

ABSTRACTS

This study purposes to analyze two outstanding issues relating to copyright protection (excluding copyright enforcement) of the Korea-U.S. Free Trade Agreement (“KORUS FTA”). One is to identify TRIPS-plus provisions in the KORUS FTA which impose new obligations. Supporters argue that TRIPS-plus provisions will benefit our economy, while opponents claim that those provisions will benefit only U.S. companies. It is hard for us to tell which side is right or wrong; however, we had better take a positive stance for making the best use of KORUS FTA. In this regard, TRIPS-plus provisions in the KORUS FTA should be reviewed throughly. The other is whether the Amendment of Copyright Act (“Amendment”) fully implements all obligations of the KORUS FTA. Once the agreement gets ratified, a bilateral consultation for FTA implementation will begin. As we could see in the case of U.S.-Peru FTA and U.S.-Oman FTA, intellectual property rights sector including copyright will become one of the most complex and difficult issues during the consultation. Advance preparation is required. Against this backdrop, the study focuses on legal interpretation and domestic implementation for each provisions of Article 18.1, Article 18.4, Article 18.5, Article 18.6, and Article 18.7.

In sum, TRIPS-plus provisions of the KORUS FTA include Article 18.1 para.3 (accession to international IPR agreements), Article 18.4 para.1 (right of temporary reproduction), Article 18.4 para.2 (right of distribution), Article 18.4 para.4 (70-year protection period), Article 18.4 para.7 (protecting effective technical measures), Article 18.4 para.8 (protecting right management information), Article 18.4 para.9 (not using infringing computer software in central government), Article 18.5 (author’s right of communication to the public), Article 18.6 para.2 (performer’s right of communication to the public relating to unfixed performance), Article 18.6 para.3 (right of performers and producers of phonogram to prohibit the broadcasting and any communication to the public), and Article 18.7 (protection of encrypted program-carrying satellite and cable signals). TRIPS-plus provisions is not a matter of good or bad. What is important is to wisely implement FTA obligations with properly taking into account textual flexibilities.

With respect to FTA implementation issues, the current Amendment of Copyright Act successfully reflects TRIPS-plus provisions of the KORUS FTA. Meanwhile, it seems that further careful reviews are required for a couple of issues where the interpretation is not clear by its appearance, including the right of broadcasting and communication to the public relating to Article 18.6 para.2 and para.3.

Keywords : Korea-U.S. Free Trade Agreement, Copyrights, Related rights, Protection period, Temporary storage, Effective technical measure, Rights management information, Fair use exception