著作權合理使用之價值創新與未來展望

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摘 要

欲解決數位環境中著作權之諸多爭議,理應回歸著作權之本質與限制,重新琢磨著作權之法律上地位,其中最重要者以合理使用最能捍衛公共領域之維持。由於合理使用係一衡平法則,並無具體之法律定義與界線,究竟應如何適用合理使用原則?其審酌標準爲何?始終爲著作權學者及法院亟思解決之議題。如何使合理使用適用流程明確化、具體化,期能對合理使用之傳統理論創造全新之價值,進而爲價值創新,乃本論文之首要目標。

此外,媒介乃作者與社會大眾間溝通之橋樑,在媒介與科技重要性與日遽增之數位時代,媒介/科技提供者亦占有學重足輕的地位,如何權衡著作權保護與鼓勵科技創新,媒介/科技提供者相關著作權法律責任誠屬一大難題。故如何釐清著作權之權利範圍與媒介/科技提供者之法律責任,以求互相衝突利益之平衡,開創著作權之未來趨勢,乃本論文之第二要務。

本論文首先以著作權之哲學基礎爲出發點,從科技發展之沿革,討論新興科技之出現如何挑戰著作權法,且爲因應上開科技革命之衝擊,我國、外國(以美國爲主)著作權法如何因時、因地制宜,甚至爲協調各國之經濟利益,許多國家共同協議簽訂多項國際性公約。於整理歸納著作權之立法趨勢之後,進一步從美國案例中介紹新興科技對於著作權法之挑戰,嘗試歸納各實際案例中所隱含之政策考量,並藉由我國著作權法相關判決之統計資料與法律的經濟分析之評析,釐清法院就新興科技爭議,於現有著作權法架構下如何以合理使用原則,平衡著作權人利益與社會大眾利益。

最後,本論文擬架構專屬於我國之著作權合理使用制度,從個案研究中發現臺灣社會獨有之特色及我國著作權法制目前所遭遇之挑戰,剖析著作權之四面關係,研究數位時代下著作權合理使用之角色與重要性,嘗試自理論與個案研究中將合理使用予以類型化,建議一清晰易懂之合理使用判斷邏輯體系,輔以媒介中立原則爲中心之解決方案,復從數案例中驗證本論文所提議之合理使用判斷邏輯體系其可行性,以供我國法院於審理相關新興科技案例及立法機關建置著作權制度之參考。



Value Innovation and Future Perspectives on Fair Use

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ABSTRACT

Following the development of technology, the scope of copyright has been adjusted and expanded. Copyright owner's interest and the public's interest have been in tension since the origin of the legal concept of copyright. How can the law strike a balance between the copyright and the public domain? The fair use doctrine plays a significant role in the balance between these two competing interests.

Because fair use is an equitable rule of reason, scholars and courts have been trying to solve the below question: How to apply the fair use doctrine to copyright issues? How to consider all factors in issued cases? The first goal of the dissertation is to embody the fair use doctrine and, further, to achieve rewards of value innovation.

On the other hand, media with advanced technology are a critical bridge between authors and the public. The incentive to distribute is as important as the incentive to create. If technology providers can fully develop new forms of media or technology without copyright infringement liability, they can provide the public more advanced tools. Therefore, media neutrality as technology neutrality should be at the center of new technology issues. The second goal of the dissertation is to clarify liabilities of technology providers from the future perspective of copyright.

iii