

Abstract**The Modified Use of Music Works and Copyright Infringement
-on Pro-baseball cheering song case-**

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Article 13 paragraph 2 subparagraph 5 of the current Copyright Act contains a very abstract and comprehensive expression, so its scope and limitations are ambiguous to apply in detail. Therefore, it is inevitable to over-appreciate the discretion of the court, which may excessively impede the predictability of the parties. In most cases, it would be possible to argue that the users' behavior of modification, which has been approved for use, is inevitable for that purpose. According to the precedent, there is no room for the Right to the Integrity within this scope, and any further changes are usually a violation of the right to produce secondary works. Therefore, when it comes to the use of works that have been approved for use, the Right to the Integrity as moral rights of the author will rarely have its own significance. In particular, in the case of a musical piece, the original song itself is essential because of its nature, and if the reason for the exception is widely accepted as the court has said, the infringement of the Right to the Integrity in music works will be virtually impossible to establish. In this paper, the existence of copyright infringement will be considered based on the first trial ruling on pro-baseball cheering song case. In addition, measures to control the interests of the authors and the public in connection with the transformation of musical composition into a cheering song will be studied.

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Keywords

Right to the Integrity, Copyright Infringement, Secondary Works, Music Works, Cheering Song

참고문헌

1. 국내문헌

- 김병일, 『저작권법 주해(정상조 편)』, 박영사(2007).
박성호, 『저작권법 2판』, 박영사(2017).
서달주, 『저작권법』, 박문각(2009).
송영식·이상정, 『저작권법강의』, 세창출판사(2017).
송영식·이상정, 『저작권법개설』, 세창출판사(2012).
오승중, 『저작권법』, 박영사(2016).
윤선희, 『지적재산권법』, 세창출판사(2018).
이춘수, 『저작권법 주해(정상조 편)』, 박영사(2007).
이해완, 『저작권법』, 박영사(2012).
임원선, 『실무자를 위한 저작권법』, 한국저작권위원회(2017).
中山信弘 著, 윤선희 편역, 『저작권법』, 법문사(2008).
최경수, 『저작권법개론』, 한올아카데미(2010).
한국저작권위원회, 『표절관련 판례집』, 한국저작권위원회(2012).
황적인·최현호, 『저작권법』, 법문사(1988).

2. 국외문헌

- Böll und Hubmann, "Zulässigkeit und Grenzen der wissenschaftlichen Kritik im $\alpha\beta$ erwettbewerblichen Bericht", UFITA 79, 1977.
Doutrelepon, "Das droit moral in der Europäischen Union", GRUR Int., 1997.
Dreier/Schulz, UrhG-Kommentar, 6. Aufl., 2018.
Rehbinder, Urheberrecht(13. Aufl.), 2004.
Schack, Urheber - und Urhebervertragsrecht (2. Aufl.), 2001.
Skrzipek, Urheberpersönlichkeitsrecht und Vorfrage, 2005.
Ulmer, Urheber- und Verlagsrecht, 3. Aufl., 1980.