



Examining design features of copyrights using hot area and track[☆]



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ABSTRACT

Features shared by two creative works are important factors to be examined in copyright trials. The study explored a highly subjective issue in graphic and pictorial infringement judgement. In the study, an eye tracker was used to measure the hot area and the track of 61 study subjects. The subjects were asked to look at three different portraits of Mona Lisa and the track of their eyeball movement recorded. The study results showed that (1) the study subjects' hot area and track of Samples 1 to 3 were highly concentrated on the face of Mona Lisa followed by her hands. (2) Compared to female subjects, male subjects' hot area and track were more concentrated on specific areas. (3) The handlebar moustache of Sample 2 and the round face of Sample 3 were the key features of these two works. The visual features of Samples 2 and 3 are significantly different from those of Sample 1. The study used the areas of a graphic or pictorial work that the viewer stared at without moving the eyeballs as a critical and objective reference for defining the visual feature of the work. It is the first time in the world that such an approach was tested, and the study results may be used as an important reference in judicial trials on copyright infringement.

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1. Introduction

Intellectual properties are protected by industrial property rights and cultural property rights; The former takes care of the intellectual property of industries, while the latter the value of originality and creativity of creators. The three major acts dealing with intellectual property rights are the Patent Act, the Trademark Act, and the Copyright Act. The Patent Act and the Trademark Act are related to industrial property rights, while the Copyright Act is related to cultural property rights. These three acts, often referred to as the three acts of intellectual property rights, are the foundation of design protection, and they are associated with three major design domains: industrial design, visual communication design, and architectural and media design. Patent rights protect technology innovation, trademark rights protect commercial morality, and copyrights protect the value of creativity and originality. Together these three forms a strong web protecting designs.

Among studies of industrial property rights, lots of them are related to patents, and these studies have set up a concrete concept

prompting companies to view patents as a technological weapon [1–2]. In term of studies on trademarks, a major focus is on how trademarks can be used by companies as a strategic tool [3] and for brand positioning [4]. As for copyright studies, most of them discussed infringement cases; few of them adopted a more objective approach for determining the features of infringement.

The Convention Establishing the World Intellectual Property Organizations [5] signed by countries worldwide in 1967 gave intellectual property rights a general definition. According Article 2 of the convention, “intellectual property” shall include rights relating to: (1) literary, artistic and scientific works, (2) performances of performing artists, phonograms, and broadcasts, (3) inventions in all fields of human endeavor, (4) scientific discoveries, (5) industrial designs, (6) trademarks, service marks, and commercial names and designations, (7) protection against unfair competition, and (8) all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields. The first (1) and the second (2) mentioned above are the focus of copyrights [6].

The emerging of the cultural creative industry in recent years [7] has prompted the public to put more attention on the previously neglected copyrights. Presently, there is no copyright application; as long as a creator considers his/her work completed, the creator will be entitled to rights derived from the created work. An advantage of copyright is that the right can be obtained relatively easily. A drawback is that when the creator's right is infringed, it may be difficult to find evidence demonstrating that one's right is infringed by the other party.

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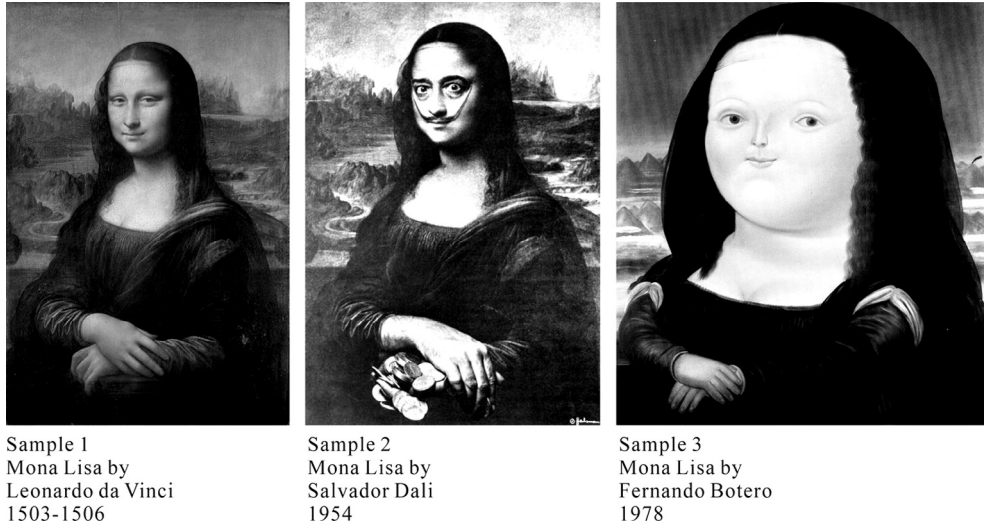


Fig. 1. The research samples: Mona Lisa.



Fig. 2. Subjects' hot area of sample 1.

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