

Abstract

A Study on the meaning and application of the term of commercial phonogram under the Korean Copyright Act

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On May 10, 2012, the Supreme Court of Korea held that the provision of article 29 paragraph 2 of the Korea Copyright Act could not be applied to the public performance of musical works through playing back CDs in the Starbucks stores. Playnetworks made and provided the CDs to Starbucks according to the music services agreement between them. The Court reasoned that the CDs could not be understood as the phonogram published for commercial purposes under the Copyright Act. This study examines the copyright and neighbouring rights related to the process of providing background music services and argues that the term 'phonogram' means not a media such as CD but fixation contained in the media, and in this regard we have to decide whether a phonogram is published for commercial purposes or not. This study proposes three possible solution to correct misunderstanding of phonograms, and it proposes amendments to the Copyright Act to fix this confusion and strike a balance between the interests of the stake holders.

Keywords: Phonogram published for commercial purposes, Background music, Phonogram, Fixation of sound, Korea Music Copyright Association, Playnetwork, Inc., Starbucks Corporation, Secondary use