[CH] New Legal Provisions on Anti-copy Protection

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The aim of the partial revision of the national legislation on copyright and neighbouring rights (LDA) which came into force on 1 July 2008 is to adapt copyright to the new communication and digital transmission technologies, and more particularly to reinforce the fight against piracy (see IRIS 2006-5: 9). By making it easier to produce and circulate copies, the digital environment increases the vulnerability of works protected by copyright. These new arrangements transpose into Swiss law the requirements of the Performances and Phonograms Treaty (PPT) of the World Intellectual Property Organisation (WIPO).

The new Article 39a of the LDA prohibits circumventing technical means of preventing or limiting the unlawful use of content protected by copyright. This means preventing users from obtaining unauthorised access to digital content or copying it without the originator's agreement. These measures include access control, anti-copy protection, encryption, and scrambling. Thus all the activities (production, distribution, advertising, rental, etc) and services concerning the devices, products or components aimed at circumventing technical protective measures are prohibited.

Protection against circumventing technical measures is however aimed only at preventing the unauthorised use of protected works or services. Consequently, the lawful exceptions to copyright protection, which limit copyright protection in the interests of the group (more particularly private use), take precedence over protection of technical measures. In other words, circumventing a protection measure is not prohibited if it is done exclusively for the purpose of lawful use.

Moreover, Article 39c of the LDA prohibits deleting or amending the information on the scheme of copyright and neighbouring rights. This provision protects firstly the electronic information that makes it possible to identify the protected content or defines the conditions and methods for use, and secondly the numbers and codes representing this information. This protection is granted when this information (a) is shown on a phonogram, a videogram or a data medium or (b) appears in connection with the communication with no physical medium of a protected work.

To preserve the balance of interests between the originators and the users of protected works, the Swiss Government has appointed an observer to detect any problems the implementation of these new statutory provisions could cause. The

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law on copyright has opted for auto-regulation by the parties concerned. However, if there are indications that the technical protective measures are being misused, the observer may propose his mediation to the parties involved with a view to promoting concerted solutions. He will not, however, have authority to make decisions or issue guidelines.

Revision of national legislation on copyright and neighbouring rights transposing into Swiss law the requirements of two WIPO Treaties and modifying the Copyright Act, 5 October 2007

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