

## Virtual Livestreamed Performance and E-License

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### **Abstract**

*Due to social distancing caused by COVID 19, music concerts have not been allowed at home and abroad, and it is not known when overseas concerts will be able to resume unless the pandemics calm down, even if they are available. Meanwhile, people consume much more content through online services such as Netflix and YouTube than before. Under these circumstances, the music industry expects the virtual livestreamed performance to restore sluggish live performances again and bring about a digital renaissance. It also leads to the issue of reestablishing a copyright system regarding a livestreamed performance and of preparing a new rate of royalty standards for the use of works in OTT. In addition, a multi-territorial licensing of rights in musical works is necessary to resolve copyright issues efficiently by applying the same terms to all countries from where the audience comes. In this paper, I examine the legal nature and the decision of copyright fees of performances as an integral part of the music industry.*

**Keywords:** COVID 19, TPM (Technological Protection Management), Livestreamed Performance, Copyright Collective Management, Multi-territorial License, OTT.

### **1. Introduction**

The Black Death, which drove about one-third of Europe's population to death in just six years, led to the collapse of medieval European feudalism [1]. People who witnessed the helpless death of noble Catholic priests became skeptical about the church authority and faith and relied on humanism rather than God [2]. And the reduction of the labor force caused by the Plague increased the value of labor and wages, which resulted in the labor shortage, which was replaced by mechanization. It boosted capitalism and renaissance [3]. In Germany, around 1440, Johannes Gutenberg invented the printing press, which triggered the Printing Revolution [4].

Individuals who could own private property due to the increasing wages were available for themselves to hold the sacred arts or donate the arts directly to the church, which provided artists with more opportunities to create their works. It is why writers and artists such as Michelangelo, Leonardo da Vinci, Shakespeare, Miguel de Cervantes Saavedra, and Erasmus were able to display their outstanding ability during the Renaissance [5].

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such as Netflix and YouTube than before. Meanwhile, music concerts have not been allowed at home and abroad, and it is not known when overseas concerts will be able to resume unless the pandemics calm down, even if they are available. Under these circumstances, music performance converging culture technology was livestreamed for the first time in the world. The music industry expects the virtual livestreamed performance to restore sluggish live performances again and bring about a digital renaissance [6].

## **2. Culture Technology with Livestreamed Performance**

### **2.1 The Convergence of Culture Technology and Music Performance**

Streaming services have helped revive the music industry which has been ruined by illegal copying in the last decade, but live music, makes up over 50% of total revenues and is derived mainly from sales of tickets to live performances [7]. The music industry has been hit hard by COVID 19. In the wake of the cancellation of music concerts, artists move from concerts to online performances while making efforts to let the audience be satisfied with the online performance. It changes the way people enjoy music.

Still, most music fans want to enjoy live concerts. If fans listen to music once and like it, they tend to listen repeatedly to it and go to the concert hall to satisfy the sense of realism and interact with their favorite musician on the stage. Unilateral livestreamed performances lack a sense of realism and interaction, so it can end up as just listening to music

Cultural technology can be an excellent way to allow livestreamed performances to have the same effect as enjoying music at a concert hall. In other words, even if it is an online performance, the audience can feel like they are enjoying music at a concert hall when cultural technologies are converged with the performance [8].

Thus, the music industry has attempted to converge CT with livestreamed performance, making the audience feel a sense of realism and interact with musicians on the virtual stage.

The first attempt of converged virtual livestreamed performance was SM's 'Beyond Live' in April, this year [9]. A total of six teams, including SuperM, Wave V, NCT Dream, NCT 127, TVXQ, and Super Junior, performed virtual livestreaming concerts from April 26 to May 31 through the project 'Beyond Live', which was jointly introduced by SM Entertainment with Naver [10]. The livestreamed performance converged with CT like advanced AR technology and real-time 3D graphic technology, and real-time video talk between artists and global fans fulfilled the audience's satisfaction [11].

'Beyond Live' has drawn more attention by utilizing cutting-edge technology, such as the 'Cheering Stick Sync Play Service', that links cheering sticks in real-time to match the ongoing performance and AR graphics to put the audience in performers' shoes and increase the sense of realism.

Besides, on June 14, BTS held 'Bangbang Con The Live' for a fee, which attracted more than 750,000 fans from 107 countries. To differentiate itself from offline performances, the 90-minute 'Bangbang Con The Live' cooperated with Kiswe Mobile [12], an American live streaming solution company, to establish a multi-view streaming system to specialize in the advantages of 'a livestreamed performance' [13].

Before COVID 19, the entertainment agencies have provided musicians' fans with a recorded performance for free online as a service for fans. These livestreamed performances converged with CT have succeeded in monetizing and eradicated the perception that livestreamed performances are served for free. Therefore, the core element to succeed in the livestreamed performance will be cultural technology, which can be considered a way to revive the sluggish live music performance.

### **2.2 TPM to prevent illegal copying**

The digital environment allows users to make illegal copies of online performance more easily, which lets

the music industry spend more time and effort cracking down on them than in the past. Thus, TPM (Technological Protection Measures) is more important than ever before. When copyright infringement occurs online, the damages are already significant and too difficult to be recovered, so TPM can play a role in preventing the distribution of such illegal content in advance. Korean Copyright Law provides that TPM applied by copyright holders should not be circumstanced because it is ineffective unless they are legally protected and enforced. TPM was discussed at the WIPO Diplomacy Conference on the introduction of legal provisions to prevent the circumstances of TPM, and WCT (the WIPO Copyright Treaty) and WPPT (the WIPO Performance and Phonograph Treaty) adopted in December 1996 [14].

WCT Article 11 made it mandatory for Contracting States to prescribe adequate legal actions and effective legal remedies related to TPM, as evidenced by its title “Obligations concerning Technological Measures”. In 2003, the Korean Copyright Act was amended to implement the provision on TPM under the WCT. Korean Copyright Act article 2 (28) defines 'TPM' as following: A. Technological protect measures applied by the person with the consent of the right holder or the right holder to effectively prevent or restrain access to copyrighted works and other works, etc. protected under this Act in connection with the exercise of rights protected under this Act; B. Technological protect measures applied by the copyright holder or the person who get the consent from the right holder to effectively prevent or restrain other acts of infringement on copyrights or other rights protected under this Act.

At the moment, DRM (Digital Rights Management) and filtering programs are practically used as TPMs to prevent illegal information from posting and distribution on the Internet.

DRM products were developed in response to the rapid increase in online piracy of commercially marketed material, which proliferated through the widespread use of peer-to-peer file exchange programs. However, DRM can be used to protect digital content and control its distribution and usage. A DRM system should offer a persistent content protection against unauthorized access to the digital content, limiting access to only those with the proper authorization. It should be flexible to manage usage rights for different kinds of digital content (e.g. music files, video streams, digital books, images) across different platforms [15].

Filtering software practically consists of programs designed to block or filter access to Web sites or other material on the Internet [16]. Generally, such programs work as a ‘filter’ between a computer's Web browser and the Internet, and restrict Web access based on a preset list of Web site addresses, or ‘URLs,’ compiled by the company that makes the filtering program. If a person attempts to access a Web site on the block list using a computer that either has filtering software installed or is connected to a network that employs filtering software, the Web browser may display a warning or error message explaining that the Web site is blocked.' In addition to compiling block lists, filtering software companies usually divide the Web sites on their block lists into various categories based on the type of material found on the specific Web site [17].

### **3. Copyright Issues in the New Media Environment**

Since the creation of the copyright system, the scope of copyright has continued to expand in response to the development of media that deliver works. At present, with the advent of new media, the Korean copyright system is heralding another major change.

COVID 19 has boosted the increase in livestreamed performances and the use of OTT (Over the Top). It also leads to the issue of establishing a copyright regarding a livestreamed performance and of preparing new rate of royalty standards for the use of works in OTT.

### **3.1 Establishment of a copyright for a livestreamed performance**

A copyright owner takes economic benefits by exploiting or licensing his exclusive right to users and he can protect his rights by prohibiting users from using his works illegally.

In terms of economic rights, it matters what copyright applies to the use of works because each copyright is related to the rate of royalty and it determines how much the copyright owner may make a profit. The advent of a new media delivering works means to redefine copyright and royalty tailored to the new media. At this moment, it is urgently necessary to define which copyright applies to a livestreamed performance. After all, KOMCA (Korea Music Copyright Association) is not collecting the fees because it cannot determine whether a livestreamed performance is equivalent to broadcasting, transmission, or other use.

Korea copyright law stipulates seven kinds of copyrights which refer to the use of a copyrighted work. The online use of works is equivalent to 'transmission'. The term 'transmission' means "providing works, etc. for the use of works so that members of the public can access them individually at the time and place of their choice (Article 2 (1) 10 of the Korea Copyright Act)".

However, a livestreamed performance allows only users who purchased the entrance ticket to access the performance at a fixed time. The livestreamed performance is not available at the selected time unless it is a VOD. Accordingly, it does not conform to the transmission concept that "the public may access works from a place and at a time individually chosen by them."

Although broadcasting or digital audio transmission can be considered in that the service is performed to receive at the same time, it is difficult to apply both in that it is not provided by a broadcasting service provider and in that it is not an audio work but an audiovisual work.

Concerning what rights will be applied to the use of works in the new media, the court may decide the type of use through interpretation after fully examining them. The 'Dinga Radio' case is a very good example [18]. Traditional webcasting corresponds to a digital audio transmission which delivers an audio material simultaneously to the public online as if it were radio because it doesn't make it available at a time chosen by the public. However, a new type of webcasting, such as "FreeListen" which appeared after 2010, allowed users to use various functions such as skipping and stopping channels during music broadcasts, whose use and effectiveness did not differ much in transmission [19].

In the case, the court ruled that the Dinga Radio webcasting may correspond to a quasi-transmission because its functions looked similar to a transmission. The functions are as following; the service makes it possible for users to select music that is usually not available in the digital audio transmission service and to create their own channels in the Dinga Radio service for enjoying music.

As in the Dinga radio case, in which a new form of webcasting function was interpreted as a 'quasi-transmission', this article suggests that the virtual livestreamed performance may be interpreted as a 'quasi-performance'.

Korean Copyright Act Article 2 (1) (iii) defines that 'performance' means the public disclosure of works, performances, records, and broadcasts by staging, playing, singing, oral, reading, screening, playback, or other means, including transmission (excluding transmission) in a connected place belonging to the same person. Accordingly, if the audience can feel the sense of realism as if they participate in the same space at the same time, it might be interpreted as a 'quasi-performance' as a 'transmission taken place within a connected place occupied by the same audience'.

If the right of performance is applied as it is now, the creators will be able to maintain their income by receiving existing performance royalties.

### 3.2 Copyright License Issues on OTT

According to the Korea Communications Commission, South Korea's OTT market has been growing by 28.1 percent since 2013 and is expected to reach 780.1 billion won by 2020. Korean companies have introduced OTT such as Wavve, Seezn, Watcha, tving, Naver TV [20]. As OTT emerges as a new platform in the broadcasting market, the following three copyright issues are problematic.

**The first issue** is the revision of “Special Provisions concerning Audiovisual Works” of the Korean Copyright Act in order to strengthen performers’ rights because performers can’t execute their rights by the application of the special provision when broadcasting is transmitted to OTT. Then, record producers and performers who participated in the production of audiovisual works desire the revision of Copyright law to include ‘transmission compensation’ into “Special Provisions concerning Audiovisual Works”.

**The second issue** is the rate of royalty for music works used in OTT. KOMCA terms do not have any regulation about the use of music in OTT. OTT industries agree to the payment of fees for the use of music in its system, but they are challenging rates. Practically, they argue that streaming or downloading videos via OTT does not differ from VOD. Meanwhile, KOMCA suggests that domestic OTTs should also pay as much as Netflix pays.

Thus, KOMCA has revised terms of collecting fees and is preparing to get approval from the Ministry of Culture, Sports and Tourism for the usage rate.

**The third issue** is that a broadcasting service provider edits a singer’s aired performance and resales it to other media. There has been a practice in which broadcasting service providers do not distribute their profits to entertainment agencies after posting idol group "Fancam" (video taken separately from stage videos for broadcasting transmission) on YouTube and others.

The entertainment agencies argue that it is unfair for a broadcaster to have copyrights regarding singers’ aired performances without permission from them belonged by the singers. The Fair Trade Commission considers that there is a point in entertainment agencies.

To address this practice and ensure fair contracts between broadcasting companies and agencies, the Fair Trade Commission is involved in establishing a standard contract between broadcasting companies and entertainment agencies. The standard contract is scheduled to be made within this year.

### 3.3 E- License on Livestreamed Performance

Traditionally, when music concerts are held overseas, artists have paid a certain portion of the proceeds from ticket sales to the country’s copyright association where the performances are held because they perform for local audience and charge admission fees. However, online makes it much easier that fans access performances from anywhere in the world. It is questionable whether KOMCA will be able to receive online performance fees from all the profits they earned from audiences around the world. When it comes to the traditional concept, KOMCA should collect the performance fees from the profits of only domestic audiences, not overseas audiences. The profits of the overseas audience should go to the copyright association of the audience's country. For this purpose, it may be considered that the Korean Copyright Association collects user fees and distributes them to the copyright associations of each country from where fans access. However, the Korean Copyright Association handles copyrights with the overseas copyright association under reciprocal principles, whose regulations may vary from country to country. A multi-territorial licensing of rights in musical works is necessary to resolve copyright issues efficiently by applying the same terms to all countries from where the audience comes. There is no multi-territorial licensing treaty on copyright management yet, but ‘Directive 2014/26/EU on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in

the internal market (hereinafter ‘the Directive of Collective Management’) can be a good guideline that Korean copyright associations will refer to [21].

The EU has established and operated a single market under a consistent economic goal of trading goods and services on the same terms. As works became available online with the development of the Internet and users’ demand for Internet-based services such as webcasting and on-demand music downloads began to emerge in all Europe’s regions, the EU has designed the plan for a single digital market.

However, within the EU, reciprocal licensing between collective management organizations had been mainly used. Thus, whenever users want to use other state’s music online, they should have obtained a license from the state which owns the copyright of the music. It has hampered the smooth use of online music by users in other EU countries.

To address these problems, the EU enacted the Directive of Collective Management in 2014 intending to facilitate the multi-territorial licensing of online music copyrights. Therefore, in order to facilitate the collection and distribution of copyright fees for livestreamed performances in the future, it can be of great help to establish an intensive management treaty so that the same conditions can be applied.

#### 4. Conclusion

As a result of the convergence of cultural technology and creative content up to now, the virtual livestreamed performance will be likely to replace or supplement live performance. This new type of performance is not a temporary phenomenon caused by COVID 19, but a result that the performance industry has prepared step by step based on cultural technology.

As humanism and printing techniques boosted by the Black Death brought out the renaissance, the convergence of culture technology and content will be likely to lead to a digital renaissance of Korean content.

However, due to the unexpected outbreak of the COVID 19, the new form of the performance was realized earlier than expected, so the institutional system doesn't adequately cope with the current issues.

In terms of copyright, it is time to discuss more earnestly what copyright will apply to a livestreamed performance and how much rate of royalty users will pay.

It is essential to supplement the institutional system from now on. In conclusion, this paper examined the legal nature and the decision of proper copyright fees of performances as an integral part of the music industry.

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