內容不受著作權法保護之資料庫的法律保護

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摘　要

不論人文或自然科學領域，不分學術研究與商業應用，資料庫皆已成為不可或缺的輔助工具。隨著資料量不斷的快速增長，電子式資料庫以其簡便、及時、負載量大的功能逐漸成為使用者最方便運用的資料庫形式。對於不受著作權保護的資料庫內容，由於其編排與選擇不具備原創性，進而使資料庫無法符合著作權法對編輯著作原創性的要求，而未受到法律的保護。然而，資料庫的建構者資金投入大，加諸其便利卻為使用者所頻繁的使用的情況下，如何從法律規範中尋求其權益的法律保護是為新興課題。

實務上，大多數的資料庫業者皆會採取科技方法來保護自己的資料庫不受未經授權之第三人任意擷取、利用。但是，科技保護方法畢竟仍為一種自力救濟，對於權利的保護需由公權力的介入才能形成強制力的效果。但是對於內容不受著作權保護的資料庫而言，其特性造成該資料庫在其他的法律上，如專利、民法，亦難獲得法律保護。若欲以專法保護，歐盟的資料庫指令實行近十年以來，仍有許多的學者認為條文中上存在許多爭議點，歐盟各會員國的法院易尚未形成統一的判決解釋。而美國的立法草案，雖然陸續提出許多版本，但至今仍未有任何相關立法通過。

從法律的經濟分析理論對於智慧財產權的保護分析來看，其著眼點在於：立法中給予權利之保護其功能係為追求社會的最大效率。藉由法律經濟分析的理論架構，若給予資料庫法律權利之保護，從建造人自身權益以及社會成本效益為視角，並考量影響侵權行為者的關鍵因素（例如其不法行為被發現的機率，以及不法行為所帶來的懲罰嚴厲程度），適度地給予資料庫法律保護將可帶來對是項產業發展的正面影響。

著作權保護模式、特別權保護模式、公平交易法保護模式在對資料庫建造人權益皆有其優缺點。本文嘗試提出混合保護的立法模式，供後續研究參考。同時，歐美相關法律案的討論與進展，以及法院的解釋、判決，亦值得我們持續觀察以尋求獲致對資料庫保護的立法參考。

Legal Protection of Databases of Noncopyrightable Contents

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ABSTRACT

Whether in the humanities or in natural science, databases have become necessary assisting tools for academic research or business application. With the speedy increase of data, electronic databases are becoming the most convenient form of databases for their easiness to use, real time response, and large loading. If the database contents are not eligible for copyright protection, and are collected or arranged in such a way that the resulting work as a whole doesn't constitute an original work of authorship, the database cannot conform to the originality requirement of the copyright law and therefore cannot be protected by copyright. However, the producers of databases invest large resources in establishing the databases and improving the convenience for the users. Seeking for legal protection of databases is a newly developing issue.

In practice, most databases proprietors will use technological measures to protect their own databases from being collected or re-used by an unauthorized third party. Technological measures are a way of self-protection, and will not have coercive force unless there is an interference of the public power. For the databases of noncopyrightible contents, their characteristics make them also unprotected by other laws. The EU directives, which give the databases sui generis rights, although have been effective for almost ten years, still have many controversial issues. The courts

of the Members have not come to a unified explanation or judgment. There are many drafts statutes in the U.S.A. but none has been passed.

From the point of economic analysis of law, the function of lawmaking is to pursue maximum social efficiency. According to the economic analysis model, if we give proper legal rights to the database owner, considering the producer's rights, social costs, and the key factors affecting the infringer's acts, it will bring long term positive effects to the industry.

The copyright protection, sui generic protection, and fair trade law protection models all have their benefits and flaws. This article attempts to suggest a mixed model for lawmaking. In addition, the discussion and developments of related judgments and draft codes in Europe and America are also worthy of our attention.