

Abstract

Legal Issues for Treatment of Mis-attribution at a Ghostwriting

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Ghostwriting raises serious ethical and legal concerns. Ghostwriting is clearly a form of plagiarism, although it plagiarizes with the consent of the actual author (the ghost writer) of the work. Therefore, it is apparent that ghostwriting should be avoided from the ethical point of view. However, a ghostwriter helps bring out what the author wishes to communicate. Furthermore, there are many issue in ghostwriting from the legal point of view. It raises issues both in terms of authorship(i.e. who in fact creates the work?) and in terms of attribution(i.e. waver of author's right and mis-attribution). This article examines those issues in terms of needs to accept some kinds of ghostwriting as a proper one without legal contradiction.

Firstly, authorship credit should be determined by the authors having made a substantial contribution to create the work. Therefore, in terms of authorship, the actual author of ghost-written work is a ghostwriter so that he has the right to credit attribution and the right to attribution cannot be waived under Korean Copyright Act. However, ghostwriting agreement inevitably contains renunciation of the right to attribution or change of author by contract that is also prohibited by the Copyright Act. In order to overcome this contradiction, some kinds of proposed methods are reviewed including the possibility of the waiver of the right to attribution. Further, the proposal that 'the (specific) right to attribution' derived from 'the (original) right to claim authorship of the work' under the Berne Convention Article 6bis should be distinguished from each other is discussed throughly in this paper. As an another solution, a commissioned work system and its attribution are discussed in order to review the possibility whether the person commissioning a work may become the first author under the work-for-hire doctrine.

Leaving aside the question of validity of ghostwriting agreement and proper treatment

of its attribution, there is also the question of public misperception. Ghostwriting could be considered to be a fraud and should be prohibited under Korean Copyright Act(Art.137) which prohibits the mis-attributed publication by fraud because ghostwriting may blind consumers deceptively. Consequently, efforts should be made to accept some kinds of inevitable ghostwriting as a proper one, while the deceptively intended ghostwriting should be deterred through the imposition of strict legal liability.

Keywords: Ghostwriting, Ghostwriter, Authorship, Validity of ghostwriting agreement, Right to attribution, Renunciation of right to attribution, Right to claim authorship of the work, Commissioned work, Mis-attributed publication by fraud.