

我國著作權集體管理機制現況及趨勢之研究

中文摘要

著作權集體管理機制（Copyright Collective Management Mechanism），誕生已有數百年的歷史，國際間已經發展出相當成熟的運作機制，相較於我國自民國八十年起才開始有類似收費機制運作，發展經驗可說是相當地懸殊。而我國該機制之正式法制化——著作權仲介團體條例於民國八十六年十一月五日公布施行以來，十年間實務上爭議不斷，機制運作陷於巨大的危機。加以近年來我國推動數位內容產業，著作權授權議題更是攸關數位影音應用產業未來的發展，在在顯示我國著作權集體管理機制確有重新審視之必要。

於是自民國九十五年起在經濟部智慧財產局的主導下，開始召集各方進行對話，並藉此機會蒐集意見以推動著作權仲介團體條例的修法工程。除了國內的改革，國際間在過去十年來也開始對著作權集體管理機制的運作進行檢討，此乃由於數位時代的到來，著作權集體管理機制受到各種新興數位科技，諸如：網際網路、數位權利管理、點對點檔案分享等之巨大衝擊，此種態勢影響機制的保護、行使和管理的環境，使得國際著作權社群開始思考著作權集體管理機制應該如何因應數位環境所帶來的挑戰。

有鑑於此，本研究希望能夠立基於我國著作權集體管理機制的現況，以過去實務上及近日修法歷程中所遭遇的爭議問題為著眼點出發，回顧過去國際間著作權集體管理機制運作經驗，並探討近年國際間發展趨勢，以勾勒出我國機制未來藍圖。探討的重點包括：著作權集體管理機制的歷史與法律背景、意涵、功能與操作原則，以為我國機制擘畫運作之參考；著作權集體管理機制運作場域——我國著作權產業的發展現況；採納「利害關係人」觀點，釐清我國機制中的各方利害關係人為何、所追求的目標何在及互相的利益衝突，進而界定出各方利害關係人未來參與機制的適當形式；評析我國著作權集體管理相關法制的沿革、內容與修

法；並針對國際間近年兩大發展趨勢：數位化及跨越疆界的著作權集體管理趨勢，先行探討有哪些新興的數位科技對著作權集體管理機制帶來衝擊，評估其影響與機制的新角色定位，其次討論跨越疆界趨勢：單一窗口、跨國界集體管理及其衍生的公平交易法課題。

最後回應本研究的研究問題，論述對我國實務現況之觀察、著作權集體管理法制總評、國際運作經驗及發展趨勢對我國的啟示，並且提出三大項建議：我國著作權集體管理團體現階段要務、政府的角色、對我國未來機制的幾點省思，是為本研究之結論與建議。

關鍵字：著作權、集體管理、仲介團體、著作權產業、利害關係人、數位化著作權、單一窗口、跨國著作權管理

A STUDY ON COPYRIGHT COLLECTIVE MANAGEMENT MECHANISM IN TAIWAN: EXPLORING THE CURRENT SITUATION AND ENVISIONING THE FUTURE

ABSTRACT

Copyright Collective Management Mechanism has been established for centuries and developed maturely worldwide. However, it was not until 1991 that some similar collecting organizations started to operate in Taiwan. Compared with some countries around the world, the development experience is quite different. After the formal legalization—the enactment of the Copyright Intermediary Organizations Act on November 5 1997, there were lots of argues emerged in the aspect of law enforcement. Besides, Taiwan’s government has promoted the development of digital content industry in recent years. The issues concerning copyright licensing will have a big impact on the development of audio-visual application industry in the future. It is therefore, necessary to raise concerns and re-scrutinize Taiwan’s copyright collective management mechanism.

Since 2006, Taiwan Intellectual Property Office (TIPO) has started to gather public opinion for revising the act. Except the revolution in Taiwan, people started to examine the exercise situation of copyright collective management internationally in last ten years. This is because the advent of digital technologies, such as: the Internet, digital rights management, peer-to-peer file sharing, has changed the environment surrounding the copyrighted works. International copyright societies started to think about how to deal with the challenges brought in digital era.

This thesis aims to discuss some of these issues by exploring the current situation

of Taiwan's copyright collective management mechanism, the obstacles encountered in the past practice, the process of law revising, and the latest development trends worldwide.

First of all, Chapter One is an Introduction to this thesis. Then Chapter Two discusses the historical and legal background, definition, functions, and operating guidelines of the mechanism for future reference when Taiwan intends to modify current mechanism. Chapter Three describes the developing situation of Taiwan's copyright industries. Chapter Four adopts "Stakeholder Analysis" to clarify who are the stakeholders in Taiwan's mechanism, their pursuing goals, and conflicts of interest between them. Chapter Five traces the developing process, content and revision in relation to Taiwan's copyright collective management legislation. Chapter Six outlines the two latest development trends: digital and cross-border copyright collective management. At first, it analyzes the impact of new digital technologies and the new role of copyright collective management mechanism. Integration trends: one-stop-shop, cross-border collective management and antitrust concerns, are explored as well. At the end of this thesis, Chapter Seven, I propose three recommendations for Taiwan's mechanism in the future: the urgent missions of Taiwan's collective management organizations, the role of government, and the self-examination. It is my hope the recommendations contribute to the better resolution of existing and future challenges.

Keywords: Copyright, Collective management, Collecting societies, Copyright industries, Stakeholder, Digital copyright, One-Stop-Shop, Cross-border management of copyright