

Abstract

Implications of ‘Smooth Rights Restriction Provisions’ under the Japanese Copyright Act as Applied to Digital Works
-Focusing on explaining Article 30-4-

Go, Su-Yun*

The 19th revisions to the Japanese Copyright Act has taken effect on 1 January 2019. The Copyright Act Amendment’s primary aim is to balance the fair use of copyrighted works and the proper protection of copyright to correspond with the move towards digitization and networking. For this reason, the ‘flexible rights restriction provisions’ was newly established. These provisions flexibly apply to certain actions that are usually considered not to harm copyright owners’ interests (Articles 30-4 and 47-4) and certain actions that may cause only minor harm to copyrights owners (Article 47-5).

Among these provisions, this paper focused on explaining the provisions of Article 30-4(Intended use of copyrighted works without the enjoyment of the ideas or emotions expressed therein). First, this provision is a rule applicable to digital works. Second, it restricts the scope of rights protection of copyrighted work to the enjoyment act of the ideas or emotions expressed the works therein, rather than the reproduction or public transmission act of that. Third, it distinguishes digital and program works. Fourth, the Japanese government considered the relationship with the moral rights in the right design. Finally, it was established in an eclectic form of specific regulation and general regulation. In conclusion, Japanese flexible rights restriction provisions provides implications for revising the copyright system on digital works.

* Ph. D. in Law, Lecturer at Kangwon University School of Law.

Keywords

Japan Copyright Act Amendment, Article 30-4, Flexible Rights Restriction Provisions, Use of Copyrighted Works Without Enjoyment.

참고문헌

1. 국내문헌

- 김병일, “프로그램 저작권에 관한 법제도 고찰”, 『계간 저작권』, 2012 겨울호, 한국저작권위원회(2012).
- 김석진, “유형적 저작물과 대비되는 디지털 저작물의 유통에 관한 법적 쟁점 연구”, 『연세 의료·과학기술과 법』, 제5권 제1호, 연세대학교 법학연구원 의료·과학기술과 법센터(2014).
- 김은관, “일본 저작권법의 최근 개정에 대한 검토”, 『저작권 동향』, 제21호, 한국저작권위원회(2012).
- 박인회, “디지털 시대에 있어서 저작권법상 복제개념의 재고찰”, 『법학연구』, 통권 제55집, 전북대학교 부설법학연구소(2018).
- 박준우, “실질적 유사성과 공정이용법리의 공통기원, 그리고 ‘규범적 복제’의 정의”, 『계간 저작권』, 2016 여름호, 한국저작권위원회(2016).
- 吳炳喆, 『디지털 정보재산의 유통과 권리처리 활성화에 대한 연구』, 프로그램심의조정위원회, 프로그램심의조정위원회(2002).
- 오병철, “컴퓨터 프로그램의 물성에 관한 재검토”, 『財産法研究』, 제26권 제3호, 한국재산법학회(2010).
- 임원선, 『미국저작권법』, 한국저작권위원회(2010).
- 정진근, “컴퓨터프로그램저작권 관련 규정의 적합성에 대한 인식과 시사점”, 『정보법학』, 제17권 제2호, 한국정보법학회(2013).

2. 국외문헌

- 川人 顕, 社会の変化に対応した著作権法の改正 — 柔軟な権利制限規定の整備を中心とした国会論議 —, 『立法と調査』, No. 403, 参議院常任委員会調査室・特別調査室, (2018. 8).
- 金野 和弘, デジタルコンテンツの著作権処理に関する研究-コモンズ問題とアンチコモンズ問題-, 『日本社会情報学会全国大会研究発表論文集 日本社会情報学会 第22回全国大会』, 日本社会情報学会, (2007).