Why Is Congress Criminalizing Copyright Law?

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A new plan to straitjacket the American public by criminalizing a common American practice is hidden in the WIPO Copyright Treaties Implementation Act. Powerful Hollywood and software corporations that are afraid of losing money from high-tech competition are behind this dramatic change in copyright law.

Senator Orrin Hatch rushed this bill through the Senate on May 14 as S. 2037 with almost no debate and on a voice vote of 99-0. Now called H.R. 2281, the plan is to pass it before the public realizes it.

H.R. 2281 makes it a felony, punishable by up to five years in prison and a fine of up to $500,000, to copy materials against the wishes of Hollywood and the software industries. That's for the first offense; any subsequent offense brings a prison term of up to ten years and a fine of up to $1,000,000.

The dangerous felons whom the politicians want to put behind bars are ordinary Americans who want to record and edit a television program or movie on their own VCRs in their own homes, a practice that is now perfectly legal. People do this, for example, when they go to the ballgame and want to tape a favorite sitcom to view later (even, perhaps, editing it by fast-forwarding through the commercials).

When VCRs first came into popular use, movie and television producers fought all the way to the U.S. Supreme Court to prevent consumers from taping programs, and lost in Sony v. Universal City Studios (1984). The Court ruled that this is "fair use," assuming, of course, that you are not making a business of selling the copyrighted programs you record.

The television and movie producers reconciled themselves to this, knowing that homemade tapes would be inferior in quality to the original. Home VCRs proved to be extremely profitable to the movie industry, anyway, through home rentals.

Technology is changing rapidly and, in a few years, television expects to move into the digital age. We will all have to buy new TV sets, and the quality of what we see on our screens will be, they say, remarkably superior to what we have today on our television sets.

When you tape digital television programs, the copies will be just as good quality as the original. So Hollywood, television producers and cable companies want to prevent consumers from all copying.

Heretofore, noncommercial copyright infringement has been a civil matter. That means, a copyright owner who thinks his property right has been infringed can sue for damages from the infringer.

Now, however, Hollywood and the software corporations have so much political clout that they are trying to make the government do their work for them. H.R. 2281 would convert current "fair use" of VCRs into copyright infringement, and convert noncommercial copyright infringement into a criminal offense, sending infringers to prison instead of just making them pay damages.

When something becomes a federal felony, that brings into action the U.S. attorney, the FBI, sting operations, and wiretapping, all at the expense of the taxpayers rather than the powerful corporations that claim to be injured. We have enough real crime to worry about and shouldn't use federal prosecutors to work for Hollywood.

Section 1201(a) spells out this new federal crime: "No person shall circumvent a technological protection measure that effectively controls access to a work protected under this title."

Hollywood and television producers plan to install "a technological protection measure" in their movies and programs, and then get government prosecutors to send to prison anyone who tries to "circumvent" it, as well as any VCR company that sells a VCR that might enable consumers to "circumvent" it.

H.R. 2281 also makes any editing of certain information at the beginning or end of a movie a crime if it is "without the authority of the copyright owner." The TV-watcher need not even intend to do such editing to be liable if a court finds that he had "reasonable grounds to know" that it constituted a violation of the act.

Adding insult to injury, the Senate exempted broadcasters from the act so they can avoid these draconian penalties. Why should broadcasters get special privileges denied to the American public?

Congress seems intent on changing all our intellectual property laws to benefit big corporations. Another piece of copyright mischief, H.R. 2652, passed the House in May and is pending in the Senate.

H.R. 2652 would reverse the 1991 Supreme Court ruling in Feist v. Rural Telephone Service that the telephone book white pages are not copyrightable. Copyrights are supposed to protect original and creative works, not compilations of public information.

Under H.R. 2652, databases of public domain information would be protected (no originality would be required), there would be no time limit on copyrights, and there would be no "fair use" exception. Even private, noncommercial extraction of information from a database would be punishable by five years in prison, and damages in civil lawsuits would be broadened.

It's time to call a halt to the peculiar passion of the Republican Congress to increase the jurisdiction of the federal courts by creating more and more new federal crimes, at the public's expense.