

Issues & Overview

Digital Battle Bots

Digital technologies have spawned a new breed of copyright wars of the likes unseen since the infamous 1980s *Betamax* case, which resulted in the Supreme Court finding that home video copying and “time shifting” of network broadcasts was fair use. Understandably, the Internet and new digital technologies, like MP3s, digital recording and webcasting, have created the potential for copyright abuses. As a result, a reactive and fearful broadcast, film and music industry has responded by taking an aggressive enforcement position that threatens to impede the full potential of these technological marvels.

In 1998, the Digital Millennium Copyright Act (DMCA) enacted sweeping amendments to the Copyright Act. The DMCA sought to protect copyrights in digital works through various means, including outlawing encryption workaround technologies and the imposition of royalties on webcasters. The recording and motion picture industries have been fighting for tight anti-copying controls to be imbedded in both digital recording media and recording devices, such as digital recorders and MP3 players, as well as aggressively pursuing legal action against so-called file swapping services like Napster (now defunct), Aimster and Morpheus. In 2001, a computer science professor at Princeton was threatened with a lawsuit by the Recording Industry Association of America (RIAA) if he proceeded merely to publish a paper discussing flaws in a digital watermark system. And when programmers wrote the DeCSS de-encryption utility to play DVDs on their computers, the long arm of copyright law held that such action violated the anti-circumvention proscriptions of the DMCA.

This whittling away of the public’s fair use rights has recently prompted proposed legislation to protect those rights in digital works, including a bi-partisan bill just introduced by Reps. Rick Boucher (D-Va.) and John Doolittle (R-Ca.) that would amend the DMCA to legalize legitimate research and acknowledge fair use rights. Their bill is supported by technology and communication giants such as Sun Microsystems, Verizon, Intel, Philips and Gateway. To counter that Congressional move, on January 14, 2003, a significant alliance was announced by the RIAA, the Business Software Alliance and the Computer Systems Policy Project (representing the interests of Dell, Intel, Hewlett-Packard, Motorola, IBM and others) — groups that have not always been allied in interest on digital rights issues. An agreement on seven principles signed by these three organizations seeks to promote awareness of piracy issues, prevent unauthorized copying and redistribution of digital works, and reach a consensus on permitted uses of technology by content creators to protect their works. The agreement emphasizes that government regulation is not in the best long-term interests of the recording and technology industries or consumers, and that technology protections should be driven by the marketplace and private business negotiations and not legislation.

On the other hand, the Consumer Electronics Association, along with other major technology companies, support Boucher’s bill, believing that some legislation is required to insure a proper balance between copyright protection and consumers’ fair use rights. Of course, the consumer products industry also wants to minimize production costs and sell more digital-enabled devices. Yet, the Motion Picture Association of America (MPAA) remains opposed to any compromise short of its goal of implanting secure copy-protection technology in all home electronics and computers. The MPAA seeks empowering federal legislation through a bill that was introduced in the last Congressional session by Sen. Fritz Hollings (D-S.C.) that may now be re-introduced. Thus, the battlefield, although redrawn, is still wide open.

So where do we go from here? It is unlikely that Congress will step out of the picture altogether. Past industry attempts at self-regulation have had mixed results, as with failed watermarking technology and private industry attempts at setting webcasting royalties. Government intervention has also proved costly and time consuming, as most recently exemplified by the much-criticized webcasting royalty process mandated by the DMCA that took nearly four years, a failed Copyright Office arbitration process, and new legislation signed by President Bush last month to resolve. In the end, each side will have to compromise to reach a fair result on encryption controls that preserves consumers’ fair use rights, allows honest research, and does not impede development of new technologies that have valid non-infringing uses.

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