

Abstract

**A Study on the Proposals of Guidelines for Awarding Statutory Damages in Korea by the Empirical Analysis of US Experiences and Issues on its Applications**

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Statutory damages allow a copyright owner to recover an award of damages the amount of which is provided by law for copyright infringement. A copyright owner may elect statutory damages instead of actual damages he or she has suffered or profits an infringer has earned. If elected, a copyright owner needs not prove damages. Korea's copyright system adopted statutory damages through the KORUS FTA, and statutory damages are expected to contribute to an effective enforcement of copyright as civil rather than criminal remedies. It has been argued, however, that the statutory damages award is excessive, arbitrary and inconsistent in the United States. With their excessive award, statutory damages would be punitive or penal rather than deterrent, and it may cause the issues of due process, the deterrence of innovation of multi-use technologies, and the chilling effect of fair use or freedom of speech. It is necessary to prevent such problems in enforcing statutory damages in Korea.

This paper purposes to show some guidelines Korea's courts need to take into consideration in calculating statutory damages. It examines statutory damages under US copyright, analyzes problems of excessive statutory damages, and introduces proposals to fix them in US. Finally, it suggests several principles and considerations of which observance would be helpful for Korea's courts in calculating statutory damages. While this paper focuses on the issues of excessive statutory damages award, it also emphasizes that too little award is not appropriate as much as excessive award in Korea.

**Keywords**

Statutory Damages, Punitive Damages, Penalty, Compensation, Deterrence, Actual Damages and Profits, Due Process, Innovation, Indirect Infringement, P2P File Sharing, Per Infringed Work