

**Abstract**

**Making Available of Works to the Public on Internet  
- with a Special Reference to Server Access and In-line Link -**

Dae-Hee Lee\*

Korea implemented the WCT and the WPPT in 2000 and 2004 respectively. Since its introduction to the Korea's copyright system, Korean courts have applied the right of making available to the public to such cases as where service providers make music files available for users through streaming, where users upload music files on the P2P network, or where users or service provider upload files of copyrighted works in the website for other users to download. Recently, there have arisen issues whether the right of making available to the public may appropriately be applied to the uses of works under certain circumstances: servers available to the public; and both hyperlinks and in-line links. This paper suggests that making servers available to the public is making available of works to the public. It indicates that servers are the same as other softwares as copyrighted works. This paper analyzes the holdings of the Court of Justice of EU(CJEU) on link and the US 9th Circuit on in-line links. This paper suggest that the holding of the CJEU would stifle the development of internet, and that its application needs to be applied only to the case where the linked-to site contains unlawfully uploaded works. And this paper also suggests that the logic of the 9th Circuit's holding needs to be applied only to cases like search engines, and that courts should be careful in deciding the legitimacy of in-line links in other cases.

\* Professor of Law, Korea University

## Keywords

WCT, right of communication to the public, right of making available of works to the public, right of public display, server, client, web server, database server, computer program(software), link, in-line link

## 참고문헌

- Allison Roarty, Link Liability: The Argument for Inline Links and Frames As Infringements of the Copyright Display Right, 68 FORDHAM L. REV. 1011 (1999)
- Barry Sookman, When hyperlinks infringe copyright: Svensson v Retriever Sverige (Feb. 13, 2014)
- David G. Leuttgen, Functional Usefulness vs. Communicative Usefulness: Thin Copyright Protection for the Nonliteral Elements of Computer Programs, 4 TEX. INT. PROP. L. J. 233 (1996)
- Emanuela Arezzo, Hyperlinks and making available right in the European Union: What future for the Internet after Svensson?, March 4, 2014 European Copyright Society, "Opinion on the Reference to the CJEU in Case C---466/12 Svensson" (15 February 2013)
- Graham Smith, Phil Sherrell, Will Smith, CJEU decision in Svensson- Hyperlinks to freely available content are permitted (Feb. 13, 2014) IViR, STUDY ON THE IMPLEMENTATION AND EFFECT IN MEMBER STATES' LAWS OF DIRECTIVE 2001/29/EC ON THE HARMONISATION OF CERTAIN ASPECTS OF COPYRIGHT AND RELATED RIGHTS IN THE INFORMATION SOCIETY (2007)
- Jane Ginsburg, The (Mew?) Right of Making Available to the Public, Columbia Law School Public Law & Legal Theory Working Paper Group, Paper No. 04-78
- Jason J. Lunardi, Guerrilla Video: Potential Copyright Liability for Websites that Index Links to Unauthorized Streaming Content, 19 FORDHAM INTELL. PROP. MEDIA & ENT. L. J. 1077 (2009)
- Jean G. Vidal Font, Sharing Media on Social Networks: Infringement by Linking?, 3 No. 2 U. PUERTO RICO BUS. L. J. 255 (2012)

- Jean-Paul Trialille ed., STUDY ON THE APPLICATION OF DIRECTIVE 2001/29/EC ON COPYRIGHT AND RELATED RIGHTS IN THE INFORMATION SOCIETY (THE "INFOSOC DIRECTIVE") (2013)
- Jeremy de Beer & Mira Burri, Transatlantic Copyright Comparisons: Making Available via Hyperlinks in the European Union and Canada, FNSNF Working Paper No 2013/22 (Aug. 2013)
- Pamela Samuelson et al., A Manifesto Concerning the Legal Protection of Computer Programs, 94 COLUM. L. REV. 2308 (1994)
- Piter de Weerd, The Netherlands: a hyperlink to unfindable files (Jan. 17, 2014), Kluwer Copyright Blog
- Stephen Vousden, "Case C---466/12, Svensson - Hyperlinks and Communicating Works to the Public" (20 January 2013)
- Thomas Rieber-Mohn, The Norwegian Supreme Court Decides the napster.no Case, IRIS 2005-3:16-29
- Tim Berners-Lee, 'Axioms of Web Architecture, Links and Law: Myths (1997)
- WIPO, GUIDE TO THE COPYRIGHT AND RELATED RIGHTS TREATIES ADMINISTERED BY WIPO AND GLOSSARY OF COPYRIGHT AND RELATED RIGHTS TERMS
- 이 대희, 전송권과 공중송신권, LAW & TECHNOLOGY 2집 3권 103-116 (2006)