

**Abstract**

## The Study on the Creativity Condition for Work

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The creativity condition for work is the one of requirements for protecting by copyright regime, which is the matter for that. The copyright act, however, does not have the provision for the definition of what is the creative work; that depends only on how to interpret the law.

Previously, when we applied the concept of the creativity, it is the romanticism, the utilitarianism and the pragmatism that affected to interpret that. The latter is related on the justification, which is so-called 'incentive-theory'. For this reason, the lawyer consider the protection to the work which is eligible for getting the incentive when the judge admitted the copyright protection. The theory, which is so-called 'sweat of the brow' in the United States, is the typical example for that. Recently, however, in the Feist case, the Supreme court of the United States says 'modicum of creativity'; the discussion for the creativity condition is developed for adopting that judgement.

In Japan, on the other hand, the Professor Nakayama(中山信弘) makes the theory for that, so-called 'variety of choice theory', which is intended to make the monistic theory of the creativity in artistic and functional works. That is very advanced one, which might help the lawyer to consider the condition of the creativity.

From this reason, in this paper, we will study the previous theory for the condition of the creativity, the concept for that in the United States and the variety of choice theory in Japan. We also examine how to apply that in modern arts, which might give the view of that for the type of works.

## Keywords

Works, Creativity, Feist Case, ‘sweat of the brow’ doctrine, modicum of creativity, Doctrine of Inequivalents, Added-Value Doctrine, Sameness Rule, ‘variety of choice’ theory.

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