



SCCR33, ITEM 6: EXCEPTIONS AND LIMITATIONS FOR LIBRARIES AND ARCHIVES: Technological Protection Measures

The Principle

Exceptions and Limitations granted by law should not be emptied of their effect through the application technological protection measures (TPMs). Libraries should be allowed to acquire and apply tools to remove such measures, in order to fulfil their public interest missions.

The Problem

'Technological protection measures' is a broad term that covers many different types of technology used to control access to digital copyrighted content, or to prevent users from copying or sharing it. Content protected by TPMs can include music, movies, software, games, eBooks, scholarly articles, and content stored on protected areas of a website (behind a paywall, for example).

With libraries buying a growing share of content in digital format, TPMs are becoming a significant factor in library, archive and museum work. They can play a role in the fight against piracy, as a complement to the legal system. However, they can also prevent libraries, archives and museums from fulfilling their public service missions by making it impossible to make use of exceptions and limitations.

As well as posing technical challenges – circumvention devices and technical expertise are required to remove TPMs – copyright laws can forbid this removal, even for what would otherwise be legitimate uses of content under exceptions and limitations. Without action, TPMs will continue to present barriers to research and education, as well as keeping significant portions of digital cultural heritage locked away.

Indeed, it is the use of TPMs that has rendered the UK's exception for text and data mining ineffective. While researchers have the legal right to perform such analysis, they do not have the right to remove the TPMs that prevent them from doing this in reality.

The Solution

Libraries and archives want to ensure that they are able to circumvent a technological protection measure which prevents them from making use of content in a way permitted by copyright exceptions.

Member States recently recognised issues posed by TPMs in including a TPM Article in the Marrakesh Treaty. Article 7 of the Marrakesh Treaty (2013) provides a useful precedent for language on TPMs to be included in a treaty for libraries and archives:

Contracting Parties shall take appropriate measures, as necessary, to ensure that when they provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures, this legal protection does not prevent beneficiary persons from enjoying the limitations and exceptions provided for in this Treaty.

Without a provision ensuring that libraries, archives and museums can circumvent TPMs in order to provide services recognised as legitimate under copyright exceptions, all other copyright exceptions risk being rendered effectively useless, at least as far as digital content is concerned.



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Talking Points

- Exceptions and Limitations to copyright are there for a reason. Since the Berne Convention, they have been recognised as central to ensuring that copyright is balanced, and promotes education and research.
- While technological protection measures can play a useful role in combatting piracy, they can also be abused either to prevent legitimate uses of books or other works, or at least to make libraries pay again in order to enjoy their rights.
- As already provided for in the Treaty of Marrakesh, to avoid making exceptions and limitations for libraries and archives meaningless, and to ensure that the will of decision-makers is effective, it should be legal to acquire and apply tools to remove TPMs which prevent legitimate uses of copyrighted works.