

Abstract

Problems and solutions to the expanded application of the offense subject to complaint of criminal law in case of the crime of copyright infringement

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The major issues related to copyright after signing Korea-U.S. Free Trade Agreement are the extension of the period for copyright protection; acknowledgement of temporary reproduction and regulation of access; abolition of crime subject to victim's complaint; introduction of statutory damages system; limit on the responsibilities of online-service providers; and the claim system for the information on a pirate. In particular, a lively discussed is the change of application of law system for copyright infringement, which is, the change from the crime subject to victim's complaint to the offense subject to complaint of criminal law. Regarding the criminal prosecution of the copyright infringement, the old copyright law (the law before the complete revision to Act 8101 on December 28, 2006) regulated it as crime subject to victim's complaint, considering that copyright is basically a private right and that a work reflects its author's character.

Afterwards, in order to respond to the changes in the environment of works application, the crime subject to victim's complaint has been amended into offense subject to complaint of criminal law with regard to the criminal punishment regulations of the copyright law, and the range of application of crime subject to victim's complaint has been expanded. If the present law system related to crime subject to victim's complaint changes into offense subject to complaint of criminal law, an investigation agency will be able to bring an accusation against an illegal duplicator with its authority, which seems that the law would be enforced strictly, that duplication would be decreased and that authors would benefit from it.

However, in terms of the control over the copyright infringement through criminal restrictions, a victim and an infringer should consider solving their problem by themselves, if possible, not through the criminal restrictions as the right of punishment of a nation. For the indirect compulsion through reinforced punishment by changing the law system, a close examination is needed on the requirements, targets and weight of an offense for a criminal punishment case so that both an author and a user can accept them. Because the acts of infringement are often carried out systematically and repetitively these days as copyright has been industrialized, an author cannot notice nor deal with it individually, its industrial damage is serious.

What is more important than anything else here is that the control over the copyright infringement using the national punishment right should be based on the fundamental laws of modern criminal law, that is, the principle of the last means and that of minimum necessity. For effective results through a national compulsory measure of punishment, it should be used only in the limitation to accomplish and maintain legal interests and peace in the society.

The national compulsory measure of punishment should be limited only to those who have committed something unacceptable in the society. Basically, in that it's a private right and a work reflects its author's personal characters, it is desirable to define the copyright infringement as a crime subject to victim's complaint, except to an offense subject to complaint of criminal law. Once the regulation of crime subject to victim's complaint becomes the bottom line, it will encourage enterprises and individual users to use authorized products. In other words, it can help an author to bring infringers of copyright to a negotiating table, not to the court, and to persuade them to use legal works. This will help prevent indiscreet crimes and authors will be able to achieve an increase in sales of his/her works and pioneer new markets.

Keywords : Copyright, Copyright infringement, Korea-U.S. Free Trade Agreement, Copyright protection, Crime subject to victim's complaint, Offense subject to complaint's intention