

Abstract

**Reconsidering the Complementarity of
Comprehensive Fair Use Provisions
: Focusing on the relationship between Articles 28 and
35-5 of the Copyright Act**

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There have been developments such as Supreme Court decisions setting out the standards for fair use under Article 35-5, but the complementary nature of the comprehensive fair use provision still remains unclear. Recent cases tend to treat the two provisions under the same heading ruling them together, or separate headings but not to mention the relationship between the two provisions.

This article focuses on the meaning of the complementary nature of Article 35-5 and attempts to clarify the relationship between Article 35-5 and Article 28. Article 28 was influenced by Japanese Copyright Act and the Berne Convention, but there are explicit differences from the Japanese provision. Considering legislative history during the 1986 amendment to the Copyright Act, changes in interpretation of Article 28, and the deleted requirement of Article 35-5 in 2016, it is reasonable to interpret Article 28's scope as limited to reporting, criticism, education and research, and to the extent equivalent or at least partly related or similar to them.

Furthermore, it is necessary to interpret the term "quotation" in a manner consistent with the Berne Convention's concept of quotation. In this respect, the principal-agent theory, which is applied to the interpretation of Article 28 along with the

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comprehensive consideration theory, could be understood as reflecting the Berne Convention. Article 35-5 should play a role in the area not covered by the limited interpretation of the quotation provision and be actively applied in situations where freedom of expression or abuse of rights is at issue.

Keywords

Limitations of copyright, comprehensive fair use provisions, quotation, complementarity, relationship between Article 28 and Article 35-5, the 1984 proposal to amend the Copyright Act, the 2016 amendment to Article 35-5, principal-agent theory, comprehensive consideration theory.