# [DE] Technical measures to protect video games are themselves protected

**IRIS 2015-2:1/9**

*Daniel Bittmann*
*Institute of European Media Law (EMR), Saarbrücken/Brussels*

In a ruling of 27 November 2014 (case no. I ZR 124/1), which is yet to be published in full, the Bundesgerichtshof (Federal Supreme Court - BGH) decided that technical measures to protect video games are themselves protected under Article 95a of the Urheberrechtsgesetz (Copyright Act - UrhG).

The plaintiff, as rightsholder, produces and sells the Nintendo DS video game console as well as video games available exclusively on memory cards that are only suitable for use on this console, which are inserted into a memory card slot. The defendant sells adapters for the console on the internet that are identical in size and shape to the original memory cards so that they fit into the slot on the console. With this adapter, console users can play pirate copies of the plaintiff's video games, which are available on the internet.

The plaintiff argued that the sale of the adapters infringed Article 95a(3)(3) UrhG and applied for a court injunction against the defendant, and for appropriate compensation. In a ruling of 14 October 2009 (case no. 21 O 22196/08), the Landgericht München I (Munich District Court I - LG) granted the application. The defendant's appeal against this decision was rejected by the Oberlandesgericht München (Munich District Court of Appeal - OLG) on 9 June 2011 (case no. 6 U 5037/09). Following another appeal by the defendant, the BGH largely quashed the Court of Appeal's decision and referred the matter back to it for a new ruling.

In its judgment, the BGH stated firstly that technical measures to protect video games were themselves protected under Article 95a(3)(3) UrhG. In view of the physical design of the memory cards and video game console, the measures taken by the plaintiff should be considered technical protection measures. Indeed, the dimensions of the memory cards and console were designed to ensure that only Nintendo DS memory cards could be used in the Nintendo DS console. It was designed to prevent pirate copies of the plaintiff's video games being played on the Nintendo DS console, which it also produced, and from being unlawfully copied.

The BGH added that the adapters sold by the defendant had primarily been produced to circumvent these technical protection measures for the purposes of Article 95(3)(3) UrhG. The Court explained that the main reason for purchasing

© European Audiovisual Observatory (Council of Europe) 2026

the adapters was to play pirate copies of the plaintiff's video games, while any lawful use was clearly less important.

However, since the OLG München had failed to examine whether the plaintiff's use of the technical protection measures respected the proportionality principle and did not excessively limit lawful use, the BGH referred the matter back to the OLG München.

***BGH, Urteil des I. Zivilsenats vom 27.11.2014 - I ZR 124/11 -***

*Ruling of the Federal Supreme Court of 27 November 2014 - I ZR 124/11 -*

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026