

Abstract

A Study on the ‘Other rights which shall be enjoyed by the copyright owners’ of Chinese Copyright Law

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The Chinese Copyright Law has an “Other rights which shall be enjoyed by the copyright owners(hereinafter referred to as OR)” in Article 10, No. 17. This clauses enacted in 2001. “OR” was enacted because the Chinese copyright law does not have sufficient economic rights for copyright owner, making it difficult for Chinese courts to judge the use of new works.

Actually, The Chinese Court found that “real-time transmission of broadcasting programs, sports broadcasting, and gameplay screens”, “the use of typeface”, “the sale of copyright infringement products” and the other uses. But some decision are not clear on the legal basis for subject to “OR”.

There is no definition in Chinese Copyright Law that explains the scope of “OR”. There is only an interpretation of the legislature that it does not include the “Artist’s Resale Right”.

“OR” served as the legal basis for implementing international treaties joined by China and supplemented the structural defects of Chinese copyright law.

Nonetheless, there is no clear interpretation and application standards. So, The judges create new right in the process of judicial judgment, but they can not know how far the limit is.

The third revision of Chinese Copyright Law amended for the fair use clauses, so new use of works can included in fair use through

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court judgment. As a result, it became difficult to distinguish between fair use and copyright infringement. Therefore, when using works in China, we should be careful not to infringe on copyright against our intentions.

Korean copyright owners who export works to China must specify the specific scope of 'OR' in the contract. Otherwise, there is a problem that the other party's range of use is randomly expanded. In addition, care should be taken to prevent unnecessary disputes due to differences in the interpretation of 'OR'.

Keywords

Other rights which shall be enjoyed by the copyright owners, Miscellaneous Provisions, Author's economic rights, Copyright management in China, Copyright contract in China, Chinese Copyright Law.