

Abstract

Article 3 of the Korean Constitution (Territory Clause) and the Effect of Copyright Act

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The Republic of Korea (hereafter “ROK”) has kept applying its Copyright Act directly to the lawsuit of infringement on North Korean citizens’ works, according to ROK Constitution Art. 3 (hereafter “Territory Clause”). It has been continued from the time when there was not ROK Constitution Art. 4 (hereafter “Peaceful Unification Clause”), which is improper attitude. According to Territory Clause, North Korea area can be said as the territory of ROK. But Territory Clause can’t have legal force in North Korea area because of the effective sovereign power of North Korean regime. Therefore, in order to improve the relationship between ROK and North Korea, it is the most appropriate interpretation that we need to acknowledge the substance of North Korean regime and the effect of Territory Clause has been suspended in North Korea area as long as the sovereign power of North Korean regime exists. So then, paying attention to the fact that ROK and North Korea are allied countries of the Berne Convention, we can resolve the “nationality problem” of North Korean citizens and the “applicable law problem” of copyright disputes on the ground of the “Open-door Theory” of West Germany.

First, North Korean citizens have the nationality of ROK. But as long as they stay in North Korea area, the effect of ROK nationality is in the state of suspension. In this case, if the lawsuit for infringement on the works of North Korean citizens is filed before

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the ROK court, the Copyright Act of ROK is applied as an “applicable law”, according to the principle of protection country of the Berne Convention. Second, when North Korean citizens come out of North Korea area the suspending state of ROK nationality is dissolved and, when they come into ROK territory they can have all the rights as citizens of ROK. But this is restricted to the case they want. Third, when North Korean citizens come out of North Korea area and stay in the third country, the nationality of ROK is also restored. And if they want, they can receive the nationality of ROK and ROK government should exercise the diplomatic protection power on them. In case of the above-mentioned Second and Third case, the nationality of ROK is restored to North Korean citizens. Therefore the Copyright Act of ROK is applied to the copyright infringement lawsuit without mentioning the Berne Convention.

Keywords

North Korean Works, Copyright Act, Berne Convention, Applicable Law, Korean Constitution Art. 3 (Territory Clause), Korean Constitution Art. 4 (Peaceful Unification Clause), Legal Status of North Korea, Special Relationship between North Korea and South Korea Theory, Open-door Theory