



# In a First-of-Its Kind Ruling, Korean Court Upholds SK Broadband’s Right to Receive Network Usage Fee from Netflix

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In April 2020, Netflix, the world's largest OTT service provider, filed a lawsuit at the Seoul Central District Court, seeking the court’s decision that it has no obligation to negotiate or to pay network usage fees to SK Broadband (“SKB”), Korea’s second largest internet service provider (“ISP”), for its access and use of SKB’s network.

On June 25, 2021, a team of Shin & Kim attorneys secured a complete victory for SKB at the trial court level.

## 1. Background

Netflix transmits its data through SKB’s network to reach Korean subscribers. Since launching its business in Korea in 2016, Netflix has seen a steady rise in the number of Korean subscribers. As a result, Korean ISPs, including SKB, have experienced a significant rise in costs for expanding and operating their network to meet the increased demand for delivering Netflix contents through their network.

Given such a rise in costs, SKB had repeatedly requested Netflix to pay network usage fees, on the ground that SKB had to expand its network to meet Netflix’s demands. However, Netflix refused to accede to such requests.

In November 2019, SKB filed a “dispute resolution for negotiation with Netflix for network usage fee” to the Korea Communications Commission (the “KCC”). KCC’s dispute resolution procedure is a process based on Article 45 of the *Telecommunications Business Act* (the “TBA”), which allows the KCC to mediate any dispute arising between telecommunication service providers in an objective manner.

However, in April of 2020, six months into the KCC’s dispute resolution procedure, Netflix brought a legal proceeding against SKB, thereby abruptly suspending the KCC’s dispute resolution process.

## 2. Court's Ruling

In its decision, the Seoul Central District Court dismissed Netflix's first claim – seeking confirmation of *no obligation to negotiate* network usage fees – without deciding on the merits. The Court held that Netflix has no standing to obtain the requested confirmation.

Additionally, concerning Netflix's separate claim seeking confirmation that it has *no obligation to pay* network usage fee, the court rejected the claim by ruling that “Netflix is liable to pay for the services provided [by SKB] for a fee, including SKB's connection services.”

## 3. Parties' Arguments

In its petition, Netflix argued that “free transmission across the internet” is the basic rule in the internet industry. Further, Netflix asserted that: (i) the obligation to transmit data belongs solely to SKB; (ii) the “users” of SKB's network are the Korean subscribers (end users) of SKB and not Netflix; and (iii) SKB is violating the principle of net neutrality by requesting Netflix to pay network usage fees.

In response, Shin & Kim successfully argued on behalf of SKB that there is no established “free transmission over the internet rule” in the internet industry, as claimed by Netflix. Moreover, we successfully convinced the Court that to the contrary, ISPs, such as SKB, provide their services for a fee as a rule. As part of our supporting evidence, Shin & Kim's team submitted materials that show current general business practice that exists between foreign and Korean content providers (“CPs”) and ISPs, including payment of network usage fees.

Further, Shin & Kim advanced the argument that the network usage involves a two-sided market structure, where CPs (such as Netflix) that access the network to transmit their data to their subscribers should be regarded as users, separate and distinct from the subscribers of the network (end users). Therefore, as users of the network, CPs should pay appropriate consideration for their use, and ISPs' request for reasonable network usage fees is irrelevant to net neutrality.

The Seoul Central District Court accepted Shin & Kim's arguments, and found that it is reasonable for Netflix to bear the obligation to pay for network access and maintenance services provided by SKB. In so doing, the Court dismissed Netflix's claim that it had no obligation to pay for its network usage.

## 4. Implications / Significance

This decision marks the first time that a court in any country has ruled on the question of the obligation to pay network usage fees in the internet network usage market.

As the first court ruling on the issue, the decision is highly significant in that it confirmed: (i) ISPs' network services are not free; and (ii) CPs that gain massive profits by streaming contents through ISPs' networks do bear the obligation to pay network usage fees regardless of – and separate from – the subscribers (end users).

## About Shin & Kim

### *Cross-Disciplinary Collaboration between Market-leading Practices*

Shin & Kim's top-ranked Corporate Litigation Practice Group collaborated closely with the ICT Practice Group, whose market-leading expertise and deep experience in the ICT sector enabled the Shin & Kim team to accurately assess the relevant issues and to advance solid and persuasive arguments, based on meaningful industry data.

[\[Korean version\]](#) 콘텐츠 사업자의 인터넷 망 이용대가 지급의무를 인정한 최초의 사례

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