

Abstract

Fair Use Under Korean Copyright Law  
- An Analysis of Case Law -

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In 2011, the fair use provision was introduced in Korean copyright law. While it has been reformed once to make it more effective, and efforts have been made to establish so-called fair use guidelines to increase its predictability, doubts are raised as to whether fair use functions as a practical standard in actual copyright cases.

It is time to point out its *status quo* and to observe how fair use has been operated by the Korean judiciary; this new legal instrument is intended to actively pursue a balance between the interests of creators and users/the public. Moreover, fair use may be understood as the legislator's delegation to the judiciary for exercising the quasi-legislative authority to create new and necessary copyright limitations/exceptions on a case-by-case basis.

For an overview, it is indispensable to analyze the relevant precedents produced by various courts in Korea in the past 11 years. Unfortunately, there have been no cases in which the Supreme Court of Korea actively reviewed fair use. Nevertheless, district and high courts produced several decisions and judgments dealing with fair use (some of them gave considerable detail to insightful investigations in fair use). By finding commonalities and trends in these limited precedents and examining their problems, it is possible to determine and suggest what improvements fair use needs and how this relatively new and unfamiliar provision can be developed in the context of Korean copyright law.

With this goal in mind, this paper analyzes the fair use-related

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precedents over the past 11 years in which fair use is reviewed or -at least- mentioned (see the collected cases in Appendix). Above all, it closely examines the attitude (modes of interpretation/application) taken by the Korean courts on fair use and evaluates whether and to what extent fair use has been actively applied by the courts. Based on this analysis and evaluation, the problems of the current Korean fair use face are pointed out from various aspects. Finally, this paper proposes some ways for a sustainable fair use in our copyright environment, and suggests cooperation and respect between the judiciary and academia.

### **Keywords**

copyright, fair use, case law, Three-Step Test, copyright limitations, copyright exceptions