

Abstract

**The Possibility of Criminal Sanctions for 'Cover-Change' by
Publication of False Facts According to the Copyright Act
- With Focus on the Supreme Court's 2016Do16031 Decision Declared
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Jo Hyoung-Chan

Regarding if Article 137 Section 1 Clause 1 of the Copyright Act is applied to the so-called 'Cover-Change' case that actual authors, non-authors and employees from the publishing company registered the non-authors under co-authors' names and made the public exhibition, the first instance court declared its violation of the Copyright Act not guilty only for 'the first public exhibition' with the reason that the regulation must be applied. However, the appellate court and the Supreme Court found it guilty considering that the definitions of public exhibition in Article 137 Section 1 Clause 1 of the Copyright Act and the Public Exhibition Right are different, and that the regulation considers even the public benefits and protections of the laws, which is 'the social trust on the identity of authors.'

According to the legislation history of the provision, Article 137 Section 1 Clause 1 of the Copyright Act, it is academically more reasonable to be called 'the Crime of Publication of False Facts' rather than 'the Crime of False Statement.' As the en banc judgment decided, public exhibition in this regulation is not limited to the first public exhibition, and possesses public as well as personal benefits and protections of the laws. However, as the Trademark Law and the Prevention of Unfair Competition Law are separated in the Korean legislation on the Intellectual Property Rights, it would have been more reasonable to set 'Use of copyrighted works by those except for actual authors and the falsely published' as public benefits and protections of the laws to be protected from the regulation rather than 'the social trust on the identity of authors,' considering the distinct characteristics of the

Copyright Act.

Keywords

Copyright Act Article 137 Section 1 Clause 1, Cover-Change, Publication of False Facts, Unfair Publication, Benefits and Protections of the Laws, Agreement, Understanding, Consent

참고문헌

1. 단행본

- 강신하, 『저작권법(제2판)』, 진원사(2014).
김성돈, 『형법총론(제5판)』, 성균관대학교 출판부(2017).
박성호, 『저작권법(제2판)』, 박영사(2017).
송영식 등 7인, 『지적소유권법 - 하(제2판)』, 육법사(2013).
송영식·이상정, 『저작권법개설(제9판)』, 세창출판사(2015).
신동운, 『형법총론(제10판)』, 법문사(2017).
오승중, 『저작권법(제4판)』, 박영사(2016).
이재상·장영민·강동범, 『형법각론(제10판)』, 박영사(2016).
이해완, 『저작권법(제3판)』, 박영사(2015).
임웅, 『형법각론(제8정판)』, 법문사(2017).
정상조 편, 『저작권법 주해』, 박영사(2008).
中山信弘, 『著作権法(第2版)』, 有斐閣(2014).

2. 논문

- 김원오, “대작(代作)에 있어 성명표시의 취급에 관한 법적 쟁점”, 『계간 저작권』 2012년 여름호, 한국저작권위원회(2012.6.).
주선아, “우리 저작권법에서의 ‘공표’의 의미 -미국 저작권법상 ‘발행’과 관련하여-”, 『Law & Technology』 제7권 제4호, 서울대학교 기술과법센터(2011.7.).
차상욱, “표지갈이’의 부정발행 등의 죄 성립 여부”, 『저작권 문화』 2017년 12월호, 한국저작권위원회(2017.12.).
한지영, “일명 ‘표지갈이’ 사건에서의 부정발행죄 적용범위에 관한 고찰”, 『계간 저작권』 2016년 가을호, 한국저작권위원회(2016.9.).