

Abstract

A Study on Secondary Liabilities for Copyright Infringement by Online Service Provider

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Generally, “secondary liability” is imposed on someone who does not commit the legal wrong directly, but is found responsible for encouraging, facilitating or profiting from it. From a legal perspective, on the surface there is no consensus concerning secondary liability of copyright infringement. Recently, the courts have admitted a broad third party liability for copyright infringement. Because there is no statutory provision concerning secondary liability in copyright law, Korean courts have examined whether the defendant is liable for copyright infringement as an aider and abettor.

The case discussed in this paper is a leading case on secondary liability of online service providers (OSPs) in Korea. The Korean Supreme Court held that OSPs cannot be held liable for merely allowing subscribers to post copyright infringing materials and enabling the materials to be searched on their portals. OSPs are only liable for aiding the infringement for not taking necessary measures under three conditions: (1) illegality of the copyright infringing material is clear; (2) the OSP either received a notice from the right holder or was clearly aware of the infringement; and (3) it is technically and financially possible to control the material.

Secs. 102 & 103 of the Korean Copyright Act(KCA) provide ‘Notice and Take-down’ procedures and OSP liability exemptions similar to those under the US Copyright Act (DMCA). The broad admittance of liability could make innovative technology more difficult and can interfere with cultural development. Accordingly, the courts must arrange ways to find a balance between copyright protection and innovation promotion in order to prevent

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the broad admittance of third party liability for copyright infringement. Accordingly, a clear legal ground should be arranged in order to apply third party liability for copyright infringement reasonably.

Keywords

Copyright Infringement, Secondary Liability, OSP Liability Exemptions, Notice and Take-down