

Abstract

A Study on Exclusive Copyright License

Lee, Gyoo-Ho

School of Law

Chung-Ang University

Article 18.10.4 and footnote 27 of the KORUS FTA provides that “Each Party shall make available to right holders(fn 27) civil judicial proceedings concerning the enforcement of any intellectual property right.” and footnote 27 of Article 18.10.4 of the KORUS FTA states that “For purposes of Article 18.10, “right holder” includes a federation or an association having the legal standing and authority to assert such rights, and also includes a person that exclusively has any one or more of the intellectual property rights encompassed in a given intellectual property.”

The issue here is whether “[a] person that exclusively has any one or more of the intellectual property rights” under Article 18.10.4 and footnote 27 of the KORUS FTA refers to exclusive licensee prescribed by U.S. Copyright Act. If so, the Korean Assembly needs to implement provisions on exclusive license following the ratification of the KORUS FTA. Otherwise, we need to take into account the exclusive license system from the perspective of domestic legislative policy. I stick to the position supporting the latter because even civil law countries use the term, ‘exclusive license’ despite of the true intention of the negotiators of both Korea and USA during KORUS FTA negotiation. However, the Ministry of Culture, Sports and Tourism had preliminarily announced the revised Copyright bill enacting the exclusive license on September 2007, deeming its adoption necessary for the implementation of the KORUS FTA. The copyright industry in Korea will change in many ways if the U.S.-style exclusive license system is transplanted into Korea.

This Article will explore the definition, history, nature, contents, recordation, sublicense, relations to security interests in copyright, rescission of the exclusive license pursuant to

U.S. Copyright Act. After that, the Article will explain the circumstance regarding the exclusive license under the current Korean Copyright Act. In conclusion, the Article will propose the implication of the U.S.-style exclusive license system to Korean legal community.

keywords: KORUS FTA, copyright, exclusive license, exclusive licensee, recordation, transfer, divisibility doctrine.