

Legal Analysis for Copyright Protection In South Korea

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Summary

Spending on research and creative writings in South Korea been growing.

In this study, we introduce the legal analysis for IPR like copyrights.

Current copyright law(Art. 23, Sec.1) allows to open some writings previously published in the textbooks under high school. Can this custom be justified? There is conflicts between right of education and intellectual property.

We review preliminary issues before concentrated research.

Key Words: R&D, 지적재산권, 저작권.

I. Introduction

The first U.S. patent act, written by Thomas Jefferson, was designed to give liberal encouragement to human ingenuity and was passed by Congress in 1790.

Mickey Mouse was going to enter the public domain in 2003. Congressional lawmakers passed a Mickey Mouse bailout law, the Sonny Bono Copyright Term Extension Act of 1998. In 2002, a legal challenge to this act reached the U.S. Supreme Court. Justice O'Connor said, 'It's hard to understand how...some retroactive extension of copyrights) could possibly do that.' U.S. record companies are calling for EU to extend copyright terms. Copyrights have exceptions, such as fair Use Doctrines. International copyrights are reciprocal arrangements extending copyright protection to citizens of other countries.

The U.S. has reciprocal relations, whereby a foreign author receives national treatment. We examine several issues with regard to duration of copyrights and exceptions, international treatments (TRIPs), etc.

In constitutional law of South Korea, industrial property rights like patents, petty patents, trademark, and design rights are protected legally. These industrial property rights and intellectual property right(IPR) like copyright, right of publish and contests are also protected in the name of metal property right.

Judicial function for these arguments are important for development of related industries.

We examine legal and economic aspects for the clauses of constitutional law. Cl.22 specifies the protection in the framework of "freedom of science and arts".

Copyrights give their creators the exclusive publication rights to literary works. Examples include books. Copyright law covers original works of authorship as long as they are fixed in a tangible medium such as a book as may occur when a paper is posted on the Web. Filing(출원) for copyright registration costs \$30 in the US.

This paper is organized as follows: Section 2 presents theoretical background as a starting point. Then, we examine the issues of related legislation. Section 3 concludes.

II. Legal Analysis for IPR

2.1 Several laws related with IPR

When we classify commodities according to the characteristics of rivalry and excludability, copyright of the owner of a novel can use the power of exclusion to extract a price from other users. The price rewards the creator, which results in more innovations and faster growth - a form of dynamic efficiency. 발명진흥법, 과학기술진흥법, 국가기술자격법, 기능장려법, 문화재보호법, 학술진흥법s are established to protect the rights of writer, inventor, scientists and engineer and artists and contribute the creation and development of national culture.

We examine specific aspects of some related laws.

First, current copyright law(Art. 23, Sec.1) allows to open some writings previously published in the textbooks under high school. Can this custom be justified? There is conflicts between right of education and intellectual property.

Second, assembly revised copyright law to allow retroactive protection of copyrights. Although not many precedential cases in South Korea, we need to admit the trespass of copyrights widely for protection if copyrights.

2.2 Opening IPR in textbooks

For promotion of development of knowledge, strict response of judicial part in state .

Our constitutional law confirms the right of private property. In this regard, IPR protection can be questioned. Cl. 23 Sec. 2 stresses the social criterion for execution of this private property.

Current copyright law(Art. 23, Sec.1) allows to open some writings previously published in the textbooks under high school. Can this custom be justified? There is some conflicts between right of education and intellectual property.

Cl.37 Sec. 2 stresses the balances between gains from regulating by legal clauses and losses from this restriction of basic rights in constitutional law.

If copyrights are denied in textbook cases, the rights of writers can be restricted. Can this be justified?

Although inclusion of writings in textbooks for public purpose cannot be looked as infringe of copyrights, government cannot prohibit requesting pecuniary compensation of copywriters.

Constitutional law's guarantee for private property includes: 1) prohibition of illegal infringe 2) prohibition of infringe without compensation 3) prohibition by retroactive legislation and persons other than state.

Considering 3) may admit the exception of protection of copyrights, 2) requires rational compensation for use in textbooks.

2.3 Discussion

In the US, in Sony Corporation of America v. Universal City Studio, Inc., 464 US 417, the Betamax case, the Supreme Court held that recording over the air copyrighted television programs on a videocassette recorder is fair use when done for time shifting purposes, but not necessarily for purposes of archiving. A vague line, frequently litigated, divides fair and unfair unauthorized copying.

What is the future of copyright in the digital age?

According to the celestial jukebox model, every users of digital information will resemble contemporary

US radio stations that must pay standardized royalties to a central clearing house. In the model of digital libertarianism, technical protection through cheap encrypting will be more efficient than legal protection of IPR.

Our future research can concentrate on

- 1) Cl. 23. Sec. 3 specifies fair compensation for public use. How can we apply this clause to IPR?
- 2) The right of receiving education(Cl. 31) is important in social state like South Korea. This public right cannot be discouraged by request of copyright. So, more research is needed for balances of basic right and private IPR.
- 3) Examples of precedental cases: Can we modify Psy's GangNam Style without permission? Cable TV can records KBS's drama for time shifting?

III. Summary and Limitations

An economic activity may create external benefits-that is, individual actions provide benefits to other people for which the producers are not compensated. The most important source of external benefits in the modern economy involves creation of knowledge. In educational institution like high schools, innovation (writings) by one person are quickly emulated and improved upon by others. Such spreading of knowledge among individuals and firms is known as a technology (intertemporal) spillover.

For now, let's look at the implications of external benefits in general for economic efficiency and economic policy. Suppose that the production of some good-say, semiconductor chips-yields positive externalities. How does this affect the chip market, and does it create a justification for government intervention?

An invention of a new design captures the monopoly profit. However, the potential gain to society from inventing the good is the entire consumer-surplus triangle above the marginal cost of production (MC). The incentive to innovate, the monopoly profit, is less than the gain to society, and this effect tends to generate too little innovation, other things being equal.

Griliches (1991) finds social rates of return on the order of 40 to 60 %, far exceeding private rates of return.

How can the economy be induced to get socially optimal level of public goods? The answer is a Pigouvian subsidy: a payment designed to encourage R&D activities that yield external benefits. The optimal Pigouvian subsidy is equal to the marginal external benefit of producing an additional unit. Producers receive the price paid by consumer's surplus plus the per-unit subsidy, inducing them to produce more output. Such a subsidy is an example of an industrial policy, a general term for a policy of supporting industries believed to yield positive externalities.

When there are external benefits from a good, the marginal social benefit exceeds consumers' marginal benefit. The demand curve represents the marginal benefit that accrues to consumers of the final good. But it does not incorporate the benefits to society as a whole from production of the good-the technological spillover an additional unit provides to the economy as a whole.

The cases in this paper is clearly meant to describe the evolution of creativity since the establishment of intellectual property rights. It is the presence of patents and copyrights that enables investors to earn profits to cover the initial costs of developing new ideas. In addition, a large body of research suggests that social returns to innovation remain well above private returns. Although the "prizes" that the market offers to potential innovators are substantial, these prizes still fall far short of the total gain to

society from innovations. This gap between social and private returns suggests that large gains are still available from the creation of new mechanisms designed to encourage research.

We can summarize the shortcoming of Schumpeterian model.

It implies that monopoly(not allowing fair use doctrine) is better than completion for innovation.

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