

Abstract

Online Music Services and the Freedom of Contract

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Korean Copyright Act provides the Minister of Culture, Sports and Tourism with the authority to approve the tariffs of royalty for the exploitation of copyrighted works trusted to the collecting societies by the right holders. Some of the collecting societies have insisted to maintain a clause of comprehensive trust in their trust contracts that require their members to trust all the rights they acquire, despite of request of the government to repeal it. A couple of revision bills have been introduced. One is for depriving the Minister's authority to approve the tariffs, another is for ensuring the member right holder's choice to exclude some rights from the scope of collective management.

This paper explores the expected impact of these two revisions, if it would be implemented. First, depriving the Minister's authority to approve the tariffs would be followed by the increase of the royalty level and the denial of a flat rate system for the subscription based on streaming service. It would place back some authors and performers who fall in the tail in the Long Tail Principle to the disadvantaged position from which they escape for the sake of the online music market. It also has a risk to trigger the market to shrink or undermine the potential of the market development.

Second, ensuring the right holder's choice would make the solidarity of the authors or performers against phonogram producers weak, and also it would be more difficult to improve the position of the authors

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and performers that have been steadily improved through the entire history of the copyright system.

Every effort to revise the collective management system should be reviewed thoroughly in terms of how they change the dynamics of power structures among the stake holders.

Keywords

Royalty Regulation, Selective Management System, Collecting Society, Pareto's Principle, Long Tail Principle, Flat Rate, Measured Rate, Mental Transaction Cost