

Abstract

**An Aesthetic Review on the Judicial Interpretation of
Transformativeness as a Fair Use Factor Regarding
Appropriation of Visual Art Works**

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The most important factor in the legal assessment of the fair use of copyrighted works is transformative use. The criteria for determining transformativeness, however, have been pointed out as a main cause of the ambiguous attitude of the courts toward visual arts. In particular, there have been many criticisms that legal judgments vary considerably when those subject to sentences for violations of fair use are of the nature of appropriation. This study examined the causes of ambiguous judgments in applying and interpreting the provisions of fair use in Section 107 of the U.S. Copyright Act regarding the act of appropriating visual art works, focusing on problems raised in determining objects of which transformativeness in the primary purpose of the use of copyrighted works needs to be considered (the first factor in fair use determinations); subjects of which perspective needs to be mainly considered in judging transformativeness; and the necessity of expanding the category of appropriation types to be protected as fair use. This study also attempted to discuss measures to address these problems, and adopted an allusion approach from an artistic perspective for a better understanding of the aesthetic nature of appropriation utilized as a technique of creating works by imitation. Since the Korean Copyright Act also introduced similar legal principles to the fair use articles of the U.S. Copyright Act, it is necessary to pay particular attention to and review this topic in Korea.

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Keywords

Fair Use, Aesthetics, Transformativeness, Visual Art Works, Copyright Limitations, the Purpose of the Use of Copyrighted Work, Appropriation Art, Parody