

Incompleteness of the Rights and Authorities Assumed by a Trustee of Intellectual Property Rights

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When a trust is set up, a trustee takes over any and all rights and authorities to control and dispose of assets held in trust. This is doubtlessly a common understanding. If the assets in the trust are intellectual property rights, however, incompleteness of such power of a trustee is expected. Unless such incompleteness of the rights and authorities of the trustee is acknowledged, the objective of the original grantor or the interest of a beneficiary can be harmed. Assume a situation where multiple copyright holders entrust a trustee with their respective copyrights to their work, by setting up multiple trusts under the same trustee. Use of a work which copyrights are held in one of those trusts may result in a conflict against another copyright held in another trust. If the trustee seeks an injunction against such a use by exercising the latter copyright, the trustee will face a conflict between his/her duty as the trustee of the former work and that as the trustee of the latter work. In such a case, terminating both trusts is inconvenient for all the involved parties, including beneficiaries of both trusts, and there should be room where the original grantor or beneficiary of the latter trust can exercise the latter copyrights while they are held in trust. Little has been discussed about this issue and no theoretical explanations or resolutions have been presented regarding this difficult situation.

Meanwhile, a series of lawsuits have arisen since 1998 over conflicts between two musical works, both of which were entrusted to one copyr-

ight management institution and shed light on such a difficult problem. This report proposes that such a problem can be solved by finding co-ownership of assets held in a trust by both the original grantor or the beneficiary and the trustee, and also shows limitation of applicability of such solution. The quest for solution to such a problem may bring a new dimension in the discussion of the nature of the rights of a beneficiary with regard to assets in a trust.