

Standing Committee on Copyright and Related Rights

Forty-Seventh Session
Geneva, December 1 to 5, 2025

PROPOSAL FOR A STUDY ON TYPES OF BUSINESS MODELS AND ECONOMIC
OPPORTUNITIES CREATED BY AND THROUGH THE IMPLEMENTATION OF
TECHNOLOGICAL PROTECTION MEASURES (TPMs)

prepared by the Delegation of the United States of America

The United States of America proposes the Secretariat to undertake a study on cataloging types of the types of available business models and economic opportunities for creators and creative industries in the digital environment that are made possible through the implementation of technological protection measures (TPMs).

CONTEXT

The widespread use of TPMs by content producers and licensed services has facilitated the range and variety of copyrighted works now digitally available to consumers. TPMs are measures such as encryption technologies that effectively regulate access and protect creative content from theft in the digital environment. TPMs include “access controls” (e.g. passwords, paywalls or subscriptions, time limits, or encryption/scrambling) that prevent unauthorized access to copyrighted works and “copy controls” (e.g. download blocking of streaming content, copy blocking for digital music and movies, print blocking, and labeling and watermarks) that prevent making of copies of content without the owner’s authorization. TPMs can also include technological measures to block unauthorized website scraping by reserving rights in protected works. TPMs have fostered an environment for innovative commercial creative products and services to make copyrighted works available online by allowing creators and rights holders to control and manage access to their works in the manner they choose, as well as to diversify their products, services, and pricing for the public.

To circumvent a TPM means to descramble a scrambled work, to decrypt an encrypted work, or otherwise to avoid, bypass, remove, deactivate, or impair a TPM, without the authority of the copyright owner. Illicit services now exist purely to circumvent TPMs, such as websites where the public can input a link to a YouTube video and receive a downloadable file of the video’s contents without proper licensure or remuneration. Another common method of circumventing TPMs is using unauthorized cheat codes in video games to unlock features that unfairly improve game play without proper compensation. These codes are often sold online and can often contain viruses that put the end-user at risk.

The WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty (collectively the WIPO Internet Treaties), both adopted in 1996, provide creators and creative industries with the full panoply of exclusive rights in the digital networked environment, including the right to “adequate legal protection and effective legal remedies against the circumvention of effective technological measures.”¹ Creating a legal framework granting adequate legal protection and effective legal remedies against the circumvention of effective TPMs, including against the trafficking of circumvention devices or technologies, is often cited as being essential to facilitate digital trade in and licensing of copyrighted works. In today’s highly digitized and sophisticated technological environment, keeping pace with methods and tools to prevent digital piracy is paramount to protecting individual creators and the health of the creative economy worldwide. The purpose of this study will be to determine how adequate and effective TPM protections have contributed to this effort.

THE STUDY ON TPM-ENABLED BUSINESS MODELS FOR CREATORS AND CREATIVE INDUSTRIES

TPMs are longstanding tools for creating successful and innovative business models for creators and creative industries in the global digital environment. What is still needed, however, is to examine the substantive legal mechanisms underlying these market-driven solutions for protecting copyrighted materials in the digital environment. This resource will be especially important for Member States intending to review their national legal frameworks to support new

¹ WIPO Copyright Treaty, Article 11; WIPO Phonograms and Performances Treaty, Article 18.

and emerging creators and creative industries. In addition, the study can provide information about existing TPM-enabled business models and economic opportunities from around the world arising from established legal mechanisms. Ultimately, Member States will benefit from analyzing how legal mechanisms that enable effective TPM protections actually help creators and creative industries to lower the costs to protect their works online and avoid diverting resources from their core mission to create, perform, produce, or distribute creative works.

The study shall focus on identifying existing legal mechanisms underlying effective TPM protection in national laws of WIPO Member States, including by examining substantive legal protections establishing the scope of protection of effective TPMs, as well as prohibiting and sanctioning its circumvention. In addition, it is requested that the study:

- (a) produce a list of real-world examples of business models and economic opportunities for creators and creative industries in the digital environment that result from the protection of TPMs;
- (b) provide examples from a wide range of creative industries, entity sizes, regions, and creative communities;
- (c) provide which respective legal framework(s) and technological solution(s) enabled each example; and
- (d) explain if and how the piracy of each example's respective creative work(s) was mitigated or prevented by TPMs, including, where possible, the potential monetary and employment loss to the creator or creative industries had TPM protection not been available.

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