

Abstract

The Constitutionality of 'Necessary Measures' Obligation Imposed on the Online Service Provider of Special Type

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Article 104 and 142 of Copyright Act are viewed as an unprecedented legislative attempt to resolve copyright infringement issues that have stemmed due to technological advances. However, such provisions impose a liability obligation upon alleged wrongdoers without possessing conceptual clearness. As a result, disputes have arisen related to these two provisions from the onset, which have or will be heard by the highest courts in South Korea. Specifically, the Constitutional Court of Korea has concluded that such articles are "constitutional." Meanwhile, the Supreme Court of Korea is expected to render a decision on subordinate provisions related to articles 104 and 142. Following such decisions by both courts, a proper analysis and recommendations can be provided.

Keywords: Online service provider (of special type), Necessary measures, Punishment by a fine, P2P service, Constitutional complaint, Principle of clarity of law, Freedom of occupation, Principle of proportionality or Prohibition of excessive restriction