



**Asia-Pacific
Economic Cooperation**

2021/CTI/WKSP2/011

Day 1 Session 2

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

Submitted by: Russia



**Workshop on Protection of Intellectual
Property Rights in Digital Content Trade
20-21 April 2021**

Protection of Intellectual Property Rights in Digital Content Trade

(Virtual Workshop) 20-21 April 2021

Organizer: Ministry of Economic Development of Russian Federation



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

Tackling Challenges of Online Copyright Protection – Solutions in Chinese Taipei

Szu-Ting CHEN (陳思廷)

Docteur en droit

Associate Professor of Law
Cheng Kung University (Chinese Taipei)



2021.04.20

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

楓林網

搜索...



線上漫畫

台劇列表

日劇列表

韓劇列表

陸劇列表

歐美劇列表

港劇列表

動畫列表

東南亞劇列表

綜藝節目

分類：日劇2018

排序：日期

佈局：



鐵證懸案：真實之門 第...



下町火箭 第二季



移居就來岐阜



牙狼GARO：JINGA



我是大哥大



黃昏流星群



我不會讓給你/絕不交給你



騷擾遊戲



塑料與微笑 SP/2018日...



小偵探 真人版：警視...



快盜戰隊魯邦連者VS警...



一定要喜歡社團活動嗎



昭和元祿落語心中 真人版



萬福



羅布奥特曼



天·天和街浪子

1 2 3 4 ... > 最善 >

廣告

新飯店推薦
日韓 | 港台 | 泰國

4折起

搶先入住 →

條款與條件適用

動畫分類 | 台劇 | 韓劇 | 陸劇 | 日劇 | 港劇 | 泰劇 | 馬劇 | 綜藝

Copyright 2018 © 楓林網 All rights reserved. 聯絡我們

Embedded video player

8maple.ru/285077/

Google 日曆 頭條要聞 | 蘋果日... 月旦法學知識庫-每... +++全國法規資料... 我的

下町火箭 第二季 第4集

■ 儲存到 Facebook 請注意！請使用chrome瀏覽器收看視頻
底下多個分流,若某分流無法觀看,請切換其它分流！

熱門連載 經典完結 最新漫畫 精選全彩

分流C 分流S

圆柱形的陶瓷制品
円柱形のものとして特許申請したとします

RCC

专利申请范围订正...事后订正请求给予已申请专利保护的範圍
クレーム補正...申請した特許が独占できる範圍を
事後的に修正すること

月旦法學知識庫-每... +++全國法規資料... 我的地圖 法學資料檢索系統 Laws

西郷殿線上看 簡介

西郷殿幼名小吉，是個捕鰻魚的好手，在偶遇藩主島津齊彬後，立志成為一個頂天立地的武士。不料在一次私鬥裡，右手受傷，再無法握刀，幾近絕望的小吉受到齊彬的鼓舞，立志成才，茁壯成長。

西郷殿 線上看

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	特別番:鈴木良平與渡邊謙的120日	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25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	第36集	第37集	第38集	第39集
第40集	特別番:西郷與大久保各自的明治之路	特別番:革命！西郷與4個男人	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 節點數達到 300 多個，覆蓋 15 多個國家和地區，10 多個運營商。目前，CDN 節點資源已覆蓋台灣、香港、新加坡、美國、馬來西亞等海外地區，全面支援海外加速，安博盒子推進全球化佈局。



突破區域限制，使用第三方APP不是問題

PRO2 無論從技術還是內容上都有質的飛躍，用戶使用 PRO2 可以随心所欲的觀看國內外各大第三方視頻 APP。突破區域限制的安博盒子，將為您展示更多、更精彩的内容。擺脫地區限制，讓您随心所欲。



WIFI無線大升級，傳輸速率提高30%

具備更強更穩定的WIFI無線信號，更高速的傳送速率，更遠的傳輸距離，並且可以讓盒子更省電，可使線上播放、看影視大片、玩遊戲更加流暢，信號更穩定，傳輸速率提高30%，帶給用戶更流暢、更舒適的觀影體驗。



支持手機觀看影視節目，隨時隨地追劇

PRO2 支持在手機、平板、及電腦上觀看影視內容，無論您使用的是 Android 系統、ISO 系統，還是 Windows，只需一部安博盒子，就可以暢通多部設備，隨時隨地觀看影視內容，而且是免費的囉！



UPRO-台灣版 全新升級UI介面

【告】安博盒子已連續使用4年以上，未來會繼續提供免費升級服務！The ubox system services has b



Recent infringement activities

► 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)

	87, I (7) (amended on 2007/07/14)	87, I (8) (amended on 2019/05/01)
target	P2P programs (illegal purpose)	computer programs which have aggregated the Internet Protocol Addresses -> ex. applications installed in OTT box, mobile devices
Persons sanctioned	provider	Provider, manufacturer, importer, seller
Actor receiving benefit	○	○
Acts prohibited	<u>provide</u> to the public computer programs or other technology that can be used to publicly transmit or reproduce works	<ul style="list-style-type: none"> • (1) <u>To provide</u> the public with computer programs which have aggregated the <u>Internet Protocol Addresses</u> of such works. • (2) <u>To direct, assist or preset paths</u> to the public for using computer programs in the preceding item. • (3) <u>To manufacture, import or sell</u> equipment or devices preloaded with the computer programs of the first item.

Taiwan Copyright Act (Amendment of 2007/07/14)
- Article 87, I (7) (deemed infringement)

◆ “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.”

Taiwan Copyright Act (Amendment of 2019)

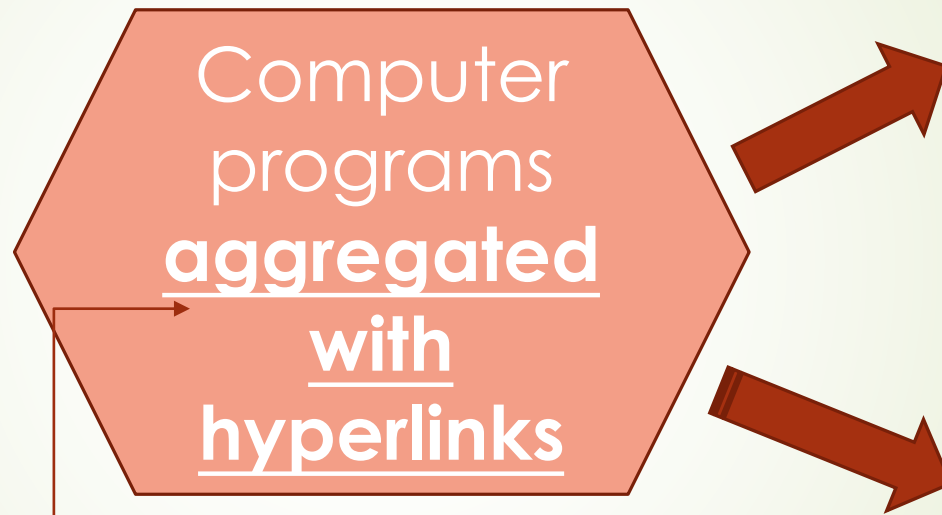
- Article 87, I (8) (deemed infringement)

➔ I, “ (8) **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

Evolution of Chinese Taipei IP Court case law

	technology	Act of communication	infringement	Deemed infringement
Webpage	Embedded video hyperlinks	X	X (*possibly to be considered an accomplice or abettor to the principal infringer if he knew of the illegality)	X ->§87,1(8)? (There is no decision yet!)
OTT box	Hyperlinks aggregation	X	<ul style="list-style-type: none"> • Knowing of illicitness • Lucrative purpose Deemed infringement §87,1(7)*	§87,1(7)* ->§87,1(8)
Mobile phone application	Hyperlinks aggregation	X	X Deemed infringement §87,1(7)*	§87,1(7)* ->§87,1(8)

***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.



網站已經遭到查禁

(This Domain Has Been Seized)

已經違反中華民國著作權法第九十一條及九十二條規範，全部或部分內容涉屬盜版，正進入司法偵查中。

This site has violated the Copyright Law of the Republic of China(Taiwan).The Criminals have be currently in judicial investigation.

內政部警政署刑事警察局電偵大隊 敬啟



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

Reaction 1

◆ 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
- Legitime use of work already publicly divulgated:
 - 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)

Reaction 2

- ◆ 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
 - ▶ Legitime exploitation of work already divulgated:
 - *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?

- Software: “UsedSoft v. Oracle” case (EUCJ, C-128/11, 2012/070)
 - 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!

Chen.szuting@gmail.com

Chinese Taipei

