

Abstract

**The Interpretation and Application of 'Phonogram',
'Commercial Phonogram' of the Copyright Act of Korea**
- Focusing on so-called '*Starbucks*' case and '*Hyundai department store*' case -

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The Copyright Act Article 29(2) delineate as follows. Commercial phonograms may be played back for the public, if no fee is charged to the audience, except in the case as set forth by Presidential Decree. And commercial phonograms played in the department stores can be a typical example of the exception under the Presidential Decree of the Copyright Act Article 11.

Article 76bis and Article 83bis of the copyright act delineate as follows. A Party doing a public performance using commercial phonograms shall pay reasonable remuneration to the performers and producers of phonograms.

The right holders became able to receive royalty due to the '*Starbucks*' case and '*Hyundai department store*' case, but the neighboring right holders were not able to receive any remuneration. Because the Supreme Court of Korea interpreted 'Commercial Phonogram' as 'Phonogram for sale to the market' in *Starbucks* case. The Seoul Central District Court interpreted 'Commercial Phonogram' under Copyright Act Article 76bis and 83bis to 'Phonogram for sale to the market' in *Hyundai department store* case as well.

This paper reviewed whether the court's interpretation of 'commercial phonogram' as 'phonogram for sale to the market' is in accordance with the definition of 'phonogram' and 'commercial purposes' in Rome Convention and WPPT. This paper also considered whether the definition of 'phonogram' and 'commercial phonogram' in the Copyright Act meets the legislative purpose as well. As a result this paper reached a conclusion that the meaning of 'commercial phonogram' stipulated in Article 29(2) is different from 'commercial phonogram' stipulated in Article 76bis and 83bis.

Keywords

commercial phonogram, phonograms published for commercial purpose,
Phonogram for sale to the market, neighboring right holders, *Starbucks* case,
Hyundai department store case

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