

從美國法角度探討我國著作權 民事間接侵權責任相類制度

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摘 要

我國 2007 年著作權法之修正，於該法第 87 條引進 2005 年由美國最高法院在 *MGM v. Grokster* 案當中所建立之「誘導侵權責任法則（inducement rule）」，屬於美國著作權間接侵權責任制度中，一嶄新之支分法則。在此之前，我國著作權法未曾跟隨國際潮流，將任何民事間接侵權責任制度植入著作權法當中。實則間接侵權責任之相關制度，於各國著作權法制當中已佔有一席之地，並且為網路服務提供者責任限制立法規制之主要對象，應有必要做一全面且完整之審視。本文將藉由台、美兩國相關制度之比較，探討我國著作權法未引進美國傳統間接侵權責任制度，卻借用誘導侵權責任法則之理由。同時，由各個角度探究我國著作權法關於引誘侵權責任立法之合理性與適當性。期冀以本文生拋磚引玉之效，引發國內對於著作權民事間接侵權責任制度之關注與應用。

關鍵詞：間接侵權責任、輔助侵權責任、代位侵權責任、誘導侵權責任、引誘侵權責任、*Grokster* 案

A Review of the Resembling Rules of the Civil Indirect Copyright Liability in Taiwan — from the Aspect of the U.S. Legal System

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Abstract

The amendment of Taiwanese Copyright Act in 2007 has borrowed the inducement rule which has been established by the Supreme Court of the United States in the *MGM. v. Grokster* case in 2005. The inducement rule is one of the common-law doctrines of indirect copyright liability which originally derives from patent law in the United States. Before that, Taiwan has never followed the international trend by putting the civil-law doctrines of indirect liability in the Copyright Law when facing the new forms of copyright infringement. The related legal institutions of indirect liability, in fact, should be comprehensively examined since they have recently assured a place in different copyright systems around the world and have been one of the reasons for the legislation of limitations for online service providers' copyright liability. Through a comparative study on the related rules of Taiwan and the U.S., this article will discuss the reason why Taiwanese Copyright Law does not import the traditional doctrines of indirect liability, but instead borrows the inducement rule from the United States. The article,

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furthermore, will go into the reasonableness and appropriateness of the provisions provided in Article 87 of the Taiwanese 2007 Amended Copyright Act from various angles. Hopefully the finding of this article will spark further discussion and concern about the application of the civil-law institutions of copyright indirect liability in Taiwan.

Keywords: indirect copyright liability, contributory liability, vicarious liability, inducement liability, inducement rule, *Grokster*