

Judicial Symposium on Intellectual Property/TOKYO 2019

Second day (September 26th), Case of the Panel Discussion

(Criminal Cases—Copyright on the Internet—)

1. Summary of the Case

Both A and B live in your country (country “X”) and did the following acts at their respective homes.

- (1) The internet site “MM” serves as a site to or from which any person can upload or download files, being operated through a server situated in the country X. On January 1, 2019, A, using the site MM, uploaded a movie file of “Wonderful”, whose copyright is owned by R Corporation, a country X company, to the MM’s server, without approval of R Corporation. Also, A downloaded movie files, music files and image files of cartoons whose copyrights are all owned by the country X companies but which had been uploaded to the site without obtaining approval of those copyright holders, knowing that they had been uploaded without the requisite approval.
- (2) C, in April 2019, made copies of a total of 100 DVDs of “Lion Prince” and “Lover of the Opera”, etc., the performances of Season Theatre Company, without obtaining approval of Season Theatre Company and other copyright holders, and sold those copies to his friend, B, for a fee. During the period from the following May to October of the same year, B put up those 100 copies of DVD for sale on net shopping sites and net auction sites operated by the country X companies, knowing that those DVDs had been made by C without obtaining approval of the relevant copyright holders, and B offered those copies to possible buyers presenting them as “genuine products”, “unopened brand new products”, or “difficult to obtain”, etc., and eventually sold to and received payments from purchasers residing in the country X of all DVDs.

2. Questions

For the questions below, the moral rights of the authors are not considered.

(1) Whether to constitute a crime or crimes

In each case above, do the acts of A or B constitute a crime or crimes? If so, which acts of A or B are identified as criminal acts? If a crime or crimes is or are found, please explain the name of the crime(s) and applicable penal statute(s).

(2) Investigation procedures

(a) In each of the above cases, what can be thought of as a clue for initiation of the investigation? What kind of such clues are common in your country?

(b) In each of the above cases, what kind of things can be considered as evidence to be collected? And, in what manner or by what means can the evidence be collected?

(c) If B says on interrogation by the police, "I thought the DVDs that I sold were all genuine products," what sort of investigation should be done?

(3) Treatment of Complaint

(a) In your country, is a complaint required in order to proceed on investigation for a copyright infringement case?

(b) With respect to para. (a) above, even when a complaint is not necessary, does investigation proceed against the will of a copyright holder? Or in the absence of any knowledge or involvement of a copyright holder? If so, what kind of investigation follows?

(4) Issue of sites in foreign countries

In each of the above cases, if the companies operating the internet sites that A and B used are foreign corporations, and the servers of the sites are placed in foreign countries, what kind of investigation can be considered? If you know any cases in your country involving mutual legal assistance with another country under similar circumstances, please explain the number of such cases together with summary facts thereof.