

Abstract

**A Study on Appropriation Art and Application of
Transformativeness under Fair Use Clause of the
Korean Copyright Act**

- Focusing on the Implication of *Andy Warhol Foundation v. Goldsmith*

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Appropriation art borrowing or even directly copying other artists' copyrighted works or other cultural materials is more likely to infringe copyrights under the current copyright system. In this regard, *Andy Warhol Foundation v. Goldsmith*, where the Supreme Court revisit its most salient fair use precedent which introduced the idea of a "transformative use", provides some useful guidance to visual artists to avoid running foul of rights holders- even if it does leave many questions unanswered. The decision is notable for at least two reasons. First, it is the first time the Court has considered whether a visual work qualifies as transformative use. Second, and perhaps more importantly, the decision shifts the focus of the transformative use assessment.

The purpose of the study is to addresses the allowable scope of appropriation art embracing other's copyrighted works under the open-ended fair use clause in the Korean Copyright Act, introduced in 2011 in the course of implementing the Korea-US FTA, focusing on the possibility of application of the standard of a "transformativeness" and the relationship with commerciality of the use of copyrighted works.

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Keywords

appropriation art, Copyright Act, fair use, commercial use, transformative use