

Abstract

The Relationship between the Right to Create Derivative Works and the Right to Integrity

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This study examines whether the creation of a derivative work constitutes an infringement of the right to integrity. Cases have emerged where authors attempt to unfairly restrict the exercise of rights by licensees or assignees by invoking the right to integrity even after licensing or assigning the right to create derivative works. Accordingly, this study aims to explore the limits of permissible modifications in such contexts.

In cases where the creation of a derivative work has been authorized, the interpretation should prioritize the intent of the parties involved. It is posited that if authors have consented to a modification that may damage their reputation, such consent should be deemed valid. However, comprehensive grant of consent alone should not be construed as allowing modifications that damage the author's reputation. Nevertheless, because consent for derivative works is typically given before the specific modifications are determined, obtaining consent for every specific change is often practically difficult. Therefore, the categorization of "conventional modifications" is crucial for interpreting the scope of consent. When a derivative work is created in a different genre from the original, the creator should be afforded a broad scope of freedom; this is particularly true in the case of cinematographic adaptations. While there may still be a "core essential content" for which the effect of consent is not recognized, such "essential content" should be interpreted more narrowly than the scope defined under Article 13, Paragraph 2 of the Copyright Act.

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Keywords

Derivative Work, Right to Integrity, Moral Rights, Defamation,
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