

Abstract

The Study on Problems that can occur when applying fair use under making a judgment in accordance with Korean Copyright Act §35-3 and Proposal of interpretation of fair use

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The modern copyright area is going through a radical change in the development of internet and digital technologies. With the effectuation of the U.S.-Korea FTA and the amendment of the Korean Copyright Act, Korea has adopted Article 35-3(fair use of copyrighted works) in order to strengthen the position of users. Since the fair use of copyrighted works' theory is still just a general, abstract one, a process to make a concrete standard of judgment is needed. Although the U.S. fair use of copyrighted works theories and precedents have been already introduced in Korea, there is a need to develop theories and accumulate cases that are suitable for our Korean legal system. Based on the existing arguments regarding fair use of copyrighted works' standard of judgment, this paper reviews how to consider the relationship among factors while applying fair use to cases, the purpose of commercial use, the scope of market and value of original copyrighted work, burden of proof, transformative purpose, and the relationship between moral rights and fair use. This paper critically analyzes those issues and proposes how to apply those factors to cases. In addition, in respect of the issues arising while applying fair use, this paper analyzes the status of fair use in the Copyright Act, the relationship with other limitations or exceptions to exclusive rights, the interpretation of moral rights.

Keywords: Fair use, Korean Copyright Act §35-3, Commerciality, Transformative use, Transformative purpose, Moral rights, The burden of proof, Right to preserve the identity