

Problems in Application of Fair Use Policy in South Korea and the United States

Hwa Lang (Calvin) Cho

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I. Introduction

Although the way Fair Use Policy is described varies per country, it usually refers to the set of laws regarding the usage of copyrighted work. In most cases, Fair Use Policy allows individuals or corporations to use work either when 1) the work is very old or 2) when the work is for educational purposes. However, there's lines on what are considered to be "educational purposes" that are most clearly defined in a case study between South Korea and the United States.

II. Fair Use Policy in South Korea

Everyone knows that the education system in South Korea is very strict and uniform. When the listening portion of the Korean SAT, the *suneung*, is occurring, the government forbids any planes from flying over South Korea in order to reduce unnecessary noise. Moreover, South Korea spends the most amount of its GDP per capita on private education in the world, showing off its people's strong desire to educate the newest generation. This dedication to educate the newest generation

Due to South Korea's obsession with education, the fair use policy is also very clearly laid out so all resources and works can be used for education. It is stated in Article 25, Paragraph 1 of the Copyright Act (Republic of Korea) that "Published works may be published in textbooks necessary for educational purposes of high schools and equivalent schools below"¹

¹ Article 25, Paragraph 1 of the Copyright Act (Republic of Korea). (The law itself was written in Korean. The translation process was done via Google translate).

There are numerous reasons why this article exists. First off, the law prevents copyright holders from barring the government's right to educate the people. As an example, say there is an important piece of literature that the government feels is necessary to be taught to high school students. However the copyright owner refuses to allow the government usage of it and/or requests a huge sum of money. In this situation, the government can apply Article 25, Paragraph 1 of the Copyright Act and forcefully use the copyrighted work, regardless of the copyright holder's protests.

III. Fair Use Policy in the United States

The United States actually has a similar fair use policy as South Korea. According to Chapter 107 of the Copyright Act (United States), fair use is defined as follows.

“Notwithstanding the provisions of sections 106 and 106a, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.”²

Ultimately, when an individual or corporation wishes to use a copyrighted for “teaching” or educational purposes, they are basically free to do so. This is different case-by-case but in most cases, usage of a work for teaching will not be a violation of Chapter 107 of the Copyright Act (United States).

² Chapter 107 of the Copyright Act (United States)

IV. Problems in Application

Up to now, it seems that both countries share very similar fair use policies. In both countries, fair use policies allow for individuals or corporations to use works for the purpose of education. However, there is one significant difference that sets South Korea's Fair Use Policy apart from the United States'. Examining Article 25, Paragraph 1 of the Copyright Act (Republic of Korea) again, which was, "Published works may be published in textbooks necessary for educational purposes of high schools and equivalent schools below,"³ there is one word that stands out. "Textbooks." The South Korean government allows works to be published in textbooks by private publishing companies. Although officially, these companies state their main purpose is to educate the public, it is still true that those institutions profit from textbooks built off of works used under the fair use policy. The National Association of College Stores stated that "out of every dollar spent on a textbook, about 77 cents goes back to the publisher. Publishers make 18 cents in pure profit. The writer takes home about 12 cents."⁴

In the case of the United States, the law does not actually mention textbooks in specific unlike South Korea. However, it could very much be the same. The National Association of College Stores calculated the worth of the textbook industry to be "\$14 billion dollars."⁵ Such findings means around 14 billion dollars are being made using works used under the Fair Use Policy. Technically, because the official and "initial" purpose of these textbook companies were

³ Article 25, Paragraph 1 of the Copyright Act (Republic of Korea). (The law itself was written in Korean. The translation process was done via Google translate).

⁴ Laude, "The Textbook Scam: How a \$14 Billion Industry Robs Students and Professors" The Spectrum, September 28 2017

⁵ Laude, "The Textbook Scam: How a \$14 Billion Industry Robs Students and Professors" The Spectrum, September 28 2017

to educate the public and use it for “teaching” it is likely that that the court will not call this a violation of the Fair Use Policy.

V. Conclusion and Disclaimer

There’s still a lot of parts that may be misleading from this publication as copyright and Fair Use Policy is something that depends per case. It is up to the court of the host country to decide what is a violation and what is not. Regardless, researching into the Fair Use Policies have shown this problem that can arise in the studied countries, South Korea and the United States. It is very much possible for individuals and companies to “unintentionally” make money off of work that is not completely theirs due to the Fair Use Policy. If there are any questions, concerns, or discomfort that have arisen due to this research paper, please contact Iuris Law Review.⁶

⁶ Contact information: iurislawreview@gmail.com

Works Cited

Article 25, Paragraph 1 of the Copyright Act (Republic of Korea). (The law itself was written in Korean. The translation process was done via Google translate).

Chapter 107 of the Copyright Act (United States).

Laude, “The Textbook Scam: How a \$14 Billion Industry Robs Students and Professors” The Spectrum, September 28 2017