# Right to Benefit from Information and Culture & Scientific and Cultural Rights

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Open Net Korea suggests the constitutional amendment to include the right to benefit from information and culture and scientific and cultural rights.

## Right to Benefit from Information and Culture

The right to benefit from information and culture needs to be explicitly specified in the Constitution, as proposed by the National Assembly's Special Committee on Constitutional Amendment. In reviewing fundamental rights, the Constitutional Court has provided relatively strong protection for the right to disseminate information or knowledge under freedom of expression, while not strongly protecting the right to access or acquire information or knowledge. For example, in the decision on the game shutdown system, there was virtually no review of the freedom of game users, particularly adolescents, to use games, and only a thorough examination was conducted of the freedom of game providers. Accordingly, it could be seen that because the expression of game providers is commercial expression for profit purposes, it was relatively weakly protected, resulting in the shutdown system being ruled constitutional.

The right to benefit from information and culture is also necessary to prevent the mechanical abuse of the Personal Information Protection Act. Recently, there have been increasing cases of public officials abusing the Personal Information Protection Act to prevent media coverage and internal whistleblowing about themselves. The core provisions of the Personal Information Protection Act basically stipulate that personal information should be processed with the consent of the data subject, while providing legal grounds (Article 15, etc.) for criticizing and monitoring others' wrongdoing without their consent. However, the problem with our country's Personal Information Protection Act is that it has created separate provisions (Article 58) that strip away such balance entirely and suppress the flow of information itself. The right to benefit from information and culture should be guaranteed as a right that includes not only the freedom of expression of journalists or whistleblowers but also the rights of media consumers and citizens to access such whistleblowing or reporting. This also applies to the problem of the Supreme Court refusing to substantially disclose court decisions on the grounds of personal information protection.

The presentation below is mainly devoted to scientific and cultural rights.

## Scientific and Cultural Rights

Scientific and cultural rights are not yet commonly used terms in Korea, but they are widely used internationally by UN human rights bodies and others. Scientific and cultural rights include the Author Clause of Article 15, paragraph 1(c) of the International Covenant on Economic, Social and Cultural Rights and Article 27, paragraph 2 of the Universal Declaration of Human Rights. While they can be seen as including the right to benefit from information and culture, the right to benefit from information and culture requires separate specification based on its necessity.

Scientific and cultural rights, like other fundamental rights, are multifaceted rights that relate to individual self-development, relate to systems that encourage scientific progress for the public good, and are also connected to civil and political rights.

Scientific and cultural rights have the advantage of being able to set inherent limits on intellectual property rights. Through this, there is potential to explore alternative models for the production and distribution of knowledge and information. Until now, intellectual property rights have been treated as outside the scope of human rights concepts or in an adversarial structure. Therefore, to resolve conflicts between fundamental rights and intellectual property rights (such as conflicts between freedom of expression and copyright, or between privacy rights and intellectual property rights enforcement), discussions have developed in the direction of fundamental rights externally blocking the indiscriminate expansion of intellectual property rights. In contrast, scientific and cultural rights have the advantage of being able to incorporate intellectual property rights as part of fundamental rights and set inherent limits on intellectual property rights. In short, they can define the boundary between intellectual property rights as fundamental rights and intellectual property rights under positive law. Such boundaries have not been considered under the current Constitution until now.

## Scientific and Cultural Rights under International Human Rights Norms

### A. Relevant Provisions

**Universal Declaration of Human Rights, Article 27** ① Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. ② Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**International Covenant on Economic, Social and Cultural Rights, Article 15**

The States Parties to the present Covenant recognize the right of everyone:

To take part in cultural life To enjoy the benefits of scientific progress and its applications To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author

The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

**B. Author Clause**

The scope of authors under scientific and cultural rights is not significantly broader than authors under copyright law. Rather, because the reason for recognizing fundamental rights for authors under scientific and cultural rights is due to the personal link between the author and the work, only natural persons can be authors under scientific and cultural rights, and legal entities cannot be authors. This differs from current copyright law, which recognizes corporations as authors in the case of works made for hire.

Scientific, literary, and artistic productions can be conveniently divided into literary and artistic productions corresponding to copyright and scientific productions corresponding to patent rights. However, scientific productions are a much broader concept than inventions under patent law, and also include scientific publications, technological innovations, indigenous knowledge, innovations, and practices that are not subject to protection under patent law.

The right to protection of moral interests was the main concern of the drafters when discussing the Author Clause. Intellectual creations are expressions of the author's personality, and therefore the protection of the moral interests of creations was seen as an essential means of connecting the creation with the author. Additionally, because the drafters were influenced by international treaties existing at the time, namely the Berne Convention, the right to protection of authors' moral interests is interpreted as similar to the moral rights recognized in the Berne Convention.

The right to protection of material interests is relatively less clear in content and scope compared to the right to protection of moral interests. It can be broadly divided into the position that associates it with property rights under Article 17 of the Universal Declaration of Human Rights and the position that associates it with the "right to an adequate standard of living" under Article 11 of the International Covenant on Economic, Social and Cultural Rights. The position emphasizes the inherent limits of the right to protection of material interests and UN human rights bodies view the author's right to protection of material interests as having a more direct connection to the "right to an adequate standard of living" than to property rights. The important point is that even when associated with property rights, not all rights recognized under current intellectual property law constitute the author's right to protection of material interests. In other words, material interests do not mean all forms of economic benefits, and material interests

differ from the purposes of economic efficiency or utilitarianism. Even examining the legislative history of the treaty, material interests refer to economic rights in the narrow sense of the right to demand compensation for intellectual labor. If the right to protection of material interests recognized in the Author Clause of scientific and cultural rights is interpreted in this way, **it can serve as the theoretical basis for institutional reform that transforms the current intellectual property system centered on exclusive rights into obligatory rights such as compensation claims.**

**In this regard, Open Net Korea has responded to 'copyright settlement businesses' to prevent harm arising from excessive assertion of economic rights in copyright, while proposing legislation for 'inalienable creator rights' that are enforced similarly to moral rights in about 20 countries worldwide to protect the rights of creators.**

### C. The Right to Participate in Cultural Life

For the right to participate in cultural life to be considered a fundamental human right, particularly if everyone is to have certain claims against the state, it is necessary to specify what cultural life means. 'Culture' in 'cultural life' does not refer only to high culture or art as opposed to popular culture. The UN Committee on Economic, Social and Cultural Rights began discussions on the right to participate in cultural life under Article 15, paragraph 1(a) of the Covenant on Economic, Social and Cultural Rights in May 2008, and based on this, issued General Comment No. 21 in December 2009. According to this, culture in 'cultural life' means culture from an anthropological perspective—that is, a historical and dynamic 'living process' that unfolds across past, present, and future.

However, if cultural life or culture is defined too broadly, there is a problem that the right to participate in cultural life as a human right becomes too extensive in scope and difficult to grasp. This problem can be overcome by clarifying the meaning of 'participation' more clearly. General Comment No. 21 states that the right to participate in cultural life consists of three core elements: (1) participation in cultural life, (2) access to cultural life, and (3) contribution to cultural life.

Here, participation has not only the general meaning of participating in cultural, religious, social, and economic life, but also an active meaning such as meaningful participation in relevant policy decisions. Access includes knowing and understanding one's own culture and understanding other people's cultures through education and information. Contribution includes the right to be involved in activities that create 'spiritual, material, intellectual, and emotional expressions of the community'. Among these three elements, 'access' is most crucial in relation to intellectual property rights and was most essential to the proponents of establishing the right to participate in cultural life as a fundamental right. Together with 'science rights', the term that best expresses the right to participate in cultural life is the right to access to knowledge. The statement that everyone has a right to culture means that everyone has the right to access knowledge, art,

literature, and works, and the nature of intellectual property rights that restricts such access forms a fundamental and systemic tension with cultural rights.

### D. The Right to Enjoy the Benefits of Scientific Progress and Its Applications

The concept of science is not limited to a narrow meaning such as technology or natural sciences, but has a broad meaning that includes verifiable and refutable knowledge in all fields including social sciences.

Benefits refer to both material and non-material benefits. The enjoyment of benefits must be applied without discrimination, applying not only to minorities and vulnerable groups but also to those who have not participated in the process of scientific progress. The 'right to enjoy benefits' in science rights is not limited to enjoying the benefits of scientific progress through the so-called trickle-down effect, but refers to realization through distributive justice and affirmative action in the modern sense.

## Provisions for Scientific and Cultural Rights

### Current

Article 22 ① All citizens shall enjoy freedom of learning and the arts. ② The rights of authors, inventors, scientists, technologists and artists shall be protected by law.

Article 127 ① The State shall strive to develop the national economy by developing science and technology, information and human resources and encouraging innovation.

### National Assembly Constitutional Amendment Special Committee Proposal

Article 27 ① All people shall have freedom of learning and the arts. ② The rights of authors, inventors, scientists, technologists and artists shall be protected by law. Article 28 ③ All people shall have the right to enjoy information culture. Article 33 ⑤ All people shall have the right to enjoy cultural life.

### OpenNet Proposal

Article 27 ① All people shall have freedom of learning and the arts. ② All people shall have the right to participate in cultural life. ③ All people shall have the right to enjoy the benefits from scientific progress and its applications. ④ All people shall have the right to the protection of the moral and material interests resulting from scientific, cultural, and artistic productions of which they are the author.

**Conclusion**

Through the establishment of scientific and cultural rights and the right to enjoy information culture, let us go beyond the abstractness of the constitutional preamble or the cultural state principle provisions, and create concrete constitutional norms that can be realistically applied in cases where the rights of information recipients/culture enjoyers are ignored, in cases of abuse of the Personal Information Protection Act, and in cases of intellectual property rights abuse. In particular, through the establishment of scientific rights, let us pursue the social distribution of the benefits of science and technology.