

A study on the diverse views in Korean Court decisions on the culpability of an internet link creator and a short proposal on how the controversies in the decisions should be settled - focusing on the analysis of the Korean Supreme Court decision 2012Do13748 and the Korean High Court decision 2016Na2087313

Kim, Soo Jeong

1. Introduction

In the online space, numerous websites are infringing copyrights and internet users are creating numerous links to those sites. Consequently, discussions are ongoing as to whether the creators of these Internet links can be held culpable for copyright infringement. To date, the Korean Supreme Court has prioritized the freedom to create these links over copyright protection in the online space in several verdicts, including 2012Do13748. This may be attributable to the great importance of internet-related business in Korea. In doing so, Korean courts have demonstrated a tendency to overlook copyright infringements in the internet space.¹⁾ In 2012Do13748 in particular, the court denied not only any direct copyright

1) Jun-Seok Park, *Is an internet link creator not a principal or even not an accessory? - The problems in the Korean Supreme Court decision 2012Do13748 and an appropriate logic for punishment in a criminal case of copyright infringement*, 48 SANE OBJAESANGWON [INDUSTRIAL PROPERTY RIGHT], 2015 at 81 (in Korean).

infringement by internet link creators, but also any aiding and abetting liability, despite the fact that most websites that infringe copyrights are supported by such links. Although it is an inevitable policy judgment to find a balance between two conflicting interests—to guarantee the freedom to create links, and to protect copyrighted material on the Internet—the stance of the Korean courts seems inclined toward promoting freedom and prosperity on the internet, since no sanctions have been imposed against even malicious and repetitive use of internet links to earn monetary profits by infringing on copyrights.²⁾ In 2017, however, this stance was challenged by the Seoul High Court with the verdict 2016Na2087313. In this manuscript, different arguments will be presented regarding the culpability of an internet link creator as discussed in the two judgements mentioned above, and the divergence between the judgements will be explored.

2. The Facts of 2012Do13748 and 2016Na2087313, and various types of links included in each case

2.1 Matter-of-fact in 2012Do13748

In this case, the defendant was the system operator of a site where users could share information on Japanese cartoons. The site had a bulletin board system, and each bulletin was dedicated to one particular cartoons. The users uploaded various information to the bulletins, some of which included personal analysis of characters or reviews of the cartoons. However, some of the uploaded posts included links to blogs which displayed unlicensed copies or translated versions of the cartoon. Notably, the links in this case were deep links or direct links leading to the webpage of the blogs featuring unlicensed copies of the cartoons. A Korean publishing company which acquired the license for the cartoons from a Japanese cartoon publishing company filed suit against the operator of the site, and the public prosecutor prosecuted the operator for aiding the copyright infringement.³⁾

2) Jun-Seok Park, *supra* note 2 at 105.

3) Since the written judgement lacked some of important facts in the case, see Jun-Seok

At the first trial, the defendant was found guilty as the accessory offender to the copyright infringement. However, in the second trial, the indirect liability of the defendant was denied, and the court found him not guilty. The high court stated that even though the defendant facilitated the creation of the links by providing the bulletins where the users could post links to the infringing sites, since the linking activity could not be evaluated as an assistance to copyright infringement, the defendant could not be held liable for aiding and abetting of the infringement. The supreme court also dismissed the prosecutor's appeal, supporting the high court's ruling that creating a link to a copyright-infringing site is not aiding infringement.

2.2 *Matter-of-fact in 2016Na2087313*

In this case, the defendant opened and managed several sites which posted numerous embedded links to several foreign sites. These foreign sites allowed the users to watch various television shows for free. However, the foreign sites never obtained the license to stream the shows, meaning they were infringing upon the public transmission rights to these shows. The defendant attracted many users to his sites by providing a large number of embedded links collected from the foreign sites, and arranging these links by title and air date of the shows, thus allowing users to easily find their desired shows. Moreover, he earned profits by placing banner advertisements on his sites. The plaintiff was a producer of some of the shows and had also acquired some of the other shows' copyrights by transfer. His primary claim was direct infringement of his copyright, and his secondary claim was aiding and abetting of the infringement.

The first trial found the defendant to be the principal offender of the copyright infringement, with the decision stating that the defendant himself had provided public access to the shows via embedded links, thereby directly infringing upon the right of public transmission. However, the high court denied the direct infringement liability and instead found the defendant liable for contributory infringement, since his links facilitated the illegal public transmission of the offending foreign sites. The plaintiff

Park, *supra* note 2 at 83 where the writer describes a search for more information through a visit to the actual site from the case.

appealed to the supreme court, insisting that the defendant was liable for the direct infringement of his copyrights; however, this appeal was rejected.

2.3 *Main difference in the facts in the two cases: differences in methods of the links*

The two decisions reflected the different judgements that were developed as to whether someone providing internet links is a principal or an accessory to copyright infringement. However, the two cases reflect different facts and situations, something to bear in mind when comparing the two judgements. In the former case, the infringed works were cartoons, while in the latter they were television shows. However, this is an insignificant difference in that the rights of an author would be violated by links to infringing sites in either case.

On the other hand, the difference in the types of the links in the two cases is a notable factor, since different types of links infringe upon an author's rights in different ways.⁴⁾ In case 2012Do13748, most of the uploaded links were direct ones, meaning links that lead to another webpage exhibiting the specific information the user is seeking. (Links which lead to the homepage are called simple links.) On the other hand, in case 2016Na2087313 the site used embedded links, which embed certain information from the original webpage into another webpage, both of which were chosen by the link creator. To the user, it appears that the information taken from the original webpage is embedded in the webpage to which it is linked, thus it is called an embedded link.⁵⁾

With the differentiation in the types of links established, the two judgements have prompted debate over whether a link creator could be a principal in a copyright infringement case, or whether he could be an accessory to copyright infringement. The rest of this paper will explore the diverse arguments that have unfolded when comparing case 2012Do13748

4) Jun-seok Park, *The copyright infringement liability for reproduction, display, and transmission through an inline link etc. by an image search engine*, 33 MINSAPANLYEYONGU [STUDY ON CIVIL LAW CASES], 2011 at 652-691 (in Korean).

5) For the definitions of each link, see Haewon Lee, *Reconsidering hyperlink and copyright infringement: focusing on the interpretation of 'making available to the public*, INKWONGWA-JEONGUI [HUMAN RIGHT AND JUSTICE] vol.463, 2017 at 100 (in Korean).

to case 2016Na2087313.

3. Consistent views on whether creating a link could be a direct infringement of copyright.

3.1 Denial of direct infringement liability of a link creator in case 2012Do13748

In the three trials of case 2012Do13748, the liability for direct copyright infringement had been consistently denied. The Korean Supreme Court referred to its previous decisions, including 2008Da77405, to deny that a link creator is a principal copyright infringer. The court argued that since a link is a mere indicator of information about a web location, no link is equivalent to the reproduction or transmission of works under Korean copyright law, even though users can be connected to the copyright-infringing websites through the links. This reasoning is consistent with the precedents that were set regarding whether the creation of a link is a direct infringement of copyright, such as the reproduction or transmission under copyright law (see Article 2 of the Korean copyright law for the definition of reproduction and transmission). However, this reasoning runs counter to another precedent, case 2001Do1335, which determined whether a link creator is a principal or an accessory in violating other's rights.

In 2001Do1335, the Korean Supreme Court ruled that a link creator who created simple links is a principal offender who infringed the rights of pornography producers, recognizing that a linking to pornography can be judged as equal to displaying it. The two cases do feature differences, since the subject in 2012Do13748 was a cartoon governed by copyright law, while in 2001Do1335 it was pornography, which is governed by telecommunications law in Korea. However, in both verdicts, the Korean Supreme Court established the premise that uploading certain content on the Internet, whether it be a cartoon or something pornographic, constitutes a display under telecommunications law and a transmission under copyright law. It came to decision as to whether creating a link to an existing site can be treated as equal to the action of uploading the content or to an aiding and abetting of the uploader's action. According to discussions

in Korean criminal law, when a link creator is considered to have carried out a functional dominant act, he is recognized as a joint principal offender; otherwise, if he was a mere assistant, he is treated as an accessory to the crime (see Article 30 and 32 of Korean criminal law for the definition of each liability). Taking this discussion into consideration, the type of work, whether a cartoon or a pornographic image, may make no difference to the conclusion when the liability of the link creator is decided.^{6) 7)} However, 2001Do1335 and 2012Do13748 achieved different conclusions, probably because the judges believed that the nature of the crime was more condemnable in the former case.

Then how should one define a functional dominant act in an example of online copyright infringement? According to a discussion in Korean Civil law concerning the interpretation of Article 760 of the civil code regulating joint illegal acts, when an internet service provider (ISP) voluntarily commences transmission or selects specific works to be transmitted, it could be considered proactive performance of the infringing activity. In this case, the ISP's action should be regarded not as an aiding and abetting of the infringement, but as a direct infringement of the public transmission rights to the work. However, direct liability for copyright infringement is such a powerful sanction that it could deter the usage of links on Internet space, so it should be acknowledged only under limited circumstances, and only when the link creator actively participated in the transmission.⁸⁾ Considering this standard, the technological difference between the types of links should be considered when determining whether a link creator is a principal agent of copyright infringement. Direct link or simple link creators merely select a webpage and establish a link that leads to the intact website, and the transmission is activated by the user's click on the link. On the other hand, embedded link creators choose certain parts of a webpage and make those parts appear directly in other websites, allowing transmission to start without any actions from the user. This active choice

6) Jun-Seok Park, *supra* note 2 95-96.

7) For the definition of a joint principal offender and an accessory to a crime, *see* Dong-Wook Shin, HYOUNGBUB-CHONGRON at 580 (8th ed. 2014) (in Korean).

8) Hae-wan Lee, INTERNET-GIBAN-JEOJAKMUL-SONGSIN-SERVICEWA-JEOJAKGWONBUB-JEOKYONG at 107 (2011) (in Korean).

and placement of information may allow a link creator to be treated equally with a principal copyright infringer, the illegal uploader of the content.⁹⁾¹⁰⁾ Likewise, different links should be separately analyzed for their functional dominant acts in copyright infringement since each type of link involves different level of participation from the link creators.

3.2 Possibility of direct infringement with embedded links acknowledged in the first trial, but denied in the second and third trial: 2016Na2087313 verdict

In the first trial of case 2016Na2087313 (2016Gahab506330), the judges recognized the defendant's direct infringement liability stating that since embedded links did not need extra measures such as clicks by users to stream the shows from the defendant's sites, the defendant himself transmitted the show to the public via his posting of the links. Moreover, the judgement distinguished embedded links from direct and deep links in precedents such as 2012Do13748, calling the links in precedents "normal links". This judgement shows that the judges considered the difference in types of links and evaluated the participation of an embedded link creator as a functional dominant act in copyright infringement.

However, in 2016Na2087313, the Seoul High Court reversed the decision by referring to case 2008Da77405, to which the 2012Do13748 judgement also referred, to maintain the ruling that since a link is a mere indicator of information about a web location, no link is a transmission of works under Korean copyright law even though it can be recognized as a command or a preparation the transmission. As a reason for denying the direct infringement, the judgement indicated that actual control of the transmission depended on the uploader from the foreign sites and not the link creator; however, the judgement did not make a distinction between different types of links. In this case, the links that were used were

9) Jun-Seok Park, *supra* note 5 at 681.

10) In this regard, there is criticism of the 2001Do1335 verdict for recognizing a simple link which lacks a functional dominant act as a principal offender of displaying pornography. See Bo-Hak Seo, *Criminal liabilities of links to noxious internet sites*, BUBRYULSINMUN, Sept. 25 2003, <https://www.lawtimes.co.kr/Legal-Info/Legal-Info-View?serial=104678&kind=CC01&key=>.

embedded links; however, in 2008Da77405, the case cited in the verdict, deep links and direct links were used. Therefore, this citation shows that the judges did not consider the fact that difference in linking methods may result in different legal determination.

However, as mentioned above, different types of links should be distinguished from one another since each represents a different level of contributions from link creators. Moreover, each link has different effects on the economic interest of the copyright holder. This is a crucial point, since the one of the main purposes of copyright law is to protect the economic incentives of the copyright holders to encourage their productivity.¹¹⁾ In the case of embedded links, the link can deprive the copyright holder of significant advertising revenues since the link creator can exclude advertisements present on the original website. On the other hand, direct links keep the advertisements intact, since they lead to an intact website. Since advertising is one of the largest revenue sources on the internet for copyright holders, stronger regulation of embedded links should exist. This may be accomplished by recognizing an embedded link creator as a principal offender of copyright infringement.¹²⁾

Some might argue that if the court acknowledges the direct infringement liability of embedded link creators, the use of embedded links would be deterred, which could cause excessive inconvenience for the public. Nevertheless, while suppressing the use of direct links may result in enormous social loss, deterring embedded links is not likely to result in significant inconvenience for the public. If direct links were regulated, it would cause difficulties for internet users by making them search through an entire website before finding the information they seek, instead of clicking the direct link which represents the internet address of the particular webpage they seek. This situation would be troublesome for numerous internet users, so avoiding this inconvenience could be a bigger priority than inspiring creative desires by protecting copyrights.¹³⁾ However, it generally does not take a great deal of effort to search for information that is found on a particular webpage even without an

11) Sung-Ho Park, JEOJAKGWONBUB at 21 (1th ed 2014) (in Korean).

12) Jun-Seok Park, *supra* note 2 at 121.

13) Jun-Seok Park, *supra* note 5 at 79, 80.

embedded link. Therefore, there would be no significant influence on social welfare, even if embedded links were to be strongly regulated and replaced by direct links, since embedded links save only one click when compared to direct links.

Nevertheless, the dominant view in the academic world asserts that even an embedded link creator cannot be treated as the main culprit in a case of copyright infringement.¹⁴⁾ However, in this case, the defendant proactively set up embedded links for an obvious lucrative purpose. Therefore, it could be said that the links in this case needed more regulation, and deliberation on whether the embedded link creator in this case had committed a functional dominant act may have been desirable instead of referring to a precedent that dealt with direct links.

4. Differing views on whether a link creator can be aiding copyright infringement

4.1 *The origin of the aiding and abetting liability in copyright infringement in Korea*

Early on, Korean courts did not specify which provision of Korean law upon which the indirect liability of ISP was based, and they continued to make decisions that seemed to be largely influenced by contributory liability and vicarious liability in America. In the early 2000s, Korean courts handed down several judgements on the ‘Soribada’ case, regarding the

14) Jun-Seok Park, *supra* note 5 at Fn. 151. For the majority opinion, *see* Dae-Hui Lee, INTERNETGWA-JISIKJAESANGWONBUB at 417 (in Korean) in which the author denies a link maker’s liability based on copyright law, while admitting the possibility of applying the trademark law to the link. Also *see* Hyun-Chul Kim, *Linkjegongjai-Jeojakgwonbubsang-Chaekime-gwanhan-sogo*, [Study on the liability of a link provider under the copyright law], GYEGANJEOJAKGWON [COPYRIGHT QUARTERLY], 2002 at 59-60 (in Korean) where the author asserts that the liability of a link maker should be governed by general illegal acts in civil law or infringement of the right to indicate the author’s name. However, even though it is a minority opinion, opinions have been stated that the embedded linker should be treated equally to the actual transmitter of the work, therefore the principal of the copyright infringement. *See* Jun-Seok Park, *supra* note 5, in which the main topic is the direct infringement of an embedded link.

largest music P2P site in Korea. In the judgements, the judges stated that the ISP's liability has its legal basis on the aiding and abetting liability in the joint illegal act provision (Article 760 in the civil code).¹⁵⁾

While Article 760 in the civil code provides grounds for indirect liability, Article 102 of the Korean Copyright Act provides limitations of liability for ISPs under certain conditions. However, Korean verdicts tend to disregard the idea that Article 102 of the Korean Copyright Act limits the liability of an ISP on the premise that the ISP already holds the aiding and abetting liability, and is not an article that defines the elements for the aiding and abetting liability. In other words, judgements tend to neglect the exemption clause when they admit the assistance liability. On the other hand, they deny the aiding and abetting liability from the beginning if the liability could be limited by the clause.¹⁶⁾ It could be said that the 2012Do13748 judgement falls in the latter group.

4.2 The controversial 2012Do13748 verdict which denied the possibility of the aiding and abetting liability of a link creator.

The 2012Do13748 decision went further from the precedents which ruled that a link is not a direct infringement under Korean copyright law and declared that linking activities do not constitute the aiding and abetting of copyright infringement. In this case, the defendant was the operator of the site where the links were posted, not the link creator, so he could be accused of aiding the aid of copyright infringement if the links in the sites were recognized as providing assistance. However, the linking activities to the site were not considered as aiding the infringement, and therefore, the site operator could not be held liable for indirect infringement liability even if he were aware of those links and had chosen not to delete them.

This judgement sparked a number of disputes, as the ruling that any linking activity may not be regarded as aiding and abetting of copyright

15) Jun-Seok Park, *The Analysis on Legislation and Cases in Korea about Copyright Infringement Liability of Online Service Providers*, LAW & TECHNOLOGY no. 35, 2011 at 110,128. For the definition of aiding and abetting liability, *see* Minbeop [Civil Act], art. 760 (South Korea).

16) Jun-Seok Park, *supra* note 17 at 122.

infringement might unduly encourage copyright infringement on the Internet via links. From the perspective of regulation, liability based on aiding and abetting was the most frequent charge of crime for ISPs. To elaborate, when an ISP participated in a third-party copyright infringement activity in a way that could be assessed as assistance in Article 760 of the civil code, a joint unlawful act would be acknowledged. When the ISP acted intentionally, it would also be considered criminally liable.¹⁷⁾ However, fundamentally denying the aiding and abetting liability for diverse linking activities made it impossible to regulate even the malicious abuse of links to copyright-infringing sites. Moreover, this decision contains a few logical weaknesses, which will be stated one by one in the following paragraphs.

4.2.1 Conflict with Article 102 of the Korean Copyright Act

First, the verdict is not compatible with the interpretation of the Article 102 of the Korean Copyright Act, which provides limitations of liability for ISPs. This provision is clearly based on the premise that the service provider could be held liable for its linking services under the aiding and abetting theory. In particular, the first clause of the Article states that ‘informing a user of an Internet address of a work or connecting a user to a work on the Internet through an information retrieval tool’ is a subject of the liability limitation article. It is commonly acknowledged that the phrase above includes the action of creating links.¹⁸⁾ Also, there is no dispute over that the liability which is limited by the Article 120 is the aiding and abetting liability since the American liability limitation clause, which is the origin of the above-mentioned Korean article, limits secondary liabilities which corresponds to the aiding and abetting liability in Korea.¹⁹⁾ It is clear that this article intended to interpret the act of providing links as assistance to copyright infringement and limit the liability for that assistance under certain conditions. Therefore, the argument in case 2012Do13748 conflicts with the intention of the article²⁰⁾, and has resulted in the expansion of the

17) Hae-Wan Lee, *supra* note 8 at 107.

18) Hae-Wan Lee, JEOJAKGWONBUB (3rd ed. 2015) (in Korean) at 1073-1074.

19) Jun-Seok Park, *supra* note 2 at 99.

20) For reference, there could be doubts about applying copyright provisions to a criminal case. However, the Korean Supreme Court ruled that considering the purpose of the

liability limitation of Article 102 even to illegal links that deserve secondary liabilities.

4.2.2 *Overlooking the diverse nature of independent rights in the copyright*

Analyzing the 2012Do13748 judgement closely, one can see that the Supreme court did not fully recognize the diverse nature of independent rights in the copyright. In Korea, a copyright holder holds 7 economic rights and 3 moral rights, and each right is an independent right. Therefore, a copyright is a bundle of 10 separate rights, and each right included in the copyright has different characteristics according to its definition; however, the judgement overlooked the different characteristics of the rights in determining the aid for the infringement of different rights.²¹⁾

The rights claimed to be infringed in the case were the right of reproduction and the right of transmission. Reproduction in copyright law means to reproduce or to fix a work in a tangible medium. Therefore, an infringement of the right of reproduction ends when the fixation or the reproduction is completed, and it is impossible for a link to aid after the action of reproduction. On the other hand, transmission in copyright law means an action of providing a work for the public's access; therefore, an infringement upon the right of transmission continues if the work is accessible to the public with the help of that action. In other words, the infringement of the right of transmission has characteristic of *Dauerdelikt*, thus a link creator can assist in infringement even after the action of uploading is complete, if the uploaded content is still available on the internet.²²⁾

However, the judgement seems to overlook this difference in the duration of the infringement. When the judges noted that linking to foreign sites which infringe economic rights (such as the right of reproduction or transmission) cannot aid or abet the infringement of the sites, they seem to be considering only the infringement which has already taken place by the

legislation and the fact that the phrasing of the article does not include any restrictions, Article 102 of the Korean Copyright Act can be applied to criminal liabilities in verdict 2011Do1435.

21) For the definition of each economic right of an author, *see* Young-Sink Song, JEOJAKGWONBUB-GAESEOL (9th ed. 2012) at 237.

22) For the definition of *Dauerdelikt*, *see* Dong-Wook Shin, *supra* note 8 at 737.

foreign sites. In other words, the verdict only had infringement of reproduction in view and overlooked the idea that the infringement of the rights of transmission could last even after the sites uploaded the works. Particularly in the original judgement, the judges noted that the links did not aid the infringement but simply took advantage of the state where the copyright of the works was already infringed upon, and the Supreme Court supported this decision. In this regard, the judges may have decided that infringement of the reproduction right could not be aided since reproduction was already completed by the uploaders, and this might have led to the conclusion that the infringement of the transmission right should have the same result.²³⁾

4.3 2016Na2087313 judgement settling the controversy on the issue, but acquiring no confirmation from Supreme Court decision 2017Da222757

In case 2016Na2087313, the high court judges had to decide whether creating a link could aid in an infringement of public transmission rights. In this case, judges noted that transmission could continue if the uploaded work exists on the Internet, and that the links enhanced accessibility of the public to the infringed works on the internet and thereby satisfied the condition of aiding and abetting the copyright infringement. This judgement was consistent with Article 102 of the Korean Copyright Act, and took the continuous characteristic of transmission into account. Most importantly, this verdict has recovered a legal control measures for the prevailing copyright infringements on the Internet via links.

However, in the third instance, only the plaintiff's side appealed, and the final judgement was given only on the issue of direct infringement. Consequently, Supreme Court decision 2017Da222757 did not explicitly break the precedents and set a new precedent on the indirect liability of link creators, while the liability for the defendant was finalized as the indirect liability as decided by the high court. This absence of an en banc decision to change precedents could be justified by the fact that the links used in this case were embedded links and not direct links as were used in precedents;

23) Jun-Seok Park, *supra* note 2 at 127-128.

however, the difference in types of links may lead to different conclusions when it comes to direct infringement liability. In indirect liability, however, there is not a particular difference between the two types since either can be recognized as providing assistance to the illegal transmission of the work. Therefore, one could say that the Supreme Court did not display a definite stance on the indirect liability of link creators in the 2017Da222757 judgement. While not explicitly admitting the indirect liability of the link creator, the Supreme Court confirmed the standard for determining damages used by the high court, which was based on the premise that the defendants held the liability for contributory infringement. Some opinions state that the Supreme Court did acknowledge the indirect liability of link creators through this judgement.²⁴⁾ However, since an en banc decision is needed to change the precedents in Korea, it is hard to prove that the Supreme Court explicitly changed its stance to acknowledge indirect liability of link creators with this judgement.

5. Conclusion- Waiting for the next en banc decision on the issue

The two judgements outlined above dealt with the legal issues around link providers; however, the two judgements presented different interpretations and different conclusions. The direct infringement of link creators, whether with direct links or embedded links, has been consistently denied in all judgements with the exception of the first trial of case 2016Na2087313. The first trial recognized the actions of embedded link creators as a direct infringement of the public transmission right; however, the majority opinion and the Supreme Court denied this direct liability. On the other hand, indirect liability of link creators was conceded in the 2016Na2087313 case, and the High Court even suggested breaking the precedents including case 2012Do13748 which denied the indirect liability of link creators. However, since the defendant in case 2016Na2087313 did not appeal to the Supreme Court, the change in precedents concerning

24) Sang-Hyuk Lim, *The meaning of the Supreme Court decision on embedded links*, INSIDE CABLE, Oct. 26, 2017, <http://www.incable.co.kr/news/articleView.html?idxno=50525>.

indirect liability was not deliberated in the final court decision on 2017Da222757, leaving the Supreme Court's stance rather vague.

With the absence of an en banc decision on the issue, the controversy on the culpability of link makers persists. To settle the controversy, it would be desirable for the position of the Supreme Court in 2012Do13747 to be unambiguously changed by an en banc decision, since admitting the secondary liability is strongly needed to regulate copyright infringement in the online space; and limitation of the liability can be achieved through Article 102 in Korean copyright law. Also, Korean Courts' tendency not to distinguish between different types of links and to broadly judge that link creators are not the principal offenders in copyright infringement may not be appropriate. Even though the majority opinion states that even placing an embedded link is not a functional dominant act in copyright infringement, use of a new type of link that warrants the charge of principal offender might appear as link technology continues to evolve. To be prepared for that kind of case, the judgements should acknowledge that various links may need different legal determinations since they involve different levels of participation by the link creator.

Likewise, the issue of the link creators' liability in copyright infringement requires an en banc decision to bring diverse arguments concerning various types of links to a conclusion. Hopefully, the new en banc decision on copyright issues would not only establish a legal standard of liability for link creators, but also recognize the importance of copyright laws in Korea.

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