

Abstract

Application and Enforcement of Copyright

- with a Special Reference to Damages -

Lee, Kyu-Hong*

The copyright system is generally regarded as an efficient system, vital for the development of culture and related industries. The system, of course, is not without any flaws. Yet, the established copyright system has been verified to be efficient over the years. Today, as the scope of copyright keeps expanding, the copyright system is confronted with various changes and the extent of relief offered is gradually becoming an important issue. To this extent, this paper discusses remedies of copyright infringement in both civil and criminal cases. This paper focuses specifically on the hearing procedures and the scope in order to determine the damage amount. And then the paper also discusses criminal and administrative remedies.

First, as for relief in civil cases, overall details show that, although the total numbers of cases are relatively small, the number of injunction cases and cases decided on merits is increasing. Until recently, despite the fact that the injunctions for copyright infringement cases are frequently decided on the merits, several problematic issues have arisen. These are fewer grants of injunctions than other fields, small amounts of damages awarded, and the lack of specialty at the fact-finding trial court level, which in turn cause delays in court decisions.

* Presiding Judge, Uijeongbu District Court. Goyang Branch

In regards to such problems, the Presidential Council on Intellectual Property has sought possible solutions parts of which were reflected in the amended act. Taking this into consideration, as a starting point, it becomes significantly necessary to examine the efficiency of the current methods to determine damages through empirical methods in order to make it possible for plaintiffs to claim relief more easily. Also, as demonstrated through various issues, results show that evidentiary facts need to be supported to apply Article 126 of the Copyright Act. This paper also presents a brief overview of the newly adopted legislations.

Next, this paper examines the present state of criminal sanctions. The current government's strong efforts to regulate and the IP owner's efforts to protect their copyrights have resulted in the striking drop of infringement cases. Partial contributions are also owed to government agencies' regulatory plan. Although the primary relief for infringement is civil one, criminal sanctions and administrative relief still play a role to some certain extent. The role played by courts will be more important in relation to improving methods to determine damages and securing specialized personnel. And efforts need to be made to strengthen the observance of copyright by users.

Keywords

Copyright Infringement, Development of Culture and Related Industry, Damage Compensation, Preliminary Injunction, Presidential Council on Intellectual Property, Fact-finding Trial Court, Copyright Law Article 126, Statutory Damages, Criminal Sanction, Administrative Relief