Media Content: Problems of Intellectual Property Rights Protection in Digital Economy

Submitted by: Russia
Session #2: Specific aspects of copyright and related rights protection on the Internet

Tackling Challenges of Online Copyright Protection – Solutions in Chinese Taipei

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Summary

I. Online copyright infringement: Actions taken in Chinese Taipei
   - 1.1. Recent infringement activities
   - 1.2. Amendment of Copyright Act (2007, 2019)
   - 1.3. Enforcement of Copyright-blocking of illegal website

II. Impact of Covid-19 Pandemic on the digital content trade
I. Online copyright infringement

- Actions taken in Chinese Taipei
1.1. Recent infringement activities
Recent infringement activities

- Piracy in those old days: FTP, P2P (ex. Torrent, emule)

- Piracy nowadays: streaming
  - Illegal audio/video by means of webpage (embedded player with hyperlinks), Over-The-Top (OTT) boxes, mobile devices

1.1. Websites
  - 1.1.1. Aggregator providing hyperlinks (some services with extracts): ex. Google News, Pirate Bay (links or p2p seeds)
  - 1.1.2. Webpage with embedded video player: ex. YouTube, pirates’ sites
Hyperlinks on video aggregator website
下町火箭 第二季 第4集

西郷殿線上看 簡介

西郷殿線上看 影集

第1集 第2集 第3集 第4集 第5集
第6集 第7集 第8集 第9集 第10集
第11集 第12集 第13集 第14集
第15集 第16集 第17集 第18集 第19集
第20集 第21集 第22集 第23集 第24集
第26集 第27集 第28集 第29集 第30集
第31集 第32集 第33集 第34集 第35集
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第41集 第42集 第43集 第44集 第45集
Recent infringement activities

1.2. APP installed in client’s Devices

- ex. computer, mobile phone & OTT box
- Video-watching APP (possibly mixed with P2P tech)
  - Aggregator of hyperlinks pointing contents website for watching by streaming
四大升級
無所不能的精彩視界

300多個CDN節目，全球雲加速
截至2018年11月，PRO2全球CDN節目數達到300多個，遍布10多個國家的地區，10多個國家
遍布優秀節目。目前，CDN節目資源已覆蓋台灣、香港、新加坡、英國、馬來西亞等海外地區，全面支援
無線加速，安博盒子前進全球佈局。

突破區域限制，使用第三方APP不是問題
PRO2通過optimizing使用全球雲加速的節目，用戶使用PRO2可以盡享所欲的節目資源外各大網
上流動APP。突破區域限制的安博盒子，將為用戶提供更多、更精確的內容，提供無限可能，讓
您盡情暢遊。

WIFI無線大升級，傳輸速率提高30%
支持更強更穩定的WiFi無線體驗，更高的傳輸速率，更低的傳輸延遲，並
且可以節電更省電，可按喜好播放，影音大片，播放更流暢更快速，體驗
更穩定，傳輸速率提高30%，帶寬應用更流暢，使用更穩定無掛機。

支持手機觀看影視節目，隨時隨地追劇
PRO2支持普通手機、平板、及時更新更多影視節目，無線網絡可直接安裝
Android系統，iOS系統，或直接Windows，只需一部安博盒子，即可聯動更多設備，體驗無限
的視頻精彩，享受視聽的視界！
Legal Question 1.
Does providing (1) “simple” hyperlinks to illegal contents in the aggregator websites (platforms)/(2) the embedded video player (hyperlinks to illegal contents) constitutes the infringement of public transmission right? If not, violation of the deemed-infringement of copyright?

Q2.
Does providing a streaming APP violates the deemed-infringement of copyright? (art.87, I, (7))
1.2. Amendment of Copyright Act (2007, 2019)
### Comparison of art. 87, I (8) & (7)

<table>
<thead>
<tr>
<th>Target</th>
<th>87, I (7) (amended on 2007/07/14)</th>
<th>87, I (8) (amended on 2019/05/01)</th>
</tr>
</thead>
<tbody>
<tr>
<td>P2P programs (illegal purpose)</td>
<td>computer programs which have aggregated the Internet Protocol Addresses -&gt; ex. applications installed in OTT box, mobile devices</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Persons sanctioned</th>
<th>provider</th>
<th>Provider, manufacturer, importer, seller</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actor receiving benefit</td>
<td>None</td>
<td>None</td>
</tr>
</tbody>
</table>

| Acts prohibited | Provide to the public computer programs or other technology that can be used to publicly transmit or reproduce works | (1)To provide the public with computer programs which have aggregated the Internet Protocol Addresses of such works.  
(2)To direct, assist or preset paths to the public for using computer programs in the preceding item.  
(3)To manufacture, import or sell equipment or devices preloaded with the computer programs of the first item. |
“1. Any of the following circumstances, except as otherwise provided under this Act, shall be deemed an infringement of copyright or plate rights:

- ...

- (7) To provide to the public computer programs or other technology that can be used to publicly transmit or reproduce works, with the intent to allow the public to infringe economic rights by means of public transmission or reproduction by means of the Internet of the works of another, without the consent of or a license from the economic rights holder, and to receive benefit therefrom.
“II. A person who undertakes the actions set out in subparagraph 7 above shall be deemed to have "intent" pursuant to that subparagraph when the advertising or other active measures employed by the person instigates, solicits, incites, or persuades the public to use the computer program or other technology provided by that person for the purpose of infringing upon the economic rights of others.”
Knowing that the works broadcast or transmitted publicly by another person infringe economic rights, with the intent to provide the public to access such works by the Internet, acting as follows, and to receive benefit therefrom:

1. To provide the public with computer programs which have aggregated the Internet Protocol Addresses of such works.
2. To direct, assist or preset paths to the public for using computer programs in the preceding item.
3. To manufacture, import or sell equipment or devices preloaded with the computer programs of the first item.”
Acts prohibited in the art. 87.1(8)

1. To provide the public this programs

2. To direct, assist or preset paths to the public for using this programs

3. To manufacture, import or sell equipment or devices preloaded with this programs

Computer programs aggregated with hyperlinks
Evolution of **Chinese Taipei IP Court case law**

<table>
<thead>
<tr>
<th>Technology</th>
<th>Act of communication</th>
<th>infringement</th>
<th>Deemed infringement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Webpage</td>
<td>Embedded video</td>
<td>X</td>
<td>X (<em>possibly to be considered an accomplice or abettor to the principal infringer if he knew of the illegality</em>)</td>
</tr>
<tr>
<td></td>
<td>hyperlinks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OTT box</td>
<td>Hyperlinks aggregation</td>
<td>X</td>
<td>§87,1(7)*</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-&gt;§87,1(8)</td>
</tr>
<tr>
<td>Mobile phone application</td>
<td>Hyperlinks aggregation</td>
<td>X</td>
<td>§87,1(7)*</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>-&gt;§87,1(8)</td>
</tr>
</tbody>
</table>

*Before 2019 amendment*: TIPC extended the application 87,1(7) to OTT boxes, mobile applications
1.3. Enforcement of Copyright
- blocking of illegal website
1.3. Enforcement of Copyright

- Blocking of illegal website
  - Though illegal website blocking practice is not stipulated in Copyright Act or criminal laws, the Shilin district court had authorized the “seizure” of domain name of a pirate site in 2020/04.
  - This is not a court injunction to ISP, but to TW Network Info Center (registration of DN).

- Efficiency & effectivity in debate...

- Need more judicial & technological collaboration with member economies.
II. Impact of Covid-19 Pandemic on the digital content trade

- Focus on the amendment of Copyright Act related to online learning
Impact

- Increasing activities at home under siege of the pandemic
  - Educational activities: online learning (courses)

- Draft amendment of Copyright Act (2021/04/08): adjusting (enlarging) the limitations of author’s economic rights for educational use of his work
  - Exception regime of Taiwan Copyright Act: limited exceptions + general fair use (≈ USA)
  - Balance between the author’s right and the public interest (educational, cultural purpose)
    - ART. 46 for school teaching: DRM (public transmission), triple test
    - ART. 46-1 for general educational use: DRM (public transmission), non-commercial use, notification & compensation
Art. 46 Use for teaching in school

- User concerned: all levels of legally established schools and their teachers
- Purpose: within a necessary scope for the purpose of teaching in schools
- Legitimate use of work already publicly divulged:
  1. reproduction, adaptation, distribution, public performance, public presentation and public re-communication.
  2. public broadcast, public transmission or public re-communication: subjected to the right management technological measures to control the access of non-registered students.

- All uses under the examination of triple test (Berne convention, TRIPS art.13)
Art. 46-1 Education use of educational institutions

- User concerned: all levels of legally established schools or educational institutions and their teachers
  - Not applied to private (commercial) online courses (ex. Coursera, Udacity)

- Purpose: within a necessary scope for the purpose of meeting educational needs

- Legitimate exploitation of work already divulged:
  - *public broadcast, public transmission or public re-communication: subject to the right management technological measures to control the access of non-registered students.
  - Not for commercial use.
  - the exploiter of the work shall notify the economic rights holder and pay appropriate compensation for use
More observations
If time permits....
Challenges to be conquered in digital content trade

◆ Extension of the doctrine of right exhaustion in the digital environment?


● Reselling used software licences: the right holder Oracle (software) cannot prevent a perpetual licensee who has downloaded the software from the internet from selling his ‘used’ licence to Usedsoft company.

● A Pandora box opened? Do consumers who buy digital music, books, games deserve more protection vis-à-vis the protection of copyright?

► E-book: “Tom Kabinet” case (EUCJ, C-263/18, 2019/12/19)

● “The CJEU ruled that the supply of e-books qualifies as “an act of communication to the public” under the InfoSoc Directive instead of “a distribution to the public” as is the case with physical books. It follows that copyright in e-books cannot be exhausted.”
Challenges to be conquered in digital content trade

**Cross-border issues**

1. Strong *protection of consumer* in certain domestic law practice

- STEAM (platform of online games) attacked by French consumers in Paris District Court (TGI) (2019)
  - TGI Paris found that the *principle of exhaustion* applied to videogames acquired via the *Steam platform*, enabling their onward sale by Steam users. -*Application of the principle of exhaustion in a digital environment*
Challenges to be conquered in digital content trade

❖ Cross-border issues

➥ 2. Risks of censorship of contents in certain member economies.

❖ Excessive censorship of contents (esp. political factors) will slow down the development of trade
Thanks for your Attention!

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Chinese Taipei