ACCESS TO WORKS PROTECTED BY COPYRIGHT: RIGHT OR PRIVILEGE?

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ABSTRACT

This paper addresses the question of whether access to work protected by copyright in the digital environment is a right or a privilege.

In the analogue world works protected by copyright were typically embodied in physical objects, such as books. The user gained access to the underlying work (the literary work, in my example) by being in possession of the physical object. Embodiment of a work in such a format that possession of the physical object did not provide access to the work was unknown, and so copyright law made no provision for an exclusive right to control access to a work.

The digital era introduced media that made it possible to possess the physical object embodying a work without necessarily being able simultaneously to access such work. This is done by means of access controls such as encryption. A user who wants access to an encrypted work will need something more than mere possession in order to gain access. Since users do not always have the keys to unlock these access controls, they circumvent these controls.

Article 11 of the WIPO Copyright Treaty of 1996 (the WCT) addresses the circumvention of technological protection measures (access control is a type of technological protection).

Article 11 of the WCT has been implemented in the United States, the European Union as well as Australia. Although South Africa signed the WCT, it has not yet implemented its provisions in national legislation.

While gaining access to a work protected by copyright in the analogue world was not an infringement of copyright, the legislative protection of access controls in the digital world made it an infringement. Access is a necessary prerequisite to use in the digital world, and users who do not have access keys will not only be prevented from accessing the work but also from using the work.

KEY WORDS

access controls

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circumvention of access controls

circumvention devices

technological protection measures

trafficking in circumvention devices

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1 INTRODUCTION

Copyright law protects the rights of an author of an original work. It basically grants a monopoly to the author.[1] This monopoly consists of a bundle of exclusive rights that may be exercised by only the author himself, or by another with his or her authorization.[2] These exclusive rights include the right to make a copy of the work, the right to distribute the work, and the right to alter or modify the work. A person who exercises any of these rights without the author's consent infringes his copyright.[3] There are quite a number of works (such as literary, artistic, and musical works, and sound recordings)[4] that are eligible for copyright protection.[5]

The author's exclusive rights are, however, subject to certain exceptions. These exceptions enable users of protected works, under certain circumstances, to use those works without the author's authorization without the users' infringing copyright.[6] The best example of such use is, of course, research. A user is allowed to make a copy of a work for the purposes of private study or research, provided that the user does not copy a substantial part of the work.[7] So an exception serves as a defence to an action for copyright infringement.

2 ACCESS IN THE ANALOGUE WORLD

In the analogue world, works protected by copyright were typically embodied in physical objects. A literary work would, for example, be embodied in a book; or a sound recording on a music cassette. A user who wished to exercise a user privilege had to access the work before he could use it. This did not present any problem: the user gained access to the underlying work (the literary work, in my example) by being in possession of the physical object embodying the work (the book itself). In the analogue world, therefore, the only requirement for exercising user privileges was that the user must have had access to the work, and access was gained by possession of the physical object embodying the work.

The embodiment of a work in such a format that possession of the physical object did not provide access to the work protected by copyright was unknown. So copyright law did not recognise a right to control access as such – access was merely a consequence of physical possession. The only control that authors had over access to their works was the limited control they had over the access to the physical copies embodying their works. This is recognized in

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[1] For purposes of this discussion I shall use the term 'author' to refer to both creators (authors in the narrow sense of the word) as well as copyright owners, even though the two terms are not synonymous. The term 'author' usually refers to the first maker or creator of a work, while 'copyright owner' refers to the person or entity entitled to exercise the economic rights relating to the work.

[2] Section 6-11B of the South African Copyright Act 98 of 1978 (the 'Act').

[3] Section 23(1) of the Act.

[4] Section 2 of the Act.

[5] If they meet the inherent and formal requirements for protection.

[6] The exceptions are listed in sections 12-19B of the Act.

[7] Section 12(1)(a) of the Act.

copyright legislation in the guise of the distribution[8] and communication to the public[9] rights.

3 ACCESS IN THE DIGITAL WORLD

All of this changed in the 1980s with the advent of satellite transmissions and signals. Transmissions and signals are not embodied in physical, tangible objects, which means that these two categories of works exist separate and distinct from physical objects. Possession of a physical object was no longer a prerequisite for access to a transmission or a signal - these works can be accessed without possession of a physical object. The only requirement for access is a playback device that would translate the intangible signals and transmissions in a form susceptible to the human senses in order to experience the work. Access was no longer limited to those who had physical possession of the objects embodying the works - even those without physical possession, can illegitimately intercept and access transmissions and signals. Unauthorised access thus became a reality, and it is also unauthorised access, and not unauthorised copying, that became the main threat to the rights of authors.[10]

The separation of works from the physical objects embodying them did not stop with transmissions and signals. Digitization made it possible to dematerialize any type of work into electronic or digital format, and therefore potentially any work can now exist separate and distinct from a physical object. A consequences of the separation of the work and the object containing the work is that possession no longer is a requirement for access - a user can access a work without being in 'possession' of a physical object (the Internet is a good example of this type of access).Authors could no longer control access by physically controlling the distribution and communication to the public of their works.

4 PROTECTION OF ACCESS IN THE DIGITAL WORLD

The digital world demanded new measures to enable authors to exercise control over access to their works. The authors themselves took the first step to protect their digital works against unauthorised access and subsequent copyright infringement by employing contractual and technological protections.[11]

'Shrink-wrap'[12] and 'click-wrap'[13] agreements are examples of such contractual protections.

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[8] In *Harper & Row, Publishers, Inc v Nation Enterprises* 471 US 539 (1985), the American Supreme Court has construed the distribution right as the right to give the author control over the determination to grant 'access' to his work, that is to disclose and offer to the public, for purchase if he or she so chooses.

[9] The traditional right of communicating a work to the public is the right of the author to control and condition access to his or her work by charging the public for such access (by charging, for example, admission to a movie).

[10] Jonathan Weinberg 'Digital TV, Copy Control, and Public Policy' (2002) *Cardozo Arts and Entertainment Law Journal* 277-294 at 281.

[11] WR Cornish *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights* (1999) Sweet & Maxwell § 13-87.

[12] In the case of a 'shrink-wrap' contract a printed standard form agreement is affixed to the surface of a package of computer software and sealed in a plastic or cellophane wrapper. By opening the package the purchaser accepts the offer made on the standard form agreement and a valid contract, separate from the contract of sale, arises. S J Davidson, SJ Berg and M Kapsner 'Open, Click, Download, Send - To What Have You Agreed?' (2001) *Internet Law* 1-14 at 6; O H Dean *Handbook of South African Copyright Law* Loose-leaf Service 9 1999 1-86 - 1-87; E Fleischmann. 'The Impact of Digital Technology on Copyright Law' (1988) *Journal of Patent and Trademark Office* 5-26 at 21; Michael Landau 'Digital Downloads, Copy Code, and U.S. Copyright Law' *9th Annual Conference on Intellectual Property Law and Policy, New York*, 19 April 2001, 1-24 at 21; and Tana Pistorius 'The Enforceability of Shrink Wrap Agreements in South Africa.' (1993) *South African Mercantile Law Journal* 1-19 at 3-10, 19.

There are also several examples of protection technologies,[14] one of which being technological protection measures.

Technological protection measures can be integrated in software or built into the hardware.[15] The best known example of a technological protection measure is encryption.[16] A technological protection measure can either control access to a work (access control) or it can control use of a work once it has been accessed (copy control).[17]

In order to access a technologically protected digital work, a user needs to bypass access control. This can be accomplished legitimately by using the access key provided by the author. Such an access key can be a password or a decryption key. Access controls can also be bypassed illegitimately by hacking or circumventing it.

Access key are usually provided against the payment of a fee. A number of users did not want to pay for the privilege to access a protected work and reverted to hacking or circumventing access controls in order to gain free access to works. Time proved access controls to be in fact quite vulnerable to circumvention.[18] The international community perceived circumvention as a serious threat to the rights of authors, and as a result concluded the WIPO[19] Copyright Treaty (the WCT).

4.1 The WIPO Copyright Treaty

The WCT was adopted in 1996. Article 11[20] of the Treaty prohibits the circumvention of technological protection measures. It is generally accepted[21] that the technological protection measures referred to in Article 11 include both access controls and copy controls. Article 11 prohibits only the conduct of circumvention – it is silent as to whether it also pertains to the trafficking in devices used for circumventing purposes. Instead, Article 11 leaves it to Contracting Parties to refine its provisions and to provide for exceptions to the prohibition.

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[13] In the case of a 'click-wrap' agreement, the person seeking access to the content must agree to accept (by 'click-on') the contractual offer displayed on the computer screen before he will gain access to the material. The offer made by the author will ordinarily be in standard form: take or leave. Cornish op cit note 8 at § 13-87. After acceptance of the offer, a contract arises. Davidson et al op cit note 9 at 7.

[14] According to the classification followed by the WIPO Copyright Treaty of 1996.

[15] Committee on Intellectual Property Rights and the Emerging Information Infrastructure; Computer Science and Telecommunications Board; Commission on Physical Sciences, Mathematics, and Applications; National Research Council 'The Digital Dilemma: Intellectual Property in the Information Age' (2001) *Ohio State Law Journal* 951-971 at 962-963; A Lucas 'Copyright Law and Technical Protection Devices' (1997) *Columbia - VLA Journal of Law and the Arts* 225-238 at 226.

[16] Sometimes also referred to as wrapping or enveloping. DS Marks and B H Turnbull 'Technical Protection Measures The Intersection of Technology, Law and Commercial Licences' (2000) *European Intellectual Property Review* 198-213 at 212.

[17] Lucas op cit note 15 at 227.

[18] N Hanbidge 'DRM: Can It Deliver?' (2001) *Entertainment Law Review* 138-140 at 140.

[19] World Intellectual Property Organization.

[20] It reads as follows: 'Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors in connection with the exercise of their rights under this Treaty or the Berne Convention and that restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law.'

[21] See, inter alia, *<http://www.ifpi.org/site-content/library/wipo%20treaties%20-%20technical%20 measures.pdf>*, last visited on 2002.04.05.

4.2 The US Digital Millennium Copyright Act

The United States of America was one of the first developed countries to ratify the WCT. Section 1201 of the Digital Millennium Copyright Act of 1998[22] (the DMCA) contains the prohibition on the circumvention of technological measures. This section is very detailed and relates to copy controls[23] as well as access controls.[24] It prohibits both the act of circumventing access control,[25] as well as the trafficking in devices used to circumvent access control. The DMCA thus specifically provides protection for access controls by safeguarding them against circumvention.

4.3 The EC Directive on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society

In Europe, Article 6 of the Directive on the Harmonisation of Certain Aspects of Copyright and Related Rights in the Information Society of 2001[26] implements Article 11 of the WCT. It seeks to protect 'effective technological measures'. In terms of Article 6(3), a 'technological measure' is a measure that prevents or restricts acts 'not authorized by the right holder of any copyright as provided for by law'. It provides that a technological measure[27] is deemed to be 'effective' where the use of a protected work is 'controlled by right holders through application of an access control or protection process...' So the 'effective technological measures' referred to in article 6(1) specifically includes access controls. Like the DMCA, the Directive prohibits not merely the act of circumventing access control, but also devices used to circumvent access controls.

4.4 The Australian Copyright Act and AUFTA

In Australia the Copyright Amendment (Digital Agenda) Act[28] amended the Australian Copyright Act[29] to implement the prohibition on circumvention, even though Australia was not a party to the WCT. A new section 116A was inserted to prohibit the trafficking in devices used to circumvent technological protection measures. The definition of a technological protection measure expressly includes access controls.[30]

After adoption of the Copyright Amendment (Digital Agenda) Act, Australia concluded the Australia United States Free Trade Agreement (AUSFTA) with the United States.[31] This

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[22] Pub. L No. 105-304, 112 Stat. 2860 (28 October 1998).

[23] 17 USC § 1201(b).

[24] 17 USC § 1201(a).

[25] 17 USC § 1201(a)(1).

[26] Directive 2001/29/EC of the European Parliament and the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, available at <*http://europa.eu.int/documents/comm/index_en.htm*>, last visited on 2004.03.11.

[27] 17 USC § 1201(a)(2).

[28] Act 110 of 2000, available at <*http://www.austlii.edu.au/au/legis/cth/consol_act/ca1968133/* >, last visited on 2005.04.25.

[29] Australian Copyright Act of 1968.

[30] Section 10(1)(a) of the Australian Copyright Act.

[31] The final text of the AUSFTA was signed in Washinton DC on 18 May 2004. On 1 January 2005, the Australia-United States Free Trade Agreement (AUSFTA) entered into force. The full text of the agreement is available at <*http://scaleplus.law.gov.au/html/comact/browse/TOCUS.htm*>, last visited on 205.04.24.

Agreement obliges Australia to ratify the WCT,[32] and reiterates its provisions on the prohibition on circumvention.[33]

4.5 The South African Electronic Communications and Transaction Act

Although South Africa is a signatory to the WIPO Copyright Treaty, it has not yet implemented the provisions of Article 11 of the WCT in national legislation. There is currently no provisions in South African copyright legislation that specifically protects access to works protected by copyright.

However, Article 86(1) of the Electronic Communications and Transaction Act 25 of 2002 (the ECT Act) criminalizes the conduct of unlawful accessing data. Section 86(3) does the same to the trafficking in devices designed to overcome security measures or access codes. The ECT Act therefore effectively recognizes the right to control access to data.

In terms of section 1 of the ECT Act the term "data" "means electronic representations of information in any form". Digitization is the dematerialization of content into electronic format readable by technologies such as computers. Once a copyrighted work is digitized, it becomes an electronic representation of information or content. The definition of "data" is thus broad enough to include digital copyright works.

South Africa in this way protects the right to control access to works protected by copyright through criminal sanctions.

5 THE EMERGENCE OF A RIGHT TO CONTROL ACCESS

By providing protection for access controls, the international community, albeit in an indirect manner, recognised access as a right worthy of protection. The legislative protection of access controls granted a new exclusive right to control access to the existing bundle of rights of an author.

The right to access copyright works therefore belongs to authors, and not to users. Being an exclusive right, only authors are entitled to access their works, or to authorise access to their works. This means that any user who gains access to a copyrighted work without authorization would be infringing copyright. And, without access, it is impossible to use the copyrighted work.

6 THE RIGHT TO CONTROL ACCESS AND USER PRIVILEGES

6.1 Limiting the Right to Control Access

In the absence of authorisation, the only other legitimate way a user can indeed access a work is if the user access the work in accordance with an exception. Many users then also believe that they have a right to access a work if such access is permitted in terms of an exception. Unfortunately this is not true: Exceptions (or user privileges) merely limit the exclusive rights of authors. Exceptions can not be used to institute an action against the author – they can serve only as

[32] AUSFTA, Chapter 17, Article 1.4.

[33] AUSFTA, Chapter 17, Article 4.7.

a defence against a copyright infringement action.[34] Exceptions do not create any user rights.[35] A user therefore does not have the right to demand access of a work.

Users who want access to a protected work would therefore only be able to do so without an access key if there is a specific exception allowing them such access.

The circumvention of access controls constitutes a violation separate of copyright infringement.[36] Liability arises not for 'copyright infringement' but for circumvention.[37] A violation of the prohibition on circumvention is deemed a violation regardless of whether it even results in infringement.[38] Since circumvention is a violation distinct from copyright infringement, the same exceptions that serve as defences against actions for copyright infringement would not be available in cases of circumvention.[39] The new right of access would therefore not be subject to the same exceptions as are the other exclusive rights.

The new right of access (or the prohibition on circumvention) is subject to a different set of exceptions. Unfortunately, in all the pieces of implementing legislation, these exceptions are very narrowly drawn and very specific. There is furthermore no general exception allowing users to make fair use of a work. Fair use is a very broad exception, and is also the one most often relied on by users. It entitles users to make use of a work, without the authorization of the author, for purposes such as research and private study.

Even if an exception would allow a user to circumvent access control, such user would not necessarily have the means to do so since circumvention devices are also prohibited. Users will therefore have no tools to engage in the circumvention necessary to exercise their user privileges.[40] Only those who can design and make their own circumvention devices would therefore be able to circumvent access controls where any of the exceptions apply.[41]

The recognition of a right to control access, and failure to limit this right by sufficiently allowing for exceptions, would have an enormous impact on users' ability to make use of copyrighted works.

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[34] Sections 24 and 25 of the South African Copyright Act deal with the institution of actions. These two sections recognise only the right of a author or licensee to institute an action for infringement. It does not recognise any user right to institute an action to demand use in terms of an exception.

[35] This has already been confirmed in US jurisprudence: the court in *Universal City Studios Inc v Corley* (273 F 3d 429 (2d Cir 2001) at 459) expressed doubts as to whether fair use was indeed compelled by the First Amendment. At 458 it states that there is in any event no constitutional requirement that fair use be made in the format of the original or in the user's preferred format. In *United States v Elcom Ltd* (203 F.Supp. 2d 1111 (ND Cal 2002)) the court (at 1135) stated that 'there is as yet *no generally recognized right* to make a copy of a protected work, regardless of its format, for personal noncommercial use' (emphasis added). At 1131 it also rejected the argument that users have a right to 'the most technically convenient way to engage in fair use'.

[36] Pete Singer 'Mounting a Fair Use Defense to the Anti-Circumvention Provisions of the Digital Millennium Copyright Act' (2002) *University of Dayton Law Review* 111-142 at 128.

[37] Glynn S Lunney 'The Death of Copyright: Digital Technology, Private Copying and the Digital Millennium Copyright Act' (2001) *Virginia Law Review* 813-920 at 839.

[38] Christine Jeanneret 'The Digital Millennium Copyright Act: Preserving the Traditional Copyright Balance' (2001) *Fordham Intellectual Property, Media and Entertainment Law Journal* 157-194 at 168-169.

[39] June M Besek 'Anti-Circumvention Laws and Copyright: A Report from the Kernochan Center for Law, Media and the Arts' (2004) *Columbia Journal of Law & the Arts* 385-519 at 394.

[40] Jonathan Band, Taro Isshiki 'The New US Anti-Circumvention Provision: Heading in the Wrong Direction' (1999) 15 *Computer Law & Security Report* at 220; Jeanneret op cit note 38 at 167; and Thomas Vinje 'Copyright Imperilled?' [1999] *EIPR* 192-207 at 202. Compare Jane C Ginsberg 'Copyright Legislation for the "Digital Millennium"'(1999) *Columbia - VLA Journal of Law and the Arts* 137-179 at 152-153: if a device is manufactured for a fair use, and used for fair use purposes, there would be no violation of section 1201(b).

[41] Besek op cit note 39 at 394.

6.2 Access Controls and the Prevention of Use

The most obvious result of the recognition of a right to control access is perhaps that authors now have the ability to prevent the public from using their works. This is due to the fact that the person who controls the access to a work also controls the use of a work. Since authors now have the exclusive right to control access to their works, they will also be capable of controlling all uses of their works.[42] And because of the fact that exceptions allowing the circumvention of access controls are so narrowly drawn, and that circumvention devices are prohibited, users will effectively be prevented from accessing a work even under circumstances allowed for by an exception.

6.3 Access Controls and Payment for Use

Access control technologies control not only initial access, but also every subsequent access.[43] For each access, whether it be initial or subsequent, a user would thus be in need of an access key. The author usually only provides access keys against payment. By protecting access controls against circumvention, users could now be required to pay for each access.[44]

On the one hand, payment for each access could be to the advantage of users. In the past, a person had to pay the same price for a book whether he wanted to read it only once or several times. This 'pay-per-use' model allows a user who does not need unlimited access, to obtain limited access at a lower cost.[45] Before, as in my example of a book, all users had to pay the higher price for unlimited access, whether or not they seek it.

The drawback of such a pay-per-use model is of course that even users who want to access and use a work in accordance with an exception, which would have been free in the past, could now be required to pay for such access.

The fact that payment can now be required for each and every access of a work, can result in a situation where no uses of a copyrighted work would be free - not even mere browsing. In the analogue world it was possible to page through a book at no cost, in order to determine whether you want to obtain it. In the digital work even mere browsing could have cost implications, since browsing requires access, and access could only be gained against payment.

6.4 Access Controls and User Privacy

The ability of authors to control access to (and therefore use of) their works will make it easier to prevent copyright infringement from taking place, or to detect copyright infringement after it took place.[46] But it may also have serious privacy implications for users. In the digital world it is private individuals who access works, and therefore unauthorized access could only be detected by policing private behaviour. To enforce a prohibition on the circumvention of access controls would involve entering into the private sphere of the user. This type of policing has been made possible by

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[42] Jessica Litman *Digital Copyright* (2001) 80; Kamiel J. Koelman 'The protection of technological measures vs. the copyright limitations' paper presented at the ALAI Congress *Adjuncts and Alternatives for Copyright*, New York, 15 June 2001 available at <*http://www.ivir.nl/publications/koelman/alaiNY.html*>.

[43] Ginsberg op cit note 40 at 147.

[44] Besek op cit note 39 at 467.

[45] Besek op cit note 39 at 479-480.

[46] NA Smith 'United States of America' in M Dellebeke (ed) *Copyright in Cyberspace, ALAI Study Days in Amsterdam, 4-8 June 1996* (1997) 418, cited by Kamiel J Koelman 'A Hard Nut to Crack: The Protection of Technological Measures' [2000] *EIPR* 272-280 at 276.

metering technologies,[47] which reveal not only the type of information accessed, but also the identity of the person who accessed it. It is questionable whether this type of policing is desirable in any democratic society.[48]

6.5 Access Controls and the Lawful Possession of a Physical Embodiment

Lastly, the fact that physical possession no longer guarantees access could also have some implications for the possessor of the physical object embodying the work. Possession of a physical object containing a work no longer guarantees access to the embedded work. Even a lawful possessor will not be able to access a technologically protected work contained in the physical object without an access key, or without circumventing the access control.

This would occur where a user lawfully obtains a work which is licensed for distribution and use only in that specific geographical territory. Typically the work would be encrypted, and only those playback devices that are sold in the same geographical are would be able to decrypt the work and grant access. The user will not be able to access or use the work on a playback device sold in another geographical area. For example, a user would not be able to play a CD bought in New York on a CD player obtained in South Africa. The South African CD player will only play the CD if this CD's access control (in the form of encryption) is circumvented. In three separate cases US courts ruled that even under circumstances such as these where the user lawfully obtained possession of the physical object, he or she would not be permitted to circumvent access controls.[49]

7 IMPLICATIONS FOR SOUTH AFRICA

In South Africa the right to control access is currently protected by the ECT Act. Even though this Act allows only for criminal, and not civil, sanctions for unauthorized circumvention of access controls, South African users are far worse off than users in other jurisdictions. The reason for this is twofold: first, because the ECT Act creates a new right, existing privileges will not apply. Users will therefore not be able to rely on the traditional copyright privileges when attempting to access a copyright work. Secondly, the ECT Act contains no exceptions to this newly created right to control access to data. This means that South African users, by threat of criminal sanction, can neither rely on the traditional copyright privileges nor those limited privileges provided for in other jurisdictions, when attempting to access digitized copyright works.

8 CONCLUSION

Technology made it possible for authors to control access to their digital works. The law protects the technology that controls access – in the United States, the European Community, and Australia through civil and criminal sanctions, and in South Africa through criminal sanctions. Authors therefore now have an almost unlimited right to control access to their works, which could have serious implications for users, especially since users do not have a right to demand access. A user

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[47] Koelman op cit note 46 at 276.

[48] Koelman op cit note 46 at 277.

[49] In *Universal City Studios Inc v Corley* (272 F 3d 429 (2nd Cir 2001) at 444) and *321 Studios v Metro Goldwyn Mayer Studios Inc et al* (No C 02-1955 SI, Northern District of California, <*www.findlaw.com*> at 12) it was decided that the purchase of a DVD does not give the purchaser the authority of a copyright holder to decrypt CSS (the technological protection measure). By lawfully obtaining a DVD, a user has the authority to view the encrypted content, but not to decrypt the content. In *Sony Computer Entertainment America Inc v Gamemasters* (87 F Supp 2d 976 (ND Cal 1999) at 976, 981, 987 and 990) the court found that even the distribution of a 'game-enhancer' device whose primary function was to circumvent a code limiting the use of such a limited territory would be prohibited under section 1201(a)(2).

who wants to access a work can only do so with authorization of the author or in accordance with a user privilege.

Unfortunately authorisation of the author usually involves payment of a fee. In some instances, authors and services providers recognised the need to allow users access to works without any cost implications. The website Amazon.com, for example, now allows prospective buyers free, although restricted, access to the content of those books they are interested in buying.

In the absence of authorisation, a user can only access a work if he or she does so in accordance with a user privilege. In other jurisdictions existing privileges do not make sufficient provision for users to access works. Current South African legislation does not even recognise any user privileges at all. The situation in South Africa can be remedied only if our Parliament would indeed implement the provisions of the WCT. Such implementation would substitute the existing provisions of the ECT Act which does not allow users any access at all.

The recognition of a right to control access has serious implications for users. South African users can but hope that our legislator will take their needs into consideration by implementing the WCT in such a manner that they would have sufficient access in order to make legitimate use of works protected by copyright.

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