

Abstract**Transformative Use Test in the U.S. Copyright Law**

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Creating a work based on preexisting works without permission may constitute copyright infringement of the exclusive rights of the copyright holders. However, the creation of a new work based on preexisting works would be susceptible to variable interpretation if the transformation of the original has been done by adding something new, with a further purpose or different character, altering the original with new expression, meaning, or message. The concept of “transformative use” has been adopted in the U.S. Supreme Court’s ruling in *Campbell v. Acuff-Rose* in 1994, and has become the most significant component in fair use cases. In 2011, the Korean Copyright Act was amended to include the general provision of a fair use. The newly introduced article 35-3 is very similar to Article 107 of the U.S. Copyright Act including four factors enumerated in the second part of the provisions. After *Campbell*, the U.S. courts has begun to emphasize the transformative use test as a part of the first factor, the purpose or character of the use. More fundamentally, recent cases show that U.S. courts are likely to issue rulings against copyright holders without their factor-by-factor analysis when the first factor of the fair use analysis falls in favor of fair use. In this paper, I will examine the meaning and the scope of transformative use and the relationship between transformative use and market harm to the original work.

Keywords

Fair use, Transformative use, Derivative work, Transformation, Transformative purpose, Transforming content, Market harm