Abstract

A Critical Review on the Direct Copyright Infringement of Innovative Technologies*

– Focusing on Analyzing Volitional Conduct and Proximate Causation in the US –

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Historically, whenever innovative technologies came up, the problem of technologies' liability have been raised. So far, the technologies were exempted or have been imposed not by direct but by indirect liability. Thus, it is exceptional to impose a direct liability on the technologies. If so, is it reasonable to impose a direct liability on the technologies? In a case, the court regarded the provider of the technology as a direct infringer, not users, and moreover it found the activities of the defendant actually helped the infringements. Thus, the court held the defendant directly liable for copyright infringements. However, the following two reasons say that it is not. The first reason overlooked the cause or start of the infringement. In the second reason, the court confused the elements in judging between direct and indirect liability.

To establish the standard and ways for direct infringement, it is efficient to compare and analyze the US law. If the US law suppositively applied to our case, it is evident our holding has many problems: our holding did not have the appropriate definition of direct infringement and confused the direct liability with indirect liability. Thus, our judgement of direct copyright infringement should be modified as follows. Firstly, the standard has to be the volitional conduct test, which is clear and can limit the liability. Next, the main focus should be the volition, not the types of the technologies or the culpability of the technologies. Finally, the elements for judging direct and indirect liability should be clearly distinguished. This ways can make the

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technologies' liability reasonable and can seek the harmonic development in copyright industry area.

Keywords

Copyright Direct Infringement, Liability of Technology, Volitional Conduct, Proximate Causation, Automated System, RS-DVR, Secondary Liability

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