Wide Web, which is an internet-based service, adopts hyperlink (hereinafter referred to as 'link') technology to connect information like a spider web and link is the key tool of connecting and sharing information on the internet from the perspective that link enables the access to information expressed in Uniform Resource Identifier (hereinafter referred to as 'URI') that displays information on the internet by linking the URI with web page documents to make users access information expressed in URI regardless of time and space so the freedom of expression shall be guaranteed and free circulation of information shall be promoted by allowing the act of linking to other information on the internet.⁸⁾

B. Limitation of the freedom of linking

Next, the Supreme Court ruled that the freedom of expression and free circulation of information through links are not absolutely guaranteed, and that in case where the act of linking constitutes an illegal act that infringes the public transmission right, one of the property rights of an author or aids or abets copyright infringement, establishing an element of the crime under the Copyright Act or Criminal Act, such an act shall be controlled judicially and judicial control over the act of linking cannot always be regarded as the infringement of freedom of

6) In order to convey the purpose of the judgment as it is, details were excerpt as they are.

7) The judgement is composed of the majority opinion, the dissenting opinion of three Supreme Court Justices, the concurring of two Supreme Court Justices on the majority opinion, and concurring opinion of three Supreme Court Justices, but dissenting and concurring opinion is excluded in this paper given the fact that the purpose of this report is to introduce the major intent of the judgement promptly.

8) Pages 5 and 6 of the judgement

linking and its unique value.

The Supreme Court, therefore, stated that in the reality where copyright infringement cases occur frequently with the advancement of internet and various kinds of ICT, the freedom of linking, one of the acts of expression and copyrights of an author are the constitutional rights and both of them shall be protected within each boundary in the process of confrontation with tension and one right shall not be protected absolutely at the expense of other right.⁹⁾

2. Whether the act of linking to infringing postings, etc. is regarded as infringement of the public transmission right

The Supreme Court has stated that the act of linking to infringing postings or linking to website where the infringing postings are located (collectively referred to as 'infringing postings, etc.')

does not constitute the infringement of transmission right as such an act does not fall into the category of transmission (public transmission), which is the element that constitutes the infringement of transmission right (public transmission right) and said that it is the established precedents of the Supreme Court (Supreme Court Decision 2008Da77405 decided on November 26, 2009, Supreme Court Decision 2009Da4343 decided on March 11, 2010). The Supreme Court added that as a link is a mere instruction to request the transmission of copyrighted works, etc., act of preparing such request or corridor that connects to the copyrighted works, the act of posting a link does not amount to transmission so the precedents above on the infringement of transmission right (public transmission right) are valid.¹⁰⁾

3. Whether the act of posting link to infringing postings, etc. for profit purpose continually constitutes the aiding and abetting the infringement of public transmission right

A. Subject to aiding and abetting

The Supreme Court reasoned that if a principal offender uploads infringing postings, etc. on internet website servers, making it possible for members of the public to access such postings for use at individually selected time and

9) Pages 6 and 7 of the judgement

10) Pages 7 and 8 of the judgement

place, the crime of infringing public transmission right is consummated even though the principal offender does not transmit the infringing postings to the public and if the principal offender does not withdraw the postings in a manner of deleting such infringing postings from a server, the punishable and unlawful act of providing the access to the members of the public at the individually selected time and place repeats continually without terminating the criminal act of infringing public transmission right, such a criminal act of the principal offender may be subject to aiding and abetting.¹¹⁾

B. Review on elements of aiding and abetting¹²⁾

The Supreme Court mentioned that there shall be the intent of aiding and abetting the execution of the act of a principal offender and the intent of a principal offender to commit an act that constitutes a crime to establish the aiding and abetting liability (refer to Supreme Court Decision 2003Do6056 decided on April 29, 2005, etc.) and those who knew that the link led to infringing postings, etc. but provided the link to such postings for profit purpose continually such as the act of linking on the site with link to infringing postings, etc. can be seen that they conducted the act of linking with an intention to strengthen and enhance the infringement of public transmission right by making the act of providing infringing postings for use by the public easier even though they recognized that the act of a principal offender constituted the element of the infringement of public transmission right sufficiently.

The Supreme Court added that the act of aiding and abetting refers to either the support that enables, promotes or makes easier the execution of the act by a principal offender with the knowledge of specific preparation for crime or criminal act or the act of strengthening or enhancing the infringement of legal interests by a principal offender before the end of criminal act of a principal offender, which is closely related to the realization of crime by a principal offender and as aiding and abetting are dependent on a principal offender, there shall be a causal relationship between the act of aiding and abetting and the

11) Page 9 of the judgement

12) Pages 9 through 11 of the judgement

realization of crime by a principal offender and it shall be possible to determine that the act of aiding and abetting contributed practically to the realization of the crime by a principal offender by making the principal offender realize the specific risk or increasing the opportunities to lead to results of crime.

The Supreme Court also stated that in this case, as members of the public who could not have found the infringing postings uploaded by a principal offender if there had not been a link provided by the site with a link to the infringing postings can have an access to infringing postings easily at the time and place they want through the link, the act of linking made the provision of infringing postings by a principal offender easier for public access easier and made the infringement of legal interests of public transmission right stronger and enhanced and in this case, the act of linking cannot be seen as a mere use of the state where the public transmission right is infringed and the causal relationship between the act of aiding and abetting and realization of crime by a principal offender, which is required as an element for the establishment of crime, may be recognized.

C. Whether the act of linking constitutes the act of aiding or abetting

For the reasons above, the Supreme Court decided that like providing a link to infringing postings on the site with a link to infringing postings, the act of linking that makes members of the public access the infringing postings at the individually selected time and place easily by posting a link to infringing postings on an internet site for profit purpose continually makes the act of crime that provides infringing postings for public use by a principal offender easier, so the crime of aiding and abetting the infringement of public transmission right is established .¹³⁾

4. Establishing the limitations of aiding and abetting regarding the act of providing a link to infringing postings, etc.

A. Clear recognition of the illegality of infringing postings, etc.

13) Page 12 of the judgement

The Supreme Court pointed out that the intent of aiding and abetting and intent of a principal offender, which are required to establish the crime of aiding and abetting mean that the person who provided link should recognize the illegality of the content connected with the link as infringing postings and the recognition of the defendant on illegality should be a level that the defendant clearly recognize that the postings are the content that infringes at least public transmission right and a prosecutor shall strictly demonstrate that the person who provided a link was in a state where he/she clearly recognized that the content connected to the link infringes the public transmission right and the illegality of the content connected to the link as postings that infringed public transmission right and was illegal.¹⁴⁾

B. Contribution to the realization of a crime by a principal offender

The Supreme Court decided that in order to recognize the act of providing a link to infringing postings as the act of aiding and abetting the infringement of public transmission right by a principal offender, it shall be possible to confirm that the act of linking is closely related to the realization of crime by a principal offender and increases the opportunity to infringe the public transmission right, contributing to the realization of crime by a principal offender and stated that the act of providing link that enables members of the public to access the postings that infringe the public transmission right easily at the time and place selected individually including the case of posting a link to infringing postings on the site with a link to infringing postings by a principal offender may fall into this category.¹⁵⁾

The Supreme Court, however, added that the act of providing a link that does not reach the extent above shall not be concluded as the act of aiding and abetting hastily if it is hard to confirm that the act of linking is closely related to the infringement of public transmission right by a principal offender and contributes to the strengthening and enhancing the infringement of legal interests and in case where the causal relationship between the intent of aiding and abetting or act of linking and the realization of crime by a principal

14) Page 14 of the judgement

15) Pages 14 and 15 of the judgement

offender can be denied or in case where social reasonability is secured from the perspective of overall law and order, the crime of aiding and abetting may not be established.¹⁶⁾

5. Changes in the judgement

The Supreme Court stated that the act of providing a link to allow members of the public to access infringing postings easily at the time and place individually selected by posting such link to infringing postings on an internet site for profit purpose continually by the person who provided a link with the recognition that a principal offender infringes the public transmission right can be regarded as fulfillment of requirements for the act of aiding and abetting, making the act of crime that provides infringing postings for public use by a principal offender easier, resulting in the establishment of aiding and abetting the infringement of public transmission right and decided to change the precedents such as Supreme Court Decision 2012Do13748 decided on March 12, 2015, etc. made with an intention that only the act of linking to web pages that infringe the public transmission right of a copyright holder did not constitute the aiding and abetting the infringement of public transmission right to the extent that the precedents are contrary to the opinion in this judgement.¹⁷⁾

6. Judgement on this case

A. Facts

1) Whether the criminal act of infringing public transmission right has been ended or not

Unnamed people uploaded and posted the audiovisual works in this case such as movies, dramas and entertainment programs on overseas internet file sharing site without obtaining the permission to use by holders of author's property rights. Such an act of unnamed people provided members of the public with the

16) Page 15 of the judgement

17) Pages 15 and 16 of the judgement

access to audiovisual works in this case at the time and place individually selected without the permission of the holders of author's property rights and constitutes the infringement of public transmission right. Unless the unnamed people do not delete the audiovisual works in this case uploaded, the criminal act of infringing the public transmission right by providing members of the public have an access to the audiovisual works in this case at the time and place individually selected has not ended.¹⁸⁾

2) Recognition of the defendant

While unnamed people were committing the act of infringing the public transmission right of the audiovisual works in this case, the defendant, with the full recognition of such crime, posted the link to the copyrighted audiovisual works in this case a total of 450 times. The users of the site were able to access the copyrighted audiovisual works in this case easily through the link provided by the defendant and the defendant was fully aware of the fact.¹⁹⁾

3) Providing the link for profit purpose continually

The site in this case, which was created for the purpose of gaining profit from advertisement and has been managed continually by the defendant, is a site that provides a link to infringing content and the defendant classified links into content type such as movie, drama and entertainment program and provided search function for the content in order to make the unspecified number of people easily find the link to the audiovisual works in this case.²⁰⁾

B. Subconclusion

The Supreme Court concluded that considering the facts above in light of the principle of law above, the defendant, while unnamed people were committing the act of infringing the public transmission right, with the full recognition of such crime, posted the link to the infringing postings on the site for profit

18) Page 16 of the judgement

19) Pages 16 and 17 of the judgement

20) Page 17 of the judgement

purpose continually, conducting the act of linking to the extent that the link made members of the public easily access the infringing postings at the time and place individually selected resulting in making the criminal act of providing the infringing postings for public use by unnamed people easier, so the crime of aiding and abetting the infringement of public transmission right may be established.²¹⁾

7. Conclusion

The Supreme Court reversed the judgment of the first trial based on the judgement that the prosecutor's appeal was reasonable and remanded the case to court of the first trial to be reviewed and judged again(However, three Supreme Court justices raised an opposition).²²⁾

IV Meaning of the Judgement

1. Continuing crime of infringing the public transmission right

A. Concept of continual crime

Continuing crime is defined as “crime that is evaluated as continuing without an end to the criminal act while the infringement or jeopardization of the legal interests continues even after the crime is consummated”²³⁾, “crime where the continuation of the act and continuation of illegal state are matched as the act that constitutes the crime not only causes the illegal state but also requires the continuation from time perspective”²⁴⁾, “crime that requires the continuation of the act that realizes the elements for constituting the crime for a certain period of time”²⁵⁾ and “crime that is consummated as all objective requirements that constitute crime are met by the act of crime mentioned first but

21) Page 17 of the judgement

22) Page 18 of the judgement

23) Lim Woong, General Review of Criminal Law (the 12th edition), Beopmunsa (2021), p.115.

24) Lee Jae-sang, General Review of Criminal Law (New 6th Edition), Park Young-sa (2010), page 73.

25) Lee Sang-don, Lecture on Criminal Law, Young-sa Park (2015), page 76.

continuing crime is established while the same act is repeated.”²⁶⁾

In the meantime, typical types of continuing crime include On the other hand, typical crimes corresponding to continuing crimes include the crime of confinement and housebreaking.²⁷⁾

Compared to immediate crime²⁸⁾ or situation crime²⁹⁾, continuing crime has a big difference in terms of the starting point of calculating the statute of limitations and the timing of establishment of accomplice.

First, the statute of limitations proceeds from the time when the criminal act is terminated in accordance with Article 252 (1) of the Criminal Procedure Act, and in case of continuing crime, the crime is consummated if there is the infringement of legal interests but the act of crime does not end and continues while the infringement of legal interest continues and the act of crime ends when the infringement of legal interests ends and the statute of limitations starts from this point.³⁰⁾ On the other hand, for immediate or situation crime³¹⁾, the crime is completed as soon as the legal interests are infringed or jeopardized or the results of elements that constitute the crime are made so statute of limitations starts immediately from this point.

Next, regarding the timing of establishment of accomplice, for immediate or situation crime, the consummation and act of crime are matched so the crime of aiding and abetting cannot be established after consummation but for continuing crime, there may be time continuation from the consummation to the completion of criminal act, so the crime of aiding and abetting can be

26) Shin Dong-woon, General Review of Criminal Law (No. 11), Beopmunsa (2019), p. 491.

27) Lim Woong, *ibid.*, p. 115, Lee Jae-sang, *ibid.*, p. 73; Lee Sang-don, *ibid.*, p. 78.

28) The term "immediate crime" is a crime that is completed (consummated) in case of infringement or jeopardization of legal interests and the act of crime ends such as murder crime, crime of inflicting injury and theft. (Lim Woong, *ibid.*, p.115)

29) The term "state crime" refers to a crime in which a crime is completed at the time when the results of elements that constitute crime occur (Lee Jae-sang, *ibid.*, p.73).

30) Lim Woong, *ibid.*, p. 115, It is explained that "as the statute of limitations starts from the end of the crime, the time when the illegal state ends is the starting point of the statute of limitations for continuing crime." (Lee Jae-sang, *ibid.*, p. 73).

31) There is an opinion that immediate crime and situation crime should not be regarded as the same concept and should be differentiated depending on the fact that the status of infringement of legal interests caused by the act after the consummation of the crime is about to be maintained by the certain period of time (Shin Dong-won, *ibid.*, p.491) but it is said to be reasonable to understand the two as the same meaning (Lee Jae-sang, *ibid.*, p.73).

established if the act continues even after consummation. ³²⁾

B. Stance in the judgement

The Supreme Court decided that if a principal offender uploads infringing postings on internet website servers, etc. to provide members of the public with an access to such postings at the time and place individually selected, the infringement of public transmission right is consummated even without sending the infringing postings to the public and if a principal offender does not withdraw the postings in a manner of deleting such postings from servers, the punishable illegal act of providing members of the public with an access to such postings at the time and place individually selected is repeated, without ending the criminal act of infringing public transmission right, such a criminal act by principal offender may constitute the aiding and abetting.³³⁾

In light of the judgement above, it is deemed that the Supreme Court considers the infringement of public transmission right with a transmission method as continuing crime and the concurring opinion to the majority opinion clearly states that the infringement of public transmission right constitutes continuing crime as shown below.

“Article 136 (1) 1 of the Copyright Act requires a person who infringes copyright by means of public transmission as an element to constitute the crime. Transmission among public transmission assumes the temporal continuity in its concept. For example, the act of uploading a copyrighted work on a internet website without obtaining permission to use from a holder of author’s rights and providing the access to the copyrighted work to anyone at the time and place they want can be seen as the continuation of infringement of public transmission right. As such an act includes the execution of illegal act and continuity of such an act, it can be evaluated that the initial illegal act as well as continuation of such act are the infringement of public transmission right equally. If a principal offender causes the illegal state of infringing public transmission right by committing the illegal act of uploading copyrighted works

32) Lim Woong, *ibid.*, pp. 115-116, Lee Jae-sang, *ibid.*, p. 73; Lee Sang-don, *ibid.*, p. 78.

33) Page 9 of the judgement.

on a server and does not withdraw the uploaded copyrighted works, it can be regarded that the illegal act of providing the copyrighted work via wireless or wired communication methods to make members of the public have an access to such copyrighted work at the time and place individually selected continues. Therefore, the infringement of public transmission right with transmission method constitutes the continuing crime where infringing act continues until the withdrawal of the copyrighted work (infringing postings) is made.”³⁴⁾

C. Meaning of the judgement

Previously, it was not clear whether the infringement of public transmission right with transmission method constitutes a continuing crime or not³⁵⁾ but the judgement is considered to have a significant meaning in terms of the timing of establishment of accomplice and statute of limitations for the infringement of public transmission right with transmission method in that the Supreme Court made clear that such an act was a continuing crime.

2. Recognizing the act of linking to infringing postings, etc. as aiding and abetting the infringement of public transmission right

A. Stance in the judgement

The Supreme Court decided to change the precedent Supreme Court Decision 2012Do13748 decided on March 12, 2015 where it stated that providing just a link to websites that infringe the public transmission right of a copyright holder does not constitute the aiding and abetting the infringement of public transmission right that infringes the public transmission right of a copyright holder does not constitute the act of aiding or abetting the infringement of

34) Pages 31 and 32 of the judgement

35) The opinion that explicitly acknowledges continuing crime includes {Park Jun-seok, “Isn’t the person who provided a link on the internet neither a principal offender nor even a person who committed aiding and abetting?”, Industrial Property No. 48 (December 2015), p.130, Korean Intellectual Property Association), opinion that “transmission should be deemed to be completed by making the copyrighted work available for the public” Park Seong-ho, Copyright Act (2nd Edition), Parkyoungsa (2017), p 352}, opinion that if the person who uploads the link manages a server, improves website for use, the person can be recognized for the continuing crime but if the person forgets the link after uploading it, it is hard to recognize it as continuing crime {Park Seong-min, “Consideration of the act of infringing copyrights as establishment of continuing crime from the criminal law perspective”, Korean Journal of Comparative Criminal Law Vol. 19, No. 4 (January 2018), Korean Association of Comparative Criminal Law, p.72}, etc.

public transmission right and ruled that the act of providing a link to allow members of the public to access infringing postings easily at the time and place individually selected by posting such link to infringing postings on an internet site for profit purpose continually by the person who provided a link with the recognition that a principal offender infringes the public transmission right can be regarded as fulfillment of requirements for the act of aiding and abetting, making the act of crime that provides infringing postings for public use by a principal offender easier, resulting in the establishment of aiding and abetting the infringement of public transmission right.³⁶⁾

2) Meaning of the judgement

The Supreme Court previously ruled with an intention that the linking to the webpage that infringes the public transmission right of a copyright holder does not constitute the infringement of public transmission right (Supreme Court Decision 2012Do13748 made on March 12, 2015), but there have been controversies over the judgement in the academia³⁷⁾, and the en banc judgement is meaningful in that it made clear the contentious points.

In reality, as most infringing postings accessed via links on the site of infringing postings are copyrighted works of movies and broadcasting, the impact of the judgement on the movie and broadcasting industries are not likely to be trivial and in the future, the number of lawsuits or civil claims by copyright holders against those who manage the site where a link to infringing postings is provided for purpose continually is likely to increase.

3 Declaration of the principle of law that limits the establishment of aiding and abetting

A. Stance in the judgement

36) Page 12 of the judgement

37) The critical views on the judgement 2012Do13748 include {Park Jun-seok, "Isn't the person who provided a link on the internet neither a principal offender nor even a person who committed aiding and abetting?", Industrial Property No. 48 (December 2015), Korean Intellectual Property Association}, {Lee Hae-wan, Copyright Act (4th Edition), Parkyoungsa (2019), pp. 580~587} and views in favor of the judgement include {Park Seong-ho, Copyright Act (2nd Edition), Parkyoungsa (2017), p 352} and {Lee Dong-hyeong, "Whether the link to a website that provide infringing content constitutes the aiding and abetting the infringement of copyrights", Copyright Quarterly, Vol.119 (2017)}.

The Supreme Court pointed out that the intent of aiding and abetting and intent of a principal offender, which are required to establish the crime of aiding and abetting mean that the person who provided link should recognize the illegality of the content connected with the link as infringing postings and the recognition of the defendant on illegality should be a level that the defendant clearly recognize that the postings are the content that infringes at least public transmission right and a prosecutor shall strictly demonstrate that the person who provided a link was in a state where he/she clearly recognized that the content connected to the link infringes the public transmission right and the illegality of the content connected to the link as postings that infringed public transmission right and was illegal.³⁸⁾

The Supreme Court decided that in order to recognize the act of providing a link to infringing postings as the act of aiding and abetting the infringement of public transmission right by a principal offender, it shall be possible to confirm that the act of linking is closely related to the realization of crime by a principal offender and increases the opportunity to infringe the public transmission right, contributing to the realization of crime by a principal offender and stated that the act of providing link that enables members of the public to access the postings that infringe the public transmission right easily at the time and place selected individually including the case of posting a link to infringing postings on the site with a link to infringing postings by a principal offender may fall into this category. ³⁹⁾

B. Meaning of the judgement

The judgement considered that a link is a key and essential tool for the free circulation of information, which is the intrinsic value on the internet space fully and ruled that the establishment of aiding and abetting can be recognized only when it is strictly demonstrated that the person who provided a link was in a state where he/she can clearly recognize the illegality of the postings that infringe the public transmission connected to the link and it can be confirmed

38) Page 14 of the judgement.

39) Page 15 of the judgement

that the act of linking was closely related to the realization of crime by a principal offender and increases the opportunity to infringe the public transmission right, contributing to the realization of the crime by a principal offender so it seems that the judgement sought to strike a proper balance between protection of a copyright holder by punishing those who committed aiding and abetting and free circulation of information through a link.

Therefore, even though the judgement clarified that the act of linking to infringing postings may constitute the aiding and abetting the infringement of public transmission right, in order for the investigative agency to indict a person who provides a link to infringing postings and make them be convicted, the agency seems to demonstrate the fact that the person who provided a link clearly recognized the illegality of the postings with relevant evidence.

In addition, in case of posting a link to infringing postings accidentally not on the infringing postings link site but on general internet space not for profit purpose, there is a chance where the causal relationship between the intent of the aiding and abetting or the act of linking and the realization of the crime by a principal offender may be denied depending on specific circumstances or judgement that the act of linking secures social reasonability from the perspective of overall law and order and does not constitute the aiding and abetting the infringement of public transmission right can be made.