

**Abstract**

## **Limitations and Exceptions of Copyright and User's rights**

Park, Yusun

This paper is to examine the nature and scope of limitations and exceptions of copyright and address how to analyse the fair use provision of Korean Copyright Act. The primary purpose of copyright law is to contribute and develop a culture and related industries by protecting both rights of the copyright owner and rights of users and maintaining the balance of the system. The emergence of the Internet and the introduction of new powerful technologies have expanded copyright owner's rights, but limitations and exceptions of copyright have not really changed much.

Korean Copyright Act has had a closed system by listing a series of limitations and exceptions to the author's exclusive rights until the fair use doctrine which is the most important example of an open system has been adopted in Article 35. 3 of the law. As Korean Copyright Act is rooted in the continental european system, the codification of the fair use doctrine can cause confusion.

The fair use provision in Korean Copyright Act should be differentiated from the free use doctrine in German copyright law. The free use doctrine is akin to the idea-expression dichotomy, determining boundaries of copyright law itself. Fair dealing in the U.K. and Canada copyright laws is more limited than the fair use doctrine in the U.S. as fair dealing only applies to the purposes enumerated. The fair use provision in Korean Copyright Act adopts the three-step test of the Bern Convention and provides four fair use factors of the U.S. copyright law with a non-exclusive list of purposes. Therefore, it is more reasonable to analyze fair use in Korean Copyright Act in ways similar to that in the U.S. law. However, courts need take more narrow interpretation of fair use because the fair use doctrine in the U.S. has been criticised for the possibility of violating the three-step test of the Bern

convention. As the three-step test has been codified in the fair use provision, it should be noted that the fair use should not go beyond the limitation on limitations of copyright of the Bern Convention.

### **Keywords**

user's rights, limitations and exceptions of copyright, fair use, fair dealing, free use, balancing copyright