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Intellectual Property, Taiwan Protection of photographic works

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With the development of technology, cameras and mobile phones now have various built-in shooting modes or parameters that enable photographers to shoot different scenes quickly. Traditionally, photographers would have had to adjust the parameters themselves. Notably, in two recent decisions the IP Court ruled that photographic works taken using built-in shooting modes or parameters can meet the Copyright Act's requirements for creativeness (originality).

In a judgment rendered on 22 October 2020 (Min-Zhu-Shang-Zi No 2), the IP Court stated that:

To evaluate whether a photographic work is of 'creativity', one can no longer judge based on the adjustments of 'aperture, shutter, depth of field and amount of light' and other photographic techniques performed in the manner that a traditional photographer would do. Instead, as long as the choice of shooting theme and shooting subject and the adjustment of shooting angle and composition in accordance with the original concept in the photographer's mind during the creative process objectively shows the thoughts and feelings of the creator, the copyright protection should be granted.

In a further judgment rendered on 29 October 2020 (Min-Zhu-Shang-Yi-Zi No 15), the IP Court stated that:

The so-called 'photographic works' refer to the works that express thoughts and feelings through images including photographs, slides and other works created by photographic methods. Therefore, even though photographic work can be completed by means of mechanical and electronic devices via the physical and chemical effects of light to reproduce the photographic images on negatives, films, discs or paper, such a work is not simply a mechanical representation of a subject. During the process, the photographer arranges the position of the subject and utilizes various photography techniques to determine factors such as the view, depth of field, amount of light, shooting angle, shutter or focal length in accordance with the concept in the creator's mind. All these efforts show [sic] the photographer's originality and the protection of copyright should then be granted under the Copyright Act... no matter whether it is automatically set or not.

Therefore, as long as the photographer has a certain concept of how the photographic work will look, it is regarded as an original (creative) work and protected by the Copyright Act, regardless of whether it uses built-in shooting modes or parameters.

In the second case before the IP Court (Min-Zhu-Shang-Yi-Zi No 15), the defendant obtained a legal licence for the photographic work from a third party and presented the licence letter as evidence. However, the court held that the licence letter recorded only the "right to use the product image" and did not specify which image was licensed. The defendant also failed to prove that the reproduced photo file came from the third party, so the court held that the defendant's act still constituted infringement. Licence letters should clearly record the licensing subject to reduce the risk of infringement.

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