

Annual Report 2009
Korea
APAA Copyright Committee

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Major Amendments to Korean Copyright Act – April, 2009

1. Unification of the Korean Copyright Act and the Korean Computer Program Protection Act

The amendment effectively discontinued the Korean Computer Program Protection Act and instead integrated it into the Korean Copyright Act; pursuant to this amendment the Copyright Commission and the Computer Program Protection Commission are also integrated into a unified body ‘the Korea Copyright Commission’.

A. Articles included in the integration of both Acts

(1) Author of work made by an employee in the course of her/his duties

The Korean Copyright Act stipulates that the authorship of a work shall be attributed to a legal person if a work conforms to the definition of “a work made by an employee of legal person” in the Korean Copyright Act Article 2(31) and it is made public under the name of such a legal person. In relation to computer programs, the frequency of computer programmers changing employment during program development to commence to developing a similar program elsewhere and the considerable amount of capital involved in program development led to the Korean Computer Program Protection Act designating the employer as the author of computer programs, regardless the existence of publication. The same guidelines exist in the German Copyright Act (Article 69(b)) as well as the Japanese Copyright Act (Article 15). Thus, a new proviso clause was added to the Korean Copyright Act Article 9 “Work made by an employee for hire” to designate the employer as the author of computer programs, regardless the

existence of publication.

(2) Addition of Exception to the Right to Preserve the Integrity

As one of author's moral rights, copyrights recognizes "right to preserve the integrity of the content, form and title" to the author of a work. But due to instances requiring alterations of the work, Korean Copyright Act specifies three exceptions to this particular moral right.

Likewise, computer programs require the constant updates and alterations of the work due to developments in technology, and it may be necessary to further limit the author's right to preserve the integrity in case of computer programs. Taking such factors into consideration, the Korean Computer Program Protection Act recognized three exceptions and these have been added to the amended Korean Copyright Act as exceptions to the author's right to preserve the integrity: 1) Modification of a program unusable in any computer other than a specific one to the extent necessary to make it usable in other computers and; 2) Modification of a program to the extent necessary to make it usable in a more effective way in a specific computer.

(3) Transfer of Author's Property Rights

The Korean Copyrights Act allows the author to reserve the right to create derivative works in order to protect the author's creative freedom and economic rights even when the assignment involves the transfer of the entire copyright property.

This is because it is common for an author to creating various derivative works by altering and representing his original work. And the transfer of this exclusive right to make derivative works would severely interfere with the subsequent creations of the author.

In the case of computer programs, it is necessary for the assignee of a program to freely conduct upgrades in accordance with the technical and utility-based character of computer programs. Recognizing this practical issue, the Korean Computer Program Protection Act presumed the assignment of rights to derivative works to be included in the assignment of the whole computer program copyrights, and it was codified through the Korean Copyright Act amendment Article 45(2).

(4) Registration of Copyright

1) Creation Date Presumption Limitation

Determining the exact date of creation for copyright registration purposes can be difficult due to the absence or the lack of verification methods such as testimony and physical evidence, especially when the creation is made by a single author. Such situations result in the loss of credibility in the date of creation indicated on the copyright registration, in case that the registration of creation date was completed when a considerable time after the creation had lapsed.

Therefore, the Korean Computer Program Protection Act only accepted the assumed date of creation when registered within one year of the date of creation. And as other copyright works also have difficulties in establishing definite dates of creation, a proviso clause was added to the Korean Copyright Act Article 53(3) to limit the scope of presumption by recognizing the presumptive date of creation only when it is registered within one year of creation.

2) Expansion of Registration Official's Duty to Maintain Secrecy

Computer programs require extreme levels of confidentiality due to the substantial risk of damage resulting from the exposure of the source codes, especially when the source codes are intended to be kept secret. Therefore, the Korean Computer Program Protection Act required public officials responsible for computer program registrations to maintain confidentiality.

Other registered copyrighted works also commonly require confidentiality of its contents, and Article 55(2) was added to the Korean Copyright Act to codify the duty of confidentiality of registration officials concerning the contents of registered works.

(5) Acts Considered as Infringement

In terms of copyright infringement, reading, watching, listening, or other forms of acts to enjoy illegally copied works does not constitute any copyright infringement. But the act of using illegal copies of computer programs for business purposes may cause

significant damages to the copyright holders of the particular computer programs, and accordingly this was considered as infringement to the program copyright by the Korean Computer Program Protection Act. The particular Article 124(1)3 recognizing the use of illegally copied computer programs in business to be ‘an act considered as an infringement’ was newly added to the amended Korean Copyright Act.

B. Establishment of Korea Copyright Commission

(1) Incorporation; Neutrality Emphasis

The existing Copyright Commission and the Computer Program Protection Commission has been merged into a new unified organization ‘the Korea Copyright Commission’. Issues arising from the confusion over the subject of legal acts due to the absence of legal corporate rights of these organizations, even though they had been created conforming to the regulation of the related laws, and difficulties in managing their assets have led to the incorporation of the Korea Copyright Commission.

Reflecting the expanded functions of the Commission, the number of committee members was also expanded from the previous 15 to 20 seats to 20 to 25 seats. Furthermore, the Minister of Culture, Sports, and Tourism vowed to appoint a balanced mix of copyright holders and copyrighted work users to the Committee in order to maintain neutrality.

(2) Expanded Functions

Korea Copyright Commission has added mediation services in addition to existing dispute resolution services and; in relation to online illegal reproduction of works, the functions to monitor, and to warn and request deletion to ISPs are also newly provided to the Commission.

In addition to the existing expert testimonial functions, the Commission has also been granted authority to provide computer program-based expert testimony in legal proceedings, investigations, and computer program mediations.

2. Amendments for Illegal Online Reproduction Prevention

A. Orders to Delete, Cease to Transmit Illegal Reproductions and Issue Warnings

(1) Introduction

The Minister of Culture, Sports, and Tourism (hereinafter “Minister”) may order online services providers to delete or cease transmission of illegal reproductions or to warn reproducers/transmitters of illegally copied materials ex officio or by complaints from the authors concerned, when MCST confirms that reproductions, programs or information which neutralize technological protection measures are interactively transmitted through networks.

(2) Requirements for invocation of orders and Its Process

The MCST has required all orders to delete or stop transmission to be examined in the Korea Copyright Commission’s internal committee as a measure to prevent the abuse and frivolous issuing of such orders. Parties the orders are issued to must carry out ordered measure within five days and report the results to the Minister.

(3) Penalties

Failure by the online service provider to carry out the issued order will result in a fine of up to 10 million won.

B. Order to Suspend the Accounts of the Infringing Users

(1) Introduction

The MCST has pronounced measures to suspend the website accounts of copyright infringers for up to six months in the even the infringer fails to refrain from conducting copyright infringement activities (reproduction, transmission, etc.) subsequent to having received three warnings related to such copyright infringement activities.

The MCST’s order to “suspend” infringer’s website account differs from the “Three

Strike Out Rule” being pursued both in France and England in the fact that it does not suspend the infringer’s all Internet access. The order would only affect the infringer’s account in the particular online service provider where the infringement occurred, and would not affect the infringer’s use of other online service providers. Furthermore, the suspension will not affect the infringer’s email services related to his suspended online service provider account.

(2) Requirements for invocation of suspension and Its Process

In order for the Minister to hand down such an order, an examination by the internal committee of the Korea Copyright Commission and a hearing for the online service provider and the account holder to submit their opinions beforehand must take place. The online service provider in question must take action within ten days of receiving notification and report the results to the Minister.

(3) Penalties

Failure by the online service provider to carry out the issued order, or failure to notify the infringing account holder of his account’s temporary block will result in a fine of up to 10 million won.

C. Order to Cease Bulletin Board Operations

(1) Introduction

Internet portal sites or web hard sites comprise many bulletin boards such as online cafes, blogs, online data storage rooms, and other online communities, and it would be harsh to shut down an entire site when the infringing activity occur on a single bulletin board. Conversely, it would be time consuming to remove individual infringing posts one by one on such bulletin boards. Thus, it has been pronounced that bulletin boards with clear and express purpose to infringe copyrighted works will be suspended for a period up to six months.

(2) Requirements and Its Process

The order to suspend bulletin boards applies only to the bulletin boards which are

operated for commercial purposes or provide users with facilities. Therefore, bulletin boards regularly used for online communities for people to share the same interest will not be affected by orders to shut down.

When the deletion or suspension of transmission of illegally copied materials has been ordered to bulletin boards more than three times; and the bulletin board's intention to distribute the illegally copied materials is explicit taking into consideration all factors such as the message board's format, the amount of infringed copies posted, and the character of the infringed copies, the MCST may issue an order to suspend the bulletin board services for up to six months after the Korea Copyright Commission's review. In this case, the MCST should give the online services provider in question and the manager of the message board an opportunity to submit their opinions.

Online service providers ordered to suspend the bulletin board will be required to notify the users of the message board for a period of ten days through the online service provider's homepage and the bulletin board itself in order for the innocent users to have enough time to backup their data posted on the bulletin board.

(3) Penalties

Failure by the online service provider to carry out the issued order, or failure to notify will result in a fine of up to 10 million won.

D. Korea Copyright Commission's Recommendations for Corrections

(1) Introduction

A new system for the Korea Copyright Commission with a aim to give online service providers to take voluntary measures prior to invocation of orders by the MCST. Under this system, the Korea Copyright Commission may recommend online service providers to send a warning to the transmitter of illegally copied materials, to delete or cease to transmit illegally copied materials posted or to suspend the accounts of the transmitters concerned.

(2) Types of Recommendations and the Process

Once the Korea Copyright Commission discovers illegally copied works being distributed, the Commission has the authority to recommend following corrections: 1) To send a warning to the users reproducing or transmitting illegal copied materials; 2) To delete or cease to transmit the illegally copied materials; 3) To suspend the accounts of repeat offenders.

In order for the Commission to properly issue recommendations, an evaluation by the internal committee must be completed. Once an online service provider receives the recommendation, it is required to carry out and report results of the recommendation Types 1 and 2 within five days of issuance; Type 3 is required to be carried out and its results reported within 10 days to the Commission.

(3) Penalties

The recommendations are merely recommendations and no legal sanctions are followed in the event of the online service provider's failure to follow them. But the Korea Copyright Commission reserves the authority to request the MCST to issue orders to carry out corrections, in which case the evaluation of the Commission is not required.