Abstract

A Study for the Establishment of Joint Works in the Case of Ex post facto Participation

- Korean Supreme Court Decision 2014Do16517 delivered on July 29, 2016 -

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The Korean Supreme Court ruled that to more specify the intention of co-creation in July 29. 2016. The Supreme Court suggested the so-called 'the intention of completion' in this decision to specify the intention of co-creation and expressed that if someone lacked the intention of co-creation in the case of ex post facto creation then that works could be derivative works.
There is the conflict over that the intention of co-creation should be the requirement of joint works. This decision can be as a natural consequence for the supporter of the theory of the intention. Meanwhile, the conclusion is same if taking the theory of the objectivity because the co-operative action was hard to find the fact of this decision.

However, 'the intention of completion' is not necessary to be the copyrighted work and the intention should be found in the objective evidence, so that is inconsistent with the truth. I think that is the weak-point of this decision. For this manner, this paper suggest the idea how to be joint works by the theory of the objectivity through the comparison with a principle of Annexing in the civil act. The ex post facto creation is similar to the attachment by that principle. If no distinction of principal and accessory can be made, works could be joint works but if not, that would be derivative works. Furthermore, if the post-creator reconstitute works and makes the expression of works on his or her own, that case is similar to the specification, so that works should be owned only by the post-creator.

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Keywords

Joint works, Requirement of joint works, Joint works by ex post facto participation, the Intention of co-creation, the Intention of completion, the Principle of annexing

참고문헌

1. 국내문헌

김원오, “공동저작물의 성립요건을 둘러싼 쟁점과 과제”, 『계간 저작권』 2011년 여름호, 한국저작권위원회(2011).

김창권, “공동창작의 의사의 의미 및 공동저작자 사이에 저작재산권침해가 성립하는지 여부”, 『대법원 판례해설』 제102호, 법원도서관(2014).

도두형, “공동저작물에 대한 저작재산권의 행사방법과 침해행위”, 『판례연구』 제29집 1권, 서울지방변호사회(2015).

우원상, “산업재산권의 공동소유 관계의 법적 성질에 대하여 - 대법원 2014. 8. 20. 선고 2013다41578 판결 -”, 『지식재산연구』 제10권 제3호, 한국지식재산연구원(2015).

_____, “저작물에 대한 창작성 요건의 검토”, 『계간 저작권』 2015년 겨울호, 한국저작권위원회(2015).

홍승기, “방송작가 집필계약상 손해배상예정액의 처리”, 『법학연구』 제16집 제1호, 인하대학교 법학연구소(2013).

_____, “드라마 대본을 소설화한 경우 공동저작물일까, 2차적저작물일까?”, 『저작권 문화』 2016년 9월호, 한국저작권위원회(2016).

곽윤직 대표편집, 『민법주해(II)』, 박영사(1992).

곽윤직 대표편집, 『민법주해(V)』, 박영사(1992).

박성호, 『저작권법』, 박영사(2014).

오승종, 『저작권법』, 박영사(2013).

이해완. 『저작권법』, 박영사(2015).

2. 국외문헌

高林龍, 三村量一, 竹中俊子 대표편집, 『知的財産法の理論的探究』, 日本評論社(2012).

半田正夫, 『著作権法概説』, 法学書院(2013).

西尾みちみ偏,『著作権判例百選(第2版)』, 別冊ジュリスト 128号, 精興社(1994).
田村善之,『著作権法概説』, 有斐閣(2001).
斎藤博,『著作権法』, 有斐閣(2007).
中山信弘,『著作権法』, 有斐閣(2014).
作花文雄,『詳解著作権法(第4版)』, ぎょうせい(2010).

Peter Drahos, *A Philosophy of Intellectual Property*, Routledge(1996).