

# OVERREACHING TECHNOLOGICAL MEANS FOR PROTECTION OF COPYRIGHT: IDENTIFYING THE LIMITS OF COPYRIGHT IN WORKS IN DIGITAL FORM IN THE UNITED STATES AND THE UNITED KINGDOM<sup>1</sup>

This Note examines the purpose of copyright law, the application and scope of copyright legislation in the United Kingdom and the United States, and the nature and function of Digital Rights Management Systems (DRMS).<sup>2</sup> The analysis suggests that DRMS have the potential to upset the balance of interests that copyright law seeks to preserve. It concludes that: (1) providing a legal cause of action against those who circumvent DRMS is justifiable only insofar as DRMS preserve rights afforded to the copyright owner by law; and (2) that the laws proscribing circumvention

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1. Much of the intellectual property law of the United Kingdom has its origins in European Union law. This Note focuses on the copyright law of the United Kingdom, rather than European Union law more generally, because copyright law in the European Union is the area of intellectual property law which is, at present, the least harmonized. ANDREW GOWERS, H.M. TREASURY, THE GOWERS REVIEW OF INTELLECTUAL PROPERTY 18 (2006), *available at* [http://www.hm-treasury.gov.uk/media/6/E/pbr06\\_gowers\\_report\\_755.pdf](http://www.hm-treasury.gov.uk/media/6/E/pbr06_gowers_report_755.pdf) (noting the disharmony except for important features of copyright law such as the term of copyright protection and the maximum scope of exceptions to copyright protection). Additionally, it is useful, in the context of a European framework constructed through directives that permit flexibility in implementation, to select a single jurisdiction and focus upon that jurisdiction's experiences. Imposition of legal norms by the European Union through the mechanism of this directive system permits a degree of variation in the implementation of a directive. Moreover, the United Kingdom has a long history of copyright protection and European influence has already been injected into an existing and sophisticated framework of law which justifies this Note's focus on U.K. copyright law.

2. DRMS refers to the technological methods used by copyright owners to control access to, and the use of, copyrighted works in digital format. They are essentially methods of protecting copyrighted materials, designed by the copyright owner to prevent unauthorized duplication of the work.

DRMS are means used to identify and control usage of digitally stored material:

From a functional perspective, DRM means many things to many people. For some it is simply about the technical process of securing content in a digital form. To others, it is the entire technical process of supporting the exchange of rights and content on networks like the Internet. For convenience, DRM is often separated into two functional areas. [1] The identification and description of intellectual property, rights pertaining to works and to parties involved in their creation of administration (digital rights management); [and] [2] [t]he (technical) enforcement of usage restrictions (digital management of rights).

DRM may therefore refer to the technologies and/or processes that are applied to digital content to describe and identify it and/or to define, apply and enforce usage rules in a secure manner.

JEFFREY P. CUNARD ET AL., WORLD INTELLECTUAL PROPERTY ORGANIZATION, STANDING COMMITTEE ON COPYRIGHT AND RELATED RIGHTS, CURRENT DEVELOPMENTS IN THE FIELD OF DIGITAL RIGHTS MANAGEMENT 4 (2003), *available at* [http://www.wipo.int/documents/en/meetings/2003/sccr/pdf/sccr\\_10\\_2.pdf](http://www.wipo.int/documents/en/meetings/2003/sccr/pdf/sccr_10_2.pdf).