

## The Case of Nude Pictures and Copyright Infringement

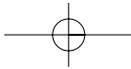


It was in June 1988. Nude photographs featured in two locally well-known monthly magazines became the subject of intense debate. Salaryman, a magazine with a good reputation, carried an article in its June publication which stimulated its readers' interests. The reason was an article entitled "The nude pictures of Korean co-eds and entertainers transformed into a pornography."

Another monthly magazine, Beauty Life, also featured the same subject, giving it a more risqué title of Artistic photographs degraded to pornographic materials in Japan. The pictures featured involved full nude or semi-nude photographs of young Korean women. Some caught the readers' eye with more sultry poses.

The reason that these pictures became the subject of a hot issue in the summer of 1988 was that the models featured were Koreans and that Japanese major publications first carried the nude pictures of such Korean co-eds and entertainers.

The two magazines claimed that they featured the pictures and article from a critical perspective. However, they certainly did not lose the commercial and stimulating aspects of this story by including pictorials. Some took the view that this was not a cri-



tical commentary because the magazines simply reiterated the article and pictures featured in the foreign magazine.

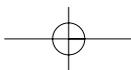
Further, the two magazines introduced nude pictures from the Japanese magazine, Penthouse, which lacked any artistic value. Young women introduced as Korean co-eds were pictured only wearing panties, which pictures were different in character from those featured in Flash, a Japanese magazine. Beauty Life took the special effort to attract readers by marketing its magazine as sealed pages in bold, red prints.

The photographer who took the nude pictures was Jae Kil Lee. An active commercial photographer, Lee had submitted 11 photographs after having been requested by Flash, a Japanese news-weekly. He was proud of his work and considered his pictures featured in the Japanese magazine to be his artistic work. In fact, Lee was a well-known photographer in the field commercial photography in Korea and elsewhere. His work had been displayed in a number of his own personal exhibitions, and his pictures were sold at high prices at a number of official galleries.

Lee became furious over the local magazines' unconsented, commercial use of his pictures. He was especially disappointed over their use of his pictures in a pictorial format to stimulate the interest of potential readers and their referral to his pictures as obscene.

Lee decided to file legal actions against the two magazines. The main grounds for his actions were copyright infringement and defamation. Even though the pictures were initially published in Japan, he claimed that his copyright was infringed because the defendants' reproduction and distribution occurred in Korea.

The two magazines did not back down. They claimed immunity based on their right to report and issue critical commentary. They argued to the court that 'Flash' magazine, on which the nude pictures were featured, is a relatively low-quality magazine in Japan. The fact that the nude pictures of Korean young women



were featured in that magazine only served to ingratiate the desires which Japanese men have in Korean young women and to place Korean young women in a negative, unfavorable light. Because this was an unacceptable format in view of our national sentiment, the pictures were merely used in our report and critical commentary.

However, Lee prevailed after a long and intense legal battle. The Supreme Court held, in its decision, that the subject nude pictures cannot be considered to be pornographic. Copyrightable materials which are protected under the copyright law refer to works of creative and artistic expressions. They only need to fall under the category of literary, scientific or artistic work. The issue of morality is irrelevant. Plaintiff's copyright shall be recognized. In view of the quality, size and placement of the nude pictures featured in Defendants' magazines, they are deemed to have been placed for the purpose of viewing, as opposed to reporting, and consequently, their conduct cannot constitute 'use for news reporting' as permitted under Article 24 of the Copyright Act. Ultimately, the two magazines were found to have infringed Lee's copyright and required to pay the related damages.