



Legal Issues in Korea Surrounding Information Disclosure and Distribution on the Internet

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1. INTRODUCTION

We sail around the sea of information on the internet everyday. While we arrive at the destination of our search most of the times, we sometimes find ourselves lost or faced with dangerous obstacles without any proper navigational guide to steer us in the right direction. Therefore, as a ship requires a navigational route to direct it toward its final destination in the real world, the cyberworld also requires navigational routes to steer the users in the right direction, that is, it must have a set of rules to regulate the activities of the netizens.

Korea's rapid growth in the e-commerce field has called for relevant laws to deal with the network economy. Such laws regulating e-commerce can be divided into three parts: contractual, property, and criminal or tort.

The contractual part focuses on the contracts entered into through the internet. Contracts made through the internet had been governed by traditional contract law since its principle was not seen as different from a contract in the old concept. However, recognizing that existing laws regarding traditional commerce do not adequately regulate e-commerce, a new legislation called the Basic Law Pertaining to Electronic Transactions was enacted in 1999 to cover the unique aspects of e-commerce.

The property part includes intellectual property rights over the objects of the electronic trade. The rights encompass patent, design patent, trademark, and copyright. In order to ensure the success of e-commerce, a balance should be sought between allowing legitimate uses of information in the electronic market and protecting the investments and creative efforts of the owners from competitors and other free riders. Under traditional intellectual property law, the concept of creativity and originality is the core requirement for protection. However, in the new trend of intellectual property law, the strict requirements for protection were widened to include efforts of the investor and creator, also known as "the sweat of the brow" theory. The sweat of the brow theory does not encompass the only changes in traditional intellectual property law. As seen in the recent Napster case, in which the U.S. courts deemed merely downloading music as copyright infringement, such concepts were also infused into related traditional laws in Korea.

The criminal or torts aspect deals with illegal activities carried out over the network society. The critical issues here are privacy, defamation, obscenity, fraud or intrusion of network like hacking and who bears responsibility for such criminal actions.

These three legal issues regulating e-commerce - contractual, property, and

criminal or tort – will be touched upon and reviewed in turn.

2. CONTRACT LAW GOVERNING THE INTERNET

Basically, from a legal perspective, a web site is considered an invitation to make a contract. When a customer fills up a shopping cart, checks out, complete the form and hits the click-to-purchase button, he is sending a contract. When the order is acknowledged, the contract will be considered confirmed and when the product is delivered, the contract will have concluded.

Contract law covering the e-commerce can be divided into three parts: documentation, delivery and performance including payments. Documentation means the process of the entrance of the contract which consists of an offer and an acceptance. Especially, in the e-commerce contract, verification is very important since the traditional signature is not feasible in the cyberworld. Even though a contract concluded over the internet does not represent an actual hard copy in the traditional sense, such contracts are deemed to hold legal validity. In a ruling that indirectly supports this notion, the Korean Supreme Court ruled that the contents of a computer floppy diskette can be considered a real document and used as evidence in the courts since the disk includes the testimonies of the relevant parties¹⁾. As such, it concluded that hearsay rule should apply to the computer diskette as to a hard copy document itself.

Delivery means how to send the object of the contract to the purchaser. Although delivery of material objects can be sent by traditional logistic methods, the digitized content can be sent via internet or other

electronic methods. According to the Korean Supreme Court, academic assistance delivered through internet tutoring service was declared as a taxable service²⁾. Although delivery was not made in the traditional sense (i.e., logistic delivery) in this case, the court nevertheless deemed such electronic deliveries as equivalent to a real delivery.

While major payment methods of the e-commerce is credit card as in a traditional contract, new payment methods like electronic money and other similar systems are now being developed. However, the currency system weighs the very controversial issues related to sovereignty and security. Therefore, such aspects must be taken into account in the new legislation.

3. PROPERTY LAW GOVERNING THE INTERNET

Under property law, new technologies can basically be protected by both the patent rights and copyright. Such information technologies can innumerate as follows: interface, software program, source code, information retrieval and search technology, financial automation system, etc. A recent burning issue is conflict between brand name and domain name. A typical structure of case is registering a well-known brand name as a domain name by someone who does not hold the rights to the brand name. However, Korean court opinions have shown a split as exemplified in the recent cases relating to the “Chanel” and “Viagra” domain names.

In the Chanel domain case³⁾, the court ruled as follows: registration of domain names follow the “first come, first served” principle as defined in the Detailed Principles of .kr

¹⁾ Korean Supreme Court, 1999.09.03 ; 99 DO 2317.

²⁾ Korean Supreme Court, 2000.11.28 ; 99 DU 6460.

³⁾ Seoul District Court, 1999.10.08 ; 99 GA-HAP 41812.

Domain Name Registration by the Korean Internet Information Center (KRNIC). Therefore, a point was made by the defendant that its registration should not be rescinded as long as it legally obtained its internet domain name, "chanel.co.kr", according to the above principle even though it had not obtained prior consent of Chanel, owner of the well-known trademark. However, it was ruled that as the "first come, first served" principle merely serves as a guide for the above organization, if the domain name registration violates legal directives such as the "Law for the Prevention of Unfair Competition", then it cannot be said that such registration is lawful and thus permitted.

In contrast to the above Chanel Domain Case in which the court ruled in favor of the owner of the trademark, registration of the domain name "Viagra" by the Korean defendant was not deemed a violation⁴⁾. The Korean defendant had used the domain name and homepage to sell fresh arrowroot juice and other health food products and had spent many years building up a high quality and well-known brand. Therefore, its rise from obscurity can be regarded as free-riding and offsetting each brands ability to attract customers, and, without regard to the confusion of the brand and business sovereignties, such conduct could possibly be regarded as an unfair competitive act. However, as the Law for the Prevention of Unfair Competition only deems actions that bring about confusion and fallacy as an unfair competitive act, it was judged that the above accusation cannot be accepted under the current legal system.

4. TORTS AND CRIMINAL LAWS GOVERNING THE INTERNET

It is commonly understood in the cyberworld that those whose functions include editing should bear responsibility for the contents of the website, i.e., the publisher. Under this understanding, common carriers like Hanaro Telecom bear no responsibility because their task is to transmit the contents; they do not have the right to touch upon the contents. The distributor (i.e., AOL or Yahoo!) likewise does not have the right to edit the contents of the internet and thus bear no responsibility for criminal contents that may appear on its pages. Both Korean and U.S. courts have shown the same conclusion in the distributor case. In *Zeran v. AOL*, AOL was exempt from the torts liability because of lack of publishing function. Likewise, the Korean court held a similar ruling in the "Cocktail Case"⁵⁾, in which an ISP (Internet Service Provider) was judged to have fulfilled its responsibilities when it deleted an illegally copied material after it was notified that the material in question constituted infringement of copyright.

Another issue concerns links to obscene sites as exemplified in the following case. The Suwon District Court⁶⁾ recently deemed mere linking to obscene sites to be legal as bookmarking of obscene materials on an internet web service -- which are presented in forms such as internet web file, picture file, and general document file - exist in a space provided by the ISP (Internet Service Provider), an act that links files containing obscene materials in the "Panty Newspaper" managed by the the creator of this paper cannot be regarded in the same light as actions that exhibit bookmarking of obscene contents. In contrast, framing in obscene sites

⁴⁾ Seoul District Court, East branch, 1999.11.18 ; 99 GA-HAP 8863.

⁵⁾ Seoul District Court, 1999.12.03 ; 98 GA-HAP 111554.

⁶⁾ Seoul District Court, 1999.12.10 ; GO-DAN 5874.

is understood to be illegal in the criminal sense.

Such introduction of new concepts should be noted. However, we anticipate that it will take time for the court to accept new definitions of information when applying them to real cases. The "Lineage Case"⁷⁾, in which characterization of properties in a game came to issue, illustrates the courts' understanding at the time. In this case, objects in the Lineage Game were not characterized as property and thus judged that the person manipulating a cyber character, who had robbed others of their cyber property, innocent in accordance with the current Criminal Law.

5. RELATED PROBLEMS: CONSUMER PROTECTION

It is recognized that existing laws regarding traditional commerce in Korea do not adequately regulate electronic commerce ("e-commerce"). Therefore, in order to secure stability and reliability, as well as sense of fair trade by establishing clear-cut lines of legal validity, the Basic Law Pertaining to Electronic Transactions ("Law") was enacted in 1999, modeling itself on laws pertaining to electronic commerce from the United Nations Commission on International Trade Law.

Although this Law aims to protect the consumer -- to provide the government with the necessary policies in order to protect the basic rights of consumers engaged in electronic transactions (article 29), to inform consumers of essential policies and resolved matters (article 30.1), to act on measures to mitigate consumer damage (article 31.1), to ensure cooperation from parties concerned with e-commerce and cybermall operators when request for information is demanded by consumer protection groups (article 30.2), and to establish and operate an organization to

compensate consumer for damages (article 32) -- the fact is that, it is, on the whole, very inadequate.

6. CONCLUSION

The breakneck speed at which technology has enveloped our lives raises the important issue of how to close the gap between law and the cyberworld. Impeachment of "Sori Bada", commonly known as the "Korean Napster", and civil complaint against Daum, a leading Korean portal site, accused of providing members of a club with free access to movies, illustrates such discrepancies. Although further conversation between the technology and legal sectors is clearly needed in order to bring the challenges of the real world and regulation together, the answer should not require writing off legal assumptions that have been developed over the centuries. Instead, we should work out ways to update traditional legal concepts to accommodate the real functions of modern technology.

the introduction and development of Such new context Sound Gap. Conversation needed between tech and law. Regulation and real world challenge response.

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⁷⁾ Seoul District Court, 2000.11.08 ; 2000 GO-DAN 1366.