

Abstract

Legal Analysis on the Balances of Interests between the Right Holders and the Users under Political Parody in Relation to Copyright and Defamation Charge.

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Political parody is to criticize the politician by illustration of ridicule. So, it may cause the parodist to charge defamation. However, Political parody, which generates public consensus, has important role in a democratic society. On the other hand, if society allows the free creation of parodies, copyright holders will lose their interest. So, a solution will balance the interests of the copyright holder and the parodist.

The Court in Korea determined whether a parody infringes the copyright holder by interpreting Article 28 of the Copyright Act which is about the standard of citation use before formulating the article § 35-3 of Copyright. However Korea codified § 35-3 of Copyright as a fair use doctrine in accordance with the Korea-U.S.A. free trade deal. So, Above two clauses are different standards whether a parody permit.

In addition, we need to treat the political parody differently from the other defamation. This is because the parodist knows that readers discriminate parody whether it is true or false. To determine whether the parody is illegal or not, you should find out whether the parodist induced the rational readers to believe the false statement or not.

The courts and scholars in the United States of America assert that the idea/expression dichotomy, fair use doctrine and copyright term keep copyright in line with the freedom of speech. But, due to increasing of the copyright term and the expanding of copyright, commentators suggest that the copyright do not solve the conflict of both competing interests under the Copyright system. In these instances, the parodist can be protected by invoking the constitutional guarantee of freedom of expression. The conflicts that arise between right holders and the freedom of expression must be resolved by

balancing both competing interests.

If the parodist have to give defamation charges easily, people are refrained from publishing their opinions because of chilling effect. It disturbs to complete the democratic society in the condition of diverse opinions. In order to balance freedom of speech and protection of reputation, we must apply different tests whether the political parody is a direct type or a vehicle type.

Keywords

political parody, citation, copyright, fair use, the freedom of expression, actual malice, defamation charge, fact and opinion, principle as the exclusion causes of illegalities.

참고문헌

- 오승중, 「저작권법」, 제2판(전면개정판), 박영사, 2012.
- 이해완, 「저작권법」, 제2판(전면개정판), 박영사, 2012.
- 허희성, 「신저작권법 축조개설(상)」, 명문프리컴, 2007.
- 박성호, 「저작권법의 이론과 현실」, 현암사, 2006.
- 허 영, 「한국헌법론」, 박영사, 1999.
- 권영성, 「헌법학원론」, 법문사, 1997.
- 양 건, 「헌법강의(제3판)」, 법문사, 2012.
- 박용상, 「표현의 자유」, 현암사, 2002.
- 손경한 편저, 「사이버지적재산권법」, 법영사, 2004.
- 강신하, “지적재산법에 있어서 패러디를 둘러싼 권리자와 이용자사이의 이익균형에 관한 연구”, 한양대학교 대학원, 박사학위논문, 2014. 2.
- 계승균, “저작권법상 패러디에 관한 일 고찰.” 「동아법학」, 제57호, 2012. 11,
- 김경호, “정치패러디와 표현의 자유”, 제7회 언론법학회 세미나, 언론재단연수센터, 2004. 6. 16, 4면.
- 김민중, “원고의 신분과 명예훼손법리의 적용”, 「언론중재」, 언론중재위원회, 2000년 여름호.
- 김송옥, “저작권 제한원리의 헌법적 해석”, 「법학논문집」, 제30집 제2호, 중앙대학교 법학연구소, 2006.