

Abstract**Protection of Creations Existing in the Intersection of
Copyright and Design Right**

**- Focusing on Supreme Court Decision 2016Da227625 Decided May 15,
2018 on a miniature model of an existing architectural structure -**

As a stand-alone hobby, building models are probably most popular among enthusiasts of construction toys such as Lego. Famous landmarks such as the Empire State Building, Big Ben and the White House are common subjects of toymakers. Standard scales have not emerged in this hobby. Model buildings are commonly made from plastic, wooden and foam boards or paper. Some models are manufactured like 3D puzzles. In this paper, we examined the supreme court ruling(2016Da227625 Decided May 15, 2018) dealing with the infringement of copyright on a miniature model of an existing architectural structure such as Sungnyemun and Gwanghwamun. In this case, the supreme court determined that the Plaintiff's Gwanghwamun model was not an exact miniature replica of the actual Gwanghwamun. Rather, it deemed that the model was created by making not small but relatively noticeable changes in the rooftop/wall ratio, roof height, slope of the eaves, roof color, structural simplification of windows and under the eaves of the second floor tower, gatekeeper size, shape of the inner gate, etc. Based on the reasoning that the original expression manifest in the Plaintiff's Gwanghwamun model, as seen earlier, also appeared in the Defendants' Sungnyemun Gate model, the supreme court determined to the effect that the two models shared a substantial similarity. However, if the same creative is filed as a design, it is difficult to say that it can be registered as a design and protected by design rights. In particular, designs that can easily be created by a person skilled in the art on the basis of a shape, pattern, color, or combination thereof widely known in the Republic of Korea or in a foreign country can not be registered, and even if registered, the defendant may reject the claim of infringement

by the design right holder with Free-to-work design defense. The overlapping protection of different laws on the same subject does not directly lead to a conflict of rights, but there is a risk that it can be exploited as a means to extend the protection of intellectual property rights by once again restricting the public domain.

Keywords

Existing Architectural Structure, Creativity, Substantial Similarity, Access, Functional Works, Derivative Works, Design, Novelty, Non-Creative Easiness, Free-To-Work Design Defense