

**Abstract**

**Criminal Illegality in Copyright Law Penal Provisions**

**- With a focus on criminal judgment regarding derivation and willfulness as subjective requirements of criminal copyright infringement -**

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The copyright law of South Korea include criminal punishments for acts of copyright infringement by stipulating separate penal provisions. However, interest in academic circles has been concentrated mostly on civil remedies; interest in terms of criminal sanctions has been typically limited to only the validity of crimes subject to a victim's complaint. The abuse of the right to file a complaint for the purpose of seeking settlements in copyright practice is an age-old issue and it is common knowledge that such abuse stems from regulations in copyright law that require a victim's complaint for a crime to be committed. However, prior to discussing the validity of crimes subject to a victim's complaint, which is a condition of legal action for punishment after the establishment of a crime, there is a need to first review whether the judgment of the criminal illegality of acts of copyright infringement is appropriately being made prior to the establishment of a crime. It is often the case that criminal sanctions are abused to achieve the legislative objectives of special criminal laws; in light of this, there is a need to review whether such an issue exists within the penal provisions of copyright law by reviewing the criminal illegality of the penal provisions.

This study aimed to clarify the legal nature of infringements to moral rights and economic rights and further validate the illegality of individual acts of copyright infringement. criminal copyright infringement are conduct crimes and endangerment crimes, however, the requirements of the Special Criminal Law often have a tendency to emphasize endangerment to mitigate the degree

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of recognized willfulness to expand the scope of punishability. Judgment of willfulness for criminal copyright infringement – an endangerment crime, also denies the volitional element of willfulness and mitigates recognition of intellectual elements to form a tendency to expand the scope of punishability. Nevertheless, copyright laws leave open the possibility of limiting the scope of punishability, through anticipatory judgment of derivation, with respect to the judging of acts of copyright infringement. Doing so, however, comes with the caveat that the tendency to lower the standard of proof regarding the derivation as found in current copyright practice may disregard the principle of last resort of criminal punishment.

It is well known that during the process of its legislation, the copyright laws of South Korea have been legislated in a manner of embodying the provisions of a number of international conventions and trade agreements (especially the KORUS FTA). However, differences in legal interpretations or systems between countries exist due to distinct historical and cultural differences among countries. Despite the necessity of establishing a system of norms at similar levels among countries through treaties, legislation should not proceed in a manner of neglecting unique historical and cultural differences that have been established over long periods of time. Especially considering that the criminal legal system is a legal domain that demands legal stability based on the trust of those who have committed a crime, it would be wise to carefully approach interpretations that do not correspond to the existing criminal legal systems.

### Keywords

Copyright Law, Copyright Infringement, Criminal Copyright Infringement, Derivation, Willfulness