

**Abstract**

## Substantial Similarity of Architectural Work under the Korea Copyright Act

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This article examines about 20 court cases, including a Supreme Court case, which dealt with substantial similarity of architectural works. The architectural works in those cases are categorized into 5 groups of ① residential space, ② commercial space, ③ cultural space, ④ golf course, and ⑤ urban development plan. And the following topics are reviewed: ① definition of architectural works, ② creativity requirement and its considerations, ③ substantiality requirement, ④ the idea-expression dichotomy applied by the court, ⑤ ordinary observer or expert standard. After the review, this article concludes the followings. First, the courts applied the same idea-expression dichotomy to architectural works as other kinds of works. Only limited number of cases met the creativity requirement, because of the work's functional nature, not because of different criterion. Second, several concepts such as unfairness, famousness or novelty of the part used by the defendant, should not be confused with the concept of creativity required for a copyrightable work. Third, ordinary observer or expert standard for judging creativity or substantiality does not fit for the market reality of copyrighted works. Instead, it is more appropriate to determine whether the expression should be freely used in architectural field, or whether defendant's work could possibly be the market substitute for the plaintiff's.

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## Keywords

Architectural Works, Functional Works, Architecture, Architectural Designs, Models, Substantial Similarity, Idea-Expression Dichotomy, Creativity, Substantiality, Factors to Consider, Expert, Ordinary Observer.

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