

**Creative Content Korea:  
South Korea's Copyright Policies and Enforcement Methods  
in the Age of Convergence**

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*Abstract*

The world is witnessing how traditional media and music corporations succumb to the popularity of (free) online service providers, striking deals with them if only to realize a profit out of the unmitigated use of their copyrighted content. It seems to be a win-win situation – content providers earn a considerable amount; members of the video-streaming community are allowed free use; and service providers avoid devastating lawsuits for copyright infringement.

Copyright, however, does not only belong to big multinational corporations. There are the artists, the performers, the authors, of the copyrighted works, and unless they assigned their copyright or entrusted their copyright collection to these big companies, royalty collection may be next to impossible.

Rapid changes in technology will create new market situations. Is copyright law and enforcement posed to adjust to the latter? Will it be proactive or merely reactive to these forces?

The paper presents South Korea's copyright policies and enforcement methods in this age of technological convergence, empowering and preparing the smallest of its artists to strike a bargain with the most giant of service providers and what else may come, all the while promoting the use of copyrighted works by the public as well – the heart of copyright.

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## A. Background of the Study

I am a recent participant in a training program for Copyright Law, sponsored by the Korean Copyright Commission for Deliberation and Conciliation (CCDC), under the *Asian Cultural Partnership Initiative (ACPI) Program* of the Ministry of Culture and Tourism, South Korea.<sup>1</sup> The program gave us a taste of Korean culture. Specifically for us lawyers, we were shown how advances in technology are fueling their “culture industry” in the form of TV series, movies, music, games, animation, design, etc. – what consists the “Korean wave.”

## B. The Problem

Advances in technology are likewise bringing about advances in copyright infringement. Of the bundle of rights in copyright, illegal copying is still the easiest to commit and thus the most pervasive. South Korea, being abreast in the use of broadband technology, experienced the proliferation of unauthorized file sharing over the internet, tremendously affecting its music and cinematographic industry. Illegal copies of music, movies and TV programs are easily shared and downloaded over the internet.

For the music industry, it is recorded that the domestic disc market that previously enjoyed increasing revenues, i.e., KRW 353 billion in 1988, KRW 380 Billion in 1999 and KRW 410.4 Billion in 2000, has dropped to KRW 183.3 Billion by 2003.<sup>2</sup>

Just to give you an idea how lucrative is the business of these internet providers, one internet provider is recorded to be realizing monthly average sales of KRW 500 Million, or about 500,000 US dollars.<sup>3</sup> It is said to have at least five million members. While the downloading services are free, the internet provider earns from the sale of banner advertisements, linked service with mobile communication companies, online shopping mall, paid mobile services such as movies, cartoons, ringback tones, etc.<sup>4</sup> Illegal downloading of music, however, robs the rightful owners of copyright of their lawful royalty fees. Piracy, in simple terms, is theft of another’s rightful property, and aiding the same, as a Korean Court held in one case, is just as illegal.<sup>5</sup>

### The Immediate Solution: Strike a Deal

Thus, the Korean Association of Phonogram Producers and other phonogram producers filed injunction cases in court against internet providers to stop rampant online file sharing of copyrighted

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<sup>1</sup> [http://culturefriends.or.kr/eng/sub04/04\\_acpi.htm](http://culturefriends.or.kr/eng/sub04/04_acpi.htm)

<sup>2</sup> *KAPP v. Soribada Co., Ltd.*, Seoul Central District Court, Case No. 2001Kahab3491 for Preliminary Injunction for the Prohibition on Phonogram Reproduction, August 29, 2005. English translation courtesy of Atty. Kyong-sok Chong of Kim Choi & Lim Law Offices, Seoul, Korea.

<sup>3</sup> *Id.*

<sup>4</sup> *id.*

<sup>5</sup> *id.*

music.<sup>6</sup> Their initial efforts have yielded one legalized internet provider (Bucks Music Co. Ltd) where the members could download files for a fee.<sup>7</sup>

This phenomenon is not only limited to Korea, as in fact, elsewhere in the world, traditional media and big music corporations are constrained to deal with (free) online service providers that allow unrestricted file sharing, striking deals with them if only to realize a profit out of the unmitigated use of their copyrighted content. For instance, YouTube was reported to have stricken deals with CBS, Universal Music Group, Sony BMG Music Entertainment, and Warner Music Group Corp.<sup>8</sup> Basically, the deals have to do with sharing in the advertising income of YouTube in lieu of royalty payments for the use of copyrighted materials by the members of the video-sharing community. CBS is said to have agreed to provide short-form video content that will include news, sports, showtime and prime-time programming. Vivendi's Universal Music Group is said to provide YouTube viewers access to thousands of its music videos, which music may be incorporated in user-generated content. Same with Sony BMG Music Entertainment, which is said to make video content available on YouTube and catalog songs usable in the member's amateur video uploads. Chad Hurley, chief executive of YouTube, was quoted saying, "YouTube is committed to balancing the needs of the fan community with those of copyright holders."<sup>9</sup>

#### Emerging New Players; New Paradigms

With this new model, the end-users – “the fans” – need not pay a monetary amount for using copyrighted materials. Instead, a kind of blanket license is procured by the service providers by sharing its advertising income with the content providers such as media and music corporations. It seems to be a win-win situation – on one hand, traditional media and music corporations earn a considerable amount for providing content and some ad exposure; on the other hand, the members of the video streaming community are allowed to use copyrighted content in their video uploads; and in the middle, service providers earn some income too and avoid costly, if not devastating, lawsuits for copyright infringement.

In this case, we see a new player in the picture – the internet service providers. Not to be forgotten, however, is that copyright does not only belong to the producers which are usually big multinational corporations, with power enough to strike a good bargain and get paid. Underneath the shadow of the producers are the artists, the performers, the individuals creator of works, and unless they assigned their copyright or entrusted their copyright collection to these big companies, royalty collection may be next to impossible.

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<sup>6</sup> Id.

<sup>7</sup> Id.

<sup>8</sup> “YouTube strikes content deals” USA Today, updated October 9, 2006 11:33 AM ET [http://www.usatoday.com/tech/news/2006-10-09-youtube-deals\\_x.htm](http://www.usatoday.com/tech/news/2006-10-09-youtube-deals_x.htm).

<sup>9</sup> id.

## Balancing Needs vis-a-vis New Market Situations

Advances in technology will create new players, new market situations, new paradigms. The question for copyright law and enforcement is whether it is posed to adjust to these new situations - whether it continue to balance the needs between the general public and the copyright holders amidst a growing number of players in the field.

This paper attempts to present how South Korea is posed to deal with the problem other than on an immediate basis.

### C. Korean Copyright Law and Enforcement

By poring over every provision of the Korean copyright law and comparing it to that of the Philippines, in principle, the laws are alike, from definition and scope of protection, differing only in some aspects. As to enforcement, however, South Korea differs in many aspects. Let me present each and every one of them.

#### 1. Strong administrative arm

Korea has a strong administrative arm in CCDC – the central agency in charge of copyright registration, subsequent assignments of rights, enforcement policies, adjudication of disputes, bilateral talks with other countries, copyright awareness through concerts and symposia, crackdown on piracy, even establishment of CCDC branches abroad. It could be a good organizational model to study for other developing countries. As to policy, they impressively think ahead. There were talks of incorporating copyright education in their school textbooks already, beginning from gradeschoolers – as they expect to reap a copyright-educated society in 10 years. They are systematic in their approach.

##### a. Use of Online Technology

What is significant in CCDC for us here is its online registration of copyright.<sup>10</sup> What happens is that the authors register their works online, filling up forms also downloadable online. For registration fees they need to pay (about US\$30.00), they use credit or debit cards. For documents they need to sign, they use digital signatures. South Korea has authorized several institutions (mostly banks) to issue digital signatures, for a small fee (about US\$5.00), upon proper application and documentation. CCDC processes these applications for registration in four days, then it issues receipt of copyright registration. On the average, CCDC processes 400 applications per month, and can go

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<sup>10</sup> Lecture meeting on Copyright Registration, facilitated by Ms. Soh Hyo-jeong, CCDC, August 17, 2006.

as high as 700. It is significant to note that only two employees are assigned to attend to this task, and they finish so many.

Certainly, CCDC's data management system and online service helps a lot in facilitating registrations for copyright. They assign registration numbers for easy tracking. The system also eliminates duplication in personal information of applicants, as the system saves any data already submitted. If there are changes in information on the work or personal data of the applicant, he or she may just update the same online, for a nominal fee (about US\$3.00).

"Works" refer to original intellectual creations such as books, articles, musical compositions, drawings, paintings, sculptures, ornamental designs, illustrations, photographic works, audiovisual and cinematographic works, or computer programs.

Why is it important to register works? Registration of works would serve as notice to others to avoid infringement of one's copyright. In case of litigation, it is proof of one's ownership and the copyright attached to it. CCDC keeps a database of all registered works and may be checked online.

## 2. Collecting Societies

Korea has strong allies in copyright enforcement through its collecting societies. What happens is that authors and artists execute "Copyright Trust Agreements" with these organizations and the latter would collect royalty payments for and in behalf of their members. Otherwise, authors and artists, by themselves, may not be able to collect at all, as it would be too expensive or too tedious. In effect, you have large organizations tasked to collect royalty fees for specific rights, as follows:

KOMCA (Korea Music Copyright Association) – public performance rights, mechanical reproduction rights, synchronization rights

KAPP (Korea Association of Phonogram Producers) - sound recording rights (copying, distribution and transmission)

FOKAPO (Federation of Traditional Korean Art Performers' Organizations) - neighboring rights of performers

KOCCA (Korea Culture & Content Agency) – traditional designs (in digital form)

KOSA (Korean Society of Authors) – literary works

I was able to visit just the above-named organizations, since they are the more established ones, though there are others yet in the making.

As you may notice, copyright is a bundle of rights, not just one, protecting an "intellectual

property” of a person. Usually, when we speak of violation of copyright, we refer to illegal copies of the work. Copyright consists of the exclusive right to carry out, authorize or prevent the following acts: reproduction; dramatization, translation, adaptation, abridgment, arrangement or other transformation; first public distribution; public display; public performance; and other communication to the public such as broadcasting and electronic transmission.

These collecting societies are endorsed by the Korean government to be “the one” collecting agency in their respective fields, and were initially supported financially by the government until such time that they could run on their own. At present, they are operating on their administrative fees (commission) from royalty collections, which fees are also government regulated. Their organizational model may be a good prototype for other countries to follow.

Thus, if I would like to produce a movie based on a Korean book, I will have to apply for a license to do so from KOSA. A license is just an agreement on the use and extent of such use. I do not have to go running after the author himself or herself, who may be vacationing in Europe at that time. If I violate the agreement, KOSA will sue me on behalf of the author. The author would just receive his or her royalty fees from KOSA. This system translates to tremendous convenience on both the side of the author and the applicants for license.

#### Use of Online Technology

The specific rates (fees) for various licenses are available online. Application forms are also available online. KOMCA and KAPP, in particular, are working on processing them online as well. Thus, for the general public, getting a license to use a copyrighted work is made much easier and cheaper – just go online using your electronic signature and credit card to pay for the fees. You save time and travel cost.

Why is this significant? One might ask. Making applications online, and thus, very convenient, is probably the best way to combat infringement of copyright. There is hardly no excuse left for the general public to ignore applying for a license to use a certain registered work. The hassle of applying for a license is so much less than the hassle of being sued for copyright infringement.

#### Advantage of Economies of Scale

Just to give you an idea how efficient a collecting society can be, KOMCA was reported to have collected US\$58.3 million in royalty fees in 2005.<sup>11</sup> Which brings me to another significant element in the operation of these collecting societies - their computerized data management systems. It would be easy if there is only one author of a work, but for music, for example, there is usually a long list of authors – from the composer, to the singer, to the rest of the crew. Thus, it is KOMCA's

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<sup>11</sup> Lecture meeting with Mr. Jong-cheol Choi, International Relations Team, KOMCA, June 15, 2006.

task to document all the composers and performers of each and every song enrolled for its protection, both local and foreign. For example, for one song, the composer normally gets 50% of the royalty fees; the main performer of the song, the singer, usually gets 25%; then the back-up singers, drummers, pianists and everyone else who contributed something to the creation of the song, they divide among themselves the remaining 25%. The list could be short or long, but the idea is to acknowledge the contribution of everyone in making the song, and putting some economic value to that contribution by way of royalty fees.

For music, royalty collection is done on a per song per use per share basis, so imagine the magnitude of the work of the collecting society paying each and every person in the list of authors. But I was astonished at their efficiency – collecting millions of dollars in royalties for and in behalf of their members, who actually get paid. In its case, KOMCA issues checks as often as monthly for all royalty collection. Now this is the other side of copyright enforcement – making copyright law work for the artists in a very real sense - financially.

This is the advantage of a collecting society – imagine the chances of a lowly guitarist in collecting royalties on his own – probably nil. He would definitely spend more than he might ever collect. Having set in place this organizational advantage, South Korea is posed to fight online piracy.

### 3. War with Online Piracy; case of KAPP

KAPP and other phonogram producers filed injunction cases in court against internet providers to stop rampant online file sharing of copyrighted music.<sup>12</sup> Their initial efforts have yielded one legalized internet provider (Bucks Music Co. Ltd) where the members could download files for a fee.<sup>13</sup> Many other cases are still pending in court, and the government is hoping that another controversial internet provider (Soribada Co. Ltd.) would yield soon, and follow the footsteps of Bucks and legalize file downloading by requiring a fee to include royalty payments.<sup>14</sup>

The collecting societies are also preparing legal, systematic and technological tools for copyright protection, such as illegal contents tracking system, meant to combat emerging copyright infringement of new media.<sup>15</sup>

### 4. Creating New Business Models

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<sup>12</sup> *KAPP v. Soribada Co., Ltd.*, *ibid.*

<sup>13</sup> *Id.*

<sup>14</sup> Lecture meeting with Young-Eun Choi, KAPP, July 6, 2006.

<sup>15</sup> Lecture meeting with Young-Eun Choi, KAPP, July 6, 2006; Lecture meeting with Mr. You-rim Chun, Chief Manager, FOKAPO, July 25, 2006; Lecture meeting with Mr. Yong-sun Cho (Policy Development and Analysis), Ms. Rosa Park and Mr. Suk-joon Ahn (Global Marketing), KOCCA, August 3, 2006.

Equipped with easy and fast internet access, the biggest content providers (television program producers) in Korea have also gone online, offering to the public online access to their television programs for a small fee. If one misses one episode of a favorite TV program, for example, just check the website and it should be available for viewing for a small fee, either on a pay-per-episode basis, one-day unlimited pass, or monthly or annual membership. Offering these programs online at cheap rates would be a good strategy at combating illegal downloading elsewhere.

#### D. Conclusion:

While advances in technology can facilitate copyright enforcement and collection of royalties, it can also facilitate copyright infringement. It can also run-over the rights of individuals who do not have the advantage of economies of scale, such as individual authors and artists who may have no collecting agencies that can effectively assert and protect their rights on the street and in courts.

What I have seen in Korea, however, are good points to consider in bracing against the onslaught of new players brought about by advanced technology. First is a good and strong government agency to oversee and spearhead enforcement. Second are collecting societies, so that individual artists and authors are organized and not left to themselves. Third is to create disincentives to copyright infringement, such as taking infringers to court. Fourth is to use technology to one's advantage, such as creating online market at competitive rates so that there is an alternative to illegal downloading of copyrighted material.

At an age where emails and TV programs are available on mobile phones, the public is getting more and more attuned to and rather spoiled with the convenience that technological convergence offers. Let us use that predilection in enforcing our laws and use technology to make it easy for the public to observe and respect copyright.