

Abstract

**The Protection of Disruptive Dual-Use Technology:
Focused on Comparing Staple Article of Commerce
Doctrine and Reasonable Alternative Design Standard
As a Judgment Rule**

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It is a hot issue in the copyright industry whether disruptive dual-use technologies can be protected. While they displace earlier technologies and create a new market, they can be used for infringing copyright. As a result, copyright holders try to restrict using them. Their developers, however, argue that such restriction stifle innovation. Although the Supreme Court introduced and applied the staple article of commerce doctrine (SACD), the P2P network has made copyright infringement issues more difficult to settle. Thus, many scholars have argued that an alternative rule is necessary, and chief of all, they paid attention to the reasonable alternative design standard (RADS). In this situation, there are needs to compare both rules. First of all, since the RADS focuses on the current use of the technology, it emphasizes the infringing uses. On the other hand, the SACD considers future potential uses as well as current uses. Although disruptive dual-use technology can be used for infringing copyright in the initial stage, infringing uses would be vanished or become legitimate uses and would create a new market. In fact, history has said that the cost of initial infringing uses was overblown by the existing copyright holders and the technology brought new chances to our society. In addition, the RADS puts the pressure on courts and developers that have to examine reasonable alternative design and thus, it results in the suppress of innovation. On the other hand, the SACD guarantees the free innovation by just considering substantial noninfringing uses. From the policy perspective, the SACD is more efficient in protecting the public interests and moreover, it improves national economy. Finally, the problem of the SACD that copyright cannot be protected well, can be supplemented by the legislation against the

special technology that seriously causes harm to copyright holders' interests. Conclusively, the SACD is more reasonable in promoting innovation and protecting public interests.

Keywords

disruptive technology, dual-use technology, staple article of commerce doctrine, alternative standard, primary purpose standard, multi-factor balancing test, reasonable alternative design standard, infringing use, non-infringing use

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