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Technical protection measures in the cloud

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Application in the cloud

- Online provision of services (software, ...)
- Storage of user content
 - Personal locker
 - Device distribution

- Access control
- Usage rights management
- Authentication
 - Of the user
 - Of the device
 - Of the work

TPM
11 WCT

IRM
12 WCT



A renewed application of anti-circumvention laws ?

- Similar application
 - With some questions
 - With the same old fundamental issue

Article 11 WCT

- 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.

A renewed application of anti-circumvention laws ?

- Are DRM in the cloud used by authors ?
 - Not necessarily
 - By service/content providers
- Are DRM in the cloud used in connection of copyright ?
 - Not only
 - To secure and manage the provision of a service and authentication of the process

Shifting copyright law towards the use

- Copyright protects exploitation of the work
 - Communication to the public directly or by way of copies
- DRM mainly protects commercialisation of the work
 - access and use by individuals

The user is captured by copyright law

A renewed application of anti-circumvention laws ?

- Do DRM in the cloud restrict acts not authorised by the authors or permitted by law ?
 - Provision of software or other content: YES
 - Mere acquisition of content
 - UsedSoft: the user owns the digital file (sale)
 - Fair use or private copy
 - personal locker, distributed use within a registered private sphere,

Private copying, levies and DRM

- Is there a private copy ?
 - Or an act excluded from copyright altogether ?
- Is there some harm to rights holders ?
 - Recital 35 Dir 2001/29
 - Harm reduced if licence fee
 - No payment if minimal prejudice
 - Phasing out if DRM (+ rec. 39)

Conclusion

- DRM will fully deploy in the cloud
 - Not to prohibit but to manage and organise the provision of a service
- Anticircumvention laws will fully apply
 - As they are already designed to go beyond strict copyright protection, but protection of access-based service and control of user behaviour



Some nexus with copyright should subsist to find protection within copyright

- Same old issues arise
 - Confusion between works and copies thereof
 - Confusion between protection of public exploitation and individual reception of the works
 - Technical obsession: all acts of copy, all acts of access
 - Shift from private copy to normal use ?

DRM and its protection by law are peripheral to copyright protection



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Thanks for your attention

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