

Abstract**Re-investigation on Moral Right of Copyright***

Jeong, Jin Keun**

Moral right is an important right which is composed of copyright with the author's economic right. Moral right is prescribed in the Berne Convention for the Protection of Literary and Artistic Works that "Independently of the author's economic rights, and even after the transfer of the said rights, the author shall have the right to claim authorship of the work and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, the said work, which would be prejudicial to his honor or reputation". This statute makes moral right as international criterion but the concrete legalization would be authorized as to each nation.

So, many countries including France, Germany, the United Kingdom, USA have statutes that limit moral rights as that software which need to be adapted, copyrightable works which would be limited by fair use or fair dealing should be limited for public interests which Copyright Act intends for.

Nevertheless, Korean Copyright Act doesn't ask the requirements of "prejudicial to author's honor or reputation" for exercise of moral rights. Moreover, copyrightable works which juridical persons create, computer software would be protected with moral right without any limitation. So, Korea is one of countries that protect moral right in strongest way.

Protecting moral right may limit parody, derivative works and fair use of copyrightable works. So, we should discuss for amendment of moral right in Korean Copyright Act under consideration of Copyright Act's object and international legislation.

* This study was supported by 2013 Research Grant from Kangwon National University(No. C1009878-01-01).

** Professor, Ph.D, Law School, Kangwon National University.

Keywords

moral right, computer program copyrightable work, Berne convention, Visual Artists Right Act of 1990(VARA), transformative use, parody, right of integrity, right of attribution

참고문헌

- 오승중, 「저작권법(제3판)」, 박영사, 2013
이해완, 「저작권법(제2판)」, 박영사, 2012
김인철, “미국법상 저작권인격권에 관한 개관”, 계간저작권(2012 여름호), 2012
박준우, “미국 판례법상 패러디의 변형성과 공정이용법리”, 선진상사법률연구(제 51호), 2010
오승중, “컴퓨터프로그램보호법의 독자성”, 비교사법(제6권 제2호), 1999
오승한, “특허·저작권법의 기본목적과 정책에 대한 경제적 분석 및 독점금지법의 경쟁정책과의 비교”, 상사판례연구(제18집 제3권), 2005
우지숙, “디지털 저작물에 대한 정당한 사용(Fair Use)원칙의 새로운 개념화를 위한 연구: 미 저작권 판례에서의 변형적 이용(transformative use) 요인을 중심으로”, 방송연구(2002년 겨울호), 2002
정진근, “컴퓨터프로그램보호법의 목적에 관한 소고”, 창작과 권리(제46호), 2007
정진근(연구책임자), 「컴퓨터프로그램저작물의 효과적 보호방안 연구」
(발간등록번호: 11-1371000-000482-01), 문화체육관광부, 2013
中山(윤선희 편역), 「저작권법」, 법문사, 2008
- Arthur R. Miller, Michael H. Davis, Intellectual Property(4th Ed.), Thompson/West(2007)
Jane Ginsburg, The Right to Claim Authorship, 41 Hous. L. Rev. 263, 294 (2004)
Michael B. Gunlicks, A Balance of Interests: The Concordance of Copyright Law and Moral Rights in the Worldwide Economy, 11 Fordham Intell. Prop. Media & Ent. L.J. 601, 602 (2001)
Reese, R. Anthony, “Transformativeness and the Derivative Work Right,” Columbia Journal of Law and Arts, Vol.31, (Summer 2008)
Ronald B. Standler, Moral Rights of Authors in the USA, 17 Apr 2012, available at www.rbs2.com/moral.pdf