


Abstract

Problems on the Limitation of Scope of Protection of a
Design of Handwriting as Works

- Focused on Critical Study on Supreme Court Decision 2012do10786
about 'Be The Reds!' -

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The topic of this paper is problems on the limitation of scope of protection of a design of handwriting as works. Pictures of people wearing T-shirts for cheering which contained a design of handwriting of Korean national soccer

team's cheer slogan "Be The Reds!", " (hereinafter referred to as "the subject design")" were uploaded on Internet website. On the above case, the owner of copyright of the subject design alleged copyright infringement and proceeded against the uploaders criminally. Recently Supreme Court decided on this case(Supreme Court Decision 2012do10786 Decided August 26, 2014, hereinafter referred to as "the subject decision").

The subject decision stated that uploading the subject design on Internet website through the above photos of this case came to be copyright infringement. I think that the subject decision missing the limitation of scope of protection of a design of handwriting as works based on public meanings of the work and denying incidental use of the subject design for transmitting the main message of the photos should be criticized. Therefore, this paper criticize the above problems on the subject decision.

In conclusion, I think that the subject decision can be criticized to be misjudged on whether uploading the subject design on Internet website through the above photos come to be copyright infringement, since the subject decision has missed (1) the limitation of scope of protection of the subject

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design having peculiar meanings based on Korean national soccer team's cheer slogan, and (2) considering direct perception of essential features of a design of handwriting which is the creative expressive mode of the work of this case on determining substantial similarity, and (3) situations of markets related to this case in the photo library services,

Keywords

Be The Reds!, a design of handwriting, works, substantial similarity, incidental use, direct perception, photo library services

참고문헌

1. 국내문헌

- 권영준, 「저작권침해판단론-실질적 유사성을 중심으로-」, 박영사(2008).
송영식·이상정, 「저작권법개설(제6판)」, 세창출판사(2010).
오승중, 「저작권법(제3판)」, 박영사(2013).
장주영, 「미국저작권관례」, 육법사(2012).
정상조 편, 「저작권법 주해」, 박영사(2007).
이해완, 「저작권법(제2판)」, 박영사(2012).
中山信弘(윤선희 역), 「著作権法」, 법문사(2008).
김병일, “저작권법상 실질적 유사성에 관한 고찰 -어문저작물(소설 및 드라마 저작물)을 중심으로-”, 「정보법학(제17권 제3호)」, 한국정보법학회(2013.12).
이성호, “저작권 침해 여부의 판단기준과 각종 저작물의 유형별 특성에 따른 실제적 적용”, 「법실천의 제문제(동천김인섭선생화갑기념논문집)」, 박영사(1996).
정경석, “실질적 유사성론”, 「계간저작권(제85호 봄호)」, 저작권심의조정위원회(2009.3).
정경석, “저작권 침해판단에서 현저한 유사성의 개념 도입론”, 「법조(통권 제633호)」, 법조협회(2009.6).

2. 국외문헌

- 茶園成樹 外 4人, 「知的財産法判例集(補訂版)」, 有斐閣(2010).
知的的所有權問題研究會 編, 「最新著作權關係判例と實務」, 民事法研究會(2007).

青山紘一, 「著作権法(事例・判例)」, 経済産業調査会(2010).

小泉直樹 外 4人 編著, 「ケースブック知的財産法(第2版)」, 弘文堂(2008).

岡戸昭佳, “文字を素材とする造形の著作物について”, 「パテント(Vol.56 No.9)」, 日本弁理士會(2003).