



**WIPO Standing Committee on Copyright and Related Rights
SCCR33 -- November 2016
ICA Statement on Technological Protection Measures**

Nations that have ratified the WIPO Internet treaties have amended their national copyright legislation to prohibit the circumvention of technological protection measures or TPMs. The prohibition on circumvention of TPMs is of great concern to archivists. This may be surprising, since a high proportion of archival holdings were not created for commercial purposes, and may not be protected by TPMs. Nonetheless, archives may acquire encrypted materials, and may need to circumvent TPMs in two situations.

First, archives typically acquire materials after they are no longer needed for business purposes, and retain no commercial value. At this stage, the passwords, encryption keys, etc. may have been lost or forgotten, and the archives may be forced to circumvent the TPMs to examine the material to see if they want to acquire it at all, or to gain access in order to catalogue it and make it available to users, or to see if there is any personal information or sensitive materials to which access should be restricted.

Secondly, where encrypted works are acquired earlier in their life cycle (for example, in the course of legal deposit or in order to provide an archival copy of all works produced by an organization), the archives may need to access such materials for purposes that serve the public interest, e.g., preservation, or reproduction for research and private study.

A recent Canadian study regarding online piracy revealed that rights holders are far more interested in developing convenient, well-priced, legal services than strengthening anti-piracy measures. In practice, the American DMCA anti-circumvention provisions have done little to stop online piracy. Instead, such provisions have stifled a wide range of legitimate activities.

We seek to ensure that each member state recognizes the legitimacy of non-infringing acts performed by archives and libraries in other countries. Fundamental to this goal is a mandatory provision that parties provide a general exception to the circumvention prohibition in order to achieve legitimate uses. To do otherwise undermines copyright's fundamental balance. Legal protection for TPMs should not prevent archives and their users from benefiting from the limitations and exceptions provided for in the instrument emerges from these discussions.

For further information, contact Jean Dryden at <dryden@ica.org>