

Abstract

Specifying the Facts charged in the Crime of Copyright Infringement

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This thesis is an annotation on the Supreme Court's judicial precedent on the specifying and substantiation of victims in the facts charged of copyright infringement crime.

In this case, controversial issues in the court's judgment were whether it was illegal to file a complaint without specifying a victim of copyright infringement as preliminary facts charged, and how would the court determine if it was not clear whether the victim was real right holder or not among primary facts charged. Above all, the Supreme Court judged that filing a charge without specifying a victim was legitimate in copyright infringement. Generally the victim is not an essential item required by the court to constitute any charge, except in special cases where the victim becomes an object of a crime, or is a premise for application of law, or is the basis for the standard of counting crime. Nevertheless, it is the principle in property crimes that victims should be specified because specifying of victim is an important criterion in the application of Criminal Law and Act On The Aggravated Punishment, etc. of Specific Economic Crimes, and the application of crime and relationship in addition to the standard of counting crimes. However, this thesis found that the Supreme Court's position is valid in the first issue, in consideration of the facts that, the right of share on intellectual property is separable and transferable, that it is not easy to identify the original author and the assignee of such right from the original author due to lack of registration system on copyrights, that it is practically impossible to identify the copyright holder in the event of widespread copyright infringement, that if the application of

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paragraph 1, Article 140 of the Copyright Act is the issue the benefit and protection of the law for the paragraph is the violation of the copyright industry as the social interest, especially as the standard of counting crimes for crime of copyright infringement is determined based on copyrighted works contrary to general property crimes.

On the second issue, in case it is unclear whether the victim is a real right holder out of primary facts charged, the Supreme Court should determined not guilty. However, this thesis proved that the victim in the relevant judicial cases is subject to evidencing and criticized the judgment rendered in this case, based on the characteristics of permission for use between copyright holder and users, the distinction between the burden of proof and the method of proof of inspection by the prosecutor, and the protection interest of paragraph 1, Article 140 of the Copyright Act.

Keywords

Specifying the Facts Charged, Victim, the Crime of Copyright Infringement, Copyright Act, Legal Interest