

Abstract

An Analysis of Korean Case Law on the Application of Article 54 in Copyright Disputes*

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Article 54 of the Korean Copyright Act is understood to adopt a registration-as-opposability system grounded in the principle of intention, aiming to enhance transactional security in copyright through a public notice system similar to real estate registration. However, its effectiveness in fulfilling this role remains debatable. Korean courts have applied Article 54 to double copyright transactions, where someone who has already transferred a copyright enters a subsequent transaction as if they still hold the rights. Courts have extended the provision's scope beyond registrable transfers to include non-registrable contractual licenses and have not limited its protection to good-faith third parties. Courts tend to distinguish between double transactions by general assignors and those by trustors; while they are willing to deny protection in transactions involving breaches of fiduciary duty by assignors, they do not when the transaction involves a trustor. This article raises several concerns about the current Act and court's interpretations. First, although the Korean Copyright Act only requires transferor-transferee's agreement to transfer a copyright, it requires joint application for registration of changes in copyright, preventing true right holders from registering their rights unilaterally.

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Second, ownership disputes remain unresolved unless registration occurs, which weakens legal certainty. Furthermore, granting Article 54's protection to bad-faith third parties undermines transactional security. Third, allowing licensees in double transactions to avert Article 54's protection, while barring licensees from the rightful owner from doing so, creates inequities. This, in fact, turns registration into a requirement for validity rather than opposability, contrary to the Act's intended purpose.

Keywords

copyright registration system, Article 54 of the Korean Copyright Act, changes in copyright, registration of changes in copyright, copyright trust, principle of no formality, principle of intention, principle of opposability based on registration, double transfer of copyright.