

## Protection of Technical Measures, Sec. 95a et. seq. UrhG

### Ratio:

Technical progress increasingly allows the protection of copyrighted works by technical security measures ("The answer to the machine lies within the machine"). Sec. 95a et seq. of the Copyright Act serve to safeguard such systems as well as to balance the legitimate interests of users.

### Protection of technical measures, Sec. 95a UrhG

- Circumvention: enabling access or a use of the work or performance and consequently depriving the rightholder of control.
- Definition of effective technical measures, para. 2:  
A technical measure is also effective if it is possible to circumvent it. According to the prevailing opinion, the criterion is whether the measure at least prevents the "average user".
- Prohibition of preparatory acts, para. 3

### Legal consequences of infringement of Sec. 95a UrhG

Depending on the legal nature:

- One opinion: Copyright, protection according to Sec. 97 et seq. UrhG Arguing against it:  
Wording (neither copyright, nor other right)  
No amendment of Sec. 97 UrhG upon introduction of Sec. 95a UrhG by legislator  
Asymmetry to the copyright limitation provisions pursuant to Sec. 95b (1), (3) UrhG
- Other opinion: Violation of a protective law, Sec. 823 (2), 1004 BGB

### Enforcement of limitation provisions, Sec. 95b UrhG

- Correction of the consequences of technical protection measures with regard to the legal barrier provisions
- No right to self help ( "No right to hack")

### Protection of information required for the management of rights, Sec. 95c UrhG

Electronic metadata is protected from modification or removal as the foundation of rights management in the digital and networked realm

### Labeling obligation, Sec. 95d UrhG

Obligation to indicate restriction of the possibility of use and against whom claims under Sec. 95b (2) are to be directed

Ex: Label on CD

### Legal consequences of infringement of Sec. 95d UrhG

- Warranty for defects according to Sec. 434 et seq. BGB
- Tortious protection according to Sec. 823 (2), 1004 BGB
- Misleading advertising by omission pursuant to Sec. 5a UWG
- Breach of law, Sec. 3, 3a UWG