ABSTRACT

Legality of jailbreaking on smartphone in view of legislative object for access control in Copyright Act

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Smartphone is not just a telephone but the intelligent device which users can use application software that they want to use with the platform software on. Under these development of telecommunication and telecomputing technology, so called 'jailbreaking' behavior surfaced in the center of discussion in the area of copyright. I think that jailbreaking comes from the policy of the Apple company which allows users to use only approved applications by Apple company that are sold in Apple's appstore.

In that point of view, we can define the jailbreaking as the behavior that enables users to use unapproved applications on i-Phone, and from that behavior comes the problem whether jailbreaking falls under the circumvention of technical measures that are applied by the copyright owner. If it comes under the circumvention of technical measures, then copyright owner can bring a suit for indirect infringement of copyright.

For this problem, we can not resume the jailbreaking behavior to be illegal because Korean Copyright Act does not allow copyright owner the access control. But DMCA in United States allows access control, so jailbreaking could be evaluated as illegal in USA. On this question, the Librarian of Congress of USA pronounced that jailbreaking behavior should not be treated as illegal by using the method that makes exemption clauses via the Rulemaking procedure.

That attitude of USA can be evaluated that interoperability is a more important goal for Copyright Act than access control right of copyright owner. So we should consider this

kind of attitude for Copyright Act's goal when we amend Korean Copyright Act for importing access control provision consented under Korea-USA FTA. To put it concretely, we should make rulemaking clauses in Copyright Act when we import the access control statute under the provision of Korea-USA FTA.

keywords: smartphone, jailbreaking, iphone, technical measure, circumvention of technical measure, ubiquitous, reverse engineering, DMCA