

# **Discussion about Copyright Misuse Doctrine**

## **—By way of Development of US Law**

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### **Abstract**

In order to promote the progress of culture, science and technology, a country creates copyright system and grants authors the exclusive rights to their works for limited times. However, during exercising the exclusive rights, copyright owners may gain an advantage to a certain degree in the relevant market because of works of uniqueness and irreplaceability.

At present, various countries in the world regulate the behavior of intellectual proprietors (including copyright owners) in exercising their exclusive rights with the help of system of competition law. It is difficult to cover all improper or misuse behavior of exercising copyright in the system of competition law for lack of component of “market power” and with difficulty to define the “relevant market” of works. How to regulate a behavior of such vague area, to protect public interests, and to avoid influencing rights of those who have damage from copyright owners’ exercising rights while ensuring copyright owners’ exclusive rights, is really an important and urgent subject.

The purpose of this thesis is to discuss how to apply laws and principles when improper or misuse behavior occurs while copyright owners exercise the exclusive rights. And through document analysis, case study and comparison of foreign laws, this thesis also reviews what role the present competition law system (Fair Trade Act) in Taiwan plays while balancing copyright, social welfare and conflict between copyright and public interests and analyzes the weakness of Fair Trade Act in order to show the necessity of “copyright misuse principle” in Taiwan law system.

At first, this thesis discusses the origin and meaning of “unclean hands” and “misuse” and function of “copyright misuse” doctrine to supplement the weakness of competition laws by comparing difference between misuse doctrine and the competition law system.

United States has gradually developed the “copyright misuse” doctrine to

resolve the insufficiency of competition law since it found this problem more than 50 years ago. This thesis introduces the related important cases, describes the progress and confirmation of “patent misuse” doctrine in suits and explains influence of “patent misuse” doctrine on development of “copyright misuse” doctrine.

This thesis draws lessons from possible meaning, standards of judgment and effect of “copyright misuse” doctrine during its development in practice of United States and discusses advantage and disadvantage of “copyright misuse” doctrine at present. And this thesis reviews “misuse” principle in Taiwan and opinions of the Supreme Court and relationship between it and Article 45 of Fair Trade Act when it applies to the territory of copyright. Finally, this thesis provides some suggestion about the standard of judgment and effect of copyright misuse doctrine in Taiwan for judicial or administrative authorities to handle with such an issue.

Key words: equity, unclean hands, misuse copyright, copyright misuse, patent misuse, defenses, Fair Trade Law Article 45, Copyright Act, Civil Law Article 148

