Antipiracy Bill Divides Studios and Tech Companies

By Sarah McBride

Fighting a losing battle against music and movie pirates, the entertainment industry is trying a fresh tack: seeking new laws that would make it easier to prosecute people who illegally trade songs and films over the Internet. Copyright holders are stepping up the drive toward new antipiracy legislation in the wake of a stunning federal appeals-court ruling that would allow creators of Internet file-sharing software to stay in operation, despite piracy by their users. Unless it's overturned by the Supreme Court, the ruling may make it difficult for the industry ever to get satisfaction from the courts when it comes to file-sharing.

With that as a backdrop, movie studios, music companies and other copyright holders believe they need stricter laws that would allow them to sue people who they think encourage copyright violation by creating technologies that enable piracy. Congress is poised soon to revisit a controversial bill, known as the Induce Act, that takes direct aim at makers of the peer-to-peer software used in the illicit online trade in copyrighted songs, movies and other material. The bill's high-profile supporters include much of the entertainment industry, and Sen. Hillary Rodham Clinton.

But companies in a wide range of other industries—consumer electronics, technology and even financial services—worry that the Induce Act could ensnare them as well. The companies fear they would face liability if their products—CDs and DVD burners, for example—were used by people making illegal copies of entertainment products. Even manufacturers of components for those products fear they could face lawsuits if the proposed law takes effect.

Among the companies that have come out against the act are Google Inc. and Yahoo Inc.

The upshot is another Hollywood versus Silicon Valley standoff of the kind that has dogged the piracy debate for years. While it's far from clear that the Induce Act or any of the other copyright-related bills will become law this session, the debate sets the framework for future intellectual-property deliberations. And it underscores how six years after the passage of the landmark Digital Millennium Copyright Act—which was supposed to create workable copyright standards for the digital era—advances in digital distribution continue to leapfrog the law.

Opponents of the bill have said there's little point in trying to legislate an evolving field, because in a few months or years the technology is outdated. But change "doesn't mean you shouldn't do something," says Owen Sloan, an entertainment lawyer at Berger Kahn in Los Angeles. "Any legislation in a rapidly developing area is always going to need to be tweaked" later.

A new version of the Induce Act is expected to incorporate input from a wide range of groups, including the Consumer Electronics Association, which represents makers of TV sets, DVD players, music systems and game players. The industry group is seeking to narrow the scope of the law by drawing a distinction between electronics companies and peer-to-peer firms. The CEA wants the law to target only those computer programs that exist primarily for "indiscriminate, mass infringement of copyrighted works," and whose commercial viability depends on that infringement.

The U.S. Copyright Office has gone in the opposite direction, seeking a wider scope for the proposed law. Instead of restricting liability to people who distribute computer programs, the Copyright Office wants to extend liability to those who distribute technology, devices and components. It

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