

ABSTRACTS

The government has recently announced the bill to amend Korea's Copyright Act. The bill contains the introduction of the fair use doctrine into Korea's Copyright Act. The current Copyright Act takes the exhaustive lists of limitations to copyright. The bill aims to introduce the indefinite list system. In other words, the bill's Article 35bis is introducing a provision, "fair use of works." The first paragraph is borrowing the three step test system of the Article 13 of the TRIPS agreement. The second paragraph introduces the fair use doctrine almost the same as the Section 107 of the US Copyright Act.

The fair use doctrine has been developed as case law in the US where the judicial environment is quite different from that of Korea. This paper aims to seek for its implications through the "Google Book Search." The use behavior of works in the Google Book Search is indispensable. It is actually difficult to get prior permissions from copyright owners and to provide search engine service to the public. Here, the "fair use" system comes to have its vitality. This paper first examines the provision of the Article 35bis of the bill. It suggests that a problem about terminology in "limitations" and "exceptions" be interpreted flexibly, not by the strict interpretation in light of analyzing the exceptional provision. Next, it examines a issue on introducing the class action system in light of US Civil Procedure Code. When a big search engine uses copyrighted works of others, right holders would need a class action to object to this and to exercise their rights. However, it would not be easy to literally introduce the US class action system in Korea. Thus, an appropriate system would be necessary under Korea's legal environment.

Finally, this paper examines an issue on attorneys' fee. In Korea, a losing party should bear the legal cost. This paper examines whether this rule is valid even with respect to introduction of the fair use doctrine. The current rule on attorneys' fee would be unclear differently from the original intention, and thus this paper suggests that a new rule be adopted.

Keywords : fair use, limitations and exceptions, lawyer's fee, class action