



Copyright Law Protection to Access Control for “Cloud”

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1. What is Access Control?

...under American copyright law

■ Copyright Act, § 1201

- (a)(1) prohibits circumvention of **Access Control**
- (a)(2) prohibits devices that circumvent **Access Control**
- (b) only prohibits devices that circumvent **Copy Control**

■ Definition

- **Copy Control**: T.M. that protect **Copyright**.
=T.M. in WIPO Treaties
- **Access Control**: T.M. that protect access to a **Work**.

■ Question: What is the relationship between **Copyright** and **Access Control**?



Two Distinct Constructions

- “A.C. protects **Copyright**” (Chamberlain approach)

...*Chamberlain v. Skylink* (Fed Cir. 2004) :

“The essence of the DMCA’s anticircumvention provisions is that § 1201(a),(b) establish causes of action for liability. They do not establish a new property right. ”

“ § 1201 prohibits only forms of access that bear a reasonable relationship to the protections that the Copyright Act otherwise affords copyright owners.”

- “A.C. protects a **new Property Right**” (MDY approach)

...*MDY v. Blizzard* (9th Cir. 2010):

“section (a) creates a new anti-circumvention right distinct from copyright infringement, while section (b) strengthens the traditional prohibition against copyright infringement.”



The Senate Report for DMCA

	Prohibited Device	Protected Right
Copy Control	§ 1201(b)	Traditional Copyright Rights
Access Control	§ 1201(a)(2)	§ 1201(a)(1) “Right” “Access”



The Issue here

Does any Access Control need
a new Access Right
in the “Cloud” environment?



2. Kinds of T.M. for Works

- **Elemental Technologies:**

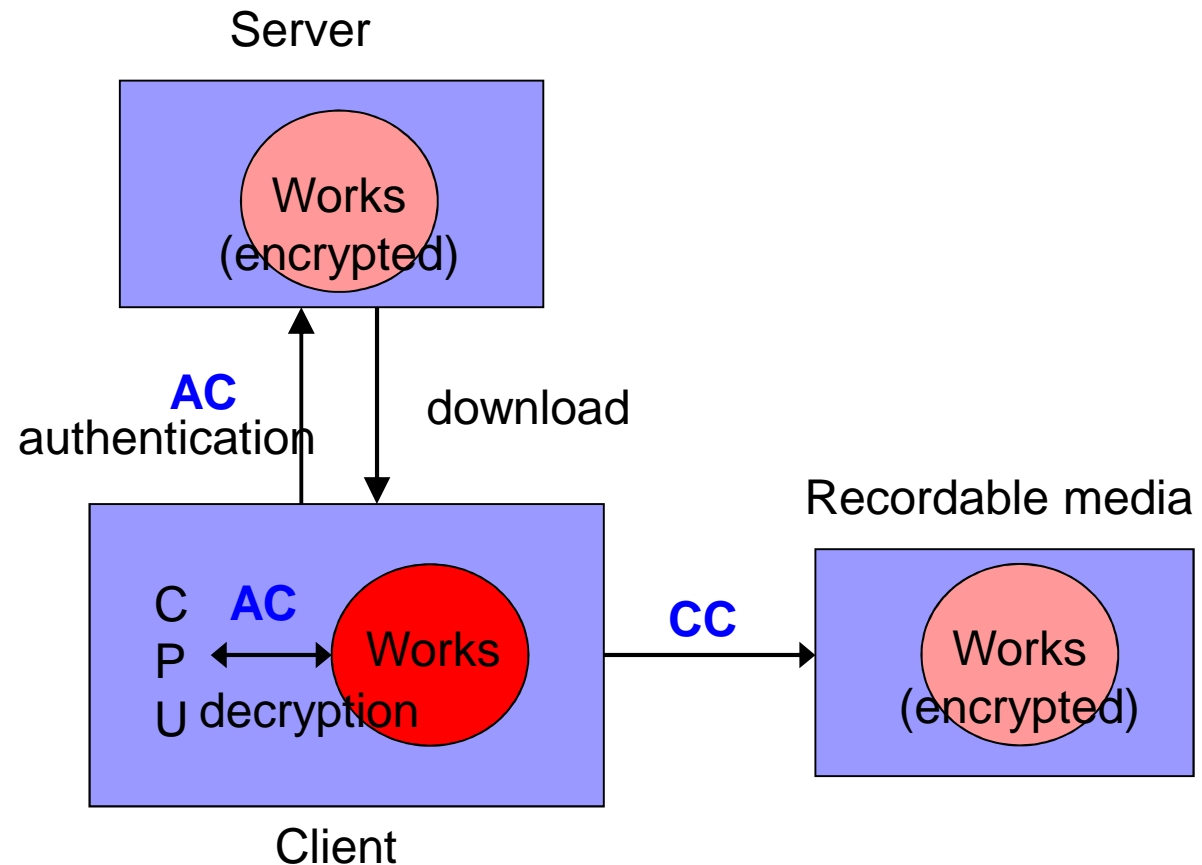
- Authentication (ID &PW....)
- Encryption
- Embodied Signals
- Specially Designed Apparatus or Software

- **Comprehensive System:**

- T.M. for Package Contents
- T.M. for Broadcast Contents
- T.M. for Network Contents
 - T.M. for Download Contents
 - T.M. for Non-Download Contents
- T.M. for Pre-installed Contents

(1) T.M. for Download Contents

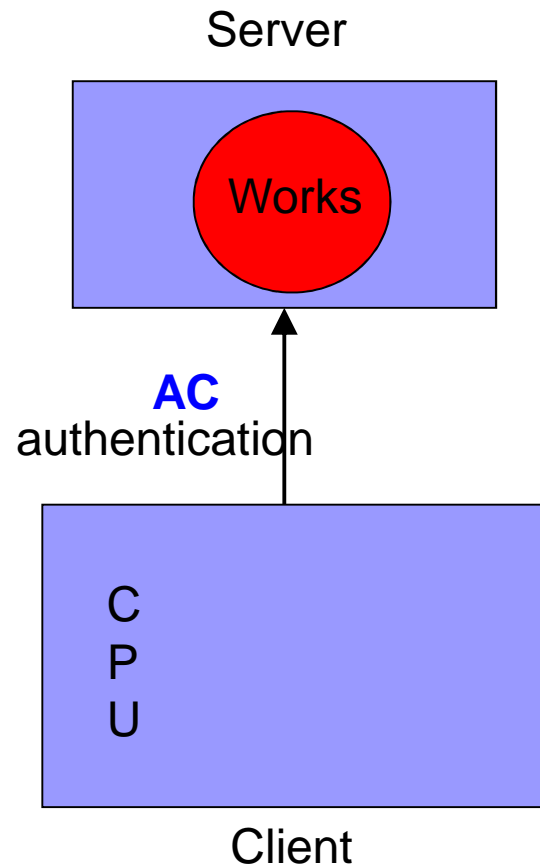
- Fair Play
- WM DRM
- Acrobat eBook



Conclusion: A.C. is in relation with traditional Copyright.

(2) T.M. for Non-Download Contents

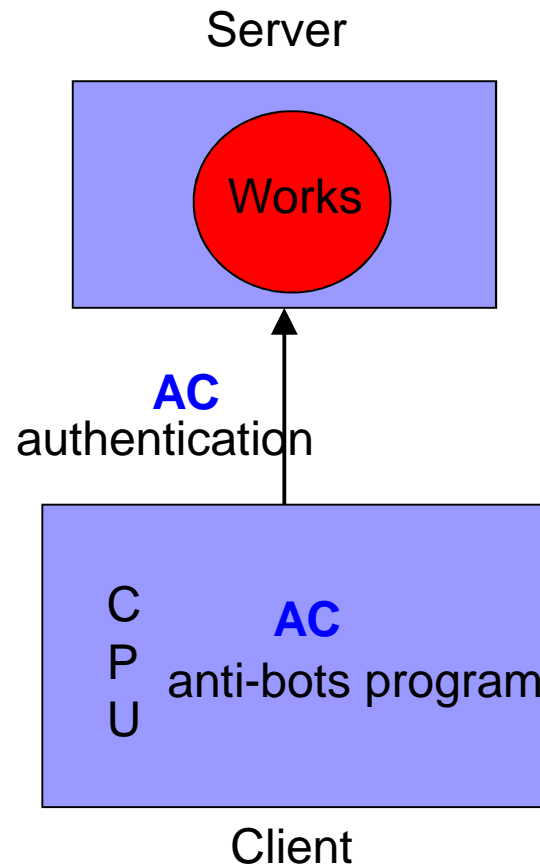
- Online Applications
- Online Databases
- MDY (Online Game)



Conclusion: A.C. is NOT in relation with traditional Copyright.

(2) T.M. for Non-Download Contents

- Online Applications
- Online Databases
- **MDY** (Online Game)



Conclusion: A.C. is NOT in relation with traditional Copyright.



3. Access Right required

1. Non-download contents in the "Cloud" environment is employed in a new manner to enjoy the benefit of a work, which manner, however, was not expected by the traditional copyright.
2. The new manner will become substantial and important business in the "Cloud" environment.
3. Therefore, a new property right or "access right" under access control protection should be added to the bundle of rights in copyright so that the copyright system could succeed in the "Cloud" environment as well.



4. How T.M. are Protected

	C. C.	A.C. for Copyright	A.C. for Access Right
WIPO Treaties	Yes	?	-
Japan	Yes, but limited	Yes, but limited	-
U.S.	Yes	Yes	Yes (MDY case)
EU	Yes	Yes	? (UK: No)



Thank you very much
for your attention.