

Abstract

Accurate Application of the Concept of Intangible Use targeting the Public under Copyright Law

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The Copyright Act defines “performance” and “public transmission” as intangible uses of a work directed at the public. Within “public transmission,” there are subcategories, such as broadcasting and interactive transmission. However, considering the practical application of these provisions and the need for equitable regulation, these concepts are occasionally misapplied.

Based on such awareness of the problem, the views presented in this article can be summarized as follows. ① Article 25(5), which addresses the use of works by those “receiving” education, and Article 32, concerning the use of works for exam questions, only reference “public transmission.” However, since live performances or music/video reproductions in specific classroom settings have minimal impact, there is no reason to prohibit them. Therefore, the law should be amended to permit “performances” as well. ② Article 27, which addresses the use of current events, articles, or commentaries, only refers to “broadcasting.” However, articles are now frequently distributed via the internet. Since there are regulations prohibiting unauthorized reprints, the provision should be revised to encompass “public transmission” more broadly. ③ The provisions concerning Online Service Providers only address “interactive transmission.” However, for interactive transmission that allows individual access to works, the exemption principles outlined in Article 102 and below should apply. Applying civil law exemption principles, instead of those under Article 102 and below,

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to broadcasting —which facilitates the simultaneous reception of works— causes fairness issues within the system. Hence, the law should be revised to encompass “public transmission” as a whole.

Keywords

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