

Abstract

Discussion Trends on Leech Sites in Japan

- Based on Discussions at the Subcommittee on Legal System and
Fundamental Issues of the Culture Council of Japan -

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A leech site is not a website for uploading content but for providing link information to copyright-infringing content stored in other websites and guiding the user to it. In this paper, I discuss what kind of legislative review is currently being carried out at the Commission on Legal System and Fundamental Issues of the Copyright Subdivision of the Council for Cultural Affairs on the issue of leech sites.

Operating the leech site may constitute indirect infringement under current law from the viewpoint of civil and criminal remedies.

However, under current interpretation of Japanese copyright law, it is considered difficult to grant an injunction against indirect infringement of copyright. On the other hand, in Japan, we have the so-called Karaoke Doctrine that can expand injunctions to intermediaries. According to Karaoke Doctrine, if intermediaries are engaged in management of the direct copyright infringement and do so to increase operating profits, they are deemed as direct copyright infringers. As a result, this Doctrine has an effect to expand the scope of direct infringement of copyright. Therefore, some problems concerning this Doctrine have been pointed out.

The Council decided to consider what types of copyright-infringing actions by a leech site or the like require urgent response, and decided to leave the discussion on the injunction against other forms of general indirect infringement to future interpretation.

Regarding the leech site issue, there are various stakeholders. In this paper,

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I summarise what types of behaviour by leech sites lead to content infringement. I explain how each participant's action is assessed by current law, particularly in "site"-type leech sites.

Attention should be paid to the issue of balance between protection of copyright and freedom of expression concerning participants in leech sites.

The following elements are being considered as elements of the types of actions that require urgent response: the malignancy of the act, the subject and its action, the amount of link information and its proportion in the leech site, the form of the link information, the subjective element of the action, and the nature of the link's infringing content. It is proposed that leech sites should be regulated by "acts considered to be infringements" under Art 113 of the Copyright Act.

Although copyright protection is an important issue, the problem with leech sites is concerned with the essential aspects of internet technology, that is, the linking act. It is necessary to have a careful discussion to establish a new legal system that adequately balances the protection of copyright and exploitation of copyrighted works necessary for the development of culture.

Keywords

Copyright Law, Indirect Infringement, Karaoke Doctrine, Injunction, Leech Sites, Linking Sites

참고문헌

1. 국내문헌

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