

7-1-2024

Jurisdictional Issues for Cross-border Copyright Infringement: a Study on Fansite Products

Naura Nabila Ikhsani Aulia Wibowo
Bahar Law Consulting, naurawibowo@gmail.com

Follow this and additional works at: <https://scholarhub.ui.ac.id/jpils>



Part of the [Intellectual Property Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Wibowo, Naura Nabila Ikhsani Aulia (2024) "Jurisdictional Issues for Cross-border Copyright Infringement: a Study on Fansite Products," *Journal of Private International Law Studies*: Vol. 1: No. 1, Article 2.

DOI: 10.21143/JPILS.v1i1.1002

Available at: <https://scholarhub.ui.ac.id/jpils/vol1/iss1/2>

This Article is brought to you for free and open access by the Faculty of Law at UI Scholars Hub. It has been accepted for inclusion in *Journal of Private International Law Studies* by an authorized editor of UI Scholars Hub.

JURISDICTIONAL ISSUES FOR CROSS-BORDER COPYRIGHT INFRINGEMENT: A STUDY ON FANSITE PRODUCTS

Naura Nabila Ikhsani Aulia Wibowo

Bahar Law Consulting, Indonesia

Correspondence: naurawibowo@gmail.com

Received: August 30, 2023 | Submitted: October 25, 2023

Revised: October 5, 2023 | Accepted: November 9, 2023

Abstract

Korean pop (K-Pop) and its fandom culture have penetrated Indonesia, resulting in a flourishing K-pop product sector. Fansite goods, fan-made merchandise originating in Korea, are one of the most popular merchandise among fans. However, because Indonesian fans' purchasing power is still restricted, many of them resort to copyright infringement of fansite goods in order to either own or gain profit from the merchandise. This article will explain whether fansite goods are protected by copyright from which country, and if so, which jurisdiction and law is applicable to rule on a dispute of fansite goods copyright infringement perpetrated by an Indonesian national, while also reviewing existing cases to examine the key similarities between them. Apart from that, this article will also explain comprehensively regarding the determination of fines for copyright violations of each fansite product. This is because every act of copyright infringement will be detrimental to the creator of the work. The results of the discussion of this article can be used as an evaluation review of the confirmation of copyright regulations for fansite goods themselves and as legal knowledge regarding cases of copyright infringement which sometimes not many people are aware of. It is hoped that law enforcement and public awareness will improve with the reviews discussed in this article and that every creator who creates fansite products has their fair rights from every product they make.

Keywords: applicable law, copyright infringement, cross-border, fansite goods, jurisdiction, K-Pop, South Korea.

I. INTRODUCTION

A fansite is a website dedicated to a specific singer, group, film, or other subject that has been built by fans and contains a wealth of personal information about celebrities.¹ These fansite masters, who are usually Korean in nationality, follow idols around the clock on their schedule to snap images of them: high-definition and semi-professional pictures, but for the sole aim of providing content for other fans without being compensated.² Watermarks are placed on the photos taken to give them a sense of "ownership" and they are then published to an online platform for other fans to enjoy and preserve.³ Fansite also creates fan-made stuff known as fansite goods, which are unofficial merchandise manufactured from photos of idols taken by fans.

Fansite pictures and goods are protected by copyright according to the Berne Convention for the Protection of Literary and Artistic Works ("**Berne Convention**"), as the convention provides protection of the rights of authors in their literary and artistic works to the countries in which the convention is applied, because it contains original photographs.⁴ Photographic works were included in the article in 1928⁵ with a minimum term of 25 years from the creation date.⁶ The

¹ Pramod K. Nayar, *An Introduction to New Media and Cyberculture* (Oxford: Wiley-Blackwell, 2010), 106.

² “적금 깨고, 욕먹고... 아이돌 홈마로 산다는 것은” (Losing my savings, getting criticized... living as an idol homemaker means), Lee Seulgi, Accessed 18 May 2020, <http://www.asiatoday.co.kr/view.php?key=20160516001105534>.

³ Verbigie Mathieu and Cho Yonghan, “케이팝(K-pop)의 한국 팬덤에 대한 연구 (A Study on the Korean Fandom of Kpop),” *Korean Journal of Journalism and Information Science* 81, no. 1 (2017): 290.

⁴ Berne Union, Berne Convention for the Protection of Literary and Artistic Works (as amended on September 28, 1979), Paris Act, Article 2 para. (1).

⁵ Berne Union, Berne Convention for the Protection of Literary and Artistic Works (as amended on June 2, 1928), Rome Act, Article 2 para. (1).

⁶ Berne Union, Paris Act, Article 7 para. (4)

convention's approach to international copyright is that enjoyment and exercise of rights should not be subject to any formalities or dependent on registration, meaning copyright protection should arise automatically as long as there is a fixation on the creation of the work.⁷ The Berne Convention and the TRIPs both include the principle of National Treatment, which requires Member States to treat foreign creators as if they were citizens of that country and so have access to said country's copyright system.⁸ This means that creations developed on the territory of one Member State are also protected by the laws of other Member States. Indonesia and South Korea have both joined the Berne Convention and the World Trade Organization. The existence of protection for a creation is governed by national legislation.

However, because copyright is a territorial concept, it is not impossible for a work to be published in a borderless jurisdiction like the internet, which includes fansite products. Fans all over the world, including Indonesia, can easily access fansite photographs, via the internet. Copyright protection for photographs that has not been renewed due to current technological advancements does not protect the artistic work against technology that allows for digital storage, editing, and reproduction of photographs, as well as widespread distribution of photographs via the Internet. This problem also affects photos shot by fansite masters, in which Indonesian fans utilize their copyrighted photos without permission. Fan-made items could be made using the images on the fansite and marketed without their consent. This copyright infringement relates to the fansite's copyright infringing on both economic and moral rights. Despite the growing number of infringements, none of the fan sites has ever pursued

⁷ Berne Union, Paris Act, Article 5 para. (2).

⁸ Paul L.C. Torremans, "Jurisdiction for cross-border intellectual property infringement cases in Europe," *Common Market Law Review Issue* 53, no. 6 (2016): 1625.

copyright violators for damages. Which is understandable, given that cross-border copyright infringement is a far more time-consuming process than domestic copyright infringement, due to the fact that transnational issues must be considered when settling infringement cases.

These problems lead into the main research question on how whether fansite goods are covered by copyright and if so, whose jurisdiction and legislation applies to rule on a dispute of fansite goods copyright infringement performed by an Indonesian national. In order to answer the research question, this article provides legal analysis of the International Jurisdiction and Applicable Law on Cross-Border Copyright Infringements. Moreover, it also evaluates cases Regarding Cross-Border Copyright Infringements.

II. FANSITE ACTIVITY AND FANSITE PRODUCTS

A. Evolution of K-Pop to International Recognition

1. K-Pop Impact in Indonesia

The Korean Foundation for International Cultural Exchange (KOFICE), a designated institute for international cultural exchange under Korea's Ministry of Culture, Sports, and Tourism, released a report titled "Global Hallyu Trends 2022" in 2022, which included data from 16 countries and 14 industries. The "Hallyu Index," a five-point measure, was used to calculate the extent to which Korean pop culture has been accepted by local consumers abroad, as well as its inclination to expand or decline, according to the research.⁹

⁹ KOFICE, *Global Hallyu Trends 2022: Handbook on the analysis of major issues in Hallyu and regional trends throughout 2022* (Seoul: KOFICE, 2022).

In the Hallyu Index, the KOFICE used two sub-measures: the Hallyu Status Index (current popularity and popularization of Hallyu) and the Hallyu Sentiment Index (degree of growth or decline of Hallyu). In 2022, Indonesia is in the medium growth – popularization region of the graph (**Figure 1**), showing that Hallyu has incorporated itself into Indonesian pop culture during the last few years as a result of global socio-cultural dynamism.

Regarding the distribution of Hallyu users in Indonesia in **Figure 2**, the proportion of avid users exceeded 40%, demonstrating the comparatively active spread of Hallyu.¹⁰

The surge of K-pop idol Brand Ambassadors for Indonesian firms demonstrates this. Up to 2023, numerous brands have had K-pop idols as Brand Ambassadors or advertisement models, such as Tokopedia (with BTS and Blackpink as Brand Ambassadors), Somethinc (NCT Dream as advertisement models), and Azarine (Red Velvet as advertisement models).

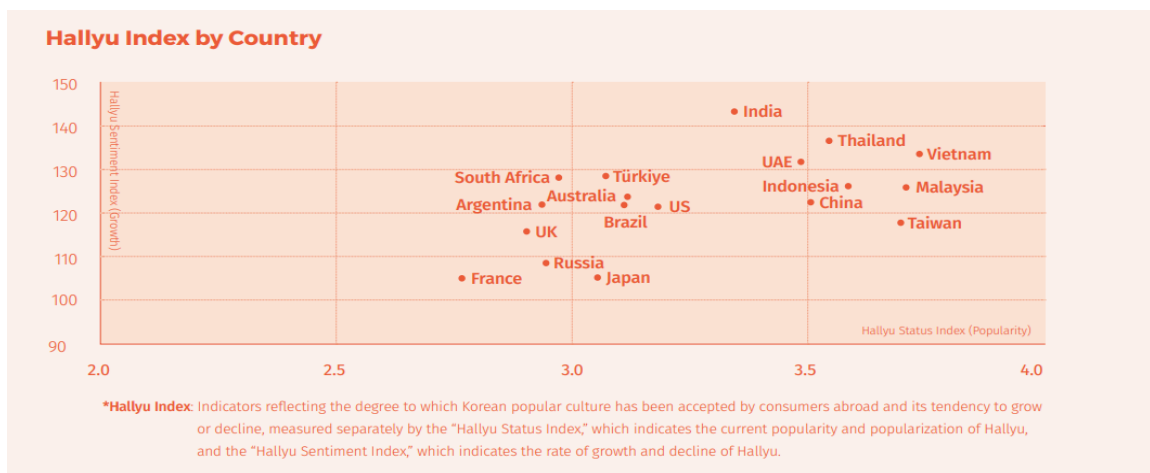


Fig. 1. Hallyu Status Index

¹⁰ *Ibid*, p. 86.



Fig. 2. Hallyu Sentiment Index

B. Fansite in the Context of K-Pop

1. Origins of Fansite in K-Pop

The notion of fansites did not begin in K-pop fan communities, yet it has since grown to be a significant element of the subculture and is now only associated with it. When a K-pop idol group makes their debut, their official agency creates an official website that includes the idol group's information and media content. For example, the K-pop group BTS who debuted in 2013 has the website <<https://ibighit.com/bts/eng/>>, which consists of profile of the group and its members, discography, and schedule information. They also set up a community-based online forum for the fans of said idol group to interact with the idol and each other.¹¹

However, fansites are established from fans' increasing need of idol contents. From the 1990s until the mid-2000s, online fan communities in Korea used the personal computer (PC) communication network to create their own web pages as well as access message boards, online chat, and private messaging. This is where fans may share information about their idols and contribute various types of data, such as images, videos, and articles. Official websites produced, controlled, and overseen by

¹¹ Jungwon Kim, "'Home' and 'Homma' in K-Pop Fandom", *Cultural Industry Research* 18, no. 3 (2018): 2.

official agencies of idols are not the same as fansite websites. Soshified, for example, was founded in 2008 for the girl group Girls' Generation and is still active today.¹²

The focus of the fansite has turned to fan action since the mid-2010s. Even though fansites continue to give information, news, and data on idols, as well as hosting fans' discussion boards and unofficial fan clubs, as they did in the 1990s and 2000s, current fansites focus on sharing visual materials such as images and videos of idols.¹³

2. Fan Labour and Relevance of Fansite

An "organized group or subculture" that shares affection and allegiance to a certain object is referred to as fandom.¹⁴ A genuine person, such as a pop music idol or movie star, or a cultural product, such as animation or fictional literature works, could be the target.¹⁵ There are also fans who participate in production activities such as photo and video creation. Fan fiction, fan art, fan film, and pictures are examples of fan-created content. Most fans freely participate in numerous practices because of their passion and desire for Idols, it may be concluded. There are three main characteristics of fandom: Discrimination and Distinction, Productivity and Participation, and Capital Accumulation.¹⁶ The aspects of media deciphering and media use were split into the dimensions of fans' interest in subculture practice, which was characterized as "productivity." It

¹²"Soshified History & Achievements", Soshified, Accessed 18 May 2020, <<https://www.soshified.com/2011/02/soshified-history-achievements>>.

¹³ Park Eunkyung, p. 140.

¹⁴ Matt Dufett, *Understanding Fandom: An Introduction to the Study of Media Fan Culture* (London: Bloomsbury Academic, 2013), 18.

¹⁵ Lee Soyoung, Kim Hyangmi, and Ju Kyeonghee, "Fandom as a Prosumer: Study on Information Behavior of Fandom", *Digital Convergence Research* 11, no. 12 (2013): 751.

¹⁶ John Fiske, "The Cultural Economy of Fandom", in *The Adoring Audience: Fan Culture and Popular Media*, eds. Lisa Lewis (London: Routledge, 1992), 34.

has been broadened to include the field of media "creation," emphasizing the fandom's subjectivity and action.¹⁷ Pop culture consumers are no longer forced to accept products created by the business; instead, they can create new cultures and meanings based on their own preferences.¹⁸

This type of action is known as "fan labor," which refers to the free dissemination of fan works.¹⁹ Because the internet is propelled by cultural and technological labor through and through, a continual production of value, free fan labor includes but is not limited to the activity of building webpages, which is at its core both voluntarily provided and unwaged, appreciated and exploited.²⁰ Fans used to be one-way consumers who received content but did not produce anything in return. The current fandom subculture practice, on the other hand, has prompted fans to create fan-made content as well as consume official content, indicating a sort of user innovation that allows for self-fulfillment.²¹

3. Definition of Fansite and Fansite Master

The phrase "*fansite*" has no legal definition, but it has become a well-known term that is defined as "a website offering content about a celebrity that a fan autonomously generates and administers."²² As "*fansite*" is a combination of the words "*fan*"

¹⁷ Kim Sua and Kim Soojung, "From Interpretation Paradigm To Performance Paradigm: Tendencies and Issues of Media Fandom Studies," *Journal of Korean Broadcasting* 29, no. 4 (2015): 40.

¹⁸ Minjung Lee, "Production of Fashion Contents by Fandom," *Basic Formative Studies* 16, no. 6 (2015): 490.

¹⁹ "Interrogating 'Free' Fan Labor", Abigail De Kosnik, Accessed February 5 2021, <<http://spreadablemedia.org/essays/kosnik/index.html#.YCJPh-kzbeQ>>.

²⁰ Tiziana Terranova, "Free Labor: Producing Culture for the Digital Economy," *Social Text* 18, no. 2 (Summer 2000): 34.

²¹ Tianxiang He, p. 5.

²² Jungwon Kim, "'Home' and 'Homma' in K-Pop Fandom", *Cultural Industry Research* 18, no. 3, (2018): 7.

and "site," meaning that the site is produced by fans and not by the singer, group, or whatever subject of devotion these fansites are for.

Although a fansite is still a webpage built by fans dedicated to idols, it is now more well-known for the photographs shot by fansite masters and the fansite merchandise they generated.²³ People who operate fan-made websites for idols are known as "fansite masters," or "homma" (홈마), short for "homepage master" in Korean. Fansite owners use social media and digital technology to broadcast images and videos of their idols on their sites, give real-time information about their idols to general fans, and recreate or reconstruct the idol's image in their own unique style. They create a fandom activity method and culture that distinguishes them from ordinary fans, and act as the aforementioned prosumer fans, catering to both fan production and content consumption, resulting in increased value for media corporations in the form of their own spending on idols' content.²⁴

Fansite masters are fansite administrators, whose main activity is following idols' schedules, which includes performances on TV music shows, concerts both domestic and overseas, radio schedules, public broadcasts, events, arrival/departure airport schedules, and fan signing events. Fansite masters²⁵ to use high-tech cameras to take

²³ Lee Seulgi, "Spending savings, being sworn at... Living as an idol Homma", *Asia Today*, May 16, 2016, Accessed 5 February 2021, <<https://www.asiatoday.co.kr/view.php?key=20160516001105534>>.

²⁴ Oh Hyunji, "Homma' earning tens of millions of won by selling fansite goods... Are there any tax obligations?", *MK News*, January 8, 2019, Accessed 18 May 2020, <<https://www.mk.co.kr/news/society/view/2019/01/15749/>>.

²⁵ Kim Seongwoo and Kim Yujin, "Reporter's Week of Homma", *News Herald*, April 26, 2019, Accessed 31 October 2020, <<http://news.heraldm.com/view.php?ud=20190426000188>>.

semi-professional images of idols and then upload them on their fan sites.²⁶ These prosumer fans are involved in not only the creation of visual material through photographing and recording idols, but also the creation, sale, and purchase of unofficial items based on their visual content for fundraising purposes.

While fansite masters and paparazzi, who follow celebrities around and take images of them for news sites and magazines,²⁷ and photojournalists or press, have certain similarities and are on the same path, the two are not the same.²⁸ Running a fansite, or being a fansite master, is a financially demanding hobby. Fansite masters introduce fansite goods for crowdfunding to keep the fansite running.²⁹

4. Fansite Activity

A fansite master's 80 percent of income is spent on maintaining the fansite during an active promotional schedule, which is when the idols release a new album and will be actively participating on TV music shows and attending events, including overseas ones. One of the events is a "*fansign*" event, which is a gathering where fans may meet their idols and get their albums signed at the time. To enter a fansigning event, one typically purchases a large number of records in order to receive an application ticket. Fansites typically raise revenue by creating and selling unofficial fanmade stuff known as "fansite goods,"

²⁶ Hwang Seoyeon, "Homma's Private Life on why they're behind the camera", *TVDaily*, May 4, 2019, Accessed 31 October 2020, <<http://tvdaily.co.kr/read.php3?aid=15569435071454268010>>.

²⁷ Kim McNamara, *Paparazzi: Media Practices and Celebrity Culture*, (Hoboken: John Wiley & Sons, 2015), p. 32.

²⁸ Tracy Brown, *Blogger or Journalist? Evaluating What Is the Press in the Digital Age*, (New York: Rosen Publishing, 2015), p. 7.

²⁹ Raizel Liebler, "Copyright and Ownership of Fan Created Works: Fanfiction and Beyond" in *The SAGE Handbook of Intellectual Property*, (London: SAGE Publications Ltd., 2015), p. 394.

which combine photos of the idols and are then sold to fans to raise funds to support said idols.³⁰

5. Fansite Pictures and Goods

Fansite photographs are the major products of fansites because their main activity is to capture pictures of their idols. The main purpose of fansites following idols on their schedules is to photograph them. The most noticeable feature of fansite pictures is that they use "*watermarks*" from their fansite on the photos they capture. Watermarks on fansite pictures are used to identify which fansite took the photograph.³¹ A fansite master's photos are typically shot at events and schedules for which the agency does not offer professional photographers, such as radio broadcasts or airport departures and arrivals.³²

Fansite masters create fan-made items using the photos they have taken to make revenue for the idol they support. The items are viewed as commodities made by fansites and are referred to as "*fansite goods*." The profits from fansite merchandise are utilized to send support to the idols. By selling fansite goods, fansites not only earn money in exchange for performing fandom by developing and selling fan merchandise, but they also reinvest their profits back into fandom by executing fan tributes. Consumer fans' purchases of fan stuff on the fan market are intended to demonstrate their engagement in

³⁰ Jungwon Kim, "*K-Popping: Korean Women, K-Pop, and Fandom*" (Doctorate Dissertation, University of California Riverside, 2017), p. 159.

³¹ "Do you know what a Homma is?", Junghyun Lee, Accessed 6 February 2021, <<https://www.nocutnews.co.kr/news/4544656>>.

³² "Homma struggling at the airport to shoot celebrities", Seobeom Han, Accessed 1 February 2021, <<https://www.hankookilbo.com/News/Read/201805221750734847>>.

fandom as well as to satisfy their desire to own K-pop-related items.³³

C. Legal Aspects of Fansite

1. Legal Capacity of Fansite Master

Regardless of nationality, fansite masters come from all over the world. They range in age from young to old: some are fans who already have a steady income to support this lifestyle, others are middle-aged fans who have been following the idol for a long time, but the majority of these fansite masters are university students, both domestic and international, who primarily study in Korea.³⁴ Because fansites are, by definition, websites controlled by individuals, it is important to figure out what kind of entity they are—whether they're associations of people, businesses, or even legal entities—and whether or not they have a legal position. To decide which law applies to the fansites that the fansite masters have formed, it is necessary to know what nations the fansite masters belong to. Unfortunately, obtaining information about a fansite master's country is impossible unless they offer this information directly.

a. Doctrine of Personal Status

Personal status refers to a system of norms that follow a person wherever he goes, giving him legal rights wherever he goes. The doctrine of personal status only applies to natural persons, and it governs such things as the beginning and

³³ Jungwon Kim, “*K-Popping: Korean Women, K-Pop, and Fandom*” (Doctorate Dissertation, University of California Riverside, 2017), 160.

³⁴ “More than just a pretty picture: Fansite culture in the K-pop fandom”, Beyond Hallyu, Accessed 18 May 2020, <http://beyondhallyu.com/k-pop/just-pretty-picture-kpop-fandom-fansite-culture/>

termination of personality, the ability to carry out legal acts, the protection of individual interests, and privacy, among other things.³⁵ The nationality principle and the domicile principle are the two most common methods for determining a person's personal status. According to the nationality concept, a person's personal status is determined by their national legislation. Countries that follow the domicile principle, on the other hand, establish a person's personal status based on the laws that apply to their residence.³⁶ As a means of determining a person's personal status, both nationality and the domicile principle are considered connecting factors of private international law (“**PIL**”), which is some outstanding fact that establishes a natural connection between the factual situation before the court and a specific system of law.³⁷

The current and only legal basis of personal status in Indonesia is stated in Article 16 of the Indies General Provisions Act or *Algemene Beppalingen van Wetgeving* (“**AB**”).³⁸ Article 16 of the Indies AB now reads that, based on principle of concordancy,³⁹ it will follow Article 6 of the Dutch AB that stipulates the laws concerning the rights, status and capacity of persons of Indonesian nationals are binding even when they reside abroad. Article 3 of the Korean Private International Law Act reads that if a person has two or more nationalities and one of them is of the Republic of Korea, than the law of Republic of

³⁵ Wirjono Prodjodikoro, *Asas-asas Hukum Perdata Internasional* (Principles of Private International Law) (Jakarta: Van Dorp & Co, 1954), 22.

³⁶ Sudargo Gautama, *Pengantar Hukum Perdata Internasional* (Introduction of Private International Law) (Bandung: Binacipta, 1987), 49.

³⁷ Paul Torremans and James Fawcett, *Cheshire, North, and Fawcett's Private International Law* (Oxford: Oxford University Press, 2017), 15.

³⁸ Staatsblad 1847 no. 23.

³⁹ Sudargo Gautama and Hanifa Wiknjosastro, “Some Aspects of Indonesian Private International Law”, *Malaya Law Review* 32, no. 2 (December 1990): 421.

Korea shall be the *lex patriae*. This means that Korea uses the nationality concept to define a person's personal status in general.

b. Personal Status of Fansite Master

The nationality of a fansite master must first be determined in order to ascertain their personal status. According to the Korean Commercial Act,⁴⁰ Article 4 states that “*Any person who engages in commercial activities under his/her own name is called a merchant.*” The definition of merchant in the article is similar to that of sole proprietorship. Article 5 of the Korean Commercial Act stipulates any person engaging in any business in the same manner as a merchant shall be deemed a merchant.

Under the two provisions, a fansite master can be considered as a merchant. While there are no provisions that explicitly states the legal status of a merchant, Article 31 of the Korean Commercial Act⁴¹ states that, “*No juristic person can come into existence other than in accordance with the provisions of the Acts*” and Article 33 states that, “*A juristic person shall come into existence by making registration for Incorporation at the seat of the principal office of the juristic person*”. Because merchants are not required to register under the Acts, they are not a juristic person and so are not a separate legal entity from their owner and so the fansite is not a separate legal entity from its owner, the fansite master. Article 11 of the Korean Private International Law Act⁴² states that a person's personal status is

⁴⁰ Republic of Korea, Official Translation of Commercial Act, Act No.13523, 2015, Partial Amendment, Article 4, Available at <http://law.go.kr/LSW/eng/engLsSc.do?menuId=2§ion=lawNm&query=commercial+act&x=0&y=0#liBgcolor14>.

⁴¹ *Ibid*, Article 31.

⁴² Republic of Korea, Official Translation of Act of Private International Law, Act No.13759, 2016, Partial Amendment, Article 11, Available at

determined by their nationality. As a result of their business actions, it may be argued that a fansite master is a merchant, and its nationality is Korean because its owner is of Korean nationality.

Under Indonesian law, a legal entity is not explicitly defined in the Civil Code, but they are legitimate subjects of law. Under Indonesian law, a fansite must adopt the form of associations,⁴³ Limited Liability Company,⁴⁴ Cooperatives,⁴⁵ or Foundations⁴⁶ in order to have a separate personal status than the owner. However, because a fansite lacks any of the traits or legal requirements to be any of the bodies, it is not a legal person, and so its personal status is identical to that of its owner.

2. Fansite Goods as Goods in Law

a. Definition of “Goods”

Black’s Law Dictionary has two definitions of “*goods*”: first, goods are tangible or movable personal property other than money, especially articles of trade or items of merchandise; and second, goods are things that have value, whether tangible or not.⁴⁷ No international legal instruments have defined “*goods*”, despite international trade using goods as its main object.

i. Indonesian Law

“Goods” is generally regulated in Book II of the Indonesian Civil Code (“**ICC**”) under the Law of Property. At Article 499 of

<<http://law.go.kr/LSW/eng/engLsSc.do?menuId=2§ion=lawNm&query=private+international+law&x=0&y=0#AJAX>>.

⁴³ Article 1653 of the Civil Code.

⁴⁴ Law No. 40 of 2007 on Limited Liability Company.

⁴⁵ Law No. 17 of 2012 on Cooperatives

⁴⁶ Law No. 16 of 2011 concerning Foundations as amended by Law No. 28 of 2004

⁴⁷ Bryan A. Garner, *Black’s Law Dictionary* 11th ed. (Minnesota: Thomson West, 2019), 762.

the ICC reads “According to the law, properties are all goods and rights which may be the object of ownership.”⁴⁸ The article, in Indonesian, reads “Menurut paham undang-undang, yang dinamakan kebendaan ialah tiap-tiap barang dan tiap-tiap hak yang dapat menjadi dikuasai oleh hak milik.”⁴⁹ Several notes regarding the translation and wording on key terms must be made. First, taking a look at the first key term: the word “kebendaan” is translated into “properties”. Second, the word “barang” is translated into “goods”. The ICC was translated directly from the Netherlands’ *Burgerlijk Wetboek* and that the direct translation of “benda” was “zaak” and the direct translation of “barang” was “goed”. Hence, this English translation of ICC uses “goods” for the term “barang”.

The ICC does not strictly differentiate between “benda” and “barang”, and it uses the two terms interchangeably.⁵⁰ However, in this discussion the two terms are mutually exclusive and are not used interchangeably and the translation of “goods” that will be used is “barang”. The distinction between “goods” and “rights” in the article implies that “properties” consists of tangible and intangible goods,⁵¹ but “goods” itself is not specifically defined anywhere in the ICC. Even though the terms “benda” and “barang” are used interchangeably in the ICC, it somehow does not encompass the definition and the terms are only used to loosely describe each other.

⁴⁸ Rahmanata and Andjar Pacht, eds., *Civil Code for Indonesia — Burgerlijk Wetboek* (Proclaimed by the Publication of April 30 1947 S. No. 23) translated by Rahmanata and Andjar Pacht (Jakarta: Lembaga Penerbit Fakultas Ekonomi Universitas Indonesia, 2009), Article. 499.

⁴⁹ R. Soebekti and R. Titrosudibjo, *Kitab Undang-Undang Hukum Perdata (Code of Civil Law)*, translated by R. Soebekti and R. Titrosoedibjo (Jakarta: Balai Pustaka, 1992), Pasal 499.

⁵⁰ Fierda Husni Hasbullah, *Hukum Kebendaan Perdata: Hak-hak yang Memberi Kenikmatan (Civil Property Law: Rights that Give Enjoyment)* (Jakarta: Ind-Hill Co, 2002), 20.

⁵¹ *Ibid*, p. 19.

Another definition of “*barang*” is stated in Law Number 7 of 2014 on Trade. Article 1 para. 5 of the law official translation reads, “*Items are any object, whether tangible or intangible, whether movable or immovable, can either be spent and can not be spent, and can be traded, used, or utilized by consumers or business communities.*”⁵² This definition of goods is virtually the same as the definition of “*properties*” or “*kebendaan*” in Article 499 of the ICC, which further proves that not only the ICC, but also the Indonesian legal framework as a whole does not strictly differentiate between “*benda*” and “*barang*”. This leads to the conclusion that goods are the same as property within the national legal framework described in national legal instruments: it is an object that is either tangible or intangible, movable or immovable, perishable or not, and on which rights can be imposed.

ii. Korean Law

In this case, because the context of “goods” is under South Korean law, then *lex causae* qualifications based on South Korean law will be used. Definitions of “goods” in South Korean law exist in Article 2 para. 2 of Foreign Trade Act, which states that “goods” means movables.⁵³ A more narrowed definition of “goods” in Article 2 para. 4 of Customs Act⁵⁴ differentiates goods

⁵² Indonesia, Official Translation of Law No. 7 of 2014 regarding Trade, Lembaran Negara Republik Indonesia (LNRI) No. 45 Tahun 2014, and Tambahan Lembaran Negara (TLN) No. 5512, Article 1 para. 15

<<https://eservice.insw.go.id/files/atr/Law%20No.%207%20of%202014%20on%20Trade.pdf>>.

⁵³ Republic of Korea, Official Translation of Foreign Trade Act, Act No.13838, 2016, Partial Amendment, Article 2 para. 2, Available at <<http://law.go.kr/LSW/eng/engLsSc.do?menuId=2§ion=lawNm&query=foreign+trade&x=0&y=0#liBgcolor18>>.

⁵⁴ Republic of Korea, Official Translation of Customs Act, Act No.14839, 2017, Article 2 para. 4, Available at <<http://law.go.kr/LSW/eng/engLsSc.do?menuId=2§ion=lawNm&query=customs&x=0&y=0#liBgcolor15>>.

into foreign goods and domestic goods. It may be argued that the meaning of "goods" in South Korean law is quite broad and includes anything movable, tangible or intangible, subject to specific constraints. Aside from that, South Korean law distinguishes between foreign and domestic commodities for customs purposes.

b. "Goods" in Fansite Goods

There have been various discrepancies in the qualification of the term "goods" in both Indonesian and South Korean law. Under Indonesian law, the phrase "goods" has a confusing relationship with the term "property". Although South Korean law specifies "goods" in a broad sense with limitations, Indonesian law specifies exactly what it should be.

There are essentially only two differences in the definitions of "goods" in both countries: in Indonesian law, "goods" also include immovables, whereas in South Korean law, "goods" can only be movables, and Indonesian law defines "goods" in a more specific manner, particularly by including the phrase "on which rights can be imposed." It has already been stated that "fansite products" are essentially unofficial merchandise in the context of "fansite goods." However, because the concept of fansite products fits under one of the two legal systems' categories, the "goods" in "fansite goods" can also be defined as trade items.

D. Concept of Copyright and Protected Rights

1. Rights Comprised in Copyright

In general, copyright is divided into two categories: economic and moral rights. Economic rights concern the monetary value that can be generated from any economic activity that utilizes the images, whereas moral rights concern the creator's relationship with the work itself.

a. Economic Rights

The term “economic rights” was not defined in the Berne Convention, only mentioned in passing firstly in Article 5 para. (2) stipulating the infringement of economic rights, and in Article 6^{bis}, as means of differentiating a different type of rights other than moral rights that was stipulated in the article it was mentioned in. Economic rights allow right owners to profit financially from the use of their works by others, and it is through economic rights that copyright can become a source of income for its owner, or in other words, it encompasses the exclusive right to the economic exploitation of the work,⁵⁵ such as selling it or licensing others to perform the acts restricted by the rights. In Article 8 Law Number 28 of 2014 on Copyright (“**Copyright Law**”), economic rights is an exclusive right of the author or holder of copyright to gain economic benefits of the creation. It is transferable according to both the Convention and Indonesia Copyright Law, which is the “intangible movable goods” part of copyright stipulated in Article 16 para. (1) of Indonesia Copyright Law.

⁵⁵ Andrea Antonelli, “Applicable Law Aspects Of Copyright Infringement On The Internet: What Principles Should Apply?”, *Singapore Journal of Legal Studies*, (July 2003): 150.

b. Moral Rights

Article 6 and Article 6^{bis} of the Berne Convention as well as Article 5 para. (1) of the Indonesian Copyright Law governs moral rights. It concerns the creator's relationship with the work: it protects a creator's right to be identified as the work's creator, known as rights of attribution, as well as the right to preserve the work by banning any revisions that could jeopardize the artist's honor or reputation. The Berne Convention in Article 6^{bis} defines moral rights as “to claim authorship; to object to certain modifications and other derogatory actions”, allowing writers and creators to take specific steps to preserve and safeguard their connection to their work. Moral rights are non-transferable because they are inherent in the creator and only granted to individual creators, according to this article, and in many national laws, including Indonesia's, they remain with the authors even after they have transferred their economic rights. However, Indonesian Copyright Law stipulated such transfer of moral rights are allowed after the death of the Creator.

2. Requirements of Protection

There are no clear requirements for a work to be eligible for copyright protection in any of the Berne Convention's articles. Article 2 para. (1) of the Berne Convention only protects the expression of ideas, not the ideas themselves, regardless of the mode or style of expression.⁵⁶ For a work to be protected by copyright, it must be an original creation—the ideas that

⁵⁶ WIPO, *Understanding Copyright and Related Rights* 2nd ed. (Geneva: WIPO Publication, 2016), 8.

inspired it do not have to be novel, but the author's expression of those ideas must be unique.⁵⁷ However, copyright protection only applies to manifestations of ideas, not to ideas themselves, as stated in Article 9 para. (2) of the TRIPS Agreement, which indicates that a single original concept is not protected, but the representation of the idea in an original form that may be observed by others is.⁵⁸

Aside from the legal requirement that a work be unique and a form of expression of an idea, the worth or merit of the work, particularly in a subjective assessment, and the manner in which the representation of an idea should be expressed, have no bearing on whether or not the work is regarded as acceptable for copyright protection.⁵⁹ Protection for a work arises spontaneously upon its creation and is not dependent on registration: once a work has taken shape, it is already protected, whether or not it has been registered.⁶⁰ Three prerequisites of copyright protection can be deduced, which are essentially the copyright principles: 1) originality of the work, 2) the idea-expression dichotomy, and 3) inherent copyright protection.⁶¹

The second and third protection standards, respectively, are already mentioned expressly in the Berne Convention. Article 2 para. (1) should be read to cover all works that have taken on a protected form. The list of sorts of works in the article is

⁵⁷ WIPO, *WIPO Intellectual Property Handbook: Policy, Law, and Use* (Geneva: WIPO Publication, 2004), 42.

⁵⁸ Thomas Margoni, "The Digitisation of Cultural Heritage: Originality, Derivative Works and (Non) Original Photographs", *Institute for Information Law* (2014): 9.

⁵⁹ WIPO, *Guide to the Berne Convention* (Geneva: WIPO Publication, 1987), 13.

⁶⁰ David Vaver, ed., *Principles of Copyright: Cases and Materials*, (Geneva: WIPO, 2002), 29.

⁶¹ Jane Ginsburg, "Copyright" in *Oxford Handbook of Intellectual Property Law*, edited by Rochelle Dreyfuss and Justine Pila (Oxford: Oxford University Press, 2018), 4.

intended to serve as a guideline for country copyright laws rather than a comprehensive list.⁶² Article 5 para. (2) stipulates that "The enjoyment and the exercise of these rights shall not be subject to any formality; [...]" which explicitly stated that under the Berne Convention, the enjoyment or exercise of copyrights shall not be affected by any means of formal administrative requirements such as registration. However, neither the Berne Convention nor the TRIPs Agreement define the terms "original" or "standard of originality," and merely establish a general criterion of originality indirectly and implicitly in Article 2 par (1). The means of originality only functions as a matter of inference when it comes to a certain threshold criterion for protection.

III. INTERNATIONAL JURISDICTION AND APPLICABLE LAW ON CROSS-BORDER COPYRIGHT INFRINGEMENT

A. Object and Subject Protected by Copyright

1. Creation, Copyright, and Creator

The concept of copyright is fickle because while a proprietor of a tangible property owns the physical goods, the intellectual rights itself may belong to someone else. To fully comprehend copyright, it is necessary to distinguish between "creation," "creator," and "copyright" in order to correctly understand what are the legal objects and who is the legal subject matter covered by the right, as well as what kind of protection the right provides. The Berne Convention predetermines these definitions as the basis of national copyright laws of its Signatory Members,

⁶² WIPO, *Guide to the Berne Convention*, p. 14.

but some definitions in national copyright laws may be adjusted to meet the needs of each country.

a. Berne Convention

Although the Berne Convention uses the term "copyright" but does not define it, the stipulations of Article 1 are sufficient to imply that the concept of copyright adopted in the Berne Convention is the *droit d'auteur* or author's rights, rather than the concept of rights to copy, from which the term "copyright" was born.⁶³ The Convention allowed Signatory Members' national legislations to create their own definitions based on this aim and change them based on their own country's specific needs for protection and so the Convention does not specify what "copyright" is.⁶⁴

The Berne Convention does not define authorship specifically but there was a general consensus among the member states on the meaning of the term. For the purposes of the Convention, it seems only logical to understand the terms "authors" and "authorship" to refer to the people who created the works.⁶⁵ As a result, there are times when the answer to the question of authorship isn't obvious. Even so, Article 15 para. (1) and (3) regulate the situation in which the author's name or identity is merely hinted at but leaves no mistake about who the author is, as well as the situation in which the author is unknown. Paragraph 1 ensures copyright protection to authors who use pseudonyms as long as the pseudonym leaves no doubt

⁶³ WIPO, *Guide to the Berne Convention* (Geneva: WIPO Publication, 1987).

⁶⁴ WIPO, Summary of the Berne Convention for the Protection of Literary and Artistic Works (1886), *WIPO*, Accessed 20 May 2021 <https://www.wipo.int/treaties/en/ip/berne/summary_berne.html>.

⁶⁵ Jane Ginsburg, "People Not Machines: Authorship and What It Means in the Berne Convention", *IIC* 49, (2018): 131.

about their identity, but paragraph 3 grants the publisher the authority to assert copyright protection on works whose author's identity is unknown.⁶⁶

The Convention also does not define creation, but it defines the word "literary and artistic works," which was discussed in the preceding article. It stated that "every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as [...]" The paragraph went on to identify all of the literary and artistic works that are protected under the Convention. Aside from that, it defines the phrase "published works"⁶⁷ despite the fact that it does not exist in any of the previous articles.

b. South Korean Law

The term "copyright" was not included in the Korean Copyright Act until Article 10, which described the types of rights that come with copyright protection, which are economic rights, sometimes known as "author's property rights," and moral rights. This act uses the term "works" to allude to creation, which is defined as "creative productions in which human thoughts or emotions are conveyed."⁶⁸ The statute protects photographic works, which are among the works exemplified in the clause.⁶⁹ The following article said that derivative works of an original work are protected as separate works from the original.⁷⁰ "The persons who create works," as defined by this act, are "creators" or "writers."⁷¹ Because the act

⁶⁶ WIPO, *Guide to the Berne Convention*, (Geneva: WIPO Publication, 1987).

⁶⁷ Berne Union, Paris Act, Article 3.

⁶⁸ Republic of Korea. Official Translation of Copyright Act, Act No.15823, 16. Oct, 2018., Partial Amendment, Article 2 para. (1).

⁶⁹ *Ibid*, Article 4 para. (1).

⁷⁰ *Ibid*, Article 5

⁷¹ *Ibid*, Article 2 para. (2).

does not elaborate on this very broad and imprecise term, it is safe to assume that anyone who has the ability to create a work and does so can be classified as an author within the confines of the act.

Apart from that, there is acceptance for presumption of authorship, which occurs when an author publishes their work under a pseudonym or a well-known actual name, obscuring their identity.⁷² The authorship of pseudonyms or well-known real names is presumed in two situations, according to this article: first, if those names are given as the author's name in the traditional fashion on the original or reproduction of the work, and second, where those names are indicated as the author in a public performance or transmission to the public of the work. As a result, when an author publishes a work under a pseudonym, they are believed to be the author and hence have ownership of the work.

c. Indonesian Law

The Copyright Law's definition of copyright in Article 1 para. (1) reads *"the exclusive rights of an author that arises automatically based on the declarative principle after a creation is published in a tangible form without reducing restrictions as per legislation provision."* Between the Berne Convention, Korean law, and Indonesian law, this is by far the most detailed and thorough definition of copyright. "Exclusive rights" are those that can only be retained by the creator, with no other parties able to benefit from them without the inventor's permission. The reference of "declarative principle when a creation is published in a concrete form" is the second. Many key

⁷² *Ibid*, Article 8

concepts are contained in this statement, including "declarative principle" and "issued in a tangible form." The last part of the passage, "without reducing restriction as per legislation provisions" refer to the limitations and exceptions of copyright, which promotes the fair use of creations. In the situation of copyright holders who are not the creators, they only own a portion of such exclusive rights, namely the economic rights.

The law defines the term "*cipta*an", translating to "creation" or "works", both of which can be used interchangeably in Article 1 para. (3). Unlike the previous legal products' definitions, this one emphasized expressly that the creation must be disseminated in a tangible form. Article 40 para. (1) letter n includes derivative works as a copyright-protected creation under this law, with para. (2) further elaborating that such work's protection is separate from the original one it is derived from. The Copyright Law solely protects physical creations that meet the previously mentioned description and are not covered by fair use exceptions and limits.

The definition of "author" or "creator", both terms used interchangeably, is "an individual or a group of individuals who, individually or collectively, produced a creation that is unique and personal". The definition recognizes "a group of individuals" as a single collective creator. However, there are no regulations governing creators who use a pen name or a pseudonym.

2. Copyrighted Works in Fansite Products

Photographs immediately justify copyright protection and have always been subject to copyright laws. Photographic works were originally listed in the Berne Convention's Article 2 para. (1) catalog of copyrightable works. However, there appears to be a distinction in terms of protection for photographic works, with

a minimum duration of 25 years from the date of creation,⁷³ whilst for the rest of the works, the standard rule equal to the author's life plus 50 years after his or her death applied.⁷⁴ The copyright protection of photographs has become more difficult in recent years as a result of new technology that allows not only for the digital storage, editing, and reproduction of photographs but also for their global distribution via the internet.⁷⁵

Photographs are one of the most widely circulated works due to their ease of production. Because of how widely the shot is shared and re-uploaded, the authorship of the photograph is frequently forgotten. As advanced technology or methods for instantly identifying the author of a photograph are not yet common or accessible to the general public unless for very specific purposes, it is becoming more difficult for photographers to mark their authorship on their photographs and easier for others to claim authorship on photographs that are not theirs.

A watermark is one of the most common and simple ways to indicate ownership of images. Because of the fast circulation of content, proof of authorship based on which account posted it first is increasingly unreliable nowadays. The inclusion of a watermark is another measure taken by photographers to prevent copyright infringement. While watermarking refers to the technique used in 13th century where papermakers stamp a design into wet paper pulp that will be visible once the pulp dries into paper, the same idea is now employed in "digital

⁷³ Berne Union, Paris Act, Article 7 para. (4).

⁷⁴ *Ibid*, Article 7 para. (1).

⁷⁵ Eleni Karatza, "*Copyright Protection for Photographs*", (Thesis, International Hellenic University, 2016, p. 8.

watermarking".⁷⁶ A digital watermark is a visible or hidden mark that is embedded in any digital data form,⁷⁷ and uses a technological procedure to build a perceptually transparent pattern that can only be retrieved using a detection algorithm and the right detection key. If appropriately integrated into digital media, this technique can be utilized for copyright protection.⁷⁸ For example, the knowledge of the secret key to read the hidden watermark can be used to authenticate the copyright owner.⁷⁹

However, digital watermarking, in all of its intricacy, is not the type of technology that will aid in the instant identification required by photographers to prevent the public from infringing on their copyright. Watermarking, as opposed to digital watermarking, is a technique for achieving the desired effect of digital watermarking by employing far simpler means, such as placing "watermarks" of the author's name or alias onto images to indicate who the photographs belong to.⁸⁰ The Berne Convention recognizes the use of a pseudonym to claim authorship of a work, stating that even if the author's name is a pseudonym, it is necessary for the author's name to appear on the work.⁸¹ Although the Convention does not define a

⁷⁶ Martin Steinebach, Jana Dittmann, and Erich Neuhold, "Digital Watermarking", in *Encyclopedia of Multimedia*, ed. Borko Furht, (Boston: Springer, 2008), https://doi.org/10.1007/978-0-387-78414-4_303

⁷⁷ Subhrajit Sinha Roy, Abhishek Basu, and Avik Chattopadhyay, *Intelligent Copyright Protection for Images*, (Florida: Taylor & Francis, 2019), 11.

⁷⁸ Nicholas Paul Sheppard, Reihaneh Safavi-Naini, Philip Ogunbona, "Digital watermarks for copyright protection", *Journal of Law and Information Science* 12, no. 1, (2002): 111.

⁷⁹ Hideyasu Sasaki, *Intellectual Property Protection for Multimedia Information Technology*, (New York: Information Science Reference, 2009), 97.

⁸⁰ Jonathan M. Blackledge, "Optical Image Formation", in *Digital Image Processing*, (Cambridge: Woodhead Publishing, 2005), p. 343, <<https://doi.org/10.1533/9780857099464.2.343>>

⁸¹ Berne Union, Paris Act, Article 15.

pseudonym specifically, it is commonly defined as a false name or identity.⁸² The same article specifies that the author's pseudonym leaves no doubt about their identity. A pseudonym can be anything as long as it is fake yet still refers to a genuine person's identity. Online username is an example of a pseudonym.⁸³

3. Protection of Fansite Products

According to Korean Copyright Act, the photographs printed on fansite merchandise are deemed a creative or "work." It fits under the concept of creation under the Berne Convention, Korean copyright law, and Indonesian copyright law, and it is a specific creation that is protected by the law.⁸⁴ Aside from that, fansite commodities are classified as goods under both Indonesian and Korean legislation, regardless of whether the term "goods" appears in the name.⁸⁵ It was also previously stated that fansite goods contain copyrighted works, which are primarily the images that are printed on the goods.

One of the hallmarks of fansite images and fansite goods is that each and every work they post, both online and in physical goods, has a little watermark of their fansite's name to show that the work belongs to a specific fansite under the name they put on the photographs and goods. Watermarking their fansite's name might be construed as posting copyrighted work under a false name. The use of a pseudonym is permitted under the

⁸² Bryan A. Garner, ed., *Black's Law Dictionary*, 11th ed., (Minnesota: Thomson West, 2019).

⁸³ Emily van der Nagel, "From usernames to profiles: the development of pseudonymity in Internet communication", *Internet Histories* 1, no. 4 (October 2017): 318, <<https://doi.org/10.1080/24701475.2017.1389548>>

⁸⁴ Indonesia, Undang-Undang Hak Cipta, Law No. 28 of 2014, LN No. 266 of 2014, TLN No. 5599, Article 40 para. (1) letter k.

⁸⁵ See p. 22 for explanation on Fansite Goods.

presumption of authorship as long as the author's identity is clear.⁸⁶

With this method, fansite products and images are things that are protected by copyright as derivative works (the former) and original works (the latter), and when the author's copyright is broken or infringed, the author may file claims to exercise their copyright rights.

B. International Jurisdiction

The term jurisdiction can be interpreted in two ways in the context of PIL: 1) territorial jurisdiction, in which a state has entire ability to resolve legal disputes within its borders (territorial jurisdiction), or 2) adjudicatory competence in relation to competing competences in the courts of other states (judicial jurisdiction). Personal and *in rem* jurisdiction are the two types of international jurisdiction.⁸⁷ Private international jurisdiction rules have traditionally relied on physical concepts such as *lex loci*, and on the existence of national borders within which domestic laws can be enforced. However, because copyright is so widespread, anyone can use a copyrighted work anywhere, at any time: copyrighted works and copyright law are everywhere.⁸⁸

International civil procedure includes all civil procedural rules that contain any foreign aspects in it.⁸⁹ Parties from

⁸⁶ Berne Union, Paris Act, Article 15.

⁸⁷ Ralf Michaels and Piotr Franzina, "Jurisdiction, foundations", in *Encyclopedia of Private International Law*, ed. Jürgen Basedow, Giesela Rühl, Franco Ferrari, and Pedro de Miguel Asensio, (Cheltenham: Edward Elgar, 2017), p. 1042.

⁸⁸ Raquel Xalabarder, "Copyright: Choice of Law and Jurisdiction in the Digital Age," *Annual Survey of International & Comparative Law* 8, no. 1, article 5, (2002): 80.

⁸⁹ Sudargo Gautama, *Hukum Perdata Internasional Indonesia Jilid III Bagian 2: Buku Ke-delapan*, (Bandung: Alumni, 1987), 203.

different national legal systems, foreign evidence or objects of dispute, judicial aid for foreign procedures, and recognition and execution of foreign judgements are all examples of foreign features in international civil procedure. Because international civil procedure is a subset of civil procedural law, it is governed by all civil procedural laws of Indonesia that are applicable to the subject of international civil procedure, as well as any relevant treaties.

In Indonesian civil procedural law, the basis of jurisdiction lies in Article 118 of *Herziene Indonesisch Reglement* (“HIR”). Paragraph (3) of the article implies that a non-resident foreigner who does not even reside in Indonesia can be sued before an Indonesia court.⁹⁰ None of these clauses referenced "nationality" as a basis of jurisdiction; rather, they all mentioned the defendant's or plaintiff's residence as the linking factors, which is a standard principle in international civil procedure law⁹¹ that applies to both the defendant and the plaintiff. In such a case, because Article 3 AB states that civil and commercial proceedings apply to both Indonesian citizens and foreigners, if a foreigner files an action in an Indonesian civil court against a defendant with an Indonesian domicile, a judge cannot refuse to hear the case based on the lack of legislation.

In Korean Private International Law Act, international jurisdiction is stipulated in Article 2 paragraph (1), which states that when the parties or the case in dispute has a substantial connection with the Republic of Korea, the courts shall have international jurisdiction with regard thereto. The differs it from jurisdictional restrictions in Indonesian international civil

⁹⁰ *Rechtsverordering*, Article 100.

⁹¹ Sudargo Gautama, *Hukum Perdata Internasional Indonesia Jilid Kedua Bagian Pertama Buku Kedua*, (Bandung: Eresco, 1986), 25.

procedural law. The phrase "substantial connection" signifies "a legitimate concept compatible with essential norms for proper allocation of international jurisdiction," or simply that the case should have a link to Korea, through which it is decided on a case-by-case basis.

1. Jurisdiction in International Copyright Infringement

While the Berne Convention states that domestic law regulates a work's protection in its place of origin as well as other Convention members, the treaty is less clear on who has jurisdiction over acts of infringement committed in other countries. As a result, nationals of one of the Berne Convention member countries, or those who have their regular abode in one of these countries, or those who are not nationals of one of these countries, for works first published in one of those countries, are eligible for national treatment (or simultaneously in a country outside the Union and a country of the Union).

Specific jurisdiction in copyright infringement cases is usually based on the place of infringement.⁹² An infringement must be localized in a place that comes under the forum court's jurisdiction for a court to have specific jurisdiction over a defendant.⁹³ Despite the fact that the Berne Convention provides protection across all member states' territory, it specifies that

⁹² Ragavi Ramesh, *"Re-imagining the Principle of National Treatment: Addressing Private International Law Issues in Copyright Infringement in the Internet Era"*, (Thesis, University of Western Ontario, 2015).

⁹³ Toshiyuki Kono, "Jurisdiction and Applicable Law in Matters of Intellectual Property (La Compétence Et La Loi Applicable En Matière De La Propriété Intellectuelle)", in *General Reports on The XVIIth Congress of The International Academy of Comparative Law/ Rapports Généraux du XVIIIème Congrès de l'Académie Internationale de Droit Comparé*, eds. Karen B. Brown and David V. Snyder, (Dordrecht: Springer, 2012), 8-9, <<https://ssrn.com/abstract=1974124>>.

the site of infringement should be the only one with exclusive jurisdiction to handle the case.⁹⁴

Because the infringement occurs inside the territory, the place of infringement becomes the dominant jurisdiction to file claims and decide the case because it is the jurisdiction to which the protection should be exercised.⁹⁵ The ability to gain Berne Convention protection through the initial publishing of a work in a Union country constitutes a significant expansion of such options for authors who are neither Union residents nor have their habitual abode in such a country.

Just as the Paris Convention provides protection regarding the international context only, national treatment (as well as minimum rights) under Article 5 para. (1) in connection with Article 5 para. (4) of the Berne Convention may be claimed only in countries of the Union other than the “country of origin.” The “country of origin” is defined, for published works, by first publication. The country of origin is decided by reference to the author's nationality in the event of unpublished works or works first published in a country outside the Union without simultaneous publication in a country within the Union. Full protection under the Berne Convention may be claimed in nations other than the country of origin, whereas domestic law rules in the country of origin. According to the Berne Convention's principle of protection independence, if an author requests the exercise of rights and protection in a member country other than their country of origin, they should be able to do so without any prior formalities.

⁹⁴ *Ibid*

⁹⁵ Alexander Peukert, “Territoriality and Extraterritoriality in Intellectual Property Law” in *Beyond Territoriality: Transnational Legal Authority in an Age of Globalization*, *Queen Mary Studies in International Law*, eds. Günther Handl, Joachim Zekoll & Peer Zumbansen, (Leiden/Boston: Brill Academic Publishing, 2012), 200, <<https://ssrn.com/abstract=1592263>>.

For the case of fansite goods and photographs copyright infringement, because the place of infringement is in Indonesia, then they shall submit their claims to Indonesian Commercial Court to fulfill the subject matter jurisdiction. This is pursuant to Article 95 para. (3) of the Indonesian Copyright Law, which states that any other court except the Commercial Court does not have authority to settle Copyright-related disputes.

C. Applicable Law in Copyright Protection of Fansite Goods

Because choice of law and jurisdiction are traditionally based on principles of tort such as *lex loci* and borders of territory where domestic laws are enforceable, the intangibility of copyright makes it harder for the law enforcement system to prevent anyone from using a copyrighted work anywhere and anytime.⁹⁶ International copyright agreements include clauses that address PIL in terms of protection in various legal jurisdictions, establishing a legal foundation for cross-border dispute settlement. These stipulations, on the other hand, are more of a statement of basic principles establishing a conflict of law norm than explicit measures addressing cross-border copyright infringement dispute resolution.

On the surface, the tort concept appears to be the greatest option for resolving cross-border copyright infringement problems. The Berne Convention's provisions include implicit tort principles that require additional interpretation. Most

⁹⁶ Alexander Peukert, "Territoriality and Extraterritoriality in Intellectual Property Law" in *Beyond Territoriality: Transnational Legal Authority in an Age of Globalization*, Queen Mary Studies in International Law, eds. Günther Handl, Joachim Zekoll & Peer Zumbansen, (Leiden/Boston: Brill Academic Publishing, 2012), 200, <<https://ssrn.com/abstract=1592263>>

national laws treat copyright infringements as torts for the purposes of determining relevant law, requiring that the law of the country where the infringement occurred be applied (*lex loci delicti*). It is almost unheard of to use the special copyright choice of law rule, such as that included in Article 5 para. (2) of the Berne Convention, or the broader tort choice of law provisions.

While the Berne Convention clearly protects fansite items and images, it has to be determined which state copyright law protects works and allows authors to assert their rights. Although the Convention does not specifically address choice of law principles, it is widely accepted that the appropriate law is the copyright law of the state where the infringement occurred, not the copyright law of the state where the author is a national or where the work was first published.⁹⁷

The first stage in an international copyright infringement lawsuit is to determine which country needs protection. The location of the infringement and the country in which protection is sought are critical since, in most cases, but not always, the location of the infringement will also be the applicable legislation.⁹⁸ Only then may we investigate the shielding country's national law as well as the international treaties to which it is a party. The country where the claimed infringing act took place is the protecting country. The law of the protective country is widely established as the relevant legislation for

⁹⁷ Polčák R., "Territoriality of Copyright Law", in *Digital Peripheries*, eds. Szczepanik P., Zahrádka P., Macek J., Stepan P., (Cham: Springer, 2020). https://doi.org/10.1007/978-3-030-44850-9_4

⁹⁸ Paul Edward Geller, "International Copyright: The Introduction", in *International Copyright Law and Practice*, ed. Lionel Bently, (Newark: Matthew Bender Elite Products, 2020).

infringement that happens in that jurisdiction.⁹⁹ As a result, if an infringement occurs in Indonesia, Indonesia will be the protecting country, and Indonesian law will apply.¹⁰⁰ This means that even if an infringement case is brought in a different jurisdiction, such as where the defendant is domiciled, Indonesian law must apply.¹⁰¹

In the first situation, only the author's country matters; in the second, it is important to examine where the work was originally published.¹⁰² According to this clause, fansite goods and photographs generated by a Korean nationality author who also originally published the works in Korea satisfy both paragraphs of the article, thus ensuring automatic protection from Korean copyright law under the Berne Convention. Article 124 of the Korean copyright law lists many acts that are deemed copyright infringement.¹⁰³

This act satisfies the conditions of paragraph (1) number (2) of the article if the author, who is of Korean nationality, has their photographs used without their permission by an Indonesian nationality to be sold in Indonesian territory. The principle of independence of protection allows an author whose rights have been infringed to seek protection from another member state without having to go through any formalities. If the author seeks protection and exercises their rights by suing for damages in Indonesia because that is where the infringement happened, the

⁹⁹ Paul Goldstein and Bernt Hugenholtz, *International Copyright*, (New York: Oxford University Press, 2016), 99–100.

¹⁰⁰ Roberto Garza Barbosa, "International Copyright Law and Litigation: A Mechanism for Improvement", *Marquette Intellectual Property Law Review* 11, no. 1, (2007): 77.

¹⁰¹ Paul Edward Geller, "International Copyright: The Introduction", in *International Copyright Law and Practice*, ed. Lionel Bently, (New York: LexisNexis, 2018).

¹⁰² WIPO, *Guide to the Berne Convention*, (Geneva: WIPO Publication, 1987).

¹⁰³ Republic of Korea. Official Translation of Copyright Act, Act No.15823, 16. Oct, 2018., Partial Amendment, Article 125.

Indonesian court will protect the author and process the claims properly. Finally, the answer to the question "Is it the Indonesian copyright law or the Korean copyright law that protects the copyright of fansite products?" is that both laws do.

IV. JURIDICAL ANALYSIS OF PROPER JURISDICTION AND APPLICABLE LAW ON CASES REGARDING CROSS-BORDER COPYRIGHT INFRINGEMENTS

A. Unauthorized Usage of Photograph in Fan-Made Merchandise

1. Facts of Case

On 16 April 2020, an Indonesian-based online shop posted two pictures of T-shirt design on their Instagram for the price of 130,000 IDR. On 20 April 2020, its affiliate shop posted the same two pictures of the same design for 100,000 IDR.¹⁰⁴ The design of the T-shirt is a black-and-white picture of Jennie, a member of girl group "BLACKPINK", with addition of texts around it.

After the pictures were posted, the post's comment section was filled with fans of BLACKPINK asking the shop to take the post down because the picture of Jennie that is used in the design of the T-shirt was not originally taken by the online shop. Amongst the many comments, fans mentioned a certain Instagram account, who is well known among fans of BLACKPINK to be a fansite master dedicated to Jennie and by then already had over 100,000 followers, operating the fansite

¹⁰⁴ LOCAL PRIDE INDONESIA OFFICIAL (@localprideindonesia), "#Project Vol 4.0," Instagram, April 20, 2020, Accessed 25 June 2021, <https://www.instagram.com/p/B_Mt4gdAgqh/?utm_medium=share_sheet>.

under the name “Dear My Queen”.¹⁰⁵ The picture that was used by the online shop was originally posted by Dear My Queen’s fansite master in their Twitter account back in 22 September 2019,¹⁰⁶ one day after BLACKPINK’s concert called “2019 PRIVATE STAGE [Chapter 1]” that was held in Olympic Hall, Seoul, South Korea on 21 September 2019.¹⁰⁷

Fans demanded that the online shop clarify whether or not they had contacted Dear My Queen about the usage of her image for fan-made products in the comments. Fans have also communicated with Dear My Queen’s fansite master via Twitter and Instagram, informing them of the problem. Dear My Queen tweeted that they had not been approached by anyone about the use of their picture for fan-made merchandise design, but then deleted the tweet. However, the online retailer has provided no more explanation, while removing the initial post from the original account, while the post from the affiliate account remains accessible with comments section turned off.

2. Case Analysis

In this scenario, the item in question must be qualified as a work that justifies copyright protection in order to evaluate whether or not there has been infringement. The object in question is a photograph of Jennie taken during BLACKPINK’s 2019 concert (hereinafter referred to as “**Jennie concert picture**”), which was first posted online by the account

¹⁰⁵ Dear My Queen, “Dear My Queen”, Accessed 25 June 2021 <twitter.com/kimjennie116>.

¹⁰⁶ Dear My Queen (@kimjennie116), “190921 BLACKPINK 2019 PRIVATE STAGE [Chapter1]”, Twitter, September 22, 2019, Accessed 23 June 2021, <<https://twitter.com/kimjennie116/status/1175808851007795201>>.

¹⁰⁷ Osen, “Blackpink wraps up memorable “PRIVATE STAGE” event with fans”, Vlive, Accessed 24 June 2021 <<https://m.vlive.tv/post/1-11915288>>.

@kimjennie116 (hereinafter referred to as "**Dear My Queen**"), with a watermark reading "Dear My Queen" on the upper left corner of the photograph.

Because a photograph is a type of artistic work, a picture qualifies as a copyright-protected artwork. This Jennie concert photograph is protected by a copyright, which grants the author moral and economic rights as well as making him a copyright holder. While this photograph satisfies the criteria of "work" set forth in all three legal bases covered in this article: the Berne Convention, Korean copyright law, and Indonesian copyright law, it remains to be established which legislation covers the photograph. After confirming that the object in question is, in fact, a copyrighted work, it is necessary to determine who is the author of the work in order to confirm the copyright holder's subject. The author of this photograph can be presumed to be Dear My Queen's fansite master, based on the work's publication and the watermark "Dear My Queen" on the shot. Dear My Queen's fansite master (hence referred to as "Dear My Queen") is the copyright holder of the work, assuming the economic right has not been sold to another party and is still held by the author. If Dear My Queen is a Korean national, the work is immediately covered by Korean copyright law, especially as its country of origin¹⁰⁸ is also Korea. Because Korea is a signatory to the Berne Convention, the work is automatically protected without the need for any rights registrations.

Now that it has been shown that the work is protected under Korean copyright law because the author is of Korean nationality and the place of origin is Korea, it may be decided whether or not the object in question has been harmed. The law's Article

¹⁰⁸ Article 5 para. (4) letter (a) stipulates that "country of origin" is the country of the Union where a work is first published.

124 contains restrictions for acts of infringement. Paragraph (1) number 2 states that, “The possession, for the purpose of distribution, of goods produced by an act that constitutes an infringement on copyright or other rights protected under this Act (including those imported as referred to in subparagraph 1) with the knowledge of such infringement”. According to the article, possessing items that are the result of a copyright infringement is considered an act of infringement under the law. While there is no explicit definition of what constitutes an "act that constitutes an infringement on copyright or other rights protected under this Act" in the article or the law as a whole, the provision itself clearly states that any act that violates the rights protected by the law is an infringement. The use of a protected work without a license or permission from the author and for purposes other than personal use is already outside the scope of copyright limitations and exceptions, implying that an act of infringement has occurred.

Because the objective of the infringement is to make a profit, it is a breach of economic rights, specifically reproduction rights, under which any author has the capacity to grant permission for the use of their works. This act of infringement is alluded to in Article 124 paragraph (1) number (2), where the perpetrator deliberately commits copyright infringement and, as a result, acquires pirated items for the purpose of distribution via sale and purchase. After confirming the existence of infringement, the author of the infringed work may sue the perpetrator for damages.

The domestic court will take a number of processes to settle the procedural aspects of any case involving PIL, notably copyright infringement. The court will first determine whether it

has jurisdiction over the case. The court will then consider which law it will apply to the matter if it agrees to take jurisdiction. It is not always the case that a court will apply its domestic law. Because copyright protection is primarily territorial, the prevailing jurisdiction for PIL issues, particularly related copyright infringement, is usually the jurisdiction of the place of infringement. In cases of infringement, neither party's nationality nor the applicable law are taken into account while determining jurisdiction. To summarize, because the infringement occurred in Indonesia, Indonesian law is the applicable jurisdiction and legislation to rule on this issue.

B. Unauthorized Reproduction of Fansite Goods

1. Facts of Case

The slogan or handbanner, a fan-made merchandise that was invented by fansites, is one of the most popular sorts of fansite goods. Slogans are printed rectangular cloth handbanners with a standard dimension of 30 cm x 60 cm. On one side, there is a photograph of the idol taken by the fansite that makes fansite merchandise, and on the other side, the idol's name. Because the slogan photographs are not shared publicly, they are considered limited editions, as opposed to other fansite pictures that are posted online by the fansite master. These slogans are generally sold at 10,000-250,000 KRW, which is 200,000-350,000 IDR, 254 depending on the quality and type of the fabric. Despite its high cost, slogans remain one of the most popular fansite items and will be the primary item produced by fansites. Because of the high cost and low quality of the merchandise,

many fans prefer to create their own slogans or purchase unofficial slogans created by fans outside of the fansite.

Because the majority of the fansite's photographs are available online on their websites, it's easy for other fans to misappropriate them for uses that aren't allowed. Fansites seldom allow their photographs to be used for purposes other than personal ones, which implies that any fansite images utilized in the creation of unauthorized slogans with the intent of being sold and profiting could be considered an instance of copyright infringement of fansite goods.

2. Case Analysis

Before reporting any violation, we must first confirm that the objects in question are copyright-protected. The original photographs shot by fansite master, original fansite goods manufactured by fansite master, and the unofficial motto are among the works in this instance. The unofficial phrase, which infringes on the original photographs and fansite goods, is the accused infringing object among the three. Photographs qualify as a copyright-protected creation since they are a type of artistic work. Assuming that the pictures used in the unauthorized slogans are owned by fansite masters, it is evident that the images are copyrighted, and the copyright holder is the fansite master because they are the creators of the images.

Now that the copyright protection of fansite photographs has been established, the same identification must be applied to fansite commodities. The official slogans, which are imitated by the unofficial slogans, are a derivative work of the original work, which is the fansite pictures, which have been edited and copied while still containing the original

work. The official fansite goods are copyright-protected as a result of that classification. The unauthorized slogans are made by mimicking and making a work that is meant to be a replica of official fansite merchandise. This is a breach of the author's reproduction rights, which are the author's rights to have the authority to provide permission for the use of their works. Because the infringement occurs in Indonesia, regardless of the author's or perpetrator's nationality, or even the place of origin, the prevailing jurisdiction and applicable legislation are the same: the Indonesian court should have the right to rule on the matter. Because of the territoriality, the appropriate law should also be Indonesian law.

V. CONCLUSION

In the event of copyright infringements, Indonesian legislation and international conventions establish jurisdiction and appropriate law. It is necessary to understand that the Berne Convention and the TRIPs Agreement give enough copyright protection, but not in terms of jurisdiction and relevant law. The Berne Convention's interim rule for jurisdictional issues and applicable law, notably the last phrase of the article, becomes the basis for jurisdictional issues and applicable law for claiming protection. The item is construed to grant jurisdiction to the site of infringement, and the applicable law to resolve the dispute employs the principle of *lex loci protectionis* in tandem with the principle of *lex loci delicti commissi*. This is used in conjunction with the principle of national treatment, the principle of automatic protection, and the principle of protection independence, all of which are included in Article 5. In Indonesia, there are several

incidents of copyright infringement involving fansite items, the most of which include unauthorized use of fansite images and unauthorized manufacture of fansite goods, primarily for profit. For international copyright infringement cases, the prevailing jurisdiction and applicable law is the jurisdiction and legislation of the infringing location. In circumstances when the infringement occurs in Indonesia, claims and damages must be filed with the Indonesian Commercial Court, which is the sole court with absolute jurisdiction over copyright infringement proceedings.

BIBLIOGRAPHY

Journals and Periodicals

- Antonelli, Andrew, "Applicable Law Aspects Of Copyright Infringement On The Internet: What Principles Should Apply?", *Singapore Journal of Legal Studies*, (2003): 147-177.
- Barbosa, Roberto Garza, "International Copyright Law and Litigation: A Mechanism for Improvement", *Marquette Intellectual Property Law Review* 11, no. 1 (2007): 77.
- Gautama, Sudargo, "Konvensi Tentang Hak Cipta", *Majalah FHUI*, 1975
- Gautama, Sudargo, and Hanifa Wiknjosastro, "Some Aspects of Indonesian Private International Law", *Malaya Law Review* 32, no. 2 (December 1990): 417-432.
- Ginsburg, Jane, "People Not Machines: Authorship and What It Means in the Berne Convention", *IIC* 49, (2018): 131-135.
- Kim, Jungwon, "Home" and "Homma" in K-Pop Fandom", *Cultural Industry Research* 18, no. 3 (2018): 1-10.
- Kurt H. Nadelmann, "Habitual residence and nationality as tests at The Hague; the 1968 Convention on Recognition of Divorces", *Texas Law Review* 47, (1969): 766-767.
- Lee Soyoung, Kim Hyangmi, and Ju Kyeonghee, "Fandom as a Prosumer: Study on Information Behavior of Fandom", *Digital Convergence Research* 11, no. 12 (December 2013): 747-759.
- Lim Minjung, "Production of Fashion Contents by Fandom", *Basic Formative Studies* 16, no. 6, (2015): 490.
- Margoni, Thomas, "The Digitisation of Cultural Heritage: Originality, Derivative Works and (Non) Original Photographs", *Institute for Information Law* (December 2014): 9.
- Mathieu, Verbigie, and Cho Yonghan, "케이팝(K-pop)의 한국 팬덤에 대한 연구 (A Study on the Korean fandom of K-pop)", *한국언론정보학보 (Korean Journal of Journalism and Information Science)* 81, no. 1 (2017): 272-298.
- Nagel, Emily van der, "From usernames to profiles: the development of pseudonymity in Internet communication", *Internet Histories* 1, no. 4 (2017): 312-331.
- Sheppard, Nicholas Paul, Reihaneh Safavi-Naini, and Philip Ogunbona, "Digital watermarks for copyright protection", *Journal of Law and Information Science* 12, no. 1 (2002): 111.
- Sua, Kim, and Kim Soojung, "From Interpretation Paradigm To Performance Paradigm: Tendencies and Issues of Media Fandom Studies", *Journal of Korean Broadcasting* 29, no. 4 (2015): 33-81.

- Terranova, Tiziana, "Free Labor: Producing Culture for the Digital Economy", *Social Text* 18, no. 2 (2000): 33-58.
- Torremans, Paul L.C. "Jurisdiction for cross-border intellectual property infringement cases in Europe", *Common Market Law Review Issue* 53, no. 6 (2016): 1625-1645.
- Xalabarder, Raquel, "Copyright: Choice of Law and Jurisdiction in the Digital Age," *Annual Survey of International & Comparative Law* 8, no. 1 (2002): 79-96.

Books and Books Chapters

- Brown, Tracy, *Blogger or Journalist? Evaluating What Is the Press in the Digital Age*, New York: Rosen Publishing, 2015.
- Dufett, Matt, *Understanding Fandom: An Introduction to the Study of Media Fan Culture*, London: Bloomsbury Academic, 2013.
- Dutta, Anatol, "Personal status" in *Encyclopedia of Private International Law Vol. II*, edited by Jürgen Basedow, Giesela Rühl, Franco Ferrari, and Pedro de Miguel Asensio, Cheltenham: Edward Elgar, 2017.
- Fiske, John, "The Cultural Economy of Fandom", in *The Adoring Audience: Fan Culture and Popular Media*, eds. Lisa Lewis, London: Routledge, 1992.
- Garner, Bryan A., *Black's Law Dictionary*, 11th ed., Minnesota: Thomson West, 2019.
- Garner, Bryan A., ed., *Black's Law Dictionary*, 11th ed., Minnesota: Thomson West, 2019.
- Gautama, Sudargo, *Hukum Perdata Internasional Indonesia Jilid III Bagian 2: Buku Ke-delapan*, Bandung: Alumni, 1987.
- Gautama, Sudargo, *Hukum Perdata Internasional Indonesia Jilid Kedua Bagian Pertama Buku Kedua*, Bandung: Eresco, 1986.
- Gautama, Sudargo, *Hukum Perdata Internasional Indonesia Jilid Kedua Bagian Pertama Buku Kedua*, Bandung: Eresco, 1986.
- Gautama, Sudargo, *Pengantar Hukum Perdata Internasional*, Bandung: Binacipta, 1987.
- Geller, Paul Edward, "International Copyright: The Introduction", in *International Copyright Law and Practice*, edited by Lionel Bently, New York: LexisNexis, 2018.
- Geller, Paul Edward, "International Copyright: The Introduction", in *International Copyright Law and Practice*, edited by Lionel Bently, Newark: Matthew Bender Elite Products, 2020.
- Ginsburg, Jane, "Copyright" in *Oxford Handbook of Intellectual Property Law*, edited by Rochelle Dreyfuss and Justine Pila, Oxford: Oxford University Press, 2018.
- Goldstein, Paul, and Bernt Hugenholtz, *International Copyright*, New York: Oxford University Press, 2016.

- Goldstein, Paul, *International Copyright: Principles, Law, and Practice*, Oxford: Oxford University Press, 2001.
- Hasbullah, Fierda Husni, *Hukum Kebendaan Perdata: Hak-hak yang Memberi Kenikmatan*, (Jakarta: Ind-Hill Co, 2002).
- Kono, Toshiyuki, "Jurisdiction and Applicable Law in Matters of Intellectual Property (La Competence Et La Loi Applicable En Matière De La Propriété Intellectuelle)", in *General Reports on The XVIIth Congress of The International Academy of Comparative Law/ Rapports Généraux du XVIIIème Congrès de l'Académie Internationale de Droit Comparé*, edited by Karen B. Brown and David V. Snyder, Dordrecht: Springer, 2012.
- Korea Copyright Commission, *Introduction of the Korean Copyright System*, Seoul: Korea Copyright Commission, 2015.
- KOFICE, *Global Hallyu Trend 2020220: Handbook on the analysis of major issues in Hallyu and regional trends throughout 2022*, Seoul: KOFICE, 2022.
- Liebler, Raizel, "Copyright and Ownership of Fan Created Works: Fanfiction and Beyond" in *The SAGE Handbook of Intellectual Property*, London: SAGE Publications Ltd., 2015.
- McNamara, Kim, *Paparazzi: Media Practices and Celebrity Culture*, Hoboken: John Wiley & Sons, 2015.
- Blackledge, Jonathan M., "Optical Image Formation", in *Digital Image Processing*, Cambridge: Woodhead Publishing, 2005.
- Peukert, Alexander, "Territoriality and Extraterritoriality in Intellectual Property Law" in *Beyond Territoriality: Transnational Legal Authority in an Age of Globalization, Queen Mary Studies in International Law*, eds. Günther Handl, Joachim Zekoll & Peer Zumbansen, Leiden/Boston: Brill Academic Publishing, 2012. <<https://ssrn.com/abstract=1592263>>.
- Prodjodikoro, Wirjono, *Asas-asas Hukum Perdata Internasional*, Jakarta: Van Dorp & Co, 1954.
- R., Polčák, "Territoriality of Copyright Law", in *Digital Peripheries*, edited by Szczepanik P., Zahrádka P., Macek J., Stepan P., Cham: Springer, 2020.
- Ralf Michaels and Piotr Franzina, "Jurisdiction, foundations", in *Encyclopedia of Private International Law*, edited by Jürgen Basedow, Giesela Rühl, Franco Ferrari, and Pedro de Miguel Asensio, Cheltenham: Edward Elgar, 2017.
- Nayar, Pramod K., *An Introduction to New Media and Cyberculture*. Oxford: Wiley-Blackwell, 2010.
- Roy, Subhrajit Sinha, Abhishek Basu, and Avik Chattopadhyay, *Intelligent Copyright Protection for Images*, Florida: Taylor & Francis, 2019.

- Sasaki, Hideyasu, *Intellectual Property Protection for Multimedia Information Technology*, New York: Information Science Reference, 2009.
- Soebekti R., and R. Titrosudibjo, *Kitab Undang-Undang Hukum Perdata, translated by R. Soebekti and R. Titrosoedibjo*, Jakarta: Balai Pustaka, 1992.
- Steinebach, Martin, Jana Dittmann, and Erich Neuhold, “Digital Watermarking”, in *Encyclopedia of Multimedia*, ed. Borko Furht, (Boston: Springer, 2008)
- Torremans, Paul, and James Fawcett, *Cheshire, North, and Fawcett’s Private International Law*, Oxford: Oxford University Press, 2017.
- Vaver, David, ed., *Principles of Copyright: Cases and Materials*, Geneva: WIPO, 2002.
- WIPO, *Guide to the Berne Convention*, Geneva: WIPO Publication, 1987.
- WIPO, *Guide to the Berne Convention*, Geneva: WIPO Publication, 1987.
- WIPO, *Understanding Copyright and Related Rights*, 2nd ed., Geneva: WIPO Publication, 2016.
- WIPO, *WIPO Intellectual Property Handbook: Policy, Law, and Use*, Geneva: WIPO Publication, 2004.

Legal Documents

- Berne Union, Berne Convention for the Protection of Literary and Artistic Works as amended on September 28, 1979, Paris Act.
- Berne Union, Berne Convention for the Protection of Literary and Artistic Works as amended on June 2, 1928, Rome Act.
- Galella v. Onassis*, 533 F. Supp. 1076 SDNY. 1982.
- Indonesia. Law Number 28 of 2014 on Copyright. Lembaran Negara Nomor 266 Tahun 2014, Tambahan Lembaran Negara Nomor 5599.
- Indonesia. Official Translation of Law No. 7 of 2014 regarding Trade. Lembaran Negara Republik Indonesia LNRI Tahun 2014 No. 45, and Tambahan Lembaran Negara TLN No. 5512 Republic of Korea. Official Translation of Act of Private International Law, Act No. 13759, 19. Jan, 2016., Partial Amendment.
- Republic of Korea. Official Translation of Commercial Act, Act No.13523, 01. Dec, 2015., Partial Amendment.
- Republic of Korea. Official Translation of Customs Act, Act No.14839, 26. Jul, 2017.

Republic of Korea. Official Translation of Foreign Trade Act, Act No.13838, 27. Jan, 2016., Partial Amendment.

Staatsblad 1847 no. 23.

Staatsblad 1910 no. 296.

Web Sources

Beyond Hallyu, “More than just a pretty picture: Fansite culture in the K-pop fandom”, *Beyond Hallyu*, Accessed 18 May 2020, <<http://beyondhallyu.com/k-pop/just-pretty-picture-kpop-fandom-fansite-culture/>>.

Hyunji, Oh, “'Homma' earning tens of millions of won by selling fansite goods... Are there any tax obligations?”, *MK News*, Accessed 18 May 2020, <<https://www.mk.co.kr/news/society/view/2019/01/15749/>>.

Hyunseok, Lim, and Shin Hyewon, “'Homma's transformation, salary of a large company, how?!" *1boon Daum*, Accessed 18 May 2020, <<https://1boon.daum.net/interbiz/5d7ed6c40aab1675b32068b8>>.

Junghyun, Lee, “Do you know what a Homma is?”, *No Cut News*, Accessed 6 February 2021, <<https://www.nocutnews.co.kr/news/4544656>>.

Kosnik, Abigail De, “Interrogating “Free” Fan Labor”, *Spreadable Media*, Accessed February 5, 2021, <<http://spreadablemedia.org/essays/kosnik/index.html#.YJCJPh-kzbeQ>>.

Seongwoo, Kim, and Kim Yujin, “Reporter’s Week of Homma”, *News Herald*, Accessed 31 October 2020, <<http://news.heraldm.com/view.php?ud=20190426000188>>.

Seoyeon, Hwang, “Homma’s Private Life on why they’re behind the camera”, *TVDaily*, Accessed 31 October 2020, <<http://tvdaily.co.kr/read.php3?aid=15569435071454268010>>.

Seulgi, Lee, “Spending savings, being sworn at... Living as an idol Homma”, *Asia Today*, Accessed 5 February 2021, <<https://www.asiatoday.co.kr/view.php?key=20160516001105534>>.

Seulgi, Lee. “적금 깨고, 욕먹고... 아이돌 홈마로 산다는 것은”, Accessed 18 May 2020, <<http://www.asiatoday.co.kr/view.php?key=20160516001105534>>.

Soshified, “Soshified History & Achievements”, *Soshified*, Accessed 18 May 2020, <<https://www.soshified.com/2011/02/soshified-history-achievements>>.

Jungwon, Kim, "*K-Popping: Korean Women, K-Pop, and Fandom.*"

Doctorate Dissertation, University of California Riverside, 2017.

Karatza, Eleni, "*Copyright Protection for Photographs.*" Thesis, International Hellenic University, 2016.

Ramesh, Ragavi, "*Re-imagining the Principle of National Treatment: Addressing Private International Law Issues in Copyright Infringement in the Internet Era.*" Thesis, University of Western Ontario, 2015.