



Korean Court Grants Preliminary Injunction Protecting Foreign Copyright on Global Platforms

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A Finland-based game development company ‘K’ (the “**Claimant**”) is the copyright holder of the game ‘A’, which it distributed through Steam, the world’s largest online game platform. The various characters appearing in the game (the “**Characters**”) feature original designs, and certain scenes in the game (the “**Scenes**”) gained significant popularity among users due to their well-crafted storylines, presentation, and composition.

However, a particular infringer (the “**Respondent**”) repeatedly uploaded illustrations that copied or modified the Characters and Scenes without authorization (the “**Infringing Works**”) to their personal social media accounts, including X (formerly Twitter). The Respondent also produced and sold merchandise featuring these works, both online and offline. In response, the Claimant asserted copyright infringement and requested a takedown at X, an online service provider (OSP) pursuant to the U.S. Digital Millennium Copyright Act (DMCA). Although the Infringing Works were temporarily removed from X, they were eventually restored after the Respondent filed a counter-notice under the DMCA procedure.¹

Subsequently, the Claimant therefore decided to pursue legal action in the Republic of Korea, where the Respondent is located, and appointed Shin & Kim LLC as its legal counsel. Based on information obtained through the DMCA process and through additional investigation, Shin & Kim successfully identified the Respondent’s personal information, including name, address, telephone number, and bank account details. Shin & Kim further conducted a comprehensive analysis of the Respondent’s multiple social media accounts and documented extensive instances of the Infringing Works, and filed for a preliminary injunction to prohibit further copyright infringement.

In the injunction proceedings, Shin & Kim asserted the following:

1. The Characters and Scenes are original expressions and thus constitute copyrightable works;
2. Foreign copyrightable works are eligible for protection under the copyright law of Korea pursuant to the Berne Convention, and therefore, the Finnish Claimant is entitled to take legal action for infringement occurring in Korea;
3. The Infringing Works are substantially similar to the Characters and Scenes, and based on the Respondent’s own postings, which included the original works or referred to the illustrations as “fan art”, it can be established that the Infringing Works were created based on the Characters and Scenes;
4. The Respondent not only used the Claimant’s works without authorization to create and sell merchandise for profit, but also continued the infringing acts despite the Claimant’s prior requests to cease such conduct.

The Respondent argued that they believed non-commercial fan art was permitted and that the injunction should be dismissed since the Infringing Works had been removed from their social media accounts.

However, the court rejected all of the Respondent's arguments and found that:

1. The Respondent's acts of uploading the Infringing Works to social media platforms and selling merchandise utilizing the Infringing Works infringed the Claimant's rights of reproduction, creation of derivative works, public transmission, exhibition, and distribution (**rights to be preserved**);
2. There was a risk of continued infringement by the Respondent (**necessity of preservation**).

Accordingly, the court granted the preliminary injunction, ordering the Respondent to cease all infringing acts, including reproduction and creation of derivative works. It also imposed indirect enforcement penalties of KRW 500,000 per violation to be paid to the Claimant in case of non-compliance.

Specifically, the court noted that:

- The Respondent had commercial intent, as they sold products utilizing the Infringing Works;
- The Infringing Works were used to promote the sale of such products, directly and indirectly, through exhibition and transmission;
- Even after being urged by the Claimant to stop posting Infringing Works and selling infringing products, the Respondent posted on social media that they would "continue to sell the products offline."

The court further held that the Respondent's actions could not be justified under the "fair use" theory, and that the necessity for injunctive relief had been clearly established, thus rejecting all of the Respondent's arguments.

This preliminary injunction is a notable example of a foreign copyright holder successfully obtaining judicial relief in Korea for copyright infringement. Moreover, this decision can serve as a basis not only to prohibit infringement within Korea but also to address and prevent copyright infringement on global platforms. In light of the court's decision recognizing the posting of the Infringing Works on such platforms as copyright infringement, if a global platform knowingly fails to delete infringing content or allows further infringing works to circulate, it may also be held secondarily liable for contributory infringement.

The Claimant is expected to present this injunction to X and other global platforms, which may lead to effective enforcement measures, including removal of infringing posts and suspension of infringing accounts.

Shin & Kim LLC's Content & Entertainment Team possesses outstanding expertise and problem-solving capabilities in the fields of copyright, content, media, gaming, entertainment, and sports. Based on their deep experience and top-tier capabilities, the team provides optimal legal solutions for a wide range of industry issues.

¹ Section 512(g) of the DMCA provides that if the uploader submits a counter-notice, the OSP must restore the removed content unless the copyright holder files a lawsuit seeking an injunction within 10 to 14 days and notifies the OSP accordingly. In this case, the Claimant, a corporation based in Finland, was realistically unable to initiate legal proceedings within such a short time frame against the Respondent, an individual residing in South Korea. As a result, the infringing content was reinstated.

[Korean version] 해외 저작권자의 국내 가처분 결정을 통해 글로벌 플랫폼을 상대로 한 실효적 조치 기대

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