

Abstract

A Study on the Right to the Integrity in Music Works

- With review of professional baseball cheering song case -

Lim, Hyoseong*

The professional baseball cheering song case brought about a social interest in right to the integrity of music works. The right to the integrity is one of the moral rights of the author provided by the Korean Copyright Act, Cases have been accumulated in various works, but the court's judgment regarding music works is insufficient. As there are various kinds of works, reasonable interpretation of law should be supported according to each characteristic to make a reasonable judgment on infringement of rights. In this sense, this paper first examines the characteristics of musical works and examines the precedents of professional baseball cheering song cases. The right to the integrity varies from country to country. In Korea's current copyright law, there is no requirement to "demeans honor or reputation," so it is very important to use the criteria to judge on the basis of whether the form and contents of the work are altered.

In (III), the essence of musical identity is examined from the musical aesthetic and theoretical perspective, based on strict interpretation theory and flexible interpretation theory, and the changes in the form and contents of musical works with examples were examined based on strict interpretation theory and flexible interpretation theory. In (IV), The professional baseball cheering song case review examines the fact that the decision is somewhat unsatisfactory without sufficiently understanding the characteristics of the music work. In (V), The conclusion concludes that it is reasonable to approach the criterion of judging the integrity of a musical work with a flexible interpretation theory, and since the moral rights are not property rights, they should act as a mechanism to effectively check the author's moral rights infringement.

* Standing composer, Artsehcro orchestra / Researcher, Legal Research Institute of Korea University

Keywords

Music Works, Moral Rights of the Author, Right to the Integrity, Derivative Works, Baseball Cheering Song

참고문헌

1. 국내 단행본

- 박성호, 『저작권법 제2판』, 박영사(2017).
송영식·이상정, 『저작권법개설 제9판』, 세창출판사(2015).
오승중, 『저작권법 제4판』, 박영사(2016).
오승중·이해완 공저, 『저작권법 개정판』, 박영사(2012).
이해완, 『저작권법 제3판』, 박영사(2015).
_____, 『저작권법 제4판』, 박영사(2019).
홍정수·오희숙, 『음악미학』, 음악세계(2003).

2. 국내 문헌

- 박성호, “동일성유지권에 관한 규정의 재검토”, 『IT와 법 연구』, 제8집, 경북대학교 IT와 법 연구소(2014).
박인회, “동일성유지권의 비판적 고찰”, 『법학논문집』, 제42집 제2호, 중앙대학교 법학연구원(2018).
임효성, “음악저작물에서의 샘플링 기법과 저작권 침해에 관한 소고 -대중음악의 창작적 특성을 중심으로-”, 『고려법학』, 제91권, 고려대학교 법학연구원(2018).
조희경, “프랑스 저작인격권법의 기초 판례에 관한 연혁적 연구”, 『강원법학』, 제56권, 강원대학교 비교법학연구소(2019).
차상욱, “동일성유지권 침해의 요건사실에 대한 해석론과 입법론”, 『계간 저작권』, 2018 가을호, 한국저작권위원회(2018).
최상필, “음악저작물의 변형적 이용과 저작권침해 -프로야구 응원가 사건을 중심으로-”, 『계간 저작권』, 2019 가을호, 한국저작권위원회(2019).

3. 국외 문헌

- Donald J. Grout·Claude V. Palisca·J. Peter Burkholder, *A history of western music* 7th