

Abstract

A review on the copyright infringement types and standard for infringement decision

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The theories and cases on the copyright infringement decisions in Korea commonly suggest the standard consisting of two elements of (1) ‘copying’ as a subjective element and (2) ‘substantial similarity’ as an objective element regardless of the types of copyright infringements. It seems that this standard is originated from the United States’ that has developed for over 100 years.

This standard, however, seems effective only for the copyright infringement cases by imitation. It seems not appropriate for other kinds of copyright infringements such as piracy or illegal citation. I proposed to classify the copyright infringement into three types, i.e. piracy, illegal citation and imitation and to develop a new standard for these types of infringement.

According to this standard, the ‘substantial similarity’ also means the ‘improper appropriation’. It leads the courts erroneously to consider the quantity or significance of the copyrighted material taken from the plaintiff’s work on the point of the plaintiff’s work itself. It also leads the courts erroneously to compare the entire defendant’s work to the plaintiff’s. The courts have to compare only the parts at issue of the defendant’s and the plaintiff’s.

To complement this standard, I proposed to add explicitly a post procedure to similarity decision to consider *de minimis* principle before the court decide if the elements taken from the plaintiff’s work amount to an improper appropriation. It is similar that we put the advance procedure to filter the unprotected idea from the protected expression before the similarity decision.

Additionally, I proposed to switch the term ‘의거dependence’ or ‘의거관계 dependence relationship’ to ‘모방 또는 베끼기imitation,’ because the term does

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not comfortably correspond to the our language practice.

Keywords

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