

Intellectual Property, Taiwan Boundaries of fair use in newsrelated TV programmes

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Alongside the executive, legislature and judiciary, the press is a key player when it comes to the public's right to know. In order to provide full reports on news events, it is often inevitable that the works of others will be used. Should relevant laws be unable to empower journalists to claim fair use under certain circumstances, news reports may fail to be conducive to the formation of public opinion or fail to agree with the main purpose of copyright protection.

Exemption regulations concerning fair use in news reports can be found in Articles 49, 52 and 65 of the Copyright Act.¹ Although the act focuses on current news events, news commentary programmes are of a more commercial nature than general news reports. Doubts remain regarding whether such programmes fall under the act's definition of 'report' and thus whether they could be exempt from copyright infringement by claiming fair use when using others' works. The IP Court provided its opinion on this matter in the civil judgment 2016-Min-Zhu-Shang-Yi-2.

The court interpreted the phrase 'reporting current events' found in Article 49 as 'simply reporting the facts on the day that the said facts happen'. Other news-related TV programmes based on news facts (eg, features and comments) are not categorised as 'reporting current events'.

The court noted that any assertion of fair use under Article 52 should be examined based on the four criteria listed in Article 65(2):

- the purpose and nature of exploitation;
- the nature of the work;
- the amount and substantiality of the portion exploited in relation to the work as a whole; and
- the effects of the exploitation on the work's potential and existing market values.

Endnotes

¹ Article 49:

"When reporting current events by means of broadcasting, photography, film, newspaper, network, or otherwise, works that are seen or heard in the course of the report may be exploited within the scope necessary to the report."

Article 52:

"Within a reasonable scope, works that have been publicly released may be quoted where necessary for reports, comment, teaching, research, or other legitimate purposes."

Article 65:

"Fair use of a work shall not constitute infringement on economic rights in the work. In determining whether the exploitation of a work complies with the reasonable scope referred to in the provisions of Articles 44 to 63, or other conditions of fair use, all circumstances shall be taken into account, and in particular the following facts shall be noted as the basis for determination:

1. The purpose and nature of the exploitation, including whether such exploitation is of a commercial nature or is for non-profit educational purposes.
2. The nature of the work.
3. The amount and substantiality of the portion exploited in relation to the work as a whole.
4. Effects of the exploitation on the work's current and potential market value.

Where the copyright owner organisation and the exploiter organisation have formed an agreement on the scope of the fair use of a work, it may be taken as reference in the determination referred to in the preceding paragraph."

The court explained that the defendant was a profit-making TV media group, with advertising income as its major source of profit. Since producing news-related TV programmes was beneficial to its ratings and advertising revenue, its use of the plaintiff's photographic work should be deemed to have commercial purpose. Moreover, the defendant had committed copyright infringement and had on numerous occasions sought to settle with the plaintiff (ie, the copyright owner). Due to the fact that the photographic work quoted by the defendant was not on this occasion a necessary element of the concerned news report, and that the said news report had been replayed for a long duration which resulted in the significant substantiality of exploitation by the defendant, the fair use assertion was groundless. The copyright owner published the work at issue and had authorised others to use it. The unauthorised exploitation of the work by the defendant resulted in an adverse effect on the potential and existing market values of the work. The court therefore concluded that the defendant was not entitled to claim fair use on the grounds of Articles 52 and 65.

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