

Study on Presumption of Authorship

Hsiao-Hui Chen*

Abstract

This study explores rules on the presumption of authorship under Article 13 of the Copyright Act. Through comparative law study, starting from the norms of the Berne Convention, the differences between the German and Taiwan's copyright laws on how to implement the Berne Convention are compared in terms of system purpose, application requirements, application case, legal effect and calculation of protection period.

This study finds that the rules on the presumption of authorship have its origin in the shifting of the burden of proof in infringement litigation, which facilitates the author to exercise his/her rights and alleviate the burden of proving the process of creation. However, it must be noted that the person protected may not necessarily be the actual author, therefore the applicable case types should not be overly expansive. For contract litigation, the risk in litigation should still be fairly apportioned according to the allocation of burden of proof. In criminal litigation, it should not conflict with the principle that favors the defendant in the case of doubt. When explaining the requirement of “appear on the work in the usual manner”, the person expressed must be objectively recognized as the author. The calculation of the duration of protection can be calculated based on the lifetime of the presumed author; when a presumption cannot be made, calculation shall be based on the rules concerning anonymous works.

Besides, to ensure the author's right to remain anonymous, and to facilitate the enforcement of rights by an exclusive licensee, this study recommends to enact new rules concerning the presumption that the publisher whose name appears on

* Associate Professor, Graduate Institute of Technology Management, National Taiwan University of Science Technology.
E-mail: hsiaohui@mail.ntust.edu.tw

the work may enforce the rights on behalf of the author and the presumption of exclusive licensee. Finally, users such as museums still shall exercise the due care of a good administrator in conducting the obligation of verifying the identity of the right holder and should not simply rely on the presumption of authorship. A museum should still be allowed to calculate the copyright protection term based on the authorship presumption and use the work after the copyright term has expired. However, the obligation of the true author to endure must still be premised on the importance of public good in the act of use; protective measures which can be technologically and economically reasonably expected have been taken. Therefore, if an open license is adopted, it cannot be the due care of a good administrator. Whether users should clearly mention the name of the author indicated on the work, it should also be handled according to the results of the verification.

Keywords: presumption of authorship, unknown author, right of attribution, anonymous work, pseudonymous work, museum, copyright clearance