

Careful with that Inline Linked Tweet

The IP High Court of Japan has returned a decision that the use by a website (hereinafter, referred to as the "current" website) of a copyrighted still photograph or a moving image (such as a gif or a jpg file) which was originally posted on a different website (hereinafter, referred to as the "first" website) does not infringe the original website's copyright of the image, but could involve "infringement of moral right of author (right to determine the indication of an author's name, right to maintain integrity)" (2016(Ne)10101 of April 25, 2018).

This "inline linking" creates a link from the current website to the first website hosting the image, so that the image also appears on the current website and completely bypasses the rest of the content (including advertisements) on other pages of the first website. This contrasts with "deep linking" in which clicking on (often blue colored) [underlined text](#) on the current website directly leads to a specific page of another website and bypasses the rest of the content (including advertisements) on the other pages of the first website. Both inline linking and deep linking have been subject to copyright infringement litigation, particularly in the United States, whereas "direct linking" to the original website (which potentially requires a user to sift through the entire website to find the sought after image, etc.) has not been subject to copyright infringement litigation.

This particular case concerned a photograph which was retweeted, and as a result of the retweeting, the photograph was somewhat altered in terms of the size or the positioning without the permission of the photographer. The IP High Court ruled that this does not constitute copyright infringement, but does infringe upon the original photographer's "right to maintain integrity" of the

photograph. Additionally, as the retweeted image did not contain the original photographer's name (as a result of the above mentioned alterations), the original photographer's right of attribution was also infringed, albeit not for profit in this case.

Update: On June 5, 2020, the Copyright Act was amended (and will come into effect on January 1, 2021) so that any website which contains links to unauthorized content, an act of uploading a link which would display unauthorized content, and many acts of downloading of unauthorized content could be subject to criminal prosecution.