#### **Abstract**

# Legal Review of the Issue regarding the Free Use of Public Work as Limitation on Author's Property Right

Young-Gyu Park\*, Chan-Dong Kim\*\*

Recently the Copyright Act concerning public works has been revised, so public work can be used freely by all people. According to Art. 24-2(Free Use of Public Works), a work produced on business and already made public by the State or a local government, or a work of which the author's property right is owned in its entirety by the State or a local government under a contract, may be used without permission. Provided, That the same shall not apply when the work falls under any of the following cases: where it includes any information pertaining to national security, where it corresponds to an individual's privacy or confidential business information, where it includes any information of which disclosure is restricted under other Acts, where it is registered with the Korea Copyright Commission and is managed as State-owned property under the State Property Act or as public property under the Public Property and Commodity Management Act.

Public works are naturally acquired in the course of the administration for the purpose of achieving administration not have been recognized as a tool of creative incentives. Thus, it is not right to grant equally comprehensive and exclusive right by the Copyright Act on public works. The Copyright Act adopt the rule of free use of public work as limitation on author's property right. However that legislation has some limitations such as the range of application, process for free use of public work, etc. Legislation concerning public works should be improved in the direction of the management and increasing its effectiveness, and the rule on the use of public works should be based on that citizens can actively utilize,

<sup>\*</sup> College of Law at Myongji University, Associate Professor

<sup>\*\*</sup> Korea Copyright Commission, Senior Researcher

### **Keywords**

public works, range of public works, free use, limitation on author's property right, state property act, public property and commodity management act

#### 참고문헌

#### 1. 국내문헌

- 강신하, 미국저작권법상 공정사용의 법리: 패러디에 관한 논의를 중심으로, 「인권과 정의」 제387호(2008,11).
- 김민호 외, 국유재산의 효율적 관리활용 방안, 한국토지공법학회(2001.12).
- 김병일, 저작권법일부개정(안) 공청회자료, 문화관광부(2007.9.12).
- 김현경, 공공저작물의 활용을 위한 입법론적 고찰, 「성균관법학」제25권 제1호(2013.3).
- 남형두, 저작권법일부개정(안) 공청회자료, 문화관광부(2007.9.12).
- 박영규, 공공기관을 상대로 한 저작물 이용의 법적 문제 및 그 대응방안, 「계간저작권」제 107호(2014년 가을호).
- 박익환, 공정이용조항의 도입논의, 「디지털재산법연구」 제6권 제2호(2007).
- 송영식 외 6인, 「지적소유권법(하)」, 육법사(2008).
- 오승종, 「저작권법 제2판」, 박영사(2012).
- 유대종, 「저작권 남용의 법리에 관한 연구」, 경희대학교 박사논문(2006).
- 이대희, 한국 저작권법 체계에서의 공정이용의 도입, 「저작권문화」(2007.11).
- 이형하, 저작권법상의 자유이용, 「재판자료집」제57집, 법원행정처(1992).
- 임원선, 「실무자를 위한 저작권법」, 저작권심의조정위원회(2006).
- 이해완, 「저작권법 제2판」, 박영사(2012).
- 이헌묵, 공공기관이 보유하고 있는 저작물의 자유이용허락에 관한 법제도 연구, 「문화·미디어·엔터테인먼트 법」제5권 제1호(2011).
- 정상조 편(박범석 집필부분), 「저작권법 주해」, 박영사(2007).
- 정필운, 공공기관은 자신의 저작권을 근거로 국민의 정보공개청구를 거부할 수 있는가 서 울행법 2007.8.28. 선고 2007구합7826 판결에 대한 평석을 겸하여 -, 「헌법학연구」 제16권 제1호(2010.3).
- 홍재현, 공공저작물 이용 활성화를 위한 저작권 제한 연구, 「한국도서관·정보학회지」제44 권, 제2호(2013.6).

## 2. 국외문헌

Forkel, "Lizenzen an Persönlichkeitsrechten durch gebundene Rechtsübertragung", GRUR 1988.