

Abstract

The Aiding and Abetting Liability of Copyright Infringement of Link Site

- Via the Discussion about the Google Case -

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In Korea, Courts have denied copyright infringement of a link on the reasons that the link indicates only web location information or path page and it does not amount to reproduction or transmission even though it may be directly connected to a webpage or each copyrighted work. Because the direct infringement doesn't occur, the link site itself doesn't have the aiding and abetting liability as the secondary or indirect infringement. However, in terms that the link site directing users to illegal contents encourages users to access to the illegal contents. For these reasons, some academics criticize the trend of such case laws.

In addition, Linked Sites conforms to an online service provider of the Copyright Act Article 102. Accordingly it shall be considered whether the online service provider satisfies the requirements of Article 102, but such considerations are omitted. Instead it is considered only whether the link itself is illegal.

If a link site is the online service provider, we need to consider its features and it is necessary to consider requirements of the limitation of liability tailored to the type of online service providers as specified in Article 102.

In a position to agree with the above critical views, this article starts from the viewpoint that link site amounts to online service provider.

As a logical premise that the link site as online service provider would take liability for the direct infringement which takes place on the link site, this article analyses the American case "Perfect 10 v. Google". Then it takes into account the American case law and examines the defects of "safe harbor" requirements of the Korean Copyright Act Article 102(1)(iv).

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Keywords

Online Service Provider, Link Site, safe harbor, indirect infringement, direct infringement, aiding and abetting liability, server test, incorporation test, contributory liability, vicarious liability

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