

Abstract

A Study on The Regulations of Link as Infringement of Making available to the public right

- Focusing on The Analysis of 'Right of communication to the public of works' -

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The link represents the position of the work through the Internet or facilitates the use of the work by the user. Through the Internet, users can freely share and utilize information by using link. On the other hand, It may infringe copyright depending on their technical system. It may violate the rights of the copyright owner to Linking the work to another site without permission of the copyright holder who published the work originally. Nonetheless The courts have shown a passive attitude toward imposing liability for copyright infringement of a linker in the case of links and copyright.

The court considered whether the link infringed right of distribution, reproduction, exhibition, transmission rights and so on. But they denied all of these rights. The problem is that courts only discussed the liability of the link site operator (online service provider) rather than specifying the link actor directly in the case. Of course, we should discuss the responsibilities of online service providers in the case of links and copyright infringement, as well as in the case of online service providers being link actors. However we think that sanctions for link actors should be initiated in order to protect copyright holders who are damaged by links. Therefore, it is necessary to examine the copyright in question by the link and specifically discuss the responsibility charge requirement of the link actor.

This article discusses the rights of the link in the case of copyright infringement and suggests the need to regulate the link as the right of public

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transmission. By confirming the attitudes of the US and European copyright laws and judgments on ‘Making available to the public right’ or ‘Right of Communication to the public of works’, we have specifically examined requirements on the infringement of the right of public transmission of the Korean Copyright Act. First, we examined the possibility of link regulation by public transmission rights. Then, we looked at requirements on the infringement of the right of public transmission. The requirements are: Link activity, A range of public (new public) that the work may be used by links, and Purpose of public transmission. However, the Internet should not impose excessive restrictions on freedom of information sharing. Therefore, liability for the linker should be imposed by strictly reviewing the requirements for infringement of the right of public transmission. In addition, online service providers who manage linked posts and users who use them should be able to take care of themselves to legitimately use the published work.

Keywords

Link, Making Available to the Public Right, Right of Communication to The Public of Works, Right of Public Transmission, Works Made Public, Implied License Doctrine, Commerciality, New Public, Responsibility of Online Service Providers

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