

Abstract

A Critical Review of the Korean Supreme Court Judgement of the Link

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According to the Supreme Court of Korea's decision on September 9, 2021, 2017do19025, a link does not meet the elements of transmission(public transmission) under the Copyright Act, so the link itself does not fall under the infringement of the right to public transmission, but if a person makes the link continuously to illegal contents available to the public for the purpose of making a profit, the Supreme Court judged that the person has liability for contributory infringement.

However, in this judgment, the Supreme Court did not distinguish between public transmission and interactive transmission and did not distinguish between the act of linking to illegal contents and an operation liability of illegal link site which is deemed so-called leech Site. In addition, the Supreme Court does not consider that if the infringing contents uploaded by the direct infringer are continuously transmitted without being removed, who is the subject of the actual transmission.

Although the Supreme Court recognized the link as a contributory infringement of copyright and presented the conditions of the contributory infringement in order to balance freedom of expression on the Internet, it denies the possibility of direct infringement of copyright through the link. Suppose a copyright holder follows the decision of the Supreme Court. In that case, illegal commercial links to legal contents which is limited the access

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by a copyright holder are not considered as copyright infringement. In the end, it seems like a logical conclusion based on the judgment that the link cannot fall under the public transmission. Although the Supreme Court missed an opportunity to examine the range of public transmission, we have to indicate that the scope of public transmission is a more inclusive concept than interactive transmission.

Keywords

link, contributory infringement, communication to the public, public transmission, interactive transmission, online service provider