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Exceptions to liability for circumvention of a technological protection measure

Effective technological measure means any technology, device, or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other protected subject matter or protects any copyright.

For the purposes of this definition:

- **controls access** does not mean control over the use of a work or other subject matter once access has been lawfully obtained;
- **Effective technological measure** does not include any technology, device, or component that has the effect of reducing consumer welfare in contravention of s 46 of the *Trade Practices Act* 1974

Lawfully Obtained Copyright Material

(1) This section does not apply in relation to circumvention of a technological protection measure by, or on behalf of, a person who has lawfully obtained the work or other subject-matter protected by the technological protection measure, if:

(a) the work or other subject-matter is a work or other subject-matter to which section 47C (1) or 47C (2) applies; and

(i) the technological protection measure is circumvented for the purpose of creating a lawful reproduction of the work or other subject matter under section 47C (1) or 47C (2); or

(ii) the technological protection measure is circumvented for the purpose of using a backup-copy lawfully so made; or

(b) either:

(i) the technological protection measure is circumvented for the purpose of creating a lawful back-up copy of the work or other subject matter; or

(ii) the technological protection measure is circumvented for the purpose of using a backup-copy lawfully so made; or

(c) the technological protection measure is circumvented to facilitate a lawful fair dealing with the work or other subject-matter; or

(d) the technological protection measure is circumvented to facilitate the lawful changing of the format or medium of the work or other subject matter; or

(e) the technological protection measure is circumvented to facilitate the use of the work or other subject-matter on a technological platform of the person's choice; or

(f) the work or other subject-matter is not communicated to any other person; or

(g) the work or other subject-matter is not dealt with in a way that would be an infringement of the copyright in the work or other subject-matter.

Non Communicated Copyright Material

(2) This section does not apply in relation to circumvention of a technological protection measure that protects a work or other-subject matter where there is no communication to any other person of a substantial part or the whole of a work or other-subject matter.

Open Access Licensed Copyright Material

(3) This section does not apply in relation to circumvention of a technological protection measure which protects a work or other-subject matter if the work or other subject-matter has been licensed under an open access licence and the work or other subject-matter is not readily available in a form that is not protected by a technological protection measure

In this section, *open access licence* means a copyright licence which makes the work or other subject-matter available for non-authenticated and non-remunerated use to the public at large.

Non-copyright, Public Domain or Donated Subject Matter

(4) This section does not apply in relation to circumvention of a technological protection measure which protects a work or other-subject matter if:

(a) copyright does not subsist in the work or other subject-matter or the work is in the public domain; or

(b) the copyright in the work or other subject-matter has been

waived, rejected, or discarded by the copyright owner;

And the work or other subject-matter is not readily available in a form that is not protected by a technological protection measure

Statutory Licences for Print Disability Radio, Recording a Musical Work, Education, Crown Use, Public Performance and Broadcast of a Sound Recording.

(5) This section does not apply in relation to circumvention of a technological protection measure that protects a work or other-subject matter covered by a statutory licence under s 47A, s 55, s 108, s 109, Part VA, Part VB, Part VC or s 183 of this Act.

Agreements Excluding Operation of Certain Provisions

(6) An agreement, or a provision of an agreement, that excludes or limits, or has the effect of excluding or limiting, the operation of subsections (1), (2), (3), (4) or (5) has no effect.