



South Korean Pop Music Idol Portrait Upload on Instagram Under Copyright

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Article	Abstract
Keywords: Copyrights; Portraits; Economic Rights; Buying and Selling.	<i>Uploading K-Pop idol portraits on Instagram is the implementation of economic rights over portraits belonging to the subject of the portrait. Fans are not allowed to implement economic rights over portraits to earn profit without permission. The researcher aims to analyze the uploading of K-Pop idol portraits on Instagram based on copyright and the legal consequences that fans can receive. This is normative legal research using a statute and conceptual approach. The research results reveal that fans are also not allowed to upload K-Pop idol portraits on Instagram even without profitable purposes without permission because copyright limits the implementation of economic rights over portraits. Uploading K-pop idol portraits on Instagram can have legal consequences, such as compensation and termination of Lysn services which fans have purchased.</i>

INTRODUCTION

Korean Wave or in other terms referred to as *hallyu* is a phenomenon of the spread of cultural products from the South Korean entertainment industry in the form of music, television dramas, films, and cultural products related to lifestyle such as fashion, culinary, to beauty that have achieved great popularity globally. South Korean pop music or *Korean Pop*, hereinafter referred to as K-Pop, is the most popular Hallyu product in the world. The dominance of fan interest in K-Pop is very large. Based on the 2023 Analysis Global Hallyu Status, it states that 1,183 or 67.6% of the total number of hallyu communities are interested in K-Pop (Korea Foundation 2023). This figure is almost three-quarters of the total number of communities. Thus, K-Pop can currently be called the main pillar of the development of *hallyu* in the world.

Indonesia is a country with a very large K-Pop influence along with the popularity of *Hallyu* in Asia. Indonesia is ranked fourth out of 20 countries in the category of "Countries With The Most K-Pop Fans" on social media Twitter (Harika et al. 2022). Indonesia is also a country with very large music *streaming activities* for K-Pop groups. Indonesia dominates in first place with a varied number of K-Pop listeners on Spotify,

the most popular music *streaming media* in the world. The large influence of K-Pop in Indonesia gave birth to Many fans pay attention to all kinds of things related to K-Pop idols.

Merchandise is another product that has not escaped the attention of fans in Indonesia. Some forms of K-Pop idol *merchandise* include albums containing CDs (*Compact Disks*) containing several songs, lightsticks which are sticks with distinctive light features, bags, and dolls. There are several other forms of K-Pop idol *merchandise* that even contain portraits of K-Pop idols, including *photocards* , posters, stickers, and many more. K-Pop idol *merchandise* can be purchased as a form of support from fans to K-Pop idols.

Table 1 Best-Selling K-Pop Idol Merchandise in Indonesia

Best Selling K-Pop Idol Merchandise in Indonesia		
1.	<i>Photocard</i>	30.6%
2.	Poster	29.3%
3.	Sticker	27.6%
4.	Album	24.2%
5.	Shirt	18.3%

Source: Katadata Insight Center (Ahdiat 2022)

Merchandise that contains portraits of K-Pop idols tends to attract more fans. One example is *a photocard* which is a card with a portrait of a K-Pop idol. *Photocards* are the best-selling K-Pop idol *merchandise in Indonesia*. *Photocard purchases* are made more often by most fans than other K-Pop idol *merchandise* (Azelia, Yuliawan, and Subakti 2022) . Posters and stickers are other *merchandise* that attract fans' attention. *Photocards* are also much easier to store because of their simpler size compared to other K-Pop idol *merchandise* . Portraits of K-Pop idols basically have a stronger appeal, especially if the portraits are easier for fans to own.

Portraits of K-Pop idols can also be accessed through social media. Portraits of K-Pop idols can be found on Instagram, X, Pinterest, and other social media so that they can be freely accessed by the public. However, there are also social media that give fans the opportunity to access exclusive portraits of K-Pop idols for a fee. Portraits of K-Pop idols on paid social media are usually not shared on other social media so they can only be accessed by fans who have paid the price for social media access. Thus, the existence of paid social media limits access to portraits of K-Pop idols because not all fans can pay the specified price.

The high interest of fans but the limitations of access to portraits of K-Pop idols have led to the uploading of portraits of K-Pop idols from paid social media on different social media. One example is the uploading of portraits of K-Pop idols that are done *up-to-date* on Instagram by one of the accounts with the username aespas Bubble (@aespa_bubble) which already has hundreds of thousands of followers. The portraits of K-Pop idols that were uploaded came from Lysn, one of the paid social media

connecting K-Pop idols with their fans. Thus, the portraits shared by K-Pop idols on Lysn can be accessed by the public because they were uploaded by fans on Instagram.

Copyright provides exclusive rights, one of which is economic rights over portraits to the people in the portrait. Uploading portraits of K-Pop idols on Instagram by fans is an implementation of economic rights over portraits. Article 12 Paragraph (1) of Law Number 28 of 2014 concerning Copyright states that

"Everyone is prohibited from commercially using, duplicating, announcing, distributing and/or communicating portraits they have made for the purposes of commercial advertising or publicity without written consent from the person being photographed or their heirs."

Fans are prohibited from exercising economic rights over portraits of K-Pop idols with the aim of gaining economic benefits without the permission of the person in the portrait. The creator or copyright holder will be harmed if someone else gains economic benefits without permission from their portrait (Riandini and Gusrianti 2021). Thus, the person in the portrait will also suffer losses along with the creator and/or copyright holder.

Law Number 28 of 2014 concerning Copyright stipulates that everyone is prohibited from exercising economic rights over portraits with the aim of obtaining economic benefits without permission from the person in the portrait. Thus, the exercise of economic rights over portraits through uploading portraits of K-Pop idols on Instagram by fans is permitted as long as it is not intended to obtain economic benefits. Law Number 28 of 2014 concerning Copyright is considered incomplete because uploading portraits of K-Pop idols on Instagram by fans actually still has limitations even without the aim of obtaining economic benefits.

Through the problems that have been explained, an interest arose to be used as research to study more deeply about "Uploading Portraits of South Korean Pop Music Idols on Instagram Based on Copyright" with the problem formulation used by the researcher as follows: (1) What is the copyright perspective on uploading portraits of K-Pop idols on Instagram? (2) What are the legal consequences of uploading portraits of K-Pop idols on Instagram?

METHOD

The research written by the researcher is classified as normative legal research because it analyzes the incompleteness of Law Number 28 of 2014 concerning Copyright which regulates licensing for the implementation of economic rights over portraits belonging to people in the portraits even though it is not for the purpose of obtaining economic benefits.

This study uses two research approaches, namely the statutory approach (*Statute Approach*) and the conceptual approach (*Conceptual Approach*). The researcher uses the

statutory approach (*Statute Approach*) because he begins the analysis of the problem of uploading portraits of K-Pop idols on Instagram using the legal basis of Law Number 28 of 2014. The researcher also uses the conceptual approach (*Conceptual Approach*) because he conducts a review of literature related to the topic of copyright so that he can find ideas from the terms that appear and are used in the problem of uploading portraits of K-Pop idols on Instagram.

Researchers use three types of legal materials in the study, the first is primary legal materials. The primary legal materials used by the study are the Civil Code (BW), Law Number 28 of 2014 concerning Copyright, Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments, and *Terms and Conditions* Lysn.

Secondary and tertiary legal materials are also needed in this study. Secondary legal materials used by the study are books, journal articles, and theses that contain concepts about copyright, especially intellectual property rights, economic rights to portraits, moral rights, creators and copyright holders, photography, and legal consequences. Tertiary legal materials in this study. Primary legal materials used by the study are the Great Dictionary of the Indonesian Language (KBBI).

The technique applied by the researcher to collect data to help solve the legal issue in the problem of uploading K-Pop idol portraits on Instagram based on copyright is a literature study by reading, understanding, and searching the internet for legal materials. The researcher reads and understands primary legal materials to ensure that the legal materials are in accordance with the problems raised and are still valid. The researcher also reads and observes secondary and tertiary legal materials to find detailed explanations that support the primary legal materials. The researcher also collects all legal materials by searching the internet.

Researchers use prescriptive techniques to analyze the legal materials that have been collected. The analysis of the legal materials is carried out by providing an assessment through arguments regarding something that is right and wrong regarding the uploading of K-Pop idol portraits on Instagram based on copyright.

RESULTS AND DISCUSSION

1. Uploading K-Pop Idol Portraits on Instagram as Economic Rights to the Portrait

Economic rights consist of various kinds of rights that can be exercised by the creator or copyright holder. Article 9 Paragraph (1) of Law Number 28 of 2014 concerning Copyright states that

"The creator or copyright holder as intended in Article 8 has the economic right to carry out: a. publishing the work; b. duplicating the work in all its forms; c. translating the work; d. adapting, arranging, transforming the work; or distributing

the work or its copies; f. performing the work; g. announcing the work; h. communicating the work; and i. renting the work."

These various economic rights can be exercised by the creator or copyright holder with the aim of obtaining economic benefits. The person in the portrait also has economic rights to the portrait. Article 12 Paragraph (1) of Law Number 28 of 2014 concerning Copyright states that

"Every person is prohibited from making commercial use, duplication, announcement, distribution and/or communication of the portraits they have made for the purpose of commercial advertising or publicity without written consent from the person being photographed or their heirs."

The person in the portrait may carry out duplication, announcement, distribution and/or communication of the portrait to obtain economic benefits from the portrait. The implementation of economic rights over portraits is in fact still widely carried out by people other than the people in the portrait. The uploading of portraits of K-Pop idols by an account with the username aespas Bubble (@aespas_bubble) on Instagram is one example. The portraits of K-Pop idols that were uploaded came from posts shared by K-Pop idols from Lysn, a paid social media connecting K-Pop idols with their fans.

Uploading portraits of K-Pop idols on Instagram is included as an exercise of economic rights to portraits based on copyright. Uploading portraits of K-Pop idols on Instagram is not allowed to be carried out by anyone other than the person in the portrait. One of them is the exercise of economic rights to portraits by fans.

Uploading K-Pop idol portraits on Instagram increases the number of K-Pop idol portraits owned by fans. Article 1 Number 12 of Law Number 28 of 2014 concerning Copyright states that "Duplication is the process, act, or method of duplicating one copy of a Creation and/or phonogram or more by any means and in any form, permanently or temporarily."

Uploading K-Pop idol portraits on Instagram is considered a duplication of creation because the uploaded portraits are copies of portraits owned by fans. Fans who upload K-Pop idol portraits on Instagram initially only have K-Pop idol portraits on their phone storage, laptops, or other devices used to upload. K-Pop idol portraits owned by fans initially only exist on phone storage, laptops, or other media, but through uploading them on Instagram, K-Pop idol portraits are stored on other portrait media, namely Instagram, permanently or temporarily. Therefore, the number of K-Pop idol portraits originating from fans is increasing.

Portrait communication is the implementation of economic rights over portraits that occur in the uploading of K-Pop idol portraits on Instagram after the duplication of the portrait. Article 1 Number 16 of Law Number 28 of 2014 concerning Copyright states that

"Communication to the public, hereinafter referred to as Communication, is the transmission of a Creation, performance or Phonogram via cable or other media

other than Broadcasting so that it can be received by the public, including the provision of a Creation, performance or Phonogram so that it can be accessed by the public from a place and time of their choosing."

K-Pop idol portraits uploaded by fans on Instagram are a creative provision for their followers. K-Pop idol portraits uploaded on Instagram are not only accessible to fans themselves but can also be accessed by their followers and even other Instagram users. Fans can determine the time of uploading K-Pop idol portraits on Instagram according to their wishes.

Uploading portraits of K-Pop idols on Instagram is also a distribution of portraits. Article 1 Number 17 of Law Number 28 of 2014 concerning Copyright states that "Distribution is the sale, distribution, and/or dissemination of Creations and/or Related Rights products.". Portraits of K-Pop idols are only uploaded by fans on Instagram so there is no buying and selling. However, portraits of K-Pop idols uploaded on Instagram are circulated and spread to their followers and even by other people who are not their followers.

The Great Dictionary of the Indonesian Language (KBBI) defines distribution as the distribution of something to several people or places. Portraits of K-Pop idols owned by fans can be distributed to their followers on Instagram. Therefore, uploading portraits of K-Pop idols on Instagram is called portrait distribution.

The implementation of economic rights over portraits can be carried out for advertising or publicity purposes. Explanation of Article 12 Paragraph (1) of Law Number 28 of 2014 concerning Copyright states that "What is meant by "advertising or publicity purposes" is the inclusion of portraits, including in advertisements, banners, billboards, calendars, and pamphlets that are used commercially." Thus, the implementation of economic rights over portraits of K-Pop idols can be carried out by including portraits of K-Pop idols in portrait media such as advertisements, banners, billboards, calendars, and pamphlets.

Advertisement is a media that can be used in the implementation of economic rights over portraits of K-Pop idols. Article 1 Number 51 of Law Number 1 of 2022 concerning Financial Relations between the Central Government and Regional Governments states that

"Advertising is an object, tool, action or media whose various shapes and patterns are designed for the commercial purpose of introducing, advocating, promoting or attracting public attention to something."

The Great Dictionary of the Indonesian Language (KBBI) defines advertising as a medium of information to the public with interesting words and images about a marketed item with the aim of selling the item. The implementation of economic rights over portraits using advertising media is carried out in public in order to attract public attention to the portraits displayed. Portraits of K-Pop idols used to support the

promotion of a beauty product can be used as an example. The inclusion of portraits of K-Pop idols in the promotion of the product is expected to increase the interest of others to make purchases. Thus, the implementation of economic rights over portraits using advertising media has the potential to be carried out with the aim of obtaining economic benefits.

Advertisements can also be used as other portrait media, the process of which is called advertising. Advertising is a persuasive message created in a media creatively and innovatively in the form of text, visuals, and audio-visuals from a company to attract public interest in a product (Thariq 2021). Persuasive according to the Big Indonesian Dictionary (KBBI) is a subtle persuasion that aims to convince someone. The implementation of economic rights to portraits in advertising media aims to persuade and convince other people's interest in something advertised using portraits. Public interest in something advertised using portraits in advertising media has the potential to gain economic benefits.

Instagram can function as a medium for the implementation of economic rights to portraits such as advertising media. Instagram has an *"Instagram Ads"* feature that can be used by fans to promote portraits. This feature can even reach a wider audience according to the target set by fans. Instagram also has an *"Exclusive Content"* feature that can attract the attention of others. This feature provides privileges for people who subscribe to be able to access portraits. Both features can be used to gain benefits. Thus, uploading portraits of K-Pop idols on Instagram can also be used for the same interests as the implementation of economic rights to portraits in advertising media.

2. Fans' Limitations on Uploading K-Pop Idol Portraits on Instagram

Economic rights to a portrait are rights held by the person in the portrait. Economic rights to a portrait are exclusive in nature so that people other than the person in the portrait cannot exercise them. Article 12 Paragraph (1) of Law Number 28 of 2014 concerning Copyright states that

"Every person is prohibited from making commercial use, duplication, announcement, distribution and/or communication of the portraits they have made for the purpose of commercial advertising or publicity without written consent from the person being photographed or their heirs."

The exercise of economic rights over a portrait with the aim of obtaining economic benefits is permitted by law as long as the person exercising the rights is the person in the portrait. Thus, the K-Pop idol as the person in the portrait is the person who has the right to exercise economic rights over the portrait of the K-Pop idol originating from Lysn.

Lsyn is a social media connecting K-Pop idols with their fans. The social media was initiated by SM Entertainment as one of the leading K-Pop idol agencies from South Korea which was then developed and released by one of its subsidiaries engaged in software development, namely Dear U Co., Ltd. in 2019 (Fauziah 2022). Lsyn is popular among fans because it provides facilities to communicate and obtain the latest information from their favorite K-Pop idols from the SM Entertainment agency. Fans need to pay a price determined by Dear U Co., Ltd. in order to use Lsyn services.

Lsyn supports fans to get the experience of interacting with K-Pop idols. Lsyn has a service that gives fans the opportunity to communicate personally with K-Pop idols. The service can be accessed by paying a price starting from 3.99\$ USD or equivalent to Rp65,296,- (sixty-five thousand two hundred and ninety-six rupiah) per ticket for a period of one month. Fans who have paid will get the latest news directly via text message from the K-Pop idol they choose. K-Pop idols often upload their latest news by inserting their portraits.

Copyright on K-Pop idol portraits is an object. Article 16 Paragraph (1) of Law Number 28 of 2014 concerning Copyright states that "Copyright is an intangible movable object." Copyright has no form because rights do not have a physical form, but ownership of copyright can be transferred so that it is considered movable. Therefore, copyright is an object that moves and has no form.

K-Pop idols also have property rights, namely ownership rights to moral rights and economic rights to portraits of K-Pop idols as part of copyright whose ownership rights can be transferred. Article 16 Paragraph (2) of Law Number 28 of 2014 concerning Copyright states that "Copyright can be transferred or assigned, either in whole or in part due to: a. inheritance; b. grant; c. endowment; d. will; e. written agreement; or f. other reasons that are justified in accordance with the provisions of laws and regulations.". However, only ownership rights to economic rights can be transferred.

Ownership of moral rights to K-Pop idol portraits cannot be transferred as long as the K-Pop idol in the portrait is still alive. The implementation of moral rights can only be continued by his heirs if the creator has died. Moral rights are inherent and cannot be separated from (Rahmahafida and Sinaga 2022). Thus, moral rights to portraits also attach to K-Pop idols as people in the portrait.

The economic rights to K-Pop idol portraits are copyrights that can be transferred in whole or in part to another person. Article 17 Paragraph (2) of Law Number 28 of 2014 concerning Copyright states that "Economic rights transferred by the Creator or Copyright Holder in whole or in part cannot be transferred a second time by the same Creator or Copyright Holder.". However, the transfer cannot be done a second time.

Buying and selling is one way that can be done to transfer economic rights to K-Pop idol portraits. The buying and selling that occurred was carried out by K-Pop idols as the people in the portraits through Lysn developed by Dear U Co., Ltd. with fans as buyers. Article 1457 of the Civil Code states that "Buying and selling is an agreement, by which one party binds himself to hand over an object, and the other party to pay the promised price." Thus, the economic rights to K-Pop idol portraits should have been transferred to fans.

The sale and purchase between Dear U Co., Ltd. and fans is a legal act that gives rise to rights and obligations for each party. Fans are obliged to pay the price of Lysn services as determined. Payment is made by fans on Lysn with several methods provided by Dear U Co., Ltd.. Fans' rights must be fulfilled by Dear U Co., Ltd. after fans have completed their obligation to pay the price of Lysn services.

Dear U Co., Ltd. as a service provider also has rights and obligations. Dear U Co., Ltd.'s rights are to receive payments from fans for purchasing Lysn services. Dear U Co., Ltd.'s obligations arise after fans make payments, namely providing Lysn services so that fans get benefits, one of which is a portrait of a K-Pop idol along with ownership rights to the economic rights to the portrait of a K-Pop idol.

Fans do indeed get ownership rights to the economic rights of K-Pop idol portraits through purchasing Lysn services. However, fans are not allowed to exercise their economic rights to K-Pop idol portraits for the purpose of obtaining economic benefits even though they have purchased Lysn services. Article 570 of the Civil Code states that

"Ownership rights are the right to enjoy the use of an object with full sovereignty, as long as it does not violate the law or general regulations stipulated by a power that has the right to determine it, and does not interfere with the rights of other people; all of this without reducing the possibility of revocation of the right to it in the public interest based on the provisions of the law and with the payment of compensation."

Fans' ownership rights to the economic rights of K-Pop idol portraits are limited by the regulations set by Dear U Co., Ltd. as the company that holds power over Lysn. These regulations are stated in a written agreement, namely Lysn's *Terms and Conditions*.

Terms and Conditions Lysn is a standard agreement. A standard agreement is a concept of an agreement with the term take it or leave it because it is made unilaterally by a stronger party, namely Dear U Co., Ltd. and given to a weaker party, namely fans, so that they only have the option to comply with the agreement or not (Mahendar and Budhayati 2019).

Terms and Conditions Lysn provides an agreement between fans and Dear U Co., Ltd.. The agreement in question is the fan's agreement to comply with *the Terms and*

Conditions Lysn that have been provided by Dear U Co., Ltd.. Article 1 of the *Terms and Conditions* Lysn states that "*The purposes of these terms and conditions are to regulate rights, obligations, responsibilities and other necessary matters in relation to the usage of Lysn services provided by Dear U Co., Ltd. (hereinafter, referred to as 'the company').*". *Terms and Conditions* Lysn serves to regulate rights, obligations, and responsibilities as well as several other important things in the use of Lysn. Therefore, fans who have agreed to purchase Lysn services are required to comply with these *terms and conditions*.

The law recognizes the principle of *pacta sunt servanda*. This principle is a legal principle that regulates the binding nature of an agreement. The agreement that has been made and agreed upon by the parties is binding like law (Suryati 2017). Article 1338 of the Civil Code states that

"All legally made agreements apply as laws for those who make them. An agreement cannot be withdrawn except by agreement of both parties, or for reasons that are stated by law to be sufficient for that. An agreement must be carried out in good faith."

The realm of copyright and law does not regulate the entire details of Lysn's use. Therefore, Lysn's *Terms and Conditions* are needed to regulate this so that there are still limitations that fans must obey.

Dear U Co., Ltd. prohibits fans from advertising using Lysn services to gain economic benefits without the permission of Dear U Co., Ltd.. Article 12 Paragraph (1) Number 5 of Lysn's *Terms and Conditions* states that "*Members' are not allowed to do the following: 5. Any acts to use the services to transmit advertisement for profits without prior consent of 'the company'*". Portraits of K-Pop idols are included as content as part of the Lysn service provided by Dear U Co., Ltd. to fans. Article 2 Paragraph (1) Number 8 of Lysn's *Terms and Conditions* states that "*'Content' refers to all unique works, such as videos, images, and voices, that the 'company' provides to its 'members' via this 'service'.*". Therefore, uploading portraits of K-Pop idols on Instagram by fans is prohibited for the purpose of gaining economic benefits because Dear U Co., Ltd. without permission according to what is stated in Lysn's *Terms and Conditions*.

Uploading of K-Pop idol portraits on Instagram by fans is also not allowed even if it is done without the aim of gaining economic benefits. Copyright limits economic rights to creations that are transferred through buying and selling. Article 18 of Law Number 28 of 2014 concerning Copyright states that

"The copyright of books and/or all other written works, songs and/or music with or without text that are transferred in a sale and/or transfer agreement without a time limit, the copyright of which is transferred back to the Creator when the agreement reaches a period of 25 (twenty five) years."

Economic rights to a work do not transfer forever even if it has been transferred through a sale. Thus, K-Pop idols do not give up their economic rights to their portraits forever even if they have been transferred through a sale.

Uploading portraits of K-Pop idols on Instagram is further prohibited even without the purpose of taking economic benefits because fans are not the copyright holders of portraits of K-Pop idols. Article 1 Number 4 of Law Number 28 of 2014 concerning Copyright states that

"The Copyright Holder is the Creator as the owner of the Copyright, the party who legally received the right from the Creator, or another party who received further rights from the party who legally received the right."

K-Pop idols through Lysn's *Terms and Conditions* set by Dear U Co., Ltd. do not stipulate that fans can become copyright holders through the buying and selling that occurs.

Purchasing Lysn services also does not transfer the economic rights to the portrait as a whole so that fans still cannot upload portraits of K-Pop idols on Instagram even though it is not for the purpose of gaining economic benefits. Ownership of the economic rights to the portrait still lies with the K-Pop idol as the person in the portrait because it only partially transfers. Article 17 Paragraph (1) of Law Number 28 of 2014 concerning Copyright states that

"Economic rights to a work remain in the hands of the creator or copyright holder as long as the creator or copyright holder does not transfer all economic rights from the creator or copyright holder to the recipient of the transfer of rights to the work."

The partial transfer of economic rights to K-Pop idols occurs because fans are actually still allowed by Dear U Co., Ltd. to keep portraits of K-Pop idols. The storage of portraits of K-Pop idols by fans constitutes duplication of portraits because they multiply copies of portraits of K-Pop idols. Duplication of portraits is included as an implementation of economic rights to portraits.

terms and conditions apparently require that fans are prohibited from violating the Intellectual Property Rights (IPR) of K-Pop idols. Article 12 Paragraph (1) Number 9 of Lysn's *Terms and Conditions* states that "*Infringement of intellectual property rights of the third party including copyrights of actors, artists and influencers.*". Lysn prohibits fans who use Lysn services from violating Intellectual Property Rights (IPR) including copyrights of third parties, namely actors, artists, and influencers including K-Pop idols. Copyright infringement occurs when there is an implementation of the exclusive rights of the creator or copyright holder by another person without permission (Jened 2014). Thus, uploading portraits of K-Pop idols on Instagram by fans is also

still not allowed even if it is not done with the aim of gaining economic benefits without permission from the K-Pop idol.

The implementation of economic rights over portraits of K-Pop idols through uploading their portraits on Instagram by fans requires permission from the K-Pop idol as the person in the portrait, whether done with the aim of obtaining economic benefits or not. This permission is needed so that fans do not violate Lysn's copyright and *Terms and Conditions*. Permission to K-Pop idols is also an ethical nature. This is in line with Hegel's view that the appreciation of intellectual property rights is not limited to providing incentives, but also with ethical and moral awards (Jened 2014).

The permission granted by the K-Pop idol as the person in the portrait is not enough. The economic rights to the K-Pop idol portrait are also owned by other parties and/or people, namely Dear U Co., Ltd. and/or the photographer. Both have an important role in the K-Pop idol portraits shared on Lysn.

Dear U Co., Ltd. as the company that developed Lysn is also the copyright holder of the K-Pop Idol portraits. Article 19 of Lysn's *Terms and Conditions* states that *"All rights such as copyrights and intellectual property rights for the 'services' belong to 'the company'. However, the 'posts' of 'members' and creative works of the third party provided according to affiliate agreement will be excluded."* Everything related to Lysn services belongs to the company including K-Pop idol portraits. Therefore, fans need permission from Dear U Co., Ltd. to upload K-Pop idol portraits from Lysn on Instagram even if it is not done with the aim of gaining economic benefits.

Fans also need to get permission to upload K-Pop idol portraits on Instagram from the portrait creator. Portrait creators are divided based on the involvement of people during the K-Pop idol photo shoot process. Portraits that are often shared by K-Pop idols on Lysn are selfies. Selfies are created without the help of a photographer because K-Pop idols use cameras to take pictures of themselves. The Big Indonesian Dictionary (KBBI) defines a selfie as a portrait with oneself as the object taken using a digital camera or cellphone which is then uploaded on social media. Thus, K-Pop idols are both the creators of the portrait and the people in the portrait.

K-Pop idols are referred to as creators because they have met the copyright protection standards because their figures play a major role in the process of making portraits and appear in the portrait results so that originality *is* guaranteed. K-Pop idols channel their creativity *through* poses taken during the photo shoot, especially without the help of others who set their style so that ideas arise entirely from the person being photographed. The ideas expressed during the photo shoot by themselves will be born through portraits that can be accessed in the form of digital files or printed so that the standard of embodiment (*fixation*) has also been met. Therefore, K-Pop idols are entitled to economic rights over portraits.

Copyright also grants economic rights to the portrait to the photographer if the portrait of the K-Pop idol obtained by the fan is not a selfie. The photographer is involved in the process of its creation so that he is the creator of the portrait so that the K-Pop idol acts as the person in the portrait. Thus, fans need to get permission from the photographer to upload a portrait of a K-Pop idol on Instagram.

Photographers are people who are tasked with taking portraits of K-Pop idols. Photographers have an important role in the process of creating portraits of K-Pop idols. The process that photographers go through during the portrait shoot is included in the standard of originality *because* the portraits produced are done by the photographer himself. The photographer also plays a role in directing the recommended poses that can be done by the person being photographed so that the direction of the poses comes from the photographer's intellectual ideas so that there is creativity *that* is poured into the photographer in the process of taking the portrait. The results of the portrait can be accessed after going through the portrait shooting process in the form of digital documents or physical documents if the portrait of the K-Pop idol is printed. The digital or physical documents are the embodiment (*fixation*) of the portrait of the K-Pop idol photographed by the photographer. Therefore, the photographer is called the creator of the portrait.

3. The Disadvantages of Uploading K-Pop Idol Portraits on Instagram

Uploading of K-Pop idol portraits on Instagram by fans can harm K-Pop idols, Dear U Co., Ltd. and/or photographers. The losses that can occur in uploading K-Pop idol portraits on Instagram depend on the wishes of the fans.

Uploading K-Pop idol portraits on Instagram can harm K-Pop idols, Dear U Co., Ltd. and/or photographers if fans have the will without permission to use K-Pop idol portraits commercially. Commercial use of K-Pop idol portraits is an economic right to K-Pop idol portraits so that its implementation still requires permission from fans in accordance with copyright provisions and Lysn's *Terms and Conditions*. Article 1 Number 24 of Law Number 28 of 2014 concerning Copyright states that "Commercial Use is the utilization of Creations and/or Related Rights products with the aim of obtaining economic benefits from various sources or paid.". The desire of fans to obtain economic benefits from the commercialization of K-Pop idol portraits uploaded on Instagram can be implemented through the features provided by Instagram.

Exclusive Content is an Instagram feature that can be used to gain economic benefits from K-Pop idol portraits. *Exclusive Content* is a feature provided by Instagram to lock uploaded content so that it cannot be accessed by others. Other people need to pay a certain price that has been set in order to access content that can be uploaded on Feed, Instagram Story, Reels, and Instagram Broadcast Channel. Payment for *Exclusive Content* is made per month. Thus, someone will gain economic benefits through payments made by other people or their followers.

Fans who have the desire to gain economic benefits from K-Pop idol portraits can utilize the *Exclusive Content feature*. Fans can make K-Pop idol portraits as exclusive content uploaded on Feed, Instagram Story, Reels, and Instagram Broadcast Channel. K-Pop idol portraits uploaded on *Exclusive Content* can be purchased by other fans so that payment for K-Pop idol portraits originating from Lysn is not made on Lysn but on the fan's Instagram. Fans will gain economic benefits that harm K-Pop idols, Dear U Co., Ltd. and/or photographers. Thus, fans can be considered to have violated copyright and Lysn's *Terms and Conditions*.

Uploading K-Pop idol portraits on Instagram can attract the attention of other fans. Other fans will follow the Instagram accounts of fans who have purchased Lysn services. Fans who do not purchase Lysn services can still get benefits in the form of access to K-Pop idol portraits from Lysn for free. Fans do not have the intention to gain economic benefits from K-Pop idol portraits, but it can still harm K-Pop idols, Dear U Co., Ltd. and/or photographers because other fans do not have to pay the price of Lysn services.

Fan Instagram accounts that upload portraits of K-Pop idols from Lysn have the potential to gain many followers over time. The potential for many followers comes from fans who want to access portraits of K-Pop idols from Lysn on Instagram for free.

Uploading K-Pop idol portraits on Instagram can harm K-Pop idols, Dear U Co., Ltd. and/or photographers and constitute copyright infringement if fans have the will to facilitate other fans who do not have access to Lysn services. Fans who have access to Lysn services do not get economic benefits from the K-Pop idol portraits they upload on Instagram. However, uploading portraits on Instagram will still result in losses because other fans should have to pay for Lysn services first before they can access the K-Pop idol portraits. Thus, the economic benefits that should have been obtained by K-Pop idols, Dear U Co., Ltd. and/or photographers through Lysn are lost because there are fans who have facilitated K-Pop idol portraits for free on Instagram.

Uploading K-Pop idol portraits on Instagram can also potentially harm K-Pop idols, Dear U Co., Ltd. and/or photographers if fans have the will to gather followers on Instagram. Instagram accounts with many followers will be able to open up new potential economic benefits for fans.

Endorsement is one of the potential sources of economic benefits for fans who have many followers on Instagram due to uploading portraits of K-Pop idols. *Endorsement* is an action by someone who has influence in society to support a product or service (Aletheia 2020). Manufacturers of a product or service target someone with great influence in society to promote their products or services so that they are increasingly known to the public.

The number of followers of an Instagram account is one of the things considered in *endorsements*. The number of followers on an Instagram account will attract the

attention of producers to promote a product through the Instagram account (Hardilawati, Wan Laura; Binangkit, Intan Diane; Perdana 2019) . Instagram accounts that have many followers are expected to influence their followers to buy products or services owned by producers. Thus, fans who have many followers on Instagram due to uploading portraits of K-Pop idols have the potential to *endorse* producers to their followers.

Potential *endorsements made on Instagram by fans have rates that need to be paid by producers. Producers will pay endorsement rates* that have been determined by fans depending on the number of followers on Instagram. The rates that need to be paid by producers will be greater if fans have more followers on Instagram. Therefore, fans will benefit more from *endorsements* because they have more followers on Instagram.

Fan Instagram accounts that have many followers due to uploading portraits of K-Pop idols can also be transferred to others through buying and selling. Fans can determine the selling price of the Instagram account. The selling price will be greater depending on the number of followers they have. Thus, fans will get economic benefits if their Instagram account is bought by someone else.

Fans are considered to have violated Lysn's copyright and *Terms and Conditions* if they upload portraits of K-Pop idols on Instagram without permission to gain economic benefits. Such utilization arises from the will of the fans. The potential for economic benefits can also arise even if fans without permission upload portraits of K-Pop idols on Instagram without the aim of gaining economic benefits so that there is a possibility of the desire to obtain them in the future. Therefore, uploading portraits of K-Pop idols on Instagram by fans without permission still results in losses for K-Pop idols, Dear U Co., Ltd. and/or photographers even though it is not intended to gain economic benefits. The losses that arise depend on the will of the fans.

4. Legal Consequences of Uploading K-Pop Idol Portraits on Instagram

Uploading portraits of K-Pop idols on Instagram is a legal act that has consequences for fans. The consequences arise from fans violating Lysn's copyright and *Terms and Conditions* , thereby harming K-Pop idols, Dear U Co., Ltd. and/or photographers. Sanctions will apply as a consequence of the violation. The consequences received by fans are referred to as legal consequences.

Fans who harm K-Pop idols, Dear U Co., Ltd. and/or photographers due to uploading portraits of K-Pop idols on Instagram will receive sanctions that have been determined in accordance with the law. Article 96 Paragraph (1) of Law Number 28 of 2014 concerning Copyright states that "Creators, Copyright holders and/or Related Rights holders or their heirs who experience economic rights losses are entitled to receive Compensation.". Uploading it on Instagram will be able to bring economic

benefits to fans. The economic benefits obtained should be obtained by K-Pop idols, Dear U Co., Ltd. and/or photographers. Uploading portraits of K-Pop idols on Instagram is an implementation of economic rights to portraits owned by K-Pop idols, Dear U Co., Ltd. and/or photographers so that fans are prohibited from obtaining economic benefits unless they have obtained permission.

Fans who do not get economic benefits from uploading K-Pop idol portraits on Instagram can also receive sanctions in the form of compensation. Losses occur if K-Pop idol fans have the will to facilitate other fans who do not have access to the Lysn service to be able to access K-Pop idol portraits from Lysn. K-Pop idols, Dear U Co., Ltd. and/or photographers will be harmed because K-Pop idol portraits that should be accessible to fans on the Lysn service for a fee become free because they are uploaded on Instagram. Therefore, compensation can be imposed on fans who upload K-Pop idol portraits on Instagram even though it is not done to gain economic benefits.

Dear U Co., Ltd. has also created sanctions that can be given to fans. Sanctions for fans are stated in the Lysn *Terms and Conditions*. Sanctions by Dear U Co., Ltd. can be given if there are fans who violate the Lysn *Terms and Conditions*. The sanction is in the form of unilateral termination of Lysn services.

Termination of Lysn services was carried out unilaterally by Dear U Co., Ltd. because fans did not comply with Lysn's *Terms and Conditions*. Article 20 Paragraph (2) Number 1 Letter A of Lysn's *Terms and Conditions* states that

"The company' may terminate the agreement of use in case any of the following reasons occur to 'members'.

Dear U Co., Ltd. will unilaterally terminate the Lysn service if fans violate any legitimate rights, honor, credit or profits of Dear U Co., Ltd., other Lysn users or third parties, or violate the laws of South Korea or public order and good morals.

Uploading K-Pop idol portraits on Instagram violates Lysn's *Terms and Conditions*. The violation occurs when fans upload K-Pop idol portraits on Instagram with the aim of gaining economic benefits. Uploading K-Pop idol portraits on Instagram can also harm K-Pop idols, Dear U Co., Ltd. and/or photographers even if it is not intended to gain economic benefits. Therefore, Dear U Co., Ltd. unilaterally terminates its agreement with fans if its rights are threatened.

Unilateral termination due to violation of Lysn's *Terms and Conditions* creates new legal consequences. The legal consequences that occur are the disappearance of the legal relationship between Dear U Co., Ltd. and fans. The disappearance of the legal relationship makes fans' access to Lysn services closed. Thus, fans do not have access to get portraits of K-Pop idols from Lysn.

Fans will also be subject to compensation if they upload portraits of K-Pop idols on Instagram without permission, either with the aim of gaining economic benefits or not, even though the period of use of the Lysn service purchased has ended and is not

continued. The compensation includes the legal consequences of Unlawful Acts (PMH) that have been committed by fans.

Unlawful Acts (PMH) have several important elements that occur so that an act is considered unlawful. These elements are the existence of an unlawful act, the fault of the person committing the act, the existence of a loss for the victim, and a causal relationship between the act and the loss (Sari 2020). Article 1365 of the BW states that "Every unlawful act, which causes loss to another person, requires the person whose fault causes the loss, to compensate for the loss."

Fans who upload portraits of K-Pop idols on Instagram without permission are considered to have committed an act that violates the law and copyright. Fans need to ask permission from K-Pop Idols, Dear U Co., Ltd. and/or photographers before uploading portraits of K-Pop idols on Instagram whether for economic benefit or not.

Uploading portraits of K-Pop idols on Instagram by fans without permission is also a wrong act. Lysn's Terms and Conditions have prohibited fans from using portraits of K-Pop idols without permission for the purpose of gaining economic benefits. Fans are also prohibited from committing copyright infringement. Uploading portraits of K-Pop idols on Instagram by fans without permission still violates copyright even though it is not for the purpose of gaining economic benefits. Therefore, the actions of fans are also wrong.

K-Pop idols, Dear U Co., Ltd. and/or photographers suffer losses due to fans uploading portraits of K-Pop idols from Lysn on Instagram. Fans are required to compensate for the losses suffered by K-Pop idols, Dear U Co., Ltd. and/or photographers. Thus, there is a causal relationship between the uploading of portraits of K-Pop idols on Instagram by fans without permission and the losses incurred.

CONCLUSION

Based on the explanation that has been written previously, uploading portraits of K-Pop idols on Instagram can be concluded as follows:

1. Uploading of K-Pop idol portraits on Instagram by fans constitutes an exercise of economic rights over portraits belonging to K-Pop idols, Dear U Co., Ltd. and/or photographers. Fans are not allowed to upload portraits of K-Pop idols on Instagram without permission even if not for the purpose of gaining economic benefits. Lysn's copyright and *Terms and Conditions* provide limitations on economic rights over their portraits so that ownership is not fully transferred to fans through buying and selling. Uploading portraits of K-Pop idols on Instagram also causes losses for K-Pop idols, Dear U Co., Ltd. and/or photographers. Both constitute a violation of copyright and *Terms and Conditions* Lysn.
2. Uploading portraits of K-Pop idols on Instagram without permission by fans, whether for economic gain or not, has legal consequences, namely the birth of sanctions in the form of an obligation to compensate for losses suffered by K-Pop

idols, Dear U Co., Ltd. and/or photographers. Legal consequences include the loss of legal relations between fans and Dear U Co., Ltd. due to unilateral termination of services due to violation of Lysn's *Terms and Conditions*.

Suggestion

The author has suggestions for those involved in uploading K-Pop idol portraits on Instagram as follows:

1. Fans who have paid for Lysn's service need to further comply with copyright provisions regarding economic rights to portraits owned by K-Pop idols, Dear U Co., Ltd. and/or photographers as well as *Terms and Conditions*. Lysn. Uploading K-Pop idol portraits on Instagram still requires permission from K-Pop idols, Dear U Co., Ltd. and/or photographers even if it is not intended to gain economic benefits because uploading it can cause losses to K-Pop idols, Dear U Co., Ltd. and/or photographers.
2. K-Pop idols and/or photographers with the help of Dear U Co., Ltd. as the developer company of Lysn need to implement stricter supervision so that fans who have access to Lysn services are more disciplined in using K-Pop idol portraits. Stricter supervision can create justice for other fans who have also paid for Lysn services.

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