

**Abstract**

## **Study on Problem and Proposal on Copyright Fair Use Doctrine in Korea\***

Jeong, Jin Keun\*\*

As Korea and USA concluded the KORUS FTA, Korea legislated a fair use doctrine under Korea's Copyright Act Sec. 35-3. So Korea's Copyright Act has limitations and exceptions to exclusive rights in two forms: free use and fair use. According to Sec. 35-3, it is allowed to use copyrighted works on the conditions: (i) if it is for 'certain special cases for news, criticism, education, research and so on'; (ii) if 'it does not conflict with a normal exploitation of the work'; and (iii) if 'it does not unreasonably prejudice the author's legitimate interests'. In deciding whether use of works are allowed, it is necessary to take into following factors: (i) 'the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes'; (ii) 'the nature of the copyrighted work'; (iii) 'the amount and substantiality of the portion used in relation to the copyrighted work as a whole'; and (iv) 'the effect of the use upon the potential market for or value of the copyrighted work'. As a result, the use needs to satisfy both the three-step test on Berne convention §9 (2), WIPO Copyright Treaty §10 and TRIPs §13 which set conditions for limitations and exceptions to exclusive rights also conditions for fair use doctrine.

Since, however, it is necessary to resolve the issues arisen from the relationship between free use and fair use statutes, this paper proposes following three solutions: (i) fair use doctrine should be applicable to the use for education over compensation claim statutes; (ii) fair use doctrine should be effective means over copyrighter's moral right; and (iii) it is necessary to settle the relationship between free use and fair use statutes.

**Keywords**

copyright, fair use doctrine, fair dealing, limitation to copyright, public interest, 3 step test, transformative use, copyright war, statutory exemption

\* This study is supported by Kangwon National University

\*\* Professor, Ph.D, Law School, Kangwon National University