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IV. EXERCISE AND MANAGEMENT OF COPYRIGHT ON THE INTERNET, THE EXPERIENCE OF THE REPUBLIC OF KOREA

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I. COPYRIGHT LAW IN KOREA

The Korean Copyright law has been amended three times since its enactment in 1957 to cope with the issues raised by the advent of new technologies, the settlement of international trade conflicts and to bring the law into compliance with international treaties. The current Copyright Law came into effect in July 1, 1996 and it provides for the protection of domestic and foreign works in compliance with the TRIPS Agreement and the Berne Convention. The main points of the latest amendments of the Copyright law are as follows:

(a) Copyright Law of 1996 (effective as of July 1, 1996)

- Retroactive protection of foreign works and phonograms
- Protection of foreign performance and broadcasts
- Performer's reproduction right of fixation of his performance
- Abolition of the compulsory license for translation right

(b) Copyright Law of 1994 (effective as of July 1, 1994)

- Extended the term of protection of neighboring rights in respect of phonograms, performances and broadcasts, etc., i.e., from 20 to 50 years
- Introduced a rental right for sound recordings for sale
- Clarified protection for database
- Increased the penalties: For fine, from maximum of 3 million Won(US$3,000) to 30 million Won(US$30,000);
- Created the penalty against possession of infringing goods for the purpose of distribution

(c) Copyright Law of 1987 (effective as of July 1, 1987)

- Enlarged the realm of 'works' by including computer program as works, etc.
- Strengthened copyright protection
- Extended the term of protection : For economic rights, from 30 to 50 years after death
- Imposed heavier penalties: For jail term, from maximum of 6 months to 3 years; for fine, from maximum of 50 thousand Won(about US$50) to 3 million Won(about US$3,000)
- Strengthened the protection of foreign works: adopting basic principle of protection.(after this, Korea joined the U.C.C. and Geneva Phonogram Convention)
- Prepared the basis for the enactment of special law on the protection of computer programs, etc.

Note: Computer Program Protection Law was enacted as a special Law for the Copyright Law in 1987

II. REPRODUCTION AND DISTRIBUTION OF WORKS THROUGH THE INTERNET.

More and more Koreans are now enjoying computers and telecommunication technologies such as Internet. The number of Internet hosts amounted to 73,191 in 1996, a dramatic increase from 36,644 in 1995. The number now records approximately 120,000. Domain names are allocated to 6,000 companies and institutions. It is estimated that more than a million users are subscribed to Internet services.

With the generalized and activated use of multimedia, there seems to have emerged an entrepreneur who supplies a work and/or a multimedia work through computer networks, such as Internet. Also, as every consumer cannot purchase all the CD-ROMs he needs, much CD-ROM and database information is provided through computer networks by a multimedia supplier. As a result, there arise issues concerning the protection and obligations of such network suppliers under the Copyright Law. In this connection, it seems to be necessary that a PC communication entrepreneur or a computer network supplier should be entitled to the same neighboring rights, defined as the rights to record, duplicate, and broadcast his broadcasting material, as that of a broadcasting service operator or a CA TV service operator.

In an information-oriented society where Internet has emerged as a primary means of information transfer, many Korean publishing companies have commenced to actively draw up schemes to publish and sell various works in the form of digital information through PC communication, and many a library has changed its role of physically lending books into one of being a center for information supply through PC communication. Under such circumstances, a prudent examination of the duplication concept seems to be necessary. In other words, in connection with the activated use of a work through PC communication, issues should be primarily resolved through legislation, e.g. whether it corresponds to a duplication of a work to read a work through a PC monitor, or for the majority of users to, in LAN circumstances, approach and read a work loaded down and stored in individual storage elements such as a hard disk.

Also, in the case of a work disclosed via Internet, it is very probable for some disputes to be raised concerning the specific meaning of the disclosure. If a specific person has disclosed his opinions or programs of his own making through Internet with a view to publicizing them, the other users of the Internet would be able to duplicate and use them at will, which is thought to be performed within the scope of the permission of a copyright holder. The issue needs to be prudently examined that, if a third person should collect, publish and sell those opinions and/or programs like a new work of his own, making such activities would be acknowledged to be within the scope of the permission of a copyright holder.

There still remains a more difficult problem, i.e. what kind of responsibility a communication service operator should assume, if he should grant leave, or implicitly allow, such an illegal duplication, as has resulted from the infringement of a third person's copyright, to be distributed via Internet.

Whether due to the legal gaps or not, there have been many cases which gave rise to acrimonious debates in the copyright circles. Some of them are pending before the court. Early last year, MP3 files which are stored in digital form were uploaded for music fans on the public BBS. One MP3 file with a few Megabytes can contain a popular music and the computer with appropriate software can play the music in CD-like quality. Tens of thousands of hits were recorded. In February and March last year, on-line service providers closed the BBS due to fear of copyright infringement. Users had protested against the measure. They criticized the providers' little attention to solve the problem and demanded the right of access to information. Collecting societies did not show great interest at the early stage. But the problem lies not only in clearing copyright and neighboring rights, but also in the fact that most BBS are operated free of charge with no person responsible for their operation, except on-line services.

Last August, Korea Music Copyright Association (KOMCA), made the standard contract for MP3 files. Several private BBS operators came into being to serve music fans. They encountered some problems to obtain authorization from the right-holders of neighboring rights, since there has been no collecting society administering neighboring rights. Recently performers and phonogram producers are gathering to make their own collecting society.

CD Blitz, a program accelerating the speed of CD-ROMs, has been posted on the BBS damaging the developer for more than 500,000 US dollars with 8,000 hits. Iyaki 7.3, one of the most famous browsing software has been hit 20,000 times on the BBS without collecting any fee.

III. KOREA'S RESPONSE TO DIGITAL ENVIRONMENT

In keeping eye on the recent developments in new technologies and international movement to enact new copyright treaties such as the WCT and the WPPT, the Korean government organized a task force to handle this issue in early 1996. The task force is composed of 4 groups covering 4 themes. Though no final conclusions have been made, the main point of each theme is as follows:

(a) The Copyright Environment in the Multimedia Era

First, multimedia productions should be protected in accordance with the existing category of works under the law, because the characteristics of each multimedia title are different from each other. Multimedia productions can be categorized as cinematographic works or compilation works. This secures legal stability, but does not fit to the nature of multimedia productions. Some suggest a new category for multimedia works, instead. What matters most is to protect the producers of multimedia titles. The producers are by no means helpless to claim copyright in multimedia titles based on the requirement of originality and the categorization of existing works. Therefore, it is reasonable to maintain the current provisions of the Copyright Law.

Second, on-demand, an interactive digital transmission should be protected by a new right and there should be an exception to the right where telecommunications facilities are provided for facilitating or enabling the transmission. The name of the new right has not been decided; it would be the right of transmission, the right of communication to the public, or the right of electronic transmission. There were discussions on the existing rights under the law such as the right of broadcasting. The majority favored a new right; the right of broadcasting should cover only the wireless transmission intended for reception by the general public. The new right would make a new form of digital transmission distinguished from other forms of transmission.

Third, there is no clear-cut conclusion on temporary storage. The group thought that the direct or indirect inclusion of temporary storage into the law would result in unexpected and undesirable effects in business practices and personal activities. One of the conclusions is that the storage which is transient and incidental to the use or transmission of works should not be covered by the new right. Several alternatives were put forward. First, some forms of temporary storage should be excluded from the concept of reproduction. Second, they may be included in the concept, but exempted from liability. Third, they may be excluded from the concept or exempted from liability but regarded by law that infringement has occurred when

authors' interests are injured by temporary storage. These alternatives, in particular the last one, would go hand in hand with the general clause on limitations and exceptions already embedded in Article 10 of the WIPO Copyright Treaty, that is, limitations of or exceptions to the rights should not conflict with a normal exploitation of the work and should not unreasonably prejudice the legitimate interests of the author. There is a corresponding provision in the WIPO Performances and Phonograms Treaty.

(b) Review of Effective Collective Management System

Here, the group analyzed the current state of collective administration of copyright and saw that databases are in urgent need for the general public to use without any fear of infringement. It concluded, therefore, that, first of all, the databases containing information on the right-holders of works should be built in a few years. It is needed not only for access to information by the general public but also for wide use of works. The information may be collected from collecting societies. This approach, however, is only useful in the short term, since they have limited repertoires. The long-term solution should be found in registrations. There should be an effective means of encouraging active registration in order to encompass the near complete list of works available in the market. Legal effects should be considered for registration, without violating the rule of automatic protection under the international treaties. It is admitted that it is impossible to have all the works created to be informed to the general public.

Second, the government or public entity should build the databases. The unified system of access and retrieval may be in conflict with the rule of restrictive practices under anti-trust law, if it is operated by one collecting society or jointly by the societies concerned. It is in the public interest that the general public may access to information.

Third, there is a need for further consultations if the standard terms of licensing agreements including royalty rates are desirable for effective utilization of works. The question of one-stop shopping, though seemingly attractive, is not ripe for discussion.

(c) Review of Copyright Regime for Public Purposes

The group examined whether the provisions on limitations of copyright are adequately laid down for the protection of copyright as well as public interests at large. In particular more attention is paid to the general clause of limitations and exceptions and the compensation system for private reproduction.

The limitations of copyright are one of the thorny issues. We have witnessed a phenomenal increase in unauthorized reproduction, whether on-line or off-line, thanks to digital technologies. Authors have demanded that the provisions of limitations and their interpretations should be narrowed down. The group has come to the conclusion that the provisions should be revised in accordance with the changing circumstances. First, there should be a general clause in the law prescribing that the limitations of rights should not be in conflict with a normal exploitation of works and should not unreasonably prejudice the legitimate interests of authors. However, great care should be taken for the enforcement of the clause.

Second, some argued that it is necessary to prohibit certain uses for private purposes. The group, however, concluded that since the radical change to the law is not easy, at least compensation for digital reproduction should be paid to the right-holders.

(d) Legal Problems of Technological Measures and Rights Management Information

One of the issues concerned how to tackle the circumvention of protection devices made by right-holders, what is the rights management information and how should it be protected from unlawful acts. The group concluded that it is necessary to have legal remedies for the circumvention but it is not ripe to have a provision to make unlawful any circumvention technologies. In the meantime, it is reasonable to make particular devices unlawful whose purpose is only to defeat protection measures. If the provision is aimed to make unlawful any devices which is capable of defeating protection measures, it should be of a general character and individual devices should be covered by the enforcement decree. In respect of penal provisions, the requirements for criminal acts should be clear and concrete. The defeating act should not be a direct infringement of copyright but regarded by law infringement.

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