

学校编码: 10384

分类号_____密级_____

学 号: 13620090153161

UDC_____

厦 门 大 学

博 士 学 位 论 文

版权法视野下的技术措施制度研究

Study on Technological Measures System in the Field of
Copyright Law

董慧娟

指导教师姓名: 林秀芹 教授

专业名称: 民商法学

论文提交日期: 2012年4月

论文答辩时间: 2012年 月

学位授予日期: 2012年 月

答辩委员会主席: _____

评 阅 人: _____

2012年4月

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内容摘要

从 1996 年世界知识产权组织的“互联网条约”^①将技术措施保护纳入版权法开始至今，技术措施制度仅仅走过了 16 年的发展历程。作为一个年轻的制度，其在实践中和理论上均已暴露出若干缺陷和不足。实践中，版权人利用该制度发起了又一次“圈地运动”，扩张权利范围之势愈演愈烈。理论上，技术措施制度与传统版权法格格不入。于是乎，对技术措施采用及保护的规制和限制问题在世界范围内备受瞩目，加强对其的理论研究也显得尤为重要。

鉴于此，本文试图先从科技哲学和技术伦理学的全新角度对技术和技术措施进行解读，在简单回顾技术措施制度的发展历程后，重点探讨该制度在理论层面的主要分歧，并密切结合司法实践、全面揭示该制度对若干公共利益的不利影响，最后提出完善该制度的建议。

本文近 14 万字，分为七个部分。第一章是导论，提出问题并介绍研究背景及意义。第二章是技术措施的基础理论，包括对“技术措施”的界定、技术措施保护的经济分析等。第三章是技术措施制度的起源、发展过程和现状，重点介绍了主要国家和地区该制度的现状。第四章是技术措施制度的理论分歧与评析，针对技术措施的法律性质等争议性问题，本文对学界观点进行了梳理并提出了自己的看法。第五章是技术措施保护与公共利益的冲突问题研究，重点揭示技术措施保护对信息获取、合理使用、言论自由等的消极影响。第六章是技术措施制度的调整与完善，在介绍部分国家版权法修改等最新动态的基础上，本文提出了正确定位、确立立法原则、调整保护范围和强度、加强限制或例外等建议。最后一部分是结论。

关键词：技术措施；保护；限制

^① 此处的“互联网条约”是指《世界知识产权组织版权公约》（WCT）和《世界知识产权组织表演及录音制品条约》（WPPT）。

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ABSTRACT

There have been only 16 years since the technological measures protection became a component of the copyright law owing to 'the internet treaties' of WIPO in 1996. Several defects and shortages emerged both in the practice and in the theory of the technological measures system, which is a very young system. In the practice, copyright owners launched another 'enclosure movement' and expanded the range of their rights by means of the technological measures system. In the theory, the technological measures system conflicts with the principles of traditional copyright law. Therefore, the regulation and limitation of the use and the protection of technology measures grabbed many people's attention. It's also significant to reinforce the research in the theory of the system.

Firstly, this thesis tries to define the meanings of 'technology' and 'technological measures' from the standpoint of philosophy of technology and ethnics of technology. After a simple review of the development of the technological measures system, this thesis probes into the disputes in the theory of the system and the potential adverse impacts of it on the public interests, such as fair use and free speech. This thesis then puts forward some suggestions on the perfection of the system.

There are nearly 140,000 words in this thesis, which is composed of 7 parts. In chapter 1, this thesis introduces the background and the significance of the research briefly and opens out main problems of the technological measures system. Chapter 2 is about the basic theory of technology measures. In chapter 2, this thesis involves the definition of the 'technology' and 'technological measures', also the economic analysis on the protection of technological measures. In chapter 3, this thesis touches on the origin and development of the technology measures system, and also the status of the system in some countries and regions. In chapter 4, this thesis introduces and deals with the disputes on the technological measures system, such as the legal nature of the technological measures and the circumvention of technological measures. In chapter 5, this thesis intensively probes into the potential adverse effects of the technological measures system on the public interests, such as fair use, free speech, the order of the competition and consumer welfare.

Chapter 6 is about the adjustment and perfection of the technological measures system. In chapter 6, on the basis of the introduction of the latest developments of the

copyright law of some countries, this thesis puts forward several propositions on the perfection of the system, such as to change the notion and principle of the legislation, to adjust the range and the level of the protection of technology measures and to enhance and strengthen the limitation of technology measures. The last part of this thesis is the conclusion.

Key Words: Technological Measures; Protection; Limitation

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