



A Dilemma between the Author's Rights and Neighboring Rights in the Era of Music Streaming Service by the Development of IT: Implications and Alternatives

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Abstract

Background/Objectives: The study analyzed that copyright law has more inclined to protect neighboring rights than authors' rights in realities focusing on music industry in S. Korea and suggested alternatives for improvements.

Methods/Statistical Analysis: Literature review was conducted focused on the researches of the change of music market in cultural industry and its influence on the origin of copyright law including the growth of music streaming service by IT and relatively neglected authors' rights; specifically the complexity of the distribution structure of digital music, the imbalanced structure of music industry and unreasonable distribution rate of digital music profits based on the secondary data.

Findings: IFPI predicts that streaming music will overtake downloads in 2017. Similarly, in S. Korea, the sales volume of music industry has increased steadily with annual average of 5.8 percent from 2011 to 2013 and that of

online distribution business has been increasing every year. However, the complexity of the distribution structure of digital music and monopoly and oligopoly by a few companies arouse concern about how the rights of music authors could be guaranteed. In reality, while the sales of distribution of music were about 2.6516 trillion Korean won, the sales of creation and production of music were about only 819.8 billion won in 2012 and this presented the serious imbalance in the profits of music compared with the other cultural contents such as game, publishing and so on. Furthermore, recently, music service business operators' combining with distribution business arouses concern about accelerating the disproportionate structure of music profits; they acquire even content production business. This will cause more severely imbalanced structure than the present, especially for authors.

Improvements/Applications: The Copyright Act should be supplemented with more substantial and realistic measures, e.g. of the current distribution rate of music profits to protect practically creators of works, i.e. authors.

Key Words : Copyright, Copyright law, Music Copyright, Author's Right, Neighboring Right, Distribution of Music Profits.

1 Introduction

Human beings have an inalienable right to invent themselves and their endeavors appear quite often as creating works. Arts such as music, paintings and photographs are the examples. A copyright law in any society is established for protecting the rights; the term "work" by the law means a creative work that expresses human thoughts and emotions. For example, musicians express their rights as composing operas, writing lyrics, recording albums or performing music¹. This study is started with questioning for whom copyright law is intended in the environment of prevalence of digital media by the development of IT; reconsidering the purpose of establishing the law, so called the world's first copyright law, the Statute of Anne which was enacted in England in 1710. Exercising its power under the newly adopted Constitution to secure the rights

of authors and inventors, Congress passed an act almost identical to the Statute of Anne as the first American copyright law in 1790². It is generally agreed that copyright law and technological progress have forever been linked and it also appears in the purpose of the Copyright Act in S. Korea; that is to protect the rights of authors and the rights neighboring on them and to promote fair use of works in order to contribute to the improvement and development of culture and related industries³. But, seemingly, the law has been weighted towards the neighboring rights not the rights of authors nowadays; the study analyzed the realities focusing on music area in S. Korea, found their implications and suggested alternatives for improvements.

2 Literature Review

2.1 Problems

According to IFPI (International Federation of the Phonographic Industry), the global music market achieved a key milestone in 2015 when digital became the primary revenue stream for recorded music, overtaking sales of physical formats for the first time⁴. They reported that digital revenues now account for 45 per cent of total revenues, compared to 39 per cent for physical sales. And a 10.2 per cent rose in digital revenues to US\$ 6.7 billion, with a 45.2 per cent increase in streaming revenue more than offsetting the decline in downloads and physical formats. Fig. 1 presents that streaming will overtake downloads in 2017⁵.

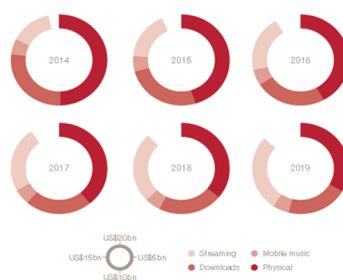


Figure 1: Global recorded music revenue by source (US \$ bn), 2014-2019

This trend is similar in S. Korea, where music industry shows the highest growth rate in cultural content industries and is recognized as a part with great expectations in the future. The sales volume of music industry has increased annually by average of 11.8 per cent, with recording 2.7408 trillion Korean won of 2009 and 4.2772 trillion won of 2013(an increase of 7.1 per cent compared with the previous year), which increased steadily with annual average of 5.8 per cent from 2011 to 2013⁶. And the sales volume of online distribution business has been increasing every year as shown in Figure 2⁷. However, as shown in Fig. 3⁸, the complexity of the distribution structure of digital music and monopoly and oligopoly by a few companies arouse concern about how the rights of music authors could be guaranteed.

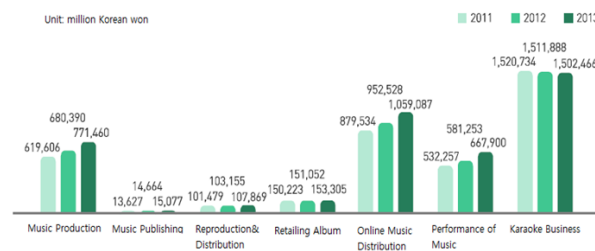


Figure 2: The trend of music industry by type of business and year in S. Korea

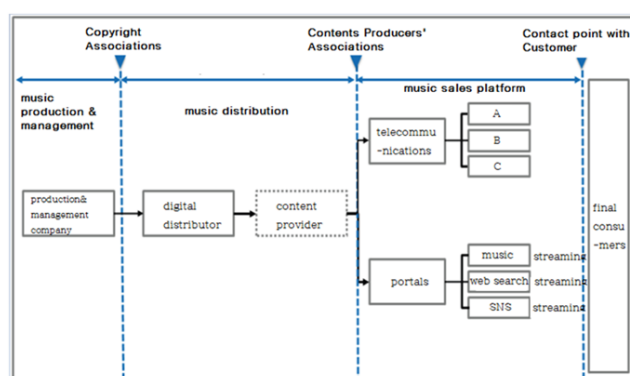


Figure 3: The distribution process of digital music in S. Korea

In reality, while the sales of distribution of music were about 2.6516 trillion won, the sales of creation and production of music were about only 819.8 billion won in 2012 and this presented the serious imbalance in the profits of music compared with the other cultural content areas such as game, publishing and so on⁹. Fig. 4 shows the differences of the portions of music profits between domestic market and iTunes¹⁰.

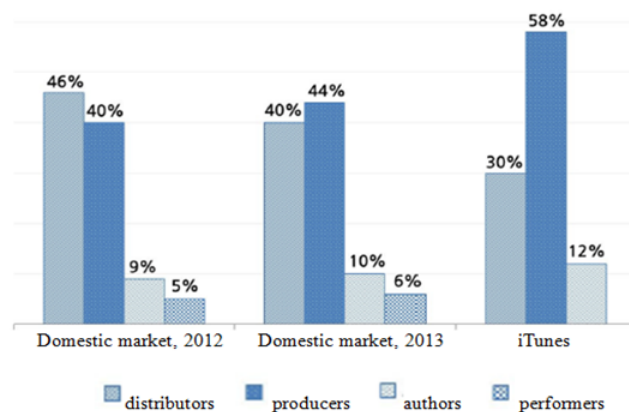


Figure 4: Comparison of the portions of music profits between domestic market and iTunes

2.2 Implications

Although copyright law, presently, is enacted for not only authors' rights but also neighboring rights, it has been criticized that the Act has been more inclined to protect neighboring rights, which is implying that the latter is more important than the former. With the development and diffusion of Internet based on IT, infringement of copyright is more concerned than before in cultural industry and this seems to be because of a prevalent view that competitively making profits is more important than protecting copyrights in cultural industry¹¹. To date, copyright law has broadened its scope of protection for works by virtue of the development of technology since the Statute of Anne. Although the advancement in scientific technology supports actively copyright business, this gives us confusion

of the concept of 'authorship' because it causes negative side effects on authorship that are related to the challenges by economic issues from cultural industry^{12,13}.

With the background of this, it is assumed that the Act is used for instigating economic profits rather than protecting the expressions of human creative spirits, like thoughts and emotions. And this is proved by Table 1¹⁴. Furthermore, the recent trend of music service business operators' combining with distribution business arouses concern about accelerating the disproportionate distribution structure of music profits; they acquire even content production business. Then, the structure of music industry will be more severely imbalanced than the present, especially for authors.

Table 1. Distribution rate of digital music profits

Seller	Producer					
Business Operator	Neighboring Rights		Authors' Rights		Performers' Rights	
40%	44%		10%		6%	
Business Operator	Distributor	Content Producer	Copyright Association	Author	Federation of Performers	Performer
40%	8.80%	35.20%	0.90%	9.10%	1.17%	4.83%
40%	60%					
.	Average commission for distributor, 20%/Commission for copyright association, 9%					
.	Commission for federation of performers, 19.5%					

3 Alternatives

As mentioned above, there have appeared various unfair practices in the imbalanced structure of music industry. Historically, music copyright issues have always affected the music industry which is connected with the creation and circulation of music. However, currently, music copyright is affected by the development of technology¹⁵. In this context, first of all, it is necessary to compensate defects of the Copyright Act and establish the substantial and realistic measures to protect practically creators of works, i.e. authors. Specifically, the current distribution rate of music profits, which is relatively lower than international standards, should be changed by a way of more reasonable aspect. And the substantial and realistic measures should include protection articles for con-

clusion of fair contracts between business operators and authors against invisible pressure.

Besides that, it is necessary to amend other laws associated with the Act and make up for the weak points of the Act; firstly, Music Industry Promotion Act¹⁶ for the purpose of providing for the matters necessary for the promotion of the music industry and facilitating the growth of related industries; secondly, Artists Welfare Act¹⁷, to protect professional status and rights of artists and to contribute to the development of arts by promoting their creating works by supporting their welfare; and thirdly, Framework Act on the Promotion of Cultural Industries¹⁸, to lay the groundwork for the development of cultural industries and enhance the competitiveness thereof, thereby contributing to the improvement of the quality of national cultural life and development of the national economy, by providing for matters necessary for supporting and fostering cultural industries should be amended not to break the balance of the industry. Furthermore, Monopoly Regulation and Fair Trade Act¹⁹ should include the issues that a big company or conglomerate can't monopolize the music market.

4 Conclusion

The imbalanced structure of music industry that is composed of the low portions of creation and production of music compared with excessively high portions of distribution in music profits should be changed for the future when IT will govern the way of listening music²⁰, i.e. streaming. As far as copyright is based on creativity of author's work, it could be a channel for cultural development, but should not be way for economic development of cultural industry. In other words, the legal framework of copyright and copyright law should be basically built on authorship even in the current environment of emphasizing on the power of cultural industry which concentrates economic welfare for the public or the economic reward from author's work via copyright business.

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