

조장하려는 명백한 목적으로 행위할 때에만 성립될 필요가 있고 피고가 그의 행위가 침해를 촉진할 것이라는 상당한 확신으로 단순히 인식한 경우에 피고는 면책되는 것이 바람직하다는 점도 강조되고 있다. 그락스터 판결은 이미 우리나라와 전세계에 영향을 미쳐왔고 앞으로도 영향을 미쳐 유사한 결론을 형성하는데 기여할 것이 예상된다. 따라서 그락스터 판결이 우리나라에 미쳤거나 미칠 영향

을 고려하면서 저작권보호와 기술보호의 균형을 유지할 필요성이 제기되고 있다. 현행법하에서는 P2P파일공유에 대한 가장 적합한 법규정이 방조이고 앞으로도 이런 추세가 지배적일 수 있지만 소니 판결과 이 판결을 구체화한 그락스터 판결의 의미는 우리나라의 판례와 법제에서도 반영될 것이다.

ABSTRACTS

Grokster Decision and Third Party Copyright Liability

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The third-party copyright liability has been improved in the course of striking or destroying the balance between the advantage and disadvantage of third-party copyright liability. Courts have adopted different interpretations of third-party copyright liability because they disagree about tradeoffs implicit in constructing the law. The pre-Grokster law of third-party copyright liability contained two divergent lines of cases: the limited interpretation of third-party copyright liability and the expansive interpretation of third-party copyright liability. Courts disagree on the interpretation and the scope of contributory copyright liability or vicarious copyright liability because they are uninterested in the role of strict liability and fault-based liability.

However, the inducement rule, the limited approach by Grokster Supreme Court, accomplishes many of the objectives that inspire expansive liability with far fewer negative consequences. This approach allows innocent defendants to be immune from responsibility for misdeeds of others and substantial noninfringing uses while it makes defendants inducing infringement subject to responsibility. If nothing else, the construction of third-party copyright liability offered here will give courts a coherent framework that encourages them to approach difficult issues in a cogent, reasonably consistent way.

Future courts will therefore restrict the application of vicarious copyright liability perhaps to the general contours of respondeat superior, in order to avoid contradicting Grokster's reliance on fault. Future courts will apply contributory liability and inducement narrowly. In particular, future courts will avoid interpreting contributory liability in expansive ways that expose innocent defendants to liability and suppress noninfringing behavior. Additionally, inducement should be found only when the defendant acts for the express purpose of encouraging infringement. Plaintiffs should not be allowed to recover when a defendant simply knows that his behavior will promote other's infringement.

It is necessary that Korea harmonize the copyright protection with the technological innovation while considering the effect of Grokster decision on Korea. The most proper rule on p2p file-sharing in Korea is aiding-and-abetting rule and this tendency will be dominant in the future. Nevertheless, Sony rule and Grokster rule will influence Korea's future court decisions and law.

Keywords : Third-Party Copyright Liability, Copyright, Contributory Liability, Vicarious Liability, Strict Liability, Fault-Based Liability, Product Liability, Inducement, Non-infringement Use