

## Intellectual Property - Korea

### Online music service providers found not liable for facilitating use of links

February 08 2010

The Supreme Court recently issued a decision affirming the lower court's findings that providing a 'deep link' or 'direct link' is not considered 'reproduction' or 'transmission' as defined in the Copyright Act, and that therefore mere facilitation of internet links does not constitute copyright infringement (Case 2008Da77405, November 26 2009).

The plaintiff was the songwriter and copyright holder of the songs in question. The defendants were several online music service providers, which provided users with services for downloading and streaming songs, as well as ringtone and ringback tone services, via mobile phone networks. Following resignation of his membership with a collecting society entrusted with copyrights of musical works, the plaintiff brought a lawsuit against the defendants seeking monetary damages for copyright infringement. Among other things, the plaintiff claimed that the defendants had infringed his copyright in the songs in question by providing 'tags' to users which enabled them to post links to the defendants' websites where the songs could be downloaded or played.

The lower court defined a 'link' as an indication on a personal blog of an individual (A), a certain website of an operator (B) of a uniform resource locator (URL) or a hypertext of a website operated and managed by another (C), which enables a visitor to A's blog or B's website to connect to or download music files from C's website. The court held that in such a situation, only the acts of A and B can be subject to determination as to whether they constitute copyright infringement (ie, of reproduction and transmission rights), while C, which operates the website subject to the link, should not be held liable for copyright infringement.

The Supreme Court affirmed the lower court's findings and held that the defendants' acts of providing users with URLs or tags to enable them to post links to the defendants' websites were insufficient to constitute infringement of the plaintiff's reproduction or transmission rights, as they were providing only a means or preparation for the users' infringing activities.

The issue of online music service provider liability has been heavily discussed among academic and legal commentators, as well as in numerous court precedents in Korea. This case sets forth the Supreme Court's view on the issue that a music service provider's act of making its website available to users to post links which simply provide the locations of copyrighted works should not constitute copyright infringement.

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