

**Study on Legal Attribute and Adequate Interpretation of
Provision of Technical Protection Measures under Copyright
Law: Focusing on Reexamination of Article 80 *ter* of Taiwanese
Copyright Act**

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Abstract

In response to rampant copyright infringement under electronic and digital era, the norm about technical protection measures has been developed in international copyright law to inhibit or reduce the risk of copyright infringement. To follow the international trend, the provision of technical protection measures was enacted on to Taiwanese Copyright Act as Article 82 *ter* in 2004. However, it is obscure how the provision of technical protection measures is incorporated into copyright law due to its unique characteristics. In view of the provision of technical protection measures, it seems that the copyright owner could seek law remedies similar to traditional copyright infringement, without concerning limitations of copyrightability and fair use under traditional copyright law. As a consequence, in such way, the provision of technical protection measures would become “paracopyright”, jeopardizing the interest balance between the copyright owner and the user of works established under traditional copyright law. The characteristics of the provision of technical protection measures, leading to “paracopyright”, are named as “quasi-copyright attribute” under this article. The purpose of this article is to assuage the negative effects resulting from “quasi-copyright attribute” of the provision of technical protection measures, by applying limitations of copyrightability and fair use under traditional copyright law through legal interpretation. On the one hand, this

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treatment is expected to rebuilt the interest balance under copyright law. On the other hand, this treatment would provide the optimal interpretation of Article 82 *ter* of Taiwanese Copyright Act for reference of future judicial and administration decisions.

Keywords: technical protection measures, anti-copy measures, access right, World Intellectual Property Organization, the Copyright Treaty, quasi-copyright attribute, fair use, the merger doctrine, scènes à faire, trafficking