

**Abstract**

## **A Study on Legal Aspect of Links and Link-Sites in Copyright Law**

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As the link-sites has become the main channel of trafficking illegal content following cyber-lockers, there has been hot debate on how to regulate them.

Court of Justice of the European Union ruled in 2015 that where a link makes it possible for users which were not taken into account by the copyright holders when they authorized the initial communication of the protected work, the users must be deemed to be a 'new public' and accordingly the holder's authorization is required for such a communication to the public. This reasoning asks a new classification of links on the basis of the possibility of public access to the targeted works. Accordingly I propose to classify links into three types, i.e. links to the works to which the public is prohibited to access, links to the works to which the public is restricted to access, and links to the works to which the public is free to access.

Where a link makes it possible for public to access to a work to which the public is prohibited to access, it means that the link makes the works available to the public for the first time. In this case, the linking could be 5<sup>th</sup> type of making transmittable in Japanese Copyright Act.

CJEU ruled that 'new public' criterion could be fulfilled with the link that circumvent restriction which could be disposed by the users, such as subscription or paywall. The potential users who cannot access to the protected works due to the disposable restriction should be considered the public which was taken into account at the time of the initial communication to the public. Accordingly the restriction related to the new public should be restricted to the one which could not be disposed by the users, so could divide markets for the works, such as space restrictions, e.g. accessible for the specific country IP only, and time restrictions. The potential users cannot be the new public.

The services which assist users to access to the information on the Internet can be classified into three types, i.e. directory service represented by 'Yahoo', search service represented by 'Naver' and 'Google', and curation service. The reason that link-sites have such a destructive influence on the content industry differently from mere linking could be explained by the fact that link-sites provide curation service which complements the shortcomings which search service and directory service has. Accordingly link-sites as a curation service could hardly satisfy the four conditions enumerated in the Copyright Act for a safe harbour, because curation service means careful and continuous management by the operators.

### Keywords

Link, Link-Site, New Public, Communication to the Public, Curation

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