

Abstract

A Study on the Refusal to License the Copyright and Fairness of Copyright Contract

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The very spirit of Copyright law is to protect the copyright holder who may be writers, composers and any other creative workers who produce the copyrightable works on the one hand and to promote the progress of culture in our country on the other hand. This is what we can read in the article 1 of Copyright Act of Korea. The copyright itself is a sort of property wholly owned by the copyright holder. For that reason any refusal without any reason could be made to any person who want to get a license(freedom of contract). However at a given circumstances, that refusal to license to others could be unjustifiable violation of antitrust law and could be interpreted as a copyright misuse which are outside of the legal exercise of copyright under our whole legal system. In addition in order to promote the cultural development, more access to the cultural works would be helpful from that perspective.

In Megastudy case, Central District Court of Seoul rendered its decision that refusal to grant license would be the violation of antitrust law and it also constitute the misuse of copyright. In Seoul High Court, that rationale was changed with the same conclusion. However that decision called a attention to the possible application of antitrust law rationale to the copyright law cases. Now in 2011, article 35-3 so called fair use doctrine becomes a part of our Copyright law. It may make some impact to the potential users of the copyrighted works. Even though, the argument based on the antitrust laws could be worth being reviewed after the Megastudy case.

Keywords

Megastudy Case, Copyright Act, Copyrighted Works, DRM, Refusal to License

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