

Abstract

International trend on the free use of visual art works in public domain.

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The development of digital technology and the open access movement expanded the base of cultural enjoyment in the cultural and artistic fields and became a driving force to lead the development of the creative industry by promoting the creation of new knowledge. The strong desire for cultural enjoyment led to a more active open access movement to cultural heritage, and the development of science and technology and reproduction media has given rise to strong doubts about the originality of photographic reproductions. It is certainly welcome that the public can easily access and enjoy the images of the great cultural heritage online, but there are still legal issues that can lead to disputes, such as violations of intellectual property rights and admission contracts. Recently, courts in Europe and the United States, home to world-renowned museums and art galleries, have issued important judgments regarding photo reproductions in the public domain. Since the UK and the United States have relatively low standards compared to continental European Civil Law in judging the originality of photographic works, whether or not to recognize the 'originality of photographic copies' has become a major issue. In Germany, since the copyright law protects photos lacking originality as a neighboring right, it was questionable whether they could be included in the scope of application of § 72 even if they belong to the 'public domain'. In 2019, the European Union legislated

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Article 14 of the DSM Directive because of the need to resolve legal uncertainty about the reproduction of visual art works belonging to the public domain among member states. Based on these cases and legislation, the implications for Korean law were reviewed.

Since it is unlikely that digital image copies will be recognized for their originality under our Copyright Law, this thesis reviewed the applicability of the ‘exploitaion of accomplishment’ provisions of § 2 (1) (Ka) of the Unfair Competition Law. In addition, it was reviewed whether the legitimate exercise of ownership could be restricted by the ‘freedom of expression’ or ‘Right of Access’ under Article 21 of the Constitution. Even if freedom of expression is a higher constitutional right, it will not be able to protect it to the extent that it infringes on the essential content of property rights.

It is clear that the various issues surrounding digital image reproduction are also challenges for us. Therefore, it is expected that we will be able to reflect on the reality of our law through precedent legislative examples in foreign countries and find countermeasures taking the entire intellectual property law into consideration.

Keywords

Public Domain, Open Access, Visual Art Works, Photo Reproductions, Faithful Reproductions, Originality, DSM Directive Article 14, Exploitaion of Accomplishment