

論我國著作權法公開播送權保護之現況與未來：以 WTO 爭
端解決案件 United States – Section 110(5) of the U.S.

Copyright Act 為中心

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摘 要

公開播送權係一無形傳達之著作財產權態樣，隨著新科技之發展，各種型態之著作皆有可能以更廣泛的被散播，廣播聲音及影像之新技術更將傳播著作之可能，作更進一步延伸，有了衛星與有線系統之助益，著作之表演及再現得傳播至地球的每一個角落。由於公開播送此種利用型態具有與時俱進之性質，新形態之產生往往亦使得著作權利人發現其傳統利用型態遭受侵害，並且有必要持續地評估檢視其權利之範圍與內涵。

在公眾場所由業者在提供其專門服務內容外，伴隨提供音樂或電視節目供公眾欣賞、娛樂係在我國社會中相當普遍之行為，然而此種行為，根據我國著作權法之規定，涉及何種著作財產權之利用態樣？並非無疑問，實務界與學術界相關之見解存有許多歧異，然而如此之疑異，不但會造成權利人行使權利之界線不清，利用人人惶恐，擔心是否觸法而不自知。

我國於二〇〇二年既已成為 WTO 會員國，則對於 WTO 相關協定例如 TRIPs 之重要原則、以及經由爭端解決案例中累積及確立之法律見解之瞭解及研究尤其重要，從而本文藉由 WTO 爭端解決案件 United States – Section 110(5) of the US Copyright Act 一案之觀點，探討我國公開播送之爭議，透過對 WTO 爭端案件 United States – Section 110(5) of the US Copyright Act 之研究，從中瞭解爭端解決小組對於伯恩公約之解讀以及國際間公開播送權保護之法律見解，然後

以之為基礎，對我國實務見解以及音樂仲介業團體實踐上對於有關公開播送權之保護進行檢視，為我國公開播送權所引發下列之爭議問題，就現行著作權法之適用以及未來修法之建議提出意見。

關鍵字：著作權、公開播送、世界貿易組織、爭端解決案件、伯恩公約、與貿易有關智慧財產權協定



A Study on the Protection of Public Communication Right Under
Taiwan Copyright Act From the Perspective of WTO Dispute
Settlement Case--United States – Section 110(5) of the U.S.
Copyright Act

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ABSTRACT

Public communication right is an economic right of copyrights in a nonmaterial form. And as the new technology develops, all kinds of work are likely to be communicated more extensively. New technology of broadcasting sounds and images, moreover, intensify the possibility of such communication. With the facilitation of satellite and cable system, the performance and display of works can be communicated to every corner of the planet. Because of such characteristic that public communication right advances with times, it is necessary to re-examine and re-estimate the scope and definition of public communication continuously to prevent the infringement on the traditional exploitation resulted from newly-developed ways of exploitation.

In a public establishment, in addition to the specific services, it is a common phenomenon that the proprietors provide music or TV programs to their customers. However, what kinds of copyrights are involved in such proprietors' exploitation is still controvertible. The opinions of practitioners and scholars in Taiwan differ from each others'. Such inconsistent opinions on this issue may result in ambiguous scope of the right holders and anxiety of the exploiters.

Since Taiwan has become a WTO member in 2002, the relevant regulations and

doctrine regarding WTO Agreements such as TRIPs and its relevant understanding and research established and accumulated in the Dispute Settlement Cases are especially important. Therefore, the purpose of this article is going to probe into the issues regarding public communication in Taiwan from the perspective of the WTO Dispute Settlement Cases, namely United States – Section 110(5) of the US Copyright Act to understand the panel’s interpretation for Berne Convention and the international point of view regarding the protection of the public communication right through the research on United States – Section 110(5) of the US Copyright Act. Thereafter, based on the Panel’s legal opinion, this article will examine the practice and legal opinion regarding the protection of public communication right in Taiwan and provide advice on the application of Taiwan Copyright Act and its amendment in the future to solve the current issues with regard to public communication right in Taiwan.

Key Words: Copyright, Public Communication, WTO, Dispute Settlement Cases, Berne Convention, TRIPs

