

Abstract

A Study on Adverse Possession of Copyright

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The doctrine of adverse possession was traditionally a rule of forfeiture applied to realty from ancient period. It has been extended to govern the transfer of title to personal property. Further extension of this real property doctrine to intangible property is a new issue which generally has been not decided by Korean court. Each country has own the doctrine of adverse possession but the adverse possession of copyright is not always approved. There are some cases that court has applied adverse possession to copyright in Japan and USA. But there is no case in German and UK court refused to approve the adverse possession of copyright.

Adverse possession needs the elements of possession, exclusivity, open and notorious, continuous, hostility, statutory period. A concept of possession concerns traditionally material things but it is possible to possess immaterial things by quasi-possession in view of the legal system. To approve adverse possession of copyright, an adverse possessor have to act as if he is a copyright holder and his use of someone's copyright is highly opened and notorious, for example, one of co-copyright holders has published a book named by only him in long time and other co-copyright holder has not claimed about that situation. This case would be meet conditions for adverse possession of copyright.

In different points of view, adverse possession of copyright need to be applied to orphan works. Such an adaptation of adverse possession would provide a superior solution to the orphan works problem. It will bring the balance between copyright holder and copyright user.

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Keywords

Copyright, Adverse Possession, Possession, Quasi-Possession, Orphan Works

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