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ABSTRACTS

Parody and Modern Expression

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In 2009, Korean government amended Copyright Act and added industrial development as its purpose. This may mean that Copyright Act does not target solely cultural aspects any more, and that copyright may contribute to industrial development. In modern society, copyrighted works can be kinds of economic goods and subjects of trade in a market. However, under the current Copyright Act, it is hard to use copyrighted works in various ways and one of such ways to use is to parody the works.

Parody is defined as a literary or musical work in which the style of an author or work is closely imitated for comic effect or in ridicule. It is used for a artistic and commercial purpose. Even though artistic and non-commercial parody may avoid copyright infringement, parody may generally constitute copyright infringement. Under Korean law, exceptions and limitations to exclusive copyright may apply to parody, but it is not clear which provision can apply. Under U.S. law, fair use applies to parody but it was controversial whether fair use applies to commercial parody as well. Finally, the US Supreme Court held in Campbell that fair use can apply to commercial parody. Thus, U.S. copyright law is less restrictive to parody than Korean law.

In Korea, however, there is another hurdle to apply the exception to parody. Korean Copyright Act awards moral rights to authors as European countries and Japan do. Because an copyright exception can apply only to property aspects of parody, parody still faces infringement of moral rights. Such a situation leads to less trade and use of copyrighted works in Korea. Moreover, the precedents of parody are very few and there is no precedent for commercial parody. Therefore, to boost trade and use of copyrighted works, legislative measurement must be prepared and this measurement must protect commercial parody as well. This measurement and parody protection will be in tune with the amended purpose of Copyright Act and broadly the freedom of speech under Constitution.

keywords : parody, commercial advertisement, derivative work, moral rights, copyright infringement, fair use, freedom of speech