

Abstract

Early Discourse on the Legal Protection of Photography: Focusing on the Fine Art Copyright Act in U.K. (1862)*

Yoon, Kwon-Soon**

The Fine Art Copyright Act in U.K. (1862) is the first law in the world to provide copyright protection for photographs. The discourse that emerged in the process of establishing photography as a subject of legal protection under copyright can be categorized into three main strands. First, it was argued that photographs were produced by mechanical labor through a mechanical process and should be excluded from protection. Second, photographs are the product of “mental labor” and should be protected in the same way as artistic works such as paintings. Third, it is argued that photographs should be protected by copyright because certain resources (labor, capital, etc.) are used in their production. In the end, the 1862 Act protects paintings, drawings, and photographs in essentially the same way, with the difference that paintings and drawings are protected up to their “design,” whereas photographs are protected only in their work and negative form. The historical experience of how photography entered the copyright system may be helpful in resolving the copyright issues surrounding generative AI.

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** Research Professor, Research Institute of Comparative History and Culture, Hanyang University

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