

Abstract

**A Study on Domestic and Foreign Cases
on the Copyrightability and Protection Scope
of Photographic Works**

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Based on the criteria for judging the originality of photographic works presented in the Supreme Court ruling on the “Nambu Ham Case,” this article analyzed the attitudes of domestic and foreign precedents surrounding subjects of photography from the perspective of copyrightability and scope of protection, and examined the significance of individual precedents.

As with the attitude of the so-called “Nambu Ham Case” Supreme Court ruling, it is interpreted that copyright protection can be obtained as a photographic work only when individuality and creativity are present after comprehensively judging three expression factors: ① matters concerning the selection of the subject to be photographed, ② matters concerning the method of photographing, and ③ phenomena and printing.

As for the criteria for determining the copyrightability of a photograph, it is reasonable to say that if it is taken by placing not only the subject’s expression but also the background decorations in an original manner, it can be a photographic work, regardless of its practical purpose.

However, many of the lower court rulings focus on the purpose of photographing (e.g., the purpose of showing the effect of hair treatment, the purpose of advertising and promoting the product, the practical purpose of delivering information and advertising

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about the product, or the practical purpose of delivering accurate and clear information) as the basis for denying originality.

I think the purpose of photographing such photographs is included in the creative judgment criteria or judgment factors of photographic works, but rather, it seems to be an incidental judgment criterion or incidental judgment factor.

Therefore, it is desirable to avoid the attitude of precedents that deny the originality of photographic works by placing greater weight on such photographic purposes in the future. In the United States, it is evaluated as an established judgment since the Supreme Court's ruling on the Bleistein case that the existence of advertising purposes does not affect the judgment of originality.

In short, the degree of originality that can be protected by copyright law is not very high, and it is sufficient if the minimal originality that can be distinguished from the expression of others is recognized as a photographic work like other general works. If the photograph in question is made independently without imitating other people's works and clearly reflects the personality of the photographer, it will be protected by the copyright law as a work with originality.

Furthermore, since the subject of photography is what the photographer intends to express through the photograph and is a component of the expression of the photograph, if creative thinking is recognized in the subject of photography, it should be considered in determining the copyrightability of the photograph.

Keywords

Photographic works, Originality, Copyrightability, Scope of Protection, Subject of Photography, Components of Expression in Photography