

**Abstract**

**A study on the copyrightability of photographs**

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This paper is a study on the copyrightability of photographs. When deciding so-called ‘Ham product photograph case’, our court decided that the product itself photograph had not an originality, so it couldn’t be protected by copyright law, whereas the image photograph had an originality. Generally speaking, from that decision on, the test of originality which is sine qua non of copyright, is a little strict in the area of photographs. But, I think, the level of originality is low, so it seems that the test of originality may be satisfied by little more than the selection of the subject, pointing of the camera and pressing of the shutter button. And we may find out the originality in the all aspects of photographs: rendition, timing and creation of subject. In a sense nearly almost photographs have an originality, and could be protected by copyright law. So many our precedents concerning the originality in photographs should be reviewed. Of course all photographs could not be copyrightable. There are some exceptions. For example satellite photographs, surveillance camera records, photograph which is intended to reproduce a two-dimensional work of art, etc..

Some courts apply the legal principles of tort to the subjects which have no originality. In specific case there may be some which constitute the tort in spite of the absence of originality. But, considering the premise that we can use freely the subject matters which is not protected by intellectual property law, the legal principles of tort should be applied circumspectly and discreetly to those cases.

**Keywords**

photograph, Photographic works, originality, copyrightability, tort, copyright, 'Ham product photograph' case, reproduction of works of art

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