

Abstract: Legal Protection of Technological Measures

-A comparative study of US, European and Chinese anti-circumvention rules

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Digital technology and the internet have radically altered the economics of copyright law such that there was even a claim of the death of copyright law. Copyright holders seek to protect themselves in two ways: by employing technological measures and lobbying for stronger legal protection, the latter of which lead to the anti-circumvention rules. Intense sympathy was given to copyright holders at that time. Alongside the strong lobbying of the content industry, both the U.S. and the EU adopted broad anti-circumvention rules. Part I of this paper recognizes the legitimacy of the anti-circumvention rules as an affirmation of rightholders' self-help remedies against large scale copyright infringements, and gives a brief overview of the international legal framework regarding the legal protection of technological measures. Part II and Part III of this paper compare the U.S. and EU models of anti-circumvention rules. Even though the EU anti-circumvention rules are modeled after the U.S. Digital Millennium Copyright Act, they differ from their U.S. counterparts in some respects, especially in defining the exceptions to the legal protection of technological measures. Part IV of this paper examines some impacts of the anti-circumvention rules on the public and consumers. The development and popularity of technological measures have considerably strengthened copyright holders' control over their works and changed the balance between copyright holders on the one side and the public and the consumers on the other has evolved. Copyright holders do not have to be passive and try to get compensated after damage has occurred. With efficient technological measures, copyright holders can now realize their legitimate but also some illegitimate interests *ex-ante*. Consumers, on the contrary, often have to resort to law to defend their rights. Technology not only serves as an apparatus of legal enforcement, but also competes with law in some respects. While some of the fears expressed by some commentators towards the anti-circumvention rules have not materialized, such as digital lock-up and the death of fair use, the anti-circumvention rules do have some negative impacts, especially on the public interest, such as the chilling effects on science and academic activities, along with the emergence of the privatization of law. Part V of this paper first provides a critical review of the Chinese anti-circumvention rules. The current anti-circumvention rules in China are not only too general and thus create many uncertainties, but are partially discriminatory. There is thus a need to take legislative measures. Part V of this paper then makes some recommendations on how to overcome the ambiguities of the Chinese anti-circumvention rules, emphasizing that as a developing country, China should take affirmative measures

to ensure that the public interest is protected. Part VI of this paper discusses the relationship between copyright law and technology, and concludes that technology should in no case replace the law.