

Copyright Licensing and Fair Trade Law Related Issues of Karaoke Products

I. Research Background

The karaoke product industry has high barrier to entry due to the large licensing fee required for songs, which is necessary to attract users. To maximize the return on their investments, enterprises use their market advantage to demand exclusive licensing from upstream music companies, and also prohibit downstream karaoke companies (karaoke product distributor, KTV, and karaoke companies) from using the products of their competitors. Disputes over restricting competition are common in the karaoke industry, especially MIDI products, which the FTC has accumulated quite a few cases. The core issue is that copyright of popular Taiwanese songs and new songs are held by specific karaoke product suppliers, who gain exclusive licensing from copyright owners, and eventually led to the monopoly in the karaoke product industry.

II. Research Methodology and Process

This study adopts document analysis as the research method, and first summarizes exclusive licensing of copyright, compulsory license system in music, and issues when applying related systems to karaoke products. This study also examines the effect on market competition of the FTC's dispositions involving karaoke product suppliers over the years. Finally, this study proposes possible solutions to the licensing issue in the karaoke product market, which has resulted in concentrated market structure and negatively impacted smaller enterprises, based on domestic and foreign legal cases and literature, as well as provisions of the Copyright Act and Fair Trade Law.

III. Recommendations

The issue of copyright licensing in the karaoke product market is unlike other types of copyright. At present, only the competent authority of competition law intervenes when a karaoke product supplier abuses its market power or engages in any other illegal action that restricts competition, but it cannot prevent licensing disputes from repeatedly arising in the karaoke product market. In practice, the FTC, the competent authority of competition law, has only required enterprises participating in a merger to provide reasonable and fair licensing conditions in the conditional non-prohibition of merger or permission for concerted action, providing limited effects on guiding market order.

After examining legislation cases of other countries and characteristics of karaoke product related domestic markets, this study has found the "compulsory licensing" system to be a relatively suitable solution. The system will allow smaller

karaoke product suppliers to obtain copyright licensing for popular songs through “compulsory licensing,” and then encode the songs into MIDI products. In light of the ABKCO and Leadsinger cases that occurred in the U.S., the karaoke industry’s attempt to gain compulsory licensing is not without grounds, and the strongest argument is “the combination of dynamic lyrics and music is the only way karaoke products use music”; it does not damage the image of the original production and details of licensing do not need to be repeatedly negotiated. Hence, this study hopes the Intellectual Property Office will relax regulations or interpretation of compulsory licensing for music in the future, and allow all enterprises intending to enter the karaoke product market to obtain licensing. This will fundamentally resolve the issue of competition in the karaoke industry being restricted by specific karaoke product suppliers that have exclusive licensing for popular Taiwanese songs.

To expand the applicability of compulsory licensing for music, this study believes that the definition of “record” and “sound recording” in Article 69 of the Copyright Act may be expanded through an administrative interpretation, so that the presentation of lyrics is not limited to sound recordings and may be presented visually, which will resolve the current dilemma in practice. The Intellectual Property Office or collective management organization may decide on the royalty rate for compulsory licensing. This will fundamentally resolve long-term licensing disputes in the karaoke product market.

Restricting competition through the abuse of copyright may still occur even with a compulsory licensing system in place. Hence, it is necessary for the competent authority of competition law to investigate if music companies and karaoke product suppliers violate the Fair Trade Law by restricting competition. The competent authority of competition law can refer to the anti-trust guidelines for intellectual property right in the U.S., which provides principles for handling intellectual property right licensing other than patents and specialized technologies, establishing law enforcement standards. Also, the safe harbor rule should be considered as it will help clarify if enterprises are indeed restricting competition.

Finally, with regard to public performance right, this study also recommends that the Intellectual Property Office clearly specify that exemption of criminal liability for public performances using a karaoke machine also include “big V” and “small V” systems. The grounds for this exemption is not only to keep pace with technological development, but also to prevent copyright owners from intentionally leaving the collective management organization and using criminal penalty to coerce KTV and karaoke operators into paying large licensing fees. This will prevent the issue of repeated fee collection (paying a fee to the collective management organization and copyright owners of songs), and will also strengthen the collective management organization.