Abstract

Protection from Intellectual Property Laws on Magic
- focusing on the cases from the United States -

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Although Korean magicians have shown remarkable achievements in the global magic community, there isn't any legal studies concerning magic. Magicians have tried to protect their works with intellectual property laws; patent, unfair competition, trade secrets, and copyright. Though there were some successful cases, most of them ended with bitter results.

Patent, with its exclusive rights protection, has limits; magician needs to bear in mind that patent will expose his/her trick's secret to the public. Unfair competition and trade secret have their own trade-offs too. Their philosophy do not go well with the ecology of magic community where sharing and creating are common. Lastly, magicians have failed to use copyright to protect their magic tricks because copyright law has merger doctrine and Scènes a faire doctrine which prevent most of the magical expressions to be protected by the copyright law.

However, the case of Teller v. Dogge has proved that magician could protect his/her trick without exposing the secret through the copyright. As Teller had registered his trick 'Shadows' as dramatic work, the court ruled that Dogge's trick was almost identical to the Teller's trick in the eyes of lay audience; thereby causing copyright infringement. With the Teller case, magicians would be able to protect their magic as copyright work.

In Korea, there has not been any legal dispute on magic yet. However, as the industry grows bigger by the year, legal studies should take places; studying foreign cases and discussing the adaptation to Korean intellectual property laws may be the first step.

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Keywords

magic, magic and intellectual property law, magic and copyright, Teller v. Dogge, Teller Case, Exposure, Stealing, Copyright Infringement

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