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A Brief Sketch of Architectural Works Copyright with the United States Cases:

Analysis based on Thomas Shine v. David M. Childs and Skidmore Owings & Merrill, LLP Case

Hwakyung Moon
Department of Architecture, Graduate School of Ewha Womans University, Seoul, Korea

Abstract

These days the copyright plays a significant role in various fields of creative works and it has expanded dramatically into unprecedented ways. In Korea, architectural works copyright cases are rare due to the lack of information and understanding of the architectural works copyright. Architectural works copyright can promote architects' creative activities and enhance the quality of architectural works as art. Nevertheless, there is little effort to advance the studies of architectural works copyright in the architectural design area. Under these circumstances, this research attempts to share the basic case laws and remedies for various architectural works copyright issues in the U.S. cases. This Article examines the Thomas Shine v. David M. Childs and Skidmore Owings & Merrill, LLP Case which is the most recent case as I could reach. This case is about a story between two architects, one is from a very prestigious architectural design firm and the other, once Yale Architectural student, now practices his design work as an up-and-coming architect. A close examination of this case will provide a legal and architectural spectrum of copyright. That is, it will make it more specific how to solve the copyright infringement. Artistic and technological contexts are overlapped in Architectural works copyright as its inherent characteristics. Therefore, different ways from other copyrighted works are needed to access the untangled equations of the architectural works copyright protection. In addition, more comprehensible and specific regulations that can impose a remedy more suited to the architectural works copyright violations are needed and they should enable architects to fulfill their architectural activities under wide range of copyright protection. Moreover, in prior to all efforts to handle those equations, fundamental knowledge of architectural works copyright is required to improve the copyright protection in the architectural design area as well as to provide for the globalizing design practice. Ultimately, all of these efforts will be rewarded when constant researches based on Korean and other countries' architectural copyright cases can support them and it would be great if this research can set the stage for resolving expected copyright conflicts within the architectural design area.

Keywords: Architectural Design, Architectural Works, Copyrights, Intellectual Property Rights, Infringement

1. INTRODUCTION

In Korea, various architectural works, as the results of artistic and creative architectural activities, can be protected under the Korean Copyright Law. According to the Korean Copyright Law[1], architectural works includes architectural drawings, models, and buildings produced from creative architectural design processes. With the copyright law, architectural works copyright can promote many architects' creative activities and enhance the quality of architectural works as art. Nevertheless, the importance of copyright is underrated in every phase of the architectural design project. There is little interest to advance the studies of architectural works copyright. This following fact tells more about the present situation. Plagiarizing her design can be a serious moral and ethical crime in any country. By the way, in Korea, architectural works copyright cases are rare among various kinds of lawsuits. Nevertheless, it is common to hear the news about the architectural works copyright infringement[2]. Then why the architectural works copyright infringement is not considered serious in Korean courts? Why architects don't file lawsuits against the infringement? Is this because people in Korea observe the copyright law very well? No. It is probably because people lack information and don't have much understanding of the architectural works copyright.

Compared to Korea, the United States has a long history of copyright system and the U.S. Legal theories are developed through cases. Accordingly, it will be helpful to examine the U.S. architectural works copyright cases in order to know about their way of solving the copyright infringement as good precedents for Korea. Because a case reflects the society's view of specific matters, it is possible to assume much about the architectural works copyright in the U.S. through the case analysis.

Under these circumstances, this research attempts to analyze the basic case laws and remedies for various architectural works copyright issues through the U.S. related cases. Although there may be a lot of architectural works infringement cases in the U.S., the case analysis of this research is focused mainly on the Thomas Shine v. David M. Childs and Skidmore Owings & Merrill, LLP Case as the most recent and interesting case as I have found. Also this research refers to several other cases related to the above case.

Ultimately, this research seeks to set the stage for understanding the doctrine architectural copyright and resolving expected copyright conflicts within the architectural design area.

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[1] Item 5 of Para. 1 of Art. 4 of the Korean Copyright Law defines "architectural works" as "architectural copyrighted works including a building, architectural plans, or drawings."

[2] Copyright infringement is defined as an unauthorized violation of the exclusive rights of the copyright owner. *See* Burton C. Allyn, IV, *The Architectural Works Copyright Protection Act of 1990*, http://www.aepronet.org/pn/vol5-no2.html#one#one.

2. THE U.S. ARCHITECTURAL WORKS COPYRIGHT LAW BASICS

(1) THE ARCHITECTURAL WORKS COPYRIGHT PROTECTION ACT, 1990

In 1989, the United States became a party to the Berne Convention for the Protection of Literary and Artistic Works. By the way, membership in the Berne Convention required the United States to protect the works of architecture. Therefore, in 1990, Congress amended the Copyright Act, adding the separate definition for "architectural works"[3], which once again included plans and drawings, but this time added "buildings" to architectural works as a new category of copyrightable material. This is the United States Architectural Works Copyright Protection Act (AWCPA).

Prior to 1990, the United States did not allow structures to be copyrighted, except those few that did not serve any utilitarian purpose. But, after the amendment, if a builder copied an architect's copyrighted blueprints in constructing a house, the builder would be guilty of infringement. Because of this, even a copycat structure made from observations of a copyrighted building could constitute infringement. The 1990 Act retains copyright protection for drawings as "pictorial" or "graphic" works, and building from the original drawings or buildings is now a copyright infringement. In addition, the copyright in an architectural work that has been constructed does not include the right to prevent the making, distributing, or public display of pictures, paintings, photographs, or other pictorial representations of the work, if the building in which the work is embodied is located in or ordinarily visible from a public place.[4]

(2) THE ARCHITECTURAL WORKS COPYRIGHT HOLDER

Usually architects who create architectural works hold the copyrights of their original works from the time they once produced. However, sometimes clients can own the copyright instead of architects, the author of the works. There may be several examples related to this situation.

First, there may be all employment agreements, whether made with permanent or temporary employees, clearly state that employees' work products are "works made for hire." The expression, "work for hire," on the agreement means that architects abandon their rights for the copyrightable works. In other words, the employer owns the copyright to any work prepared by an employee within the scope of his or her employment.[5] The other way to use agreements is that, by adding an article such as "all copyrightable works belong to the client's intellectual property", the client is able to acquire the copyright. Thus, in both cases, not the architects but the clients, have the copyrights.

Second, copyright owners can assign the copyright. This should processed by written materials and be manifested what kind of right assigned. Then the owners have the only rights assigned by the architects.

Third, clients can achieve the right to use drawings and specifications by having architects' license and this license can be established under certain condition.

3. CASE STUDY ON THE U.S. ARCHITECTURAL WORKS COPYRIGHT PROTECTION - THOMAS SHINE V. DAVID M. CHILDS AND SKIDMORE OWINGS & MERRILL, LLP[6]

(1) CASE SUMMARY

This case is about the World Trade Center Site Memorial Competition winner design, David M. Childs' Freedom Tower. Plaintiff Thomas Shine sued David M. Childs and Skidmore, Owings & Merrill, LLP (SOM) for copyright infringement under the United States Copyright Act. Shine alleged that he created designs for an original skyscraper which Childs saw and later copied in the first design plan for the Freedom Tower at the World Trade Center(WTC) site. Then Defendants moved to dismiss the Complaint, or alternatively for summary judgment. For the reasons explained below, defendants' motion for summary judgment was granted in part and

Figure 1.
Shine '99

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[3] 17 U.S.C. § 101.
"An 'architectural work' is the design of a building as embodied in any tangible medium of expression, including a building, architectural plans, or drawings. The work includes the overall form as well as the arrangement and composition of spaces and elements in the design, but does not include individual standard features."
" 'Pictorial, graphic, and sculptural works' include two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, diagrams, models, and technical drawings, including architectural plans. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article."

[4] 17 U.S.C.A. § 120(a).

[5] This is why the many designers at large architectural firm don't have the copyright.

[6] 382 F.Supp.2d 602 (2005).

denied in part.[7]

The District Court, Mukasey J., held that plaintiff's original scale models of skyscrapers were "designs of a building" entitled to copyright protection; models were sufficiently original to be entitled to protection; allegedly infringing skyscraper design was not probatively similar to copyrighted twisting tower design; and the genuine issue of material fact as to whether defendants' design infringed on any of the original aesthetic expressions of copyrighted design precluded summary judgment.[8]

(2) JUDGMENT OF THE CASE

To prevail, plaintiff must prove these particular facts. First, she must prove the ownership of a valid copyright. Second, she must prove the copying of constituent elements of the work that are original. And to prove copying of original elements of her work, in addition to showing originality, plaintiff must demonstrate both that defendants actually copied her works, and that such copying was illegal because there is substantial similarity between each of her works and the alleged infringing work, the Freedom Tower, in this case.

Figure 2.
Olympic Tower

1) ARCHITECTURAL WORKS UNDER THE COPYRIGHT ACT

According to the judgment of the court, Shine '99[9] and Olympic Tower are under the protection of AWCPA. Because Shine '99, although certainly a rough model, is more than a concept or an idea, it is a distinctive design for a building. The important aspect here is whether a tower actually could be constructed from this model is not relevant. This is because AWCPA protects "the design of a building as embodied in any tangible medium of expression ... [including] the overall form as well as the arrangement and composition of spaces and elements in the design....".[10]

Although defendants argue that the shape and form of Shine '99 are so rudimentary and standard that protecting it would be akin to protecting a particular geometric shape, such as "an ellipse, a pyramid, or an egg", the court said that individual arguably "standard" elements of Shine '99, such as its twist or its setbacks, might not be worthy of protection, but the arrangement and composition of the various elements in the model do at least arguably constitute the "design of a building" under the AWCPA.

2) ORIGINALITY IN ARCHITECTURAL WORKS

Originality is the sine qua non of copyright.[11] That is to say that, without originality, works can not be protected by copyright law. Moreover, if a certain element within a work is not original, that element is not able to be protectable "even if other elements, or the work as a whole, warrant protection." [12] The courts criticized the defendants' claims for the originality of the plaintiff's works in the following ways.

First, the court pointed out that defendants failed to acknowledge that plaintiff's "certificates of [copyright] registration constitute prima facie evidence[13] of the validity not only of their copyrights, but also of the originality of [the] works."[14] In addition to this, the court explained that the level of originality and creativity that must be shown was minimal, only an "unmistakable dash of originality needs to be demonstrated, which high standards of uniqueness in creativity were dispensed with."[15]

Second, the court indicated the defendants' failure to prove that the defendant's works was not original. This was apparent according to the AWCPA which stated that "the overall form as well as the arrangement and composition of spaces and elements in the design" of an architectural work might be the subject of a valid copyright. The point was that defendants did not present any evidence that the particular combinations of design elements in either Shine '99 or Olympic Tower were unoriginal. The court confirmed that each of these works had at least the mere "dash of originality" required for copyrightability, not to mention that they both had been copyrighted, and, therefore, were prima facie original.

3) INFRINGEMENT

To prove infringement, plaintiff must first show that his or her work was actually copied. Copying may be established either by direct evidence of copying, or by indirect evidence, including access to the copyrighted

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[7] *See id.*

[8] A judgment granted on a claim or defense about which there is no genuine issue of material fact and upon which the movement is entitled to prevail as a matter of law. Bryan A. Garner(Editor in Chief), Black's Law Dictionary, West, a Thomson business, 2004 at 1476.

[9] Shine '99 is a scale model of twisting tower.

[10] 17 U.S.C. § 101.

[11] Thomas Shine v. David M. Childs and Skidmore Owings & Merrill, LLP, *supra* note 6.

[12] *Boisson,* 273 F.3d at 268.

[13] Evidence that will establish a fact or sustain a judgment unless contradictory evidence is produced. Bryan A. Garner(Editor in Chief), *supra* note 8 at 598.

[14] *See* 17 U.S.C. § 410(c);
"A copyright registration certificate, when issued within five years of the first publication of the work, is prima facie evidence of ownership of a valid copyright."

[15] Folio Impressions, Inc. v. Byer California*,* 937 F.2d 759, 764-65 (2d Cir.1991) (quoting *Weissmann v. Freeman,* 868 F.2d 1313, 1321 (2d Cir.1989)).

work, similarities that are probative of copying between the works, and expert testimony.

① ACTUAL COPYING

Plaintiffs may prove actual copying by showing that defendants had access to their copyrighted works, and that similarities that suggest copying exists between the protected works and the alleged infringing work. The court explained that "[P]robative,' rather than 'substantial' similarity is the correct term in referring to the plaintiff's initial burden of proving actual copying by indirect evidence."

In a copyright infringement case, it is only after actual copying is established that one claiming infringement then proceeds to demonstrate that the copying was improper or unlawful by showing that the second work bears "substantial similarity" to protected expression in the earlier work.[16]

② SUBSTANTIAL SIMILARITY

Actually, since the court of this case had not yet had any occasion to compare the substantial similarity of a copyrighted architectural work such as Olympic Tower to an alleged infringing work before, it was not entirely clear which standard the court should use for the comparison. Under this circumstance, the court referred to two former cases [17] where it analyzed the resemblance between copyrighted works and structures. However, even in those cases, the court generally discussed the similarities between the copyrighted materials and the alleged infringing works, but did not utilize a specific procedure for those comparisons.

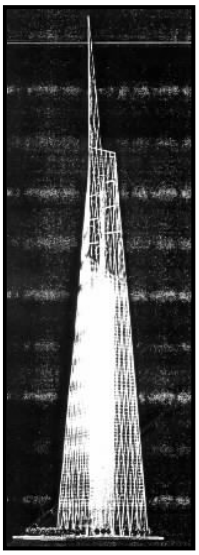

Figure 3. Freedom Tower

Anyway, after careful consideration, the judge chose the "total concept and feel" test for this infringement case. This "total concept and feel" test was usually used to examine the substantial similarity between artistic works in many other cases. So it was considered to be a good standard to judge the substantial similarity between the architectural works of this case[18] by the court. Also the court added that the "total concept and feel" test was not "so incautious," because where it had been applied, courts had taken care to identify "precisely the particular aesthetic decisions – original to the plaintiff and copied by the defendant – that might be thought to make the designs similar in the aggregate." The Court explained further that while the infringement analysis had to begin by dissecting the copyrighted work into its component parts in order to clarify precisely what was not original, infringement analysis was not simply a matter of ascertaining similarity between components viewed in isolation.[19]

Nevertheless, this test may be criticized because of its vagueness due to comparatively subjective standard, "feel." However, as explained above, the copyright infringement is not established by similarity between components viewed in isolation but by similarity between the overall forms. Therefore, in this sense, this test can be useful.

In this case, plaintiff's expert did not comment on whether any similarity existed between Shine '99 and the Freedom Tower. Therefore, the similarity between Shine '99 and Freedom Tower was not granted. On the other hand, experts both of plaintiff and of defendants did not disagree as to the substantial similarity between Olympic Tower and the Freedom Tower. Thus, the court had to determine whether there was the substantial similarity between both towers. As mentioned above, the court used the "total concept and feel" test and this test had been used in artistic works such as carpet designs, quilt designs, sweaters, foam rubber puzzles and the Sturdza case.[20]

In the perspective of ordinary observers or lay observers, the judgment of the substantial similarity between Olympic tower and freedom tower might vary according to the examiners' artistic views. So they could not disagree with whether the substantial similarity is or not between two works. This means that the court could not conclude there was no substantial similarity. Because of this, although the defendants' motion for summary judgment regarding the Freedom Tower infringed upon plaintiff's copyrighted architectural work, Shine '99, was granted, the motion for summary judgment regarding plaintiff's claim that the Freedom Tower infringed upon his another copyrighted architectural work, Olympic Tower, was denied.

(3) ANALYSIS OF THE CASE JUDGMENT

The core problem of this case is that the standard for the judgment of the substantial similarity between the architectural works is in some ways ambiguous. Architectural works always have the architects' subjective interpretations of "beauty", which are the original ideas of

[16] Thomas Shine v. David M. Childs and Skidmore Owings & Merrill, LLP, *supra* note 6.

[17] *See Sparaco,* 303 F.3d at 467-70; *Attia,* 201 F.3d at 56-58(quoting Thomas Shine v. David M. Childs and Skidmore Owings & Merrill, *id*).

[18] "Noting that '[i]n recent years we have found it productive to assess claims of inexact-copy infringement by comparing the contested design's 'total concept and overall feel' with that of the allegedly infringed work," and applying this test to compare two carpet designs. *See* Thomas Shine v. David M. Childs and Skidmore Owings & Merrill, LLP, *id.*

[19] *See id.*

[20] *Sturdza v. United Arab Emirates,* 281 F.3d at 1296(quoting Thomas Shine v. David M. Childs and Skidmore Owings & Merrill, *id).*

architects who created them.[21] In this respect, the judgment of the substantial similarity between architectural works can be different as who examined it. It is not a serious problem when the similarity between two works is so apparent that anyone will conclude in the same way. However, this will be a rare case. This is because people who copied other architects' works might use many devices to conceal their infringements. In Thomas Shine v. David M. Childs and Skidmore Owings & Merrill, LLP case, it seems that the judge chose the standard of "total concept and feel" considering that he had to respect "beauty of art" which was inherent in architectural works. The overall similarity of the concept is demonstrated by parroting properties that are apparent when numerous aesthetic decisions embodied in the plaintiff's work of art -- the excerpting, modifying, and arranging of public domain compositions, if any, together with the development and representation of wholly new motifs and the use of texture and color, etc. And these properties are considered in relation to one another. By the way, this similarity analysis task presents the question of the point of view from which the "concept and feel" substantial similarity analysis should be conducted. Because, as mentioned above, the "concept and feel" by itself differs from individuals. Especially the "feel" varies a lot depending on one's point of view and experience. Hence, this is the main obstacle to solving the architectural works copyright infringement cases. Nevertheless, the overall similarity of concept and feel from the architectural works determines whether there is the copyright infringement or not in the end.

Therefore, although the court held that substantial similarity should be determined not with the help of or solely by experts in the relevant field, but from the perspective of the ordinary observer, it seems more reasonable to focus more on the experts' judgment considering the characteristics of architectural works.[22] In other words, the most effective and best way to solve this problem is to establish the objective standard to evaluate the similarity between the works even though in some ways the subjective aspect in the analysis still remains. For example, in *Eli Attia v. The New York Hospital* case[23], the meaning of concept drawings was explained in the process of the judgment and the importance of them was emphasized by world-famous architects such as Philip Johnson, Richard Meier, and Frank Gehry and etc.[24] However, those experts' opinions were ignored by the court. The court explained like this. "However, the drawings in his Booklets are highly preliminary and generalized; they describe Plaintiff's proposed design at a very general level of abstraction.

Figure 5.
Freedom Tower

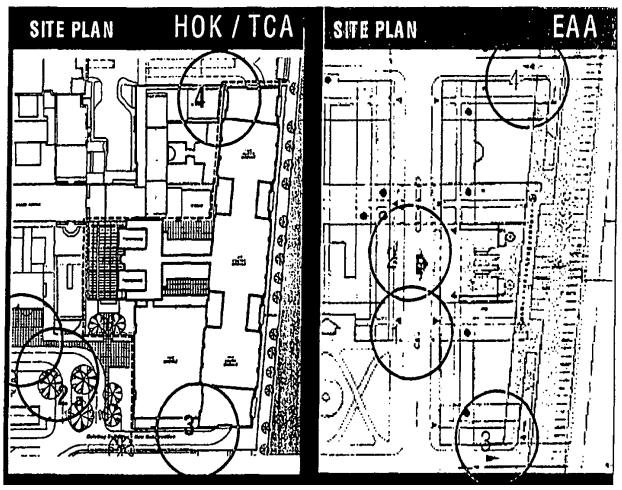

Figure 4.
Site Plans of Eli Attia & HOK/TCA

[21] David Hume said, "Beauty in things exists in the mind that contemplates them." *See* Julian Conrad Juergensmeyer, Thomas E. Roberts, Land Use Planning and Development Regulation Law, Thomson West, 2003 at 493.

[22] "It would be a dangerous undertaking for persons trained only to the law to constitute themselves final judges of the worth of pictorial illustrations, outside of the narrowest and most obvious limits." *See* Bleistein v. Donaldson Lithographing Co., 188 U.S. 239 (1903).

[23] Eli Attia v. Society of the New York Hospital, Hellmuth Obata & Kassabaum, Inc., Taylor Clark Architects, Inc., and HOK/TCA Associated Architechts, P.C., 201 F.3d 50 (1999). This case is about the copyrightability of the concept design or drawings.

[24] "An architectural design, such as the one I prepared for the Hospital (referred to within the profession throughout the world as 'concept design') is neither 'general' nor 'preliminary' but a specific design solution and as such, the most significant part of the architect's creative work; furthermore, its protection is of supreme importance for the art and profession of architecture. This is what every architect knows."(2000 WL 33989127). "Philip Johnson, Richard Meier, and Frank Gehry, among others (who examined my concept design drawings and HOK/TCA's final schematic drawings), have actively demonstrated their grievous concern in this issue of critical importance to architects and architecture [A. C, p. 13-38]. For concept design is the architectural creation itself; it is the first comprehensive expression of the complete architectural design. It follows exactly what the copyright law defines as protected architectural work [FN1]. All that follows the concept design derives from it and consists of elaboration upon it and of technical work, most of which consists of non-copyrightable 'standard features' as manifested in the Defendants' 'schematic design'. The difference between Frank Lloyd Wright's New York Guggenheim Museum or Ustad Isa's Taj Mahal and any mundane building anywhere lies first and foremost in their concept design. If only one thing should be protected in architecture, it is the concept design."(2000 WL 33989127).

Defendants' schematic design drawings, in contrast, which HOK/TCA prepared over several years of work on the Hospital's commission, constitute a detailed expression of how to effectuate the Major Modernization Program by constructing over the F.D.R. Drive and restructuring existing buildings."[25] And it added, "The copying of a line that has no expressive content but has as its sole purpose to identify the position of an existing wall takes only fact and nothing of expression; it does not infringe copyright."[26]

Actually, there were no legal or logical errors in the judgment of *Eli Attia v. The New York Hospital* case. But referring to the court's judgment, there was a problem that the court failed to consider the own characteristics of the architectural works in the process of the similarity analysis. This was in some ways caused by judges' or jurors' little understanding of overall architectural design process. Moreover, this is not a matter of interpretation of law. Rather, this is a matter of lack of understanding of and interest in architectural design. Also, in Thomas Shine v. David M. Childs and Skidmore Owings & Merrill, LLP case, the court said, "The plaintiff's legally protected interest is not, as such, his reputation ... but his interest in the potential financial returns from his [work] which derive from the lay public's approbation of his efforts. The question, therefore, is whether defendant took from plaintiff's works so much of what is pleasing to the ... lay [public] ... that defendant wrongfully appropriated something which belongs to the plaintiff."[27] And the purpose for which the Copyright Acts were adopted was to expand human knowledge for the general good by giving creative persons, authors, exclusive control of the copying of their creations as a financial incentive to create.[28] However, considering the fact that the copyright system was born as a regulation for written materials, when it is applied to other copyrighted works, it must be applied to them with particular consideration of their own characteristics.[29]

In conclusion, if architectural works are focused on the interest of the public, to consider lay observers' points of view are more appropriate in the similarity analysis. However, if architectural works are focused on the artistic aspects, it is more reasonable to consider experts' judgment on the architectural works.

[25] Eli Attia v. Society of the New York Hospital, *See supra* note 23.

[26] *See id.*

[27] Thomas Shine v. David M. Childs and Skidmore Owings & Merrill, LLP, *supra* note 6.

[28] Eli Attia v. Society of the New York Hospital, *supra* note 23.

[29] In the last three hundred years, we have come to apply the concept of "copyright" ever more broadly. But in 1710, it wasn't so much a concept as it was a very particular right. The copyright was born as a very specific set of restrictions: It forbade others from reprinting a book. In 1710, the "copy-right" was a right to use a particular machine to replicate a particular work. It did not go beyond that very narrow right. It did not control any more generally how a work could be *used*. Today the right includes a large collection of restrictions on the freedom of others: It grants the author the exclusive right to copy, the exclusive right to distribute, the exclusive right to perform, and so on. Lawrence Lessig, Free Culture, The Penguin Press, 2004 at 87-88.

(4) SUMMARY OF THE ANALYSIS

As demonstrated above, in the U.S. copyright infringement cases, plaintiffs must prove that they are the authors of the architectural works and whether the works have the originality. Also, they must prove that defendants actually copied their own works and the copying is illegal because there is the substantial similarity between the original works and the alleged infringing works. Plaintiff may prove actual copying by showing that defendants had access to his copyrighted works, and that similarities that suggest copying exist between the protected works and the alleged infringing work.

Under the U.S. current law, it is apparent that architectural works are "copyrightable." However, it is not appropriate that the eligibility of architectural works for copyright protection under the law is subject to the same limitation as other copyrightable works. Because architectural works inherently have artistic and technological contents, their value derives from both artistic and practical ways. For this reason, the architectural works copyright must be considered both in artistic and technological contexts.

Actually, it is very tough task to establish an objective standard which can be applied to any architectural works copyright infringement cases. Moreover, the artistic aspect of architecture makes it more difficult to find out the originality -- the essential element of copyright -- of architectural works and the substantial similarity between architectural works related to copyright infringement cases. The fact that the examiners' subjective opinions may more or less affect the judgment is the most difficult part in dealing especially with architectural works copyright infringement cases. In the end, this problem can be solved when each case is fully considered with the advice of professionals who engage in architectural design area although that was somewhat disregarded in the *Eli Attia v. The New York Hospital* case.

4. CONCLUSION

Architecture, as human creative work of art, is composed of various studies about our society and hence, architectural design affects people's lives in many ways. This causes architectural works copyright to be more complicated than other copyrighted works and also makes it possible to expand the scope of the architectural works copyright.

In Korea, architectural works copyright cases are rare due to the lack of information and understanding of the architectural works copyright. Architectural works copyright can promote architectural creative activities and enhance the quality of architecture as art. Nevertheless, there is little effort to advance the studies of architectural works copyright in the architectural design area.

Under these circumstances, this research has attempted to share the basic case laws and remedies for

various copyright issues in the architectural design area through the U.S. case analysis. Also, this research tried to provide a broad overview of architectural works copyright infringement and set the stage for resolving expected conflicts within that area through the case analysis.

The central argument about the architectural works copyright is as follows. First, it is not appropriate to judge architectural copyrighted works on the same basis as applied in other copyrighted works. The architectural works copyright must be considered both in artistic and technological contexts because of its own characteristics. Therefore, in addition to the current Korean copyright law, more comprehensible and specific regulations that can impose remedies more suited to the architectural works copyright violations are needed and they should enable architects to fulfill their architectural activities under wide range of copyright protection. For example, until now, architects seldom register copyrights for their works. Hence, for the full protection of the architectural works copyright and for relieving the burden of proof in litigation the copyright registration should be extended to individual architect's works.

Second, the fundamental knowledge of architectural works copyright information is needed to improve copyright protection in the architectural design area as well as to provide for the globalizing design practice. As this research has attempted to study several U.S. cases, to analyze other countries' leading cases is also helpful to expand our scope of architectural works copyright protection. Moreover, it is also important to study foreign copyright protection policies and other disciplines' copyright protection doctrines to strengthen the wider range of understanding of copyright basis.

Besides those remedies as proposed above, undoubtedly more efforts unaddressed or insufficiently considered by this research are needed and most importantly, these all efforts will be rewarded when constant researches based on Korean and other countries' architectural copyright cases can support them and those studies should hopefully serve as an effective starting point for resolving expected copyright conflicts within the ever-advancing architectural design area.

REFERENCES

BOOKS

Bryan A. Garner(Editor in Chief), Black's Law Dictionary, West, a Thomson business, 2004.

Julian Conrad Juergensmeyer, Thomas E. Roberts, Land Use Planning and Development Regulation Law, Thomson West, 2003.

Lawrence Lessig, CODE and other laws of cyberspace, Basic Books, 1999.

Lawrence Lessig, Free Culture, The Penguin Press, 2004.

Robert Burrell, Allison Coleman, Copyright Exceptions: The Digital Impact, Cambridge University Press, 2005.

THESES

Architectural Record, *MANTORS: Since 1990, architectural works, whether buildings, plans, or drawings, have been protected under copyright law*, Architectural Record, Volume 189; Issue 11, 2003.

Burton C. Allyn, IV, *The Architectural Works Copyright Protection Act of 1990*, http://www.aepronet.org/pn/vol5-no2.html#one#one.

Jon O. Newman, *New Lyrics for an Old Melody: The Idea/Expression Dichotomy in the Computer Age,* 17 Cardozo Arts & Ent. L.J. 691, 1999.

CASES

Bleistein v. Donaldson Lithographing Co., 188 U.S. 239 (1903).

Demetriades v. Kaufmann, 690 F.Supp. 289, 295 (S.D.N.Y.1988).

Folio Impressions, Inc. v. Byer California, 937 F.2d 759, 764-65 (2d Cir.1991).

Attia v. Society of New York Hospital, 201 F.3d 50 (1999).

Sparaco v. Lawler, Matusky, Skelly Engineers, 313 F.Supp.2d 247 (2004).

Thomas Shine v. David M. Childs and Skidmore Owings & Merrill, LLP, 382 F.Supp.2d 602 (2005).

INTERNET

Architectural Institute of Korea
http://www.aik.or.kr.

Architecture & Urban Research Information Center
http://www.auric.or.kr.

Korea Institute of Registered Architects
http://www.kira.or.kr.

Korea Ministry of Government Legislation
http://www.moleg.go.kr.

Lower Manhattan Development Corporation
http://www.renewnyc.org/default.aspx.
http://www.wtcsitememorial.org/index.html.

Supreme Court of Korea
http://scourt.go.kr.

U.S. Copyright Office
http://www.copyright.gov.

Westlaw
http://westlaw.com.

PHOTOS

Figure 1. Shine ’99;
Thomas Shine v. David M. Childs and Skidmore Owings & Merrill, LLP, 382 F.Supp.2d 602 (2005).

Figure 2. Olympic Tower;
Thomas Shine v. David M. Childs and Skidmore Owings & Merrill, LLP, 382 F.Supp.2d 602 (2005).

Figure 3. Freedom Tower;
Thomas Shine v. David M. Childs and Skidmore Owings & Merrill, LLP, 382 F.Supp.2d 602 (2005).

Figure 4. Site Plans of Eli Attia & HOK/TCA
Attia v. Society of New York Hospital, 2001 WL 34106003 (Appellate Brief), Brief and Appendix for Defendants-Appellees (Jan. 17, 2001).

Figure 5. Freedom Tower
http://search.renewnyc.com/plan_des_dev/wtc_site/new_design_plans/freedom_tower/freedom_tower_elements_4.asp.
(Data of Submission : 2006. 7.2)