

論歐盟新著作權指令對網路產業發展的影響

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摘要

2016 年歐盟執委會 (European Commission, 以下簡稱執委會) 發表「數位單一市場著作權指令 (Proposal for a Directive of the European Parliament and of the Council on Copyright in the Digital Single Market, 以下簡稱新著作權指令)」草案, 其中第 11 條及第 13 條兩具爭議性的重要條文引起全球的高度關注。第 11 條是關於新聞出版物之網路使用的保護, 新聞出版者可向搜尋引擎、社群媒體平台或新聞整合性網站等收取費用, 被批評無異為新聞出版者提供新的著作鄰接權 (neighboring right)。第 13 條要求網路服務提供者 (Internet services provider, ISP) 須採用自動化的過濾機制, 審查所有上傳內容, 其目的在解決所謂的「價值落差 (value gap)」問題, 亦即 ISP 基於上傳於其平台上的著作權作品所獲之利益, 與其因作品之登載, 而原應給付予著作權人之授權金間的獲利差異。惟課以 ISP 事前審查的責任, 遭人質疑不僅與歐盟「電子商務指令 (Directive 2000/31/EC)」禁止 ISP 採取預防性措施, 防止侵權行為發生的規定相左; 過濾監控之程序亦有違反《歐盟基本權利憲章》(Charter of Fundamental Rights of the European Union) 相關規定之疑慮; 網路審查更對網路的表意自由有不利影響。新著作權指令顯然已打破文化產業與網路科技產業間, 爭奪網路主導權的向來均勢, 產生重新洗牌的效應。

雖然 2018 年歐洲議會 (European Parliament) 已針對上述條文的爭議提出修正意見, 由於仍屬歐洲議會單方的談判意見, 在本文撰寫時, 尚未與歐盟理事會 (Council of the Europe Union) 及作為歐盟行政部門之執委會, 達成三方談判共識, 形成最終指令內容。故本文仍將以執委會發表之新著作權指令為主要範本, 再佐以歐洲議會的修正意見, 進行相關議題的探討, 以期完整呈現 ISP 新著作權責任的制定過程與立法爭議。

關鍵字: 著作權指令、新聞出版者、著作鄰接權、網路服務提供者、網路審查

Abstract

The European Commission presented the Proposal for a Directive of the European

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Parliament and of the Council on Copyright in the Digital Single Market (hereinafter Copyright Proposal) in September 2016. This Copyright Proposal has attracted considerable criticism, in particular article 11 and article 13. Article 11 provides the protection of press publications concerning digital uses. Online platforms (mainly social medias and news aggregators) should pay to the press publishers for their news reported by them, entirely or via excerpts. Because of the sharing of links to news online, such charge is called as “link tax”. It is criticized that article 11 grants press publishers a new neighboring right which is detrimental to freedom of information flow on the internet. Article 13 places a disproportionate burden on internet service providers (ISP) to filter any uploaded contents for the purpose of closing the value gap between rights-holders and ISPs. The adoption of monitoring obligation for ISPs shows a contradiction between Copyright Proposal and EU E-commerce Directive. The application of filtering systems could have bad impacts on the protection under Charter of Fundamental Rights of the European Union. Further, the network monitoring would also deprive users of the room for freedom of expression. These two controversial articles have caused a new battle between cultural industries and information technology industries for taking back the network.

In September 2018, European Parliament introduced substantive amendments with regard to article 11 and article 13 in response to the above criticism. As a negotiating position on copyright rules for European Parliament, whether these amendments will be agreed to the content of a final directive still remains pending during this writing. Based on Copyright Proposal published by European Commission, this article tries to explore the debates caused by article 11 and article 13, and the amendments introduced by European Parliament for the purpose of comprehensively presenting the development of the new Copyright Directive and its influence on ISP's liability.

Keywords: Copyright Directive, press publisher, neighboring right, Internet Service Provider, Network Monitor