



Civil Liability of E-Commerce Platforms in Korea

-Focusing on the P2C Relations-

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Introduction

- Purpose of the presentation
 - Platform liability under Korean Law
 - Recent regulatory trends in Korea
 - Regulatory direction for platform liability

Table of Contents

I . The structure of platform liability under the E-Commerce Act

II . Basic liability of e-commerce platforms

III . Enhanced liability of e-commerce platforms

IV . Recent trends

V . Conclusion

I . The structure of platform liability under the E-Commerce Act

1. E-Commerce Act

- 「Act on Consumer Protection in Electronic Commerce, etc.」
- enacted and enforced in 2002 / revised in 2012, 2016
- Scope → Mail order sales + E-commerce

1. The structure of platform liability under the E-Commerce Act

2. Regulatory Framework of E-Commerce Act

- **Mail order sales** (Article 2, Subparagraph2)
 - Sales of goods or services by mail, telecommunications, etc.
 - **Mail order seller / Mail order intermediary**
- **E-Commerce** (Article 2, Subparagraph1)
 - Conducting commercial transactions by electronic means
 - Mail order sales by telecommunications + non-sales activities (e.g. e-payment)
 - Mail order intermediary by electronic means → **E-commerce intermediary**

1 . The structure of platform liability under the E-Commerce Act

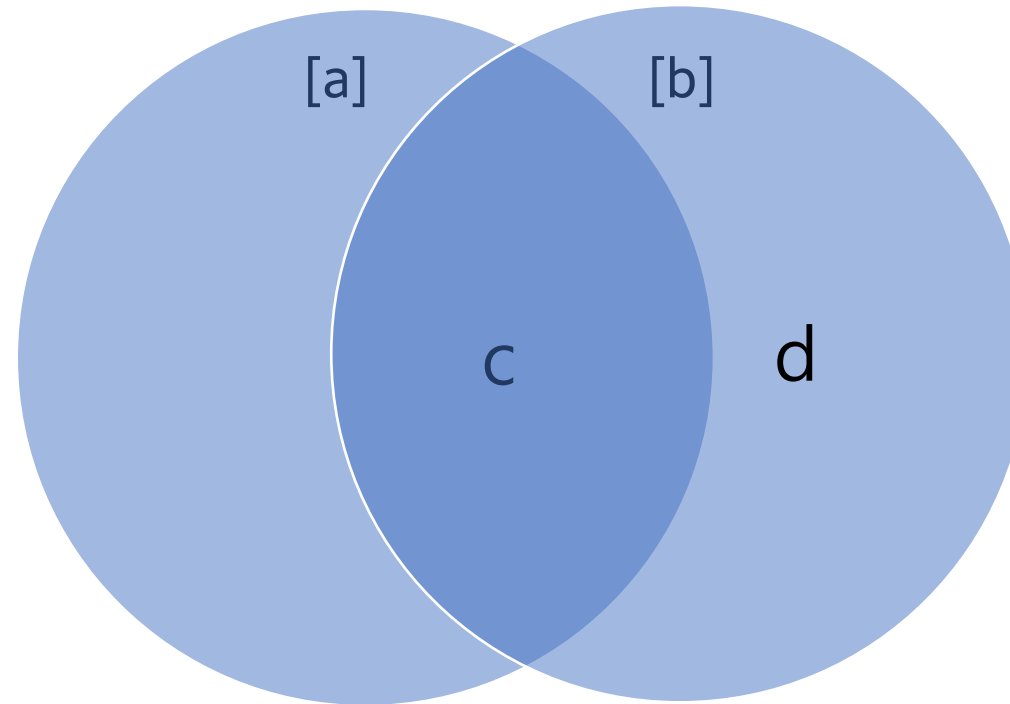
2. Regulatory Framework of E-Commerce Act

a: Mail order sales

b: E-commerce

c: E-commerce sales

d: E-commerce intermediation



I . The structure of platform liability under the E-Commerce Act

3. Structure of the liability of e-commerce intermediary

	Article 20	Article 20-2	Article 20-3
Paragraph1	①Obligation to notify	Joint liability for consumer's damages	
Paragraph2	②Obligation to provide identity information of sellers	Joint liability for consumer's damages	
Paragraph3	③Obligation to take measures to resolve disputes, etc. (administrative sanctions)	④Liability of an e-commerce intermediary who is also a seller	
			⑤Liability of a transaction-involved intermediary (=supplementary liability)

(note) ①②③ : basic liability / ④⑤ : enhanced liability

II . Basic liability of e-commerce platforms

① Obligation to notify who is a party to a transaction and joint liability

- An e-commerce intermediary shall notify the consumer in advance, in a manner that is **easily understandable to the consumer**, that the intermediary is not a party to the contract of sale (Art. 20, para. 1).
- If the intermediary violates the obligation, it shall be **jointly liable with the seller for the consumer's property damages** caused by the seller's intention or negligence (Art. 20-2, para. 1).

II . Basic liability of e-commerce platforms

② Obligation to provide ID information of sellers and joint liability

- **B2C Transaction:** An intermediary shall confirm the seller's identification information (name, address, telephone number, e-mail address, business registration number and Tax ID) and provide them to the consumer before the consumer's order is made (Art. 20, para. 2)
- **C2C Transaction:** An intermediary shall confirm the seller's identification information (name, address, phone number, etc.) and provide both parties to the transaction with the method of accessing the other party's information (Art. 20, para. 2)
- If the seller's information is **not provided** or if the information provided is incorrect, the intermediary shall be **jointly liable with the seller for the consumer's property damages**, unless it can prove that due attention has been taken to prevent damages (Art. 20-2, para. 2).

II . Basic liability of e-commerce platforms

③ Obligation to take measures for dispute resolution, etc.

- In order to resolve complaints or disputes arising from the transaction, an e-commerce intermediary shall promptly **take necessary measures** such as identifying the cause and damages (Art. 20, para. 3)
- The specific measures are as follows (Art. 25-2 of the Enforcement Regulations)
 - (i) to establish **dedicated personnel and physical facilities** for complaint handling and dispute resolution,
 - (ii) to establish **standards and procedures for dispute resolution**, and
 - (iii) to inform the consumer of the progress within 3 business days and of **the result or resolution** within 10 business days.

III . Enhanced liability of e-commerce platforms

1. Liability of an e-commerce intermediary who is also a seller

- An e-commerce intermediary who is also a seller may be held liable as a seller (Art. 20-2, para. 3).
- **The meaning of “an e-commerce intermediary who is also a seller”**
 - i) An intermediary is naturally a seller in the system of the Act (selling a service)
 - ii) An intermediary involved in the transaction (“see next slide”)
 - iii) An intermediary acting as a seller on its own platform (dual status)
- **(Q) Basis for attribution of liability:** Is it possible to be liable as a seller even though you acted as an intermediary?

III . Enhanced liability of e-commerce platforms

2. Supplementary liability of transaction-involved intermediary

- If a seller fails to perform his obligations under the Act regarding the following part of the transaction, the **intermediary involved in the transaction** with its own transaction system shall perform the seller's obligations **on behalf of the seller** (Art. 20-3).
 - (1) acceptance of the offer by the consumer, or
 - (2) receipt of payment for the goods or services
- (Q) Can the **involvement in the transaction** be the basis for attributing (supplementary) liability? / Is the regulation beneficial?
 - (1) or (2) above involvement is one of the functions in most e-commerce platforms. / Sellers and consumers use the system for transactions through “**platform use contract**”.
 - On the other hand, **involvement in the price of goods or services** sold by sellers. or **purchases of goods or services from the seller** to sell directly to consumers → the legal status of the intermediary would be questioned.

IV. Recent regulatory trends in Korea

1. Legislative attempts to further strengthen the legal liability of platform operators

- The KFTC's legislative proposal for comprehensive revision of the E-Commerce Act (March 5, 2021) + Several bills by lawmakers referring to the proposal
- **“Transaction-involvement intermediary** will be jointly liable with sellers for consumer's damages, unless it can prove that it did not act intentionally or negligently.” → severely criticized
- Since the change of government on May 10, 2022, the basic direction of the government's legislative policy on online platforms has also changed **from strict regulation to self-regulation**

IV. Recent regulatory trends in Korea

2. Self-regulation

- **Private Platform Self-Regulation Organization** (August 19, 2022) → **Plans for self-regulation of online platforms** (May 11, 2023)
- **The P2B Subcommittee** agreed to take measures to improve the practice of contracts, to improve the dispute resolution process, and to reduce the burden on sellers by each platform operator
- **The P2C Subcommittee** agreed to organize a "Consumer Collective Damages Response Committee" composed of platform operators and consumer organizations to cooperate and respond quickly to consumer collective damages.
- Future challenges → **How to ensure the implementation of the agreements in the future**

V. Conclusion

- **Regulatory direction for the liability of online platform operator**
 - **Enhanced liabilities in Current Law + Attempts to further strengthen the liability = “Joint Liability with the sellers”**
 - **Legal status of online platform operator**
 - **“Designer & Operator of a transaction system”**
 - **“Maintainer & Manager (Governor) of the transaction order”**
 - **Obligations and liabilities of online platform operator based on its legal status**
 - ① **Obligation to ensure stable operation of the system**
 - ② **Obligation to ensure the legitimacy of the seller**
 - ③ **Obligation to act as a moderator between the parties to a transaction**

Thank you!!

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