

Abstract

The Possibility of Self-Use of a Co-author without Consent of the Other Co-authors

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Despite the some positive aspect of the 2014 Korean Supreme Court ruling on the chinjeong-eomma (the married woman's mother) case (hereinafter "chinjeong-eomma decision") that more clearly defined the requirement of joint works, the chinjeong-eomma decision has already been heavily criticized by many Korean scholars for its misinterpretation of Article 48 of the Korean Copyright Act which directly did conflict with a clear phrase stipulating that all copyrights can be exercised only with unanimous agreement among co-authors.

The reason why this article belatedly criticizes the above decision is that the following additional important flaws is found in the respective logic of the judgments by the lower courts in the chinjeong-eomma case and the case review report by a senior judicial researcher in the Supreme Court involved in chinjeong-eomma decision, among the issues also dealt with by chinjeong-eomma decision, particularly on whether self-use by a co-author without consent of the other co-authors (hereinafter 'free use') would be infringement on copyright of the other co-authors. First, it was too hasty to conclude that the relationship of co-authors was not joint-tenancy under the Korean Civil Act, but joint-in-common under the same Act, so it was treated as if one co-author was a tenant in common under the Civil Act.

Second, in terms of whether to recognize the free use of joint

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works, it was treated as a majority vote in line with the fact that other Korean IP laws, such as the Patent Act, have already acknowledged the free use of a co-owner.

Third, the non-rivalrous (non-excludable) nature of copyright and the natural phenomenon of relatively low utilization of joint works due to the some refusal of consent from other right holders were improperly used as grounds for recognizing free use.

Fourth, above all, by overlooking the main characteristic of copyright as a “bundle of rights”, it was not understood that there was no room for raising so-called a free use defense against the facts of this criminal case in the first place in terms of performance rights, not reproduction rights, etc. To prevent this kind of mistake being repeated in another case, a clear awareness of the above characteristic is needed at the starting line of reviewing any copyright cases.

Fifth, more reasonable alternatives were not taken, such as actively expanding and adopting the good faith standard of Article 48 already designed by the legislator, acknowledging implied consent, and strictly acknowledging criminal intent.

Keywords

the judgment in the chinjeong-eomma (the married woman’s mother) case, the exercise of author’s property rights in joint works, the joint ownership between co-authors, the unanimous agreement system of Article 48 and self-use/free use, the intellectual property/IPR and joint-in-common and joint-tenancy under civil law, the nature of copyright as a bundle of rights, the good faith standard under the Korean Copyright Act and the good faith principle under the Korean Civil Act