Copyrights vs. The Public Interest

May 13, 1998

Google Ads are provided by Google and are not selected or endorsed by Eagle Forum

Bill Clinton got a big laugh when he joked at the White House Correspondents' Dinner that the 105th Congress is, like Seinfeld, about "nothing." But that's not true; Congress is trying to pass some very detrimental laws in some areas where we wish it were doing nothing.

Several pending bills to change our Copyright law illustrate two very unfortunate trends: creating more federal crimes, thereby widening the jurisdiction of federal courts, and tilting laws to favor big entrenched interests and multinational corporations.

H.R. 2589, which has already passed the House, would extend copyright protection for authors and songwriters for an additional 20 years beyond the present law. This is contrary to the spirit and intent of the U.S. Constitution, which assures authors and inventors the "exclusive" property right in their writings and discoveries "for limited times," after which the writing or invention becomes the property of the general public to enjoy.

The public has the right to use the writings and music of works whose "limited times" have expired. There is no good reason for the descendants of James Madison or Julia Ward Howe to receive royalties on the Federalist Papers or the Battle Hymn of the Republic.

The original 1790 copyright law set the limited time for copyrights at 14 years plus one 14-year renewal. The limited time period has been repeatedly extended until now it runs for the life of the author or artist plus 50 years, and 75 years for a corporation.

Powerful special interests now want to extend the time period to 70 years beyond the life of the author, and 95 years for corporations. Leading the charge are the Walt Disney Company, the American Society of Composers, Authors and Publishers (ASCAP), and the Gershwin Family Trust.

They want to keep Mickey Mouse and Porgy and Bess from moving into the public domain. But Disney himself borrowed freely from characters and stories that had been created by others in pre-copyright years and centuries, and future artists should be able to do likewise.

Walt Disney and George Gershwin have already enjoyed their exclusive property right far longer than intended by our original constitutional design. It is long overdue for their creations to go into the public domain as a part of our American culture to be enjoyed and used by all.

H.R. 2589 is so overreaching that, if it had been in effect earlier, everyone who used the pictures of Uncle Sam or Santa Claus during most of the 20th century would have had to pay royalties to the remote descendants of the 19th century cartoonist Thomas Nast.

ASCAP is one of the most litigious lobbies in America today. In 1995, ASCAP tried to force the Girl Scouts to pay royalties for the songs they sing around their campfires, until a torrent of bad PR forced retreat.

Last year, Congress passed the No Electronic Theft (NET) law, which provides very stiff federal prison terms for petty and non-commercial copyright infringements and practices long considered fair use. Previously, copyright infringement was a civil matter. Now, if you download unlicensed material worth over $1,000 within six months, you are guilty of a federal felony.

This law applies even if you did not pursue economic gain and did not redistribute what you downloaded. It's difficult to browse the Internet without violating it, and there would probably be millions of felons if this law were strictly enforced.

Another bill, H.R. 2281, which is now pending in the House, attempts to expand NET by making it a crime to "circumvent a technological protection measure that effectively controls access to a work."

That artful phrase is designed to ban a variety of practices that have long been considered legitimate and have been upheld by the courts as "fair use" of copyrighted materials. For starters, we would lose our right to tape television programs for non-commercial use because all the new digital VCR machines would be forced to honor Hollywood's copy-protection schemes.

The bill would also outlaw reverse engineering, without which "you couldn't make applications that run on Windows," said Skip Lockwood, coordinator of the Digital Future Coalition. "The products couldn't be produced by anybody else but Microsoft if it weren't for reverse engineering."

Although the Senate Judiciary Committee exempted reverse engineering when it took up a similar bill last week, Jack Krumholtz, Microsoft's director of government affairs, said, "We support the bill as it's [originally] written." Then he added, "This provision doesn't in any way change the existing balance between fair use and the rights of the copyright holder."

That's funny: the law does nothing, but Microsoft is very much in favor of it. Most observers agree that Microsoft and Hollywood would be the major beneficiaries of H.R. 2281, which imposes a penalty of up to five years in prison and up to $500,000 in fines, as well as civil damages.

Does it strike you as curious that the same Congressmen are sponsors of the Copyright bill to extend copyrights to 95 years, and of the Patent bill (S. 507) to cut off inventors' legal protection at 18 months? What those two ostensibly inconsistent bills have in common is that they both would benefit entrenched corporations at the expense of the innovators of the future and the public.