

# HOW TO CENSOR YOURSELF

Korean Documentary Filmmakers and the Creative Cost of Misunderstanding Copyright

By Changmin Lee, Moonchil Park and Patricia Aufderheide

ABRIDGED FROM THE KOREAN VERSION,  
SEPTEMBER 2024



## TOP TAKEAWAYS

- Korean copyright law permits creators to use copyrighted material without permission or payment under some circumstances, especially through the doctrine of fair use.
- But filmmakers do not know enough about the law to do so.  
As a result, they self-censor. They change entire scenes, they cut important parts out, they violate other laws, and they avoid entire kinds of filmmaking.
- Understanding the law can save them money and help them do better work.

**Korean copyright law authorizes filmmakers to use copyrighted material and archival material in their work without permission or payment in some circumstances, but filmmakers don't know enough about the law to use it well. Understanding the law better can save them money, and help them in making more and better work.**

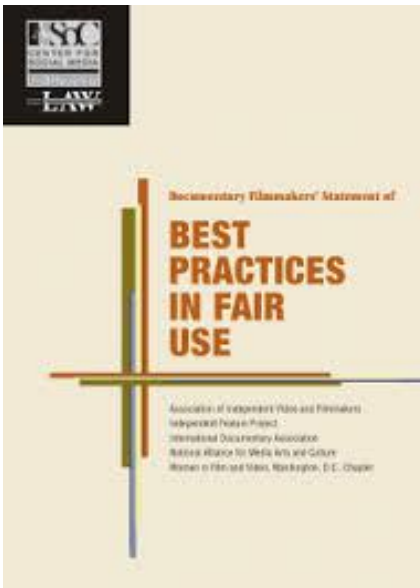
# KOREAN COPYRIGHT LAW AND ITS EXCEPTIONS

## Fair Use as a Linchpin for Creative Expression

Documentary filmmakers in Korea are self-censoring, and so producing lower-quality and less work that can be seen by the Korean public, because they do not take advantage of existing laws, a 2024 survey of 185 documentary filmmakers and interviews with 30 of them shows. Korean copyright law is robustly designed both to protect copyright holders and to permit new creators to refer to and comment on the previous expressions of their own culture. Documentary filmmakers, however, do not know copyright law well enough to employ these balancing features. The results are costly not only to them but to the wider society, which then misses out on innovation, creative exploration, and new expression.

Korean copyright law is designed to balance the rights of copyright holders and creators of new culture. Filmmakers have a right to a copyright in their own work. At the same time, a copyright is not absolute ownership. Copyright holders cannot stop someone else from referring to their work, quoting it as an example of something, criticizing it, using it as an example of a historical phenomenon, or otherwise using it for a purpose different from the purpose for which the work is available. These kinds of uses do not undercut the copyright holder's legitimate market purposes.

Korean copyright law permits various kinds of unpermitted and unpaid uses (Articles 23-38 in the Korean Copyright Act), which are known as *exceptions*, because they are exceptions to the limited monopoly rights of copyright holders. These exceptions have been created to allow Korean copyright law to remain balanced, even as the terms of copyright are expanded to align with the international marketplace and protect Korean creators. If copyright gets unbalanced, copyright could enable private censorship over future cultural creation.



The most flexible exception is “fair use,” in Korean copyright law at Article 35-5 since 2011. It is the right to re-use existing material if: 1) you have a different use for it than the reason it is on the market, and 2) you use the appropriate amount for that new use. These two criteria—the new, different use and the appropriate amount—are the current judicial interpretation in the U.S. of the law’s “four factors” to consider in employing fair use, in the U.S. (The “four factors:” 1) Purposes and characteristics of use; 2) Types and purposes of works; 3) Amount and substantiality of portion used in relation to the whole works; 4) Effect of the use of works on the existing or potential market for the works or current or potential value thereof.) So far, Korean courts’ decisions align with this reasoning. These criteria address the concerns of the Copyright Act, which says fair use can apply “where a person does not unreasonably undermine an author’s legitimate interest without conflicting with the normal exploitation of works.”

In the U.S., fair use is widely used by documentary filmmakers, who established their own set of best practices to help them understand how to use it. Its precepts have since been used widely in the industry, including by large media companies, and have never been challenged. The filmmakers’ statement is found at [cmsimpact.org/documentary](https://cmsimpact.org/documentary). Find a translated copy at [cmsimpact.org/koreandocs](https://cmsimpact.org/koreandocs).

Some examples of documentarians’ common fair uses in the U.S. are:

- *Hip Hop: Beyond Beats and Rhymes*, which quotes hip-hop music videos to show that they stereotype and demean women;

- *Valentine Road* uses many news images, clips and texts in retelling the murder of a middle-school student by another;
- *Retro Report* produces short documentaries to provide historical context to the day's news.

Examples of Korean work that creatively re-uses unlicensed copyrighted material are *An Escalator in World Order* (Kim Kyung-man, 2011), *Two Doors* (Kim Il-ran & Hong Ji-you, 2012), *Derivation* (Seo Hyun-suk, 2012) and *Beep* (Kim Kyung-man, 2014).

## KOREAN FILMMAKER PRACTICES TODAY

**“During brainstorming, if the copyright issue is complicated,**

**I often dismiss the idea itself.”**

**--KOREAN INDIE DOCUMENTARIAN**

In our 2024 survey of 185 filmmakers, complemented with 30 interviews, filmmakers ranged from new practitioners to people with decades of experience. Almost everyone who makes documentaries (97%) incorporates copyrighted material into their work.

Documentarians' copyrights typically do not bring them much money; 77% said they did not count on copyright for much or any income. But they pay regularly for others' copyrighted work. Almost everyone pays some of the time, and half pay most of the time.

A quarter of the filmmakers who replied had suffered infringement—someone violating their copyright by copying their work. However, all of the cases involved misappropriation of entire works. None of them involved excerpts, the kind of uses that fair use typically involves.

More than 80% of them believe they have paid to license material for their films when they should not have to. The most common reason to pay anyway is simply to avoid risk, both a criminal charge and a fine. Filmmakers worry most about the time and money it would take to dispute a claim, and the reputational damage done in the process.

But filmmakers also do not know how to assess risk. Only 6% were confident in their copyright knowledge.

Many did not even know that copyright exceptions exist. Almost 2/3 did not know fair use exists. More than half also did not know that a much more well-established right of quotation (Article 28 of the Copyright Act) exists; it is used constantly in Korean journalism, applies to many of them, and is well-established in Korean law.

Only slightly more than 10% of filmmakers had ever employed *any* exception knowingly, and almost no one had employed fair use.

## WHY IT MATTERS

Documentary film work suffers because filmmakers are not using the law as it is designed. Filmmakers distort or fake reality, they cut out important or emotionally powerful parts of their films, and they do not even try to do creative projects that would involve copyright hurdles. This affects the historical record, deprives Korean culture of innovation, and is unnecessary. Filmmakers told us about a range of ways their work is diminished because of copyright issues:

*"I altered some photos using AI to resolve copyright issues, but the images turned out to be quite different from the originals."*

*"Since I couldn't afford to pay the high copyright fees, I used other media instead of video. However, the atmosphere and emotions that video conveys couldn't be fully delivered."*

*"I found footage that could show a different side of the protagonist, offering more background to their story, but I couldn't use it. If I had been able to use it, I think it would have better portrayed the protagonist's story. However, at that time, I didn't even consider the concept of fair use."*

- **COST:** Documentary films are more expensive than they need to be, and they take longer than they need to. More than a quarter of filmmakers said they had suffered delays, typically 3-4 months, because of copyright problems.
- **ALTER/FAKE/DELETE:** Documentary filmmakers change their work because of copyright problems; almost half (43%) said they had done so. Filmmakers have taken out background sound and substituted licensed music, thus altering the reality they claim to represent, even though a copyright exception for incidental uses (accidentally captured in the process of capturing something else) exists. They have used less effective or emotionally powerful, but cheaper or more available, substitutes for copyrighted material they could not license. They cut out entire scenes.
- **LIMIT DISTRIBUTION:** About a fifth decide to limit their work to noncommercial venues, including film festivals, because of copyright issues. One had not been able to show a finished film at all, for copyright reasons.
- **JUST DON'T DO IT:** About a sixth of filmmakers reported imagining projects that they believed they would never be able to do, because of copyright problems. And many projects do not reach the stage where they are imagined well enough even to abandon.

## OTHER PROBLEMS

Filmmakers also face problems of access to copyrighted material. Without access, they are unable to decide whether to apply exceptions. A few broadcasters hold private archives that are important documentation of recent Korean history, for example. Newspapers closely guard private archives. Government archives such as KTV Archives hold government-produced material, but much of that material has been declared government property rather than public domain, and filmmakers must seek permission. Any licensor has private censorship power, because of their copyright. They can deny access to any use they do not approve of. And of course they can charge what they want to. There are also private archives and dedicated archives such as that for the Sewol Ferry disaster, which require permission involving approval of the project and sometimes payment.

Thus, copyright exceptions cannot address all the ways in which documentary filmmakers' work is diminished because of copyright issues. However, they would provide filmmakers with a greater range of tools and choices.

Filmmakers interviewed for this research did not attempt to find legal ways to employ accessible versions of material that otherwise was held in an archive. (For instance, sometimes lower-resolution or watermarked material is available on YouTube, or the material might appear in another film.) Alarming, some filmmakers told us of taking legal risks to use unpermitted and unlicensed material, which they often had gotten from broadcasters under an agreement to pay if used; these risks are unnecessary if filmmakers independently access material and employ an exception.

## NEXT STEPS

Filmmakers, teachers, and government representatives could all participate in addressing the social and economic cost of limited knowledge about copyright in the film community. Some next steps include:

- Filmmakers can share this report and other knowledge about copyright exceptions with peers, coworkers and their trainees.
- Filmmaker organizations can convene their members to coordinate a code of best practices in fair use for the Korean circumstances.
- Professors in film, media and communications programs can teach students about their options within the law, working with existing resources, since such courses are already taught in journalism programs.
- Legal scholars and lawyers can provide legal advice to filmmakers, to clarify appropriate uses.
- The Korean Copyright Commission can extend its already-impressive suite of educational materials, to emphasize the useability of Korean copyright exceptions.



## MORE INFORMATION

A more complete version of this report, with citations, is available in Korean at [cmsimpact.org/koreandocs](https://cmsimpact.org/koreandocs).

## ACKNOWLEDGEMENTS

Patricia Aufderheide received a 2024 Fulbright Senior Research Fellowship at the Hankuk University of Foreign Studies, and was also supported by a sabbatical from American University.

## THE AUTHORS

**Changmin Lee** ([changmin.john.lee@gmail.com](mailto:changmin.john.lee@gmail.com)) is a Research Professor at the Korea National University of Arts and a documentary filmmaker. He is the founder of Anamnesis Film, focusing on independent and experimental films that explore social and historical themes. His directorial works include *Memories of a Photographer* (2014), which portrays the life of a photographer under the South Korean military dictatorship, and *Candle in the Wave* (2017), an omnibus film during the impeachment of President Park Geun-hye, which was the opening film at the Seoul Human Rights Film Festival. *Dear Elephant* (2019) won the Audience Jury Award at the Seoul International NewMedia Festival and the Special Jury Prize at the Busan International Short Film Festival. *Burmese on the Roof* (2016), which won the Distribution Support Award at the Busan International Film Festival, was also the opening film at the 2017 London Korean Film Festival. His latest project, *Hydrangea* (currently in production), explores the journey of a Korean-Japanese TCK (Third Culture Kid) woman as she confronts invisible discrimination while searching for her identity. The project was selected as the Best Asian Project at the K-DOCS Pitch 2024.

**Moonchil Park** ([jazzurup@gmail.com](mailto:jazzurup@gmail.com)) teaches film at Jeonju University, and is a documentary filmmaker. His first feature, *My Place* (2013), tells the story of his sister's single motherhood and his family's reverse migration from Canada to Korea. It screened at Hot Docs Canadian International Documentary Festival in 2014 and has won multiple awards including the Jury Award at the Seoul Independent Film Festival. *Blue Butterfly Effect* (2017), traces the anti-THAAD peace movement in Seongju, where local residents and activists organized a fierce opposition to the US military's installation of an anti-ballistic missile defense system. It won the Best Documentary award at the 2017 Jeonju International Film Festival. *Queer053* (2019) tells the remarkable story of how Daegu, a notoriously conservative city, became the site of an annual queer culture festival second only to Seoul. *Comfort* (2020), about a sexual slavery survivor, won the Documentary award at 2020 Jeonju International Film Festival.

**Patricia Aufderheide** ([paufder@american.edu](mailto:paufder@american.edu)) is University Professor of Communication Studies in the School of Communication at American University in Washington, D.C. She founded the School's Center for Media & Social Impact, where she continues as Senior Research Fellow. She serves on the board of directors of the Independent Television Service, and has served on the board of Kartemquin Films. Her books include *Kartemquin Films: Documentaries on the Frontlines of Democracy* (University of California Press), *Reclaiming Fair Use: How to Put Balance Back in Copyright* (University of Chicago), with Peter Jaszi; *Documentary: A Very Short Introduction* (Oxford), *The Daily Planet* (University of Minnesota Press), and *Communications Policy in the Public Interest* (Guilford Press). She has been a Fulbright Research Fellow twice, in Brazil (1994-5) and Australia (2017). She is also a John Simon Guggenheim fellow (1994) and has served as a juror at the Sundance Film Festival among others. Aufderheide has received numerous journalism and scholarly awards, including the George Stoney award for service to documentary from the University Film and Video Association in 2015 and the International Communication Association's 2010 Communication Research as an Agent of Change Award.