

# **Intellectual Property Rights Protection and Fair Use Policy**

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The intellectual property protection has been an important international legal issue since 1980's. It becomes even more important during the electronic and digital age. The legal protection of computer and communication Technology, and the fair use of data and database are the most serious concerns for many countries.

In the 1990's, almost all key members in APEC are aware of the importance of the intellectual property protection for the computer software and the database. Certainly, they are also facing the challenge of internet legal problems.

However, the approaches they take in dealing with the issues in the areas of computer software, database and internet may not necessarily all be the same. Korea and China have the independent laws for protecting computer software. Other countries amend their copyright law to include computer software. Database protection has caused controversies in many Asian countries.

Internet is a legal nightmare for many Asian countries. China and Singapore would like to have better governmental control. Japan, Korea, Taiwan, Malaysia and Australia are actively pursuing the issue of National Information Infrastructure (NII). At the same time, every country has to deal with the old issue of the piracy and counterfeiting, and the fair use doctrine.

The White Paper and the Framework for Global Electronic Commerce proposed by the United States have addressed the issue of fair use, so are the World Intellectual Property Organization (WIPO) treaties and Berne Convention. All of them provide or try to provide for exceptions to rights in certain cases that do not conflict with a normal exploration of the work and do not unreasonably prejudice the legitimate interests of the author.

Almost all countries have adopted the concept of fair use and most courts make decision based on the following factors:

- (1) the purpose and character of use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyright work;

(3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and

(4) the effect of the use upon the potential market for or value of the copyrighted work.