

Abstract

A Study on the Constitutional Foundation of Copyright - Focusing on the conflict between copyright and freedom of expression -

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The constitutional basis of copyright can be found simultaneously in Articles 22 (2) and 23 of the Korean Constitution. Although the provisions are the constitutional basis or basis of copyright, Article 22 (2) of the Korean Constitution should be considered preferentially over Article 23 covering the property rights, when the application is determined between the two provisions. This is because Article 22 (2) of the Korean Constitution may itself be a constitutional basis for protecting both the proprietary interests and personal interests of copyright as rights. That Article 22 (2) of the Korean Constitution should be given a priority means that this article is to be preferentially examined as a constitutional basis for copyright, not Article 22 (2) of the Korean Constitution is only constitutional basis of copyright. Article 23 of the Korean Constitution should also be regarded as an important constitutional basis in that the legal principles of existing property rights should also be considered important when it comes to copyright restrictions. Consequently, Article 22 (2) and Article 23 of the Korean Constitution are provisions to be applied to copyrights in an overlapping manner. Meanwhile, the purpose of the Copyright Act is “to contribute to the improvement of culture and related industries by protecting the rights of the author and the rights adjacent thereto and promoting fair use of the works.” Considering the economic rights owner of copyright and neighboring right property rights belong to

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proprietary right under the Korean Constitution, constitutional interpretations of its scope and limitations are inevitable.

This article analyzes copyright issues related to the Korean Constitution, focusing on the conflict between copyright and freedom of expression and noted that freedom of expression can be taken into consideration in determining copyright infringement. Furthermore, this article addresses that further discussion on whether limitations on copyrights based on freedom of expression are possible is needed, noting that foreign legal systems allows fair use with a copyright work for the purposes of caricature, parody or pastiche.

Keywords

copyright, Korean Constitution, limitation of copyright, freedom of expression, balance of interests