

**Abstract**

## **Misunderstanding and Solutions About the Meaning of Phonogram Published for Sale, focusing on the Supreme Court's decision 2023da300436 dated January 23, 2025**

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In its ruling on the Lotte GRS case, the Supreme Court reaffirmed its existing position that “phonogram published for sale” in Article 29(2) of the old Copyright Act refers to phonogram for sale in the market. However, this should be corrected for the following reasons.

First, the Supreme Court's decision misunderstood the concept of phonogram production and, as a result, misjudged the concept of phonogram published for sale.

Second, it ignored the National Assembly's efforts to amend the Copyright Act to change the term “phonogram published for sale” to “phonogram published for commercial purpose” so that this misunderstanding would not be repeated, and the government's efforts to expand the scope of application of the Copyright Act Presidential Decree that provided for the exceptions in Article 29(2).

Third, the Supreme Court's insistence on its existing position led to the error of maintaining an mis-interpretation that contradicts the provisions of Articles 76bis and 83bis which stipulate the remuneration rights of performers and phonogram producers for public performances using their phonogram.

It is necessary to abolish this provision and to change the phrase “published for commercial purpose” to “made public” in consideration of the development of the record industry so far. In addition, the Ministry of Culture, Sports and Tourism's approval authority on the

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tariff of the Korea Music Copyright Association under the Copyright Act for performing music should be limited to supplementing the establishment of fair market prices and should not go so far as to actively and politically coordinate conflicting interests.

### **Keywords**

phonogram published for sale, phonogram published for commercial purpose, secondary use.