

4 Publishers Filed Lawsuit against Cloudflare, Seeking Injunction against Public Transmission and Reproduction of Piracy Content and Damages

On February 1, 2022, Shueisha Inc., together with KADOKAWA, KODANSHA, and SHOGAKUKAN, filed a lawsuit against Cloudflare, Inc. (headquarter: San Francisco, California, U.S.A.) in the Tokyo District Court, seeking an injunction against the public transmission and reproduction of piracy contents and compensation for damages. The amount of damages claimed is based on one work by each plaintiff, and \$ 4 million in total for 4 works as a partial claim.

The plaintiffs 4 publishers, together with their legal advisors*, have been repeatedly called for Cloudflare concerning 9 specific piracy sites which clearly infringe copyrights and the infringing content illegally stored on those sites:

- stop public transmissions through Cloudflare's server;
- stop temporary caching of Cloudflare's servers in Japan; and
- cancel contracts with operators of piracy sites that are clearly illegal.

Although Cloudflare eventually responded that they had taken the necessary measures for the sites in question, the company refused to provide any specific explanation as to which sites they had taken what measures. Above all, it is difficult to believe that the company has taken effective measures when the sites in question continue to operate at the same communication speed as before. Furthermore, technical verification by experts shows that there is a high probability that the piracy sites are still using the company's services and caching are still utilized.

Based on the above background and recognition of the current situation, the 4 publishers have filed a lawsuit against Cloudflare, seeking an injunction against the public transmission and reproduction of piracy contents and compensation for damages.

Cloudflare is one of the largest content delivery network (CDN) providers in the world. Cloudflare provides its service to 9 of the top 10 malicious piracy sites in terms of traffic as of December 2021 (provided its services to more than half of the top 10 sites for many months).

CDN providers set up high-capacity servers in various parts of the world and temporarily duplicate (cache) the contents of the contracted sites on these servers to distribute the access points from users, while at the same time ensuring the communication speed of the sites by delivering data from the server closest to the users. The service itself is recognized as one of the public services essential for maintaining a comfortable Internet environment. The services provided by CDN providers in various countries are recognized as one of the public services that are indispensable for maintaining a comfortable Internet environment. Major CDN providers take various measures to ensure that the site operator's identity is properly verified at the time of contract signing and that the site does not distribute illegal or unfair content.

By contrast, Cloudflare's CDN does not limit a period of free service and can be contracted with insufficient identification. Therefore, by using Cloudflare's service, site operators can maximize the benefits of CDN services while keeping the origin server provider and the operator's IP address secret. Because of these characteristics, many piracy site operators who do not want to be identified are turning to Cloudflare's CDN service.

The origin servers and other communication infrastructure used by the piracy sites do not have the capacity to handle more than 100 million accesses per month, even from the perspective of operating costs. Therefore, if Cloudflare's CDN service is discontinued, it will be impossible or extremely difficult for many malicious piracy sites to operate. In other words, Cloudflare's CDN service has become indispensable for the operation of many malicious piracy sites.

Through this lawsuit, the 4 plaintiffs and their legal advisors would like to ask society whether the uncooperative attitude that Cloudflare has shown over the past few years in response to requests for cooperation in fighting piracy is appropriate for a company that is responsible for the public service of telecommunications infrastructure.

Operating a pirate site is a criminal act. In order to fulfill our role as a publisher, entrusted rights on contents that authors have poured their heart and soul into creating and to distribute them in an appropriate manner, Shueisha will continue to take strict action against infringements, both criminal and civil. We would like to ask for the understanding and cooperation of our readers and all related parties.

Advisory Counsels (*) Kensaku Fukui, Tatsuo Ninoseki and Hajime Idei = Kotto-dori Law Office; Tetsuo Maeda = Somei, Maeda & Nakagawa Law Office; Makoto Ito, Yuki Hirai and Norikazu Maruta = Rights Law & Patent Office; and Hiroyuki Nakajima = Tokyo Flex Law Office

February 1, 2022

Shueisha Inc.