

**Questionnaire
Session ID2**

**ALAI 2001 Congress, New York, June 13-17:
Adjuncts and Alternatives to Copyright**

**Session ID2: The scope of the prohibition on circumvention
of technological measures - exceptions**

General Reporter, Pierre Sirinelli, Professor, Université Paris I, Panthéon-Sorbonne
Questionnaire prepared by Pierre Sirinelli and Jane Ginsburg

We would be grateful if those national reporters who can answer the questionnaire in both French and English would do so.

PLEASE APPEND TO YOUR REPORT THE STATUTORY TEXTS CORRESPONDING TO YOUR ANSWERS, AS WELL AS CITATIONS TO RELEVANT JUDICIAL DECISIONS

I. State of the law before transposition of the WIPO Treaties

- 1.1 Before adoption of the WIPO treaties in 1996, did your country already have legislation concerning technological protection of copyrighted works? If so, in what areas (e.g. software . . .)?
- 1.2 Did your country already have legislation addressing protection of information encoded in the work concerning the work or its author or copyright owner?
- 1.3 Did your country's legislation prohibit the circumvention of technological measures:
 1. By the person who committed the act of circumvention?
 2. By the person who furnished the means of circumvention:
 - a. By furnishing information about these means?
 - b. By furnishing the devices enabling circumvention (preparatory acts)?
 - c. By offering circumvention services?
- 1.4 In the absence of legislation, have judicial decisions prohibited acts such as:
 1. The act of circumvention?
 2. Furnishing devices to enable circumvention?
 3. Furnishing circumvention services?
- 1.5 If your country had, by legislation or judicial decision, prohibited circumvention of technological measures, did this prohibition prove effective?
 1. How often did copyright owners avail themselves of technological measures?
 2. How often were lawsuits brought alleging unlawful circumvention?

3. In the event that copyright owners did not apply technological measures or did not bring lawsuits against their circumvention, what were the reasons for non recourse to legal protection of technological measures?
- 1.6 In the absence of legislation or judicial decisions, did a practice develop of tolerating circumvention?
 - 1.7 Did your country's legislation provide for exceptions to prohibitions on circumvention? If so, please describe them.
- II *Implementation of WIPO Treaty obligations -- provisions concerning the protection of technological measures***
- 2.1 Has your country adopted legislation to implement the obligations set forth in the WIPO Treaties (WIPO Copyright Treaty, arts. 11 and 12; WIPO Performers and Phonograms Treaty, arts. 18 et 19)?
 1. When?
 2. By what means?
 - a special copyright law? A general law of which copyright legislation is only a part?
 - 2.2 Is your country active in the field of research concerning or development of technological measures?
 - 2.3 How does your legislation ensure the legal protection of technological measures?
 1. By provisions specifically addressed to the question?
 2. By provisions on copyright infringement?
 3. By provisions concerning the general tort law?
 4. By other means? (For example, provisions on computer crime . . .)
 - 2.4 Briefly describe the legislation.
 - 2.5 List the sanctions available for violations and specify whether or not your country's legislation provides for criminal sanctions.
 - 2.6 Which persons are liable?
 1. Those who engage in the act of circumvention?
 2. Those who enable or facilitate the commission of an act of circumvention by:
 - a. Supplying information?
 - b. Supplying devices?
 - c. Offering services?
 3. Is knowledge or intent to circumvent a prerequisite to liability?

- 2.7 Are there differences in the scope of the prohibition depending on the kind of technological measure circumvented? For example is the prohibition the same with respect to: access controls; measures protecting rights of the copyright owner; copyright management information? If so, why?
- 2.8 If supplying devices for circumvention is a prohibited act,
1. Specify how “devices” are defined.
 - a. Does the definition encompass software (computer programs)?
 - b. Does liability depend on whether the device is “effective”, and if so, what standard is used to determine the effectiveness of a device?
 2. How does the legislation take account of the fact that some devices capable of circumventing technological protection measures also have other, beneficial purposes? E.g., does liability depend on whether circumvention is the “sole purpose” of the device, or its “primary purpose”, or on whether there are “commercially significant” uses for the device other than circumvention, or some other standard?

III. Exceptions to prohibitions; authorized circumventions

- 3.1 Does your country’s legislation provide for exceptions to the prohibition on circumvention? Do the exceptions differ according to the type of measure at issue (access controls; measures protecting rights of the copyright owner; copyright management information)?
1. Exceptions for the benefit of users:
 - a. Do they correspond to all copyright exceptions?
 - b. Do they correspond to only some of the exceptions (e.g. draft EU Directive, seven listed exceptions)?
 - c. Is there a closed list of exceptions, or general criteria to assess the appropriateness of the exception?
 - d. Describe the circumvention exceptions in your law.
 - e. What are the justifications for the exceptions for which your country’s legislation provides?
 2. Are there new exceptions for circumvention of technological measures that did not expressly exist in your country’s prior copyright law?
 3. Do exceptions differ depending on the type of technological measure circumvented? Why?
- 3.2 Does your country afford users the means to exercise the exceptions to circumvention? If so, how?
- 3.3 Are there private agreements (contracts, collective bargaining . . .) that permit certain categories of users (e.g., public libraries) to circumvent? If so, why ?
- 3.4 Does your legislation offset any circumvention exceptions with rights to remuneration or compensation?
- 3.5 Do consumer equipment manufacturers have any obligation to design their products to recognize and comply

with specific protection measures? Does your legislation address this issue, and if so, how?

- 3.6 What has been your experience under your legislation to date (e.g., court proceedings, administrative interpretations, etc.)?
- 3.7 To what extent are works currently marketed in your country with technological protection? Please describe with as much detail as possible the kinds of works currently protected and the kinds of technological measures used.