

Abstract

**Are Embedded Links an Act of Using Copyrighted Works?
- A Study on Hyperlink via Analysis of Justin Goldman v. Breitbart
News Network -**

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Since the Perfect 10 case, U.S courts have held that a server doesn't take the responsibility of direct infringement unless the server hosts any copies of works based on the so-called 'server test' rule. This is because the mere provision of a link of any kind cannot constitute an act of copying or transmission and therefore cannot constitute a direct violation of the copyrights.

This is also the case for our courts. Conversely, the Court of Justice of the European Union("CJEU") in Svensson v. Retriever Sverige AB, held linking to be a form of communication to the public, even though providing a link simply furnishes a means to access a work offered from a third-party site. Accordingly, U.S. courts and the CJEU have shown a marked difference in their approach to linking.

However, in the first instance of the Goldman case in February of this year, the New York District Court rejected the server test rule and held that the act of linking constitutes an act of display and therefore infringes on the 'right of display'. The Goldman case is related to embedded links. This case reminds us of the 'Hotpang case' which was judged to be an infringement on the 'right of communication to the public' in the first instance. The second instance ruled aiding responsibility and finally, only the Supreme Court judged the compensation amount.

Therefore, it is unclear whether the Goldman case ruling will hold in the court of appeal. In the meantime, it was considered to be limited to the European Court of Justice to view the link as public transmission, but as a result of this case, the concept of public transmission under the Berne

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Convention and the WIPO Copyright Treaty has relevance to the Korean legal system.

Keywords

Hyperlink, Embedded, Aiding and Abetting Liability, Communication to the Public, Making Available, The Right of Display, Server Test, Berne Convention, WIPO Copyright Treaty, Secondary Communication

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