

Data in the current IP system

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The current Korea's IP regime provides a protection to data as follows: First, data is protected by copyright if data meets requirements for copyrightability. Second, Korea's Copyright Act provides *sui generis* protection to database producers to whom are granted exclusive rights. Third, data protection is strengthened by anti-circumvention law which prohibits the circumvention of access control. Fourth, data is protected under the unfair competition law which protects against the infringement of other's economic interests achieved through substantial investment or efforts. In addition to the IP regime, data may be protected indirectly by other areas of law such as criminal law or information-related law.

Korea's IP regime, in particular copyright law, should not be an obstacle for data use while it should strike a delicate balance between protecting data and using data. The current Korea's IP regime, however, may present a barrier to innovation because it places limitations on using data. While Korea's copyright law provides breathing space for data use through a fair use provision, or idea/expression dichotomy, it is not enough for data-related innovation. As part of improving situations of using data, several bills have been proposed in the Korean Assembly.

The Copyright Act Amendment Bill proposes the legislation of text and data mining (TDM) exception which is expected to pass the Assembly later this year. According to the Bill, it is permissible to exploit the work and database in a text and data mining to the extent that it is necessary. Requirements for exploitation are that (i) such exploitations should not be for enjoying ideas or emotions expressed in works, and that (ii) such works should be lawfully accessible.

Nobody will argue against data sharing in the age of rapid technological developments. The current Korea's IP regime may provide an over-protection to data, and it is not appropriate for data sharing. IP community does not have experience, or even if it does, not have an enough experience for data sharing. Exploitation of copyrighted works or data under those circumstances needs to be dealt quite differently from the traditional exploitation because traditional exploitation of copyrighted works or database is quite different from data use for text and data mining, information analysis, or machine learning. Limitations or exceptions such as fair use or (currently proposed) TDM would not be enough for exploitation of data. It takes too much time to get court decisions on fair use, and requirements for TDM exceptions such as lawful access look impractical. It would create chilling effects to data-driven innovation and hinder creativity although the primary purpose of copyright is to induce and reward authors to create new works and to provide those works to the society. Too many works are just in the dead storage room. IP community needs to make those works available for data-driven innovation. It is high time for the IP community to take the implementation or expansion of data sharing into consideration so that the IP regime may contribute to, rather than hinder, the data-driven innovation.