

Abstract

Analysis and Implications of U.S. Cases on the Use of Music Works

- Focusing on whether music copyrights are infringed by the use of sampling

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In light of the mainstream U.S. precedent attitude, even if the sound is copied using digital sampling techniques from other copyrighted sound recordings, the use of the sound is very small quantitatively and even if an average lay observer cannot recognize the original song, it cannot be considered as infringing copyright.

However, the precedents related to music sampling in the US went through a development process that was difficult to say that it was completely consistent. In particular, it was adopted in the Bridgeport case in 2005, and it is possible to see even the mindset that the copyright of the recording can be infringed no matter how short the sampling is.

Meanwhile, the situation has changed significantly in the VMG Salsoul case ruling in 2016, which recently contested Madonna's 0.23-second sampling in "VOGUE" in the United States, when the 9th Circuit Federal Court of Appeals challenged the Bridgeport case head-on. In other words, the interpretation of the Bridgeport case ruling, which did not recognize the application of this rule to the copyright of the sound recording, was wrong for the so-called "minimis rule" that denies copyright infringement for the use of minor and insignificant works, and it was judged that the application of the "de minimis rule" was recognized like other copyrights.

As above, even in the US, which created the Bridgeport ruling

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of ‘infringement even for one second’, the change that the adoption of the VMG Salsoul judgment in 2016 as a sign of infringement denial based on the ‘de minimis rule’ rule is returning to the interpretation of whether the average audience (an average lay observer) can identify the original song by ear for the recorded song, that is, ‘identifiability’ or ‘cognitive possibility’ (Spürbarkeit) for the sampled original song, should not be underestimated. The attitude of the US trial practice toward sampling needs to be carefully observed in the future.

As with the recent U.S. precedent (for example, the 2016 VMG Salsoul case ruling), it is difficult to assume that the minimum quantitative use of musical works or sound recordings subject to the protection of the rights of others will infringe on the essential interests of copyright holders, so there is no practical benefit of copyright protection. It would be necessary to accept the criteria for judgment of infringement of our music copyright within a reasonable range. On the other hand, the Bridgeport case ruling in 2005 ignores the “de minimis rule”, but I think it is a wrong decision due to the lack of rationality and cannot agree.

In short, there are many objections that sampling music can infringe the copyright of existing musical works on the one hand, and that it should be protected by freedom of expression because it is a new technique of art creation on the other. The recent attitude of American precedents from the perspective of freedom of art creation has many implications for us.

Keywords

Sampling, musical works, sound recordings, copyright infringement, de minimis rule, freedom of expression, freedom of art creation