

Abstract**Questions in Examination in the School or Educational Institutions and Copyright in Korea.**

KYE, Seungkyoon*

This article deals with copyright issues for exam questions in educational institutions. Since Korea has traditionally been a country with a lot of enthusiasm for education, it can be said that interest on the examination questions of educational institutions are also very high.

However, the examination questions posed by educational institutions also have the character of a work, especially a work made for works. First of all, it can be said that examination questions in secondary education institutions have the characteristics of a work, unless the test taker does not copy the work of others. In this regard, the Supreme Court of Korea also approves the fact that the examination questions are copyrighted works.

In addition, since it is planned or planned to achieve a certain educational schedule, educational goals, and students' academic background within an educational institution, it can be said that the requirements for works made for hire are also satisfied. Therefore, for example, when a teacher poses a examination question in a middle or high school, in the case of a public school, the local educational government that has jurisdiction over the public school, in the case of a national school, the state, and in the case of a private school, the foundation to which the teacher belongs. become the copyright holder. The Supreme Court of Korea has taken the same stance on this point.

* Professor, PNU School of Law

However, it can be said that the examination questions also have the character of a public work. If the author's affiliation is a national school or public school, as mentioned above, it can be said to be the public works because they belong to the Office of Education, which is a national or local government. If the examination question is approved to be the public works, I think it is the stronger public works because it has not only the author's property rights as defined by the Korean Copyright Act, but also the moral right. Therefore, examination question that is the public works can be freely used by anyone. However, in the case of a examination question posed at a private school, the copyright belongs to the foundation, so it is an individual property right. In other words, although the examination questions are public in nature, they can not be said to be the public works. Therefore, since it is not a work that can be used by anyone, the principles of copyright law must be followed.

This dual nature of examination questions can cause great confusion in society. In the case of examination question in the national or public schools, it is the public works and anyone can use it, but the fact that no one can use the examination question in a private school is socially unacceptable because discriminatory legal evaluation is made for acts of the same nature. Personally, I think that a solution based on formal legal logic is not appropriate to resolve the legal gap related to the examination question, and legitimacy and justification are different when resolving social phenomena. Therefore, it can be said that it is necessary to establish a legal basis related to the examination question or to reach a social consensus.

Keywords

Questions in Examination, Works, Copyright, Public Works, Works Made for Hire, Legitimacy, Justification, Schools or Educational Institutions