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Judas or Messiah? The Implications of the Mod Chip Cases for Copyright in an Electronic Age

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Rightholders are increasingly turning to technology to protect their digital works, proceeding on the rational basis that strong private security measures may be more effective than existing law. As more and more media becomes available in electronic format, such technological measures for protecting works will assume increasing importance.

However, the intersection of copyright law with technological protection highlights underlying tensions in the very conception of copyright, which forces a more critical examination of the purposes and scope of copyright. The combined effects of digitization and technological protection measures on the notion of copyright are vividly illustrated by contrasting decisions examining the legality of devices to circumvent the technological protection measures used in the Sony PlayStation and its games: in the U.S., *Sony v. Gamemasters*, 87 F.Supp.2d 976 (N.D.Cal. 1999); in the U.K., *Sony v. Owen* [2002] E.C.D.R. 27; and in Australia, *Sony v. Stevens* [2002] FCA 906. This paper will examine those cases to see what light they may shed on copyright in an electronic age. The draft of this article was originally presented at the 2003 British and Irish Law, Education and Technology Association's annual conference. The full article can be accessed through the website of the *Hertfordshire Law Journal* by clicking on the following link: http://www.herts.ac.uk/law/Centre_IntLaw/HLJ/PDF%20Articles/article1_esler.pdf