

Abstract

**Whether to admit the Succession of
the Copyright's Blanket License after the Cancellation of
Intellectual Property Trust Management**

Lim, Sang-Min*

In a case of first impression, the Korean Supreme Court pronounced a decision in the 2011da101148 case on the issue of Succession of Copyright's blanket license after the cancellation of copyright trust management. The decision is highly significant because it will serve as the main standard of judgment in similar cases hereafter.

On the issue between the author's returned property right and the right of licensee to use the work, the Court's decision overturned the appellate court's decision and declared that the copyright has priority over the right of licensee. From a logical point of view, the Court's decision is reasonable.

However, it's doubtful whether the Court's decision sufficiently considered of the concerns of the appellate court. The appellate court rendered its decision by considering the policy questions of how to vitalize the usage of works through a stable trust system and how to achieve the aim of copyright laws of cultural development. Such considerations are well founded and it's regretful that the Court didn't explicitly address these issues.

In addition, it's problematic that the Court didn't consider the issue of whether the author achieved effectiveness against third parties through the registration of the transfer of author's property right upon cancellation of trust.

On the other hand, there's considerable circumstantial evidence that the author gave an implied consent to a blanket license at the time when the trust agreement was entered into. Nevertheless, the Court overruled the implied consent argument without giving a detailed explanation.

* Judge of Busan High Court.

Ultimately, in order to reasonably resolve the legal dispute over the succession of copyright's blanket license after the cancellation of copyright trust management, it's necessary to revise the current copyright laws as follows.

1. exclusive license should be admitted and the license should be effective against third parties through registration.
2. Trustor and trustee should have the obligation to notify each other around the time of payment of the license fee.
3. It's necessary to categorize the author's property license agreement, to disclose the types of agreements at the time of entering into the trust agreement, and for the author to choose the type in trust agreement.
4. It's important to pluralize the copyright trust management service providers.

Keywords

copyright trust, collective management of copyright, trust cancellation, blanket license, registration, effectiveness against third parties, implied consent, succession of copyright's blanket license, invasion of author's property right, compensation for damages, etc.

참고문헌

1. 국내문헌

단행본

- 광장신탁법연구회, 『주석 신탁법』, 박영사(2015).
법무부, 『신탁법 개정안 해설』, (2010).
송영식·이상정 공저, 『저작권법개설』, 세창출판사(2015).
오승중, 『저작권법』, 박영사(2016).
이해완, 『저작권법』, 박영사(2015).
임채웅, 『신탁법연구2』, 박영사(2011).
정상조 편, 『저작권법 주해』, 박영사(2007).
최수정, 『신탁법』, 박영사(2016).

논문

- 계승균, 저작인격권의 특질에 관한 소고, 『법학논총』, 전남대학교 법률행정연구소(2008).
- 김기중, 저작권 신탁관리업에 대한 규제제도와 개선방향, 『계간 저작권』 71호, 저작권심의조정위원회(2005).
- 김병식, 저작재산권신탁계약의 해지 및 그에 따른 법률관계, 『대법원판례해설』 제94호, 법원도서관(2013).
- 박준석, 저작재산권 신탁에 관한 고찰, 『저스티스』 통권 제151호, 한국법학원(2015).
- _____, 콘텐츠산업에서의 저작권, 『창작과 권리』 제67호, 세창출판사(2012).
- 방석호, 저작재산권신탁관리계약의 법적 의미와 분석, 『민사판례연구』 제27권, 박영사(2005).
- 신봉기, 저작권 보호와 이용활성화를 위한 저작권 집중관리 시스템, 『정보법학』 제13권 제1호, 한국정보법학회(2009).
- 이근영, 신탁법상 신탁행위와 신탁재산의 공시방법, 『토지법학』 제29-2호, 한국토지법학회(2013).
- 이용세, 저작권신탁, 『저작권신탁/상속신탁연구』, 법무법인(유한)바른 상속신탁연구회(2016).
- 정상조, 저작권이전등록-안현필 사건, 『한국저작권관례평석집(Ⅰ)』, 저작권심의조정위원회(1998).
- _____, 저작물 이용허락의 범위, 『관례실무연구 Ⅰ』, 박영사(1997).
- 최승재, 저작재산권신탁계약종료 시 저작재산권신탁관리업자가 체결한 계약의 효력, 『대법원판례해설』 제103호, 법원도서관(2015).

2. 국외문헌

- David Sinacore-Guinn, *Collective administration of copyrights and neighboring rights: international practices, procedures, and organizations*, Little & Brown(1993).
- Julie E. Cohen et al., *Copyright in a Global Information Economy* 3rd ed., Aspen Publishers(2010).

3. 기타

- ASCAP 홈페이지, <http://www.ascap.com/licensing/licensingfaq.aspx#general>.
- 한국저작권위원회 홈페이지, <http://www.copyright.or.kr/information-materials/law-precedent/view.do?brdctsn=9215&list.do?pageIndex=1&brdctsnstatecode=&brdclasscode=04&servicecode=06&nationcode=&searchText=&searchTarget=ALL>.
- 한국음악저작권협회 홈페이지, https://www.komca.or.kr/form_trust/%EA%B8%B0%ED%83%80%EC%84%9C%EC%8B%9D_%EC%8B%A0%ED%83%81%EA%B3%84%EC%95%BD%EC%95%BD%EA%B4%80.pdf.