

Abstract

Continuous Exploitation of Derivative Works in the Case of Restored Works

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Interpreting Article 4 paragraph 3 of the additional clause to the 1995 Revision of the Copyright Law, the Supreme Court stated that the continued exploitation of the derivative work is permitted to the extent that the substantial similarity is recognized. Several lower courts had decided that derivative work can be continuously exploited only within the scope of the sameness. As above, the Supreme Court set the standard for the continuous exploitation of the derivative work of the restored works.

Since Article 4 paragraph 3 is directly related to the criminal punishment, it should be strictly interpreted in accordance with the principle of legality. Since the Copyright Law does not define the meaning of the word 'exploitation' as written in the above Article, it is difficult to interpret the concept according to the literature. However, since copyright consists of a bundle of branch rights, it could be considered that the activities permitted or prohibited under the Copyright Law are based on the scope of those rights. The reproduction right is protected to the extent that substantial similarity is recognized. There is no data to suggest that it was the legislator's intention to allow continued exploitation only within the scope of the sameness. If an act within the scope of substantial similarity is seen as punishable because it is an act beyond the scope of sameness, it could be an interpretation unfavorable to the accused without any basis.

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If continuous exploitation is allowed within the scope of substantial similarity, one can raise the question of whether new translation might be allowed virtually unlimitedly considering the characteristics of the translated work. That was the position of the trial court. However, even if the continued exploitation of the derivative work is permitted, creating derivative work of that work is not permitted, and it can serve as a limit to the variation. It cannot be said that the likelihood of creating a derivative work for a translated work is generally low.

Conversely, if the right holder of the restored work is always protected when a change is made beyond the scope of the sameness, the effort and investment put into the translated work might not be protected sufficiently. The right holder of the restored work may be compensated by monetary compensation, even if the exploitation of the translated work is permitted within the scope of substantial similarity

Keywords

Restored work, continuous exploitation, derivative work, article 4 paragraph 3 of the additional clause, substantial similarity, sameness