

## Abstract

### Legal Issues about Uncertainty of Fair Use in Copyright Law

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According to Article 18.4 : 1 of Free Trade Agreement between the Republic of Korea and the United States of America, it is stated that “Each Party shall provide that authors, performers, and producers of phonograms have the right to authorize or prohibit<sup>9</sup> all reproductions of their works, performances and phonograms, in any manner or form, permanent or temporary (including temporary storage in electronic form). And its footnote states “Each Party shall confine limitations or exceptions to the right described in this paragraph to certain special cases that do not conflict with a normal exploitation of the work, performance, or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder. For greater certainty, each Party may adopt or maintain limitations or exceptions to the right described in this paragraph for fair use, as long as any such limitation or exception is confined as stated in the previous sentence.”

So Article 18.4:1 and its footnote clearly points out that the limitations and exceptions for the right of reproduction can be adopted or maintained within obeying the three step test stated in Article 9 of Bern Convention. In other words, no obligation to install the system of fair use is given to the parties in this agreement.

However, reflecting the trend of implementation of legislating to regard temporary storage as illegal reproduction and the requests of the intensified protection of copyrights, it is afraid that the loss of balance to hamper the fair use of the users may occur by focusing only on the protection of right of author if the system of fair use is not adopted. Therefore there are some views that it is reasonable to introduce the provision of fair use in the comprehensive form.

Likewise, considering the results of Free Trade Agreement between Republic of Korea and USA, the present revision of copyright law is trying to accept the provision of fair use

which is similar to the system of fair use of USA. Still, there are some concerns whether the effectiveness of introducing the system of fair use of copyright law of USA can be secured or not since the judicial climate or environment of Republic of Korea is very distinct from that of USA.

All in all, this thesis suggests the solution to promote the advantage and compensate the defect after figuring out the gains and losses that the general provision of fair use can bring to the mechanism of copyright law. For these discussions, I basically examined over the meaning of fair use and analyzed the advantage and disadvantage accompanied with the adoption of fair use of copyright law of USA and then specifically elaborated on the solutions to resolve the uncertainty which is the essential cause for generating the advantage and the disadvantage.

**Keywords : Fair use, Uncertainty, Fair use board, Copyright terms**