

Abstract

Copyright Infringement Judgment and Fair Use of Sampling in Pop-Music*

Lee, Jung hoon**

Park, Seong soo***

In music, sampling is the act of taking a portion of one sound recording and reusing it as an instrument or a sound recording in a different song or piece. Unauthorized sampling is likely to infringe copyrights and neighboring rights in the sense that they use ‘extract’ a portion of a fixed Sound. However, domestic research is insufficient and accumulation of related cases is difficult. The reason is that most of the disputes related to unauthorized sampling are concluded with the consent of the recording agency.

As a result, there are no discussions about the legal nature of sampling, and there are no clear rules and regulations applicable to the sampling. In this paper, we review the intrinsic characteristics of sampling and review the violation criteria in unsteady sampling step by step. Furthermore, several Alternatives are suggested to enable the fair use of sampling to be activated.

The copyright infringement judgment of unauthorized sampling is reviewed step by step. First, a determination must be made as to whether the sampled portion of the original song can be protected under copyright law. Even if there is substantial similarity in the part that can not be protected, there is no copyright infringement. After that, judge the existence of substantial similarity and If there is a substantive similarity, a judgment is made as to whether it is a derivative work or reproduction. In the case of sampling with substantial similarity, the possibility of infringing neighboring rights is

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** Lead Author, Senior, Dept. of Judicial Affairs Administration, Dankook University.

*** Co-Author, Senior, Dept. of Judicial Affairs Administration, Dankook University.

increased. Sometimes there may be infringement of neighboring rights even without copyright infringement. We will review some cases by organizing a series of processes for judging copyright infringement of unauthorized sampling as above.

What is more important than copyright infringement judgment is prevention of infringement. Therefore, this paper examines the system for dividing licenses for sampling. And In the reality that it is difficult to formulate the cost for the sampling, consider a method of paying the license fee in the form of a “reward” rather than a one-time sampling royalty fee. Based on this system, we propose a platform of sampling sound source circulation and study the possibility of the Exploitation of Works Under Legal License.

Keywords

Sampling, Copyright Infringement, Violation of Neighboring Rights, Derivative Works, Substantial Similarity, Abstraction Test, Music Licensing, Exploitation of Works Under Legal License

참고문헌

국내단행본

- 류종현, 『방송과 저작권: 뉴스 영화 드라마 생방송 광고』, 커뮤니케이션스, 2013.
 손승우, 『지식재산권법의 이해』, 동방문화사, 2016.
 안정모, 『알기 쉬운 약식론』, 다라, 2002.
 오승중, 『저작권법』, 박영사, 2016.
 윤선희, 『지적재산권법』, 세창출판사, 2016.
 이해완, 『저작권법』, 박영사, 2015.
 임원선, 『실무자를 위한 저작권법』, 한국저작권위원회, 2014.

국내논문

- 김병일, “저작권법상 실질적유사성에관한 고찰”, 『정보법학』, 제17권 제3호, 2013.