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Report Raises Questions About Fighting Online Piracy

By JOHN SCHWARTZ

The entertainment industry's pursuit of tough new laws to protect copyrighted materials from online piracy is bad for business and for the economy, according to a report being released today by the Committee for Economic Development, a Washington policy group that has its roots in the business world.

Record companies and movie and television studios have fought copyright infringement on many fronts, hoping to find ways to prevent their products from being distributed free on the Internet. But critics warn that many of the new restrictions that the entertainment industry proposes - like enforcing technological requirements for digital television programming that would prevent it from being transmitted online - would upset the balance between the rights of the content creators and the rights of the public.

"We are sympathetic to the problems confronting the content distribution industry," said the report, "Promoting Innovation and Economic Growth: The Special Problem of Digital Intellectual Property." "But these problems - perfect copies of high-value digital works being transmitted instantly around the world at almost no cost - require clear, concentrated thinking, rather than quick legislative or regulatory action."

Until recently, those who opposed strong copyright protections have been characterized by the entertainment industry as a leftist fringe with no respect for the value of intellectual property.

"The ideas of copy-left, or of a more liberal regime of copyright, are receiving wider and wider support," said Debora L. Spar, a professor at Harvard Business School. "It's no longer a wacky idea cloistered in the ivory tower; it's become a more mainstream idea that we need a different kind of copyright regime to support the wide range of activities in cyberspace."

Susan Crawford, a professor at the Cardozo Law School of Yeshiva University and an author of the report said that a growing number of business leaders are worried that the trend toward "equating intellectual property with physical property" might be hampering innovation.

"Bits are not the same as atoms," she argued, contending that the distinction is being blurred by Hollywood. "We need to reframe the legal discussion to treat the differences of bits and atoms in a more thoughtful way."

The chief author of the report, Elliot Maxwell, a former adviser to the secretary of commerce on the digital economy during the Clinton administration, said that middle ground was hard to find in the many conflicts over intellectual property. The report, he said, was an attempt "to find a way through this thicket."

The entry of the Committee for Economic Development into the copyright wars, some say, is surprising given its long history as a policy-setter in the world of economics and business. The 60-year-old organization left its intellectual mark on initiatives like the Marshall Plan and the Bretton Woods agreement, which created the World Bank and the International Monetary Fund. In more recent years, the committee's policy papers have had a measure of influence on issues like campaign finance reform and the movement to set standards for public schools through testing.

Ms. Spar, however, warned against reading too much social change into the committee's new stance. It shows that the ideas are "gaining legitimacy," she said. "It does not mean that we're about to throw out the copyright system any time

soon."

The report was written by an offshoot of the committee, and in an introduction to the report, the members of the parent group said that for largely technical reasons, the report is "not an official C.E.D. policy statement." But they underscored the group's support, saying that it "welcomes this report and recommends it to readers as an excellent analysis of the issue of balancing intellectual property rights and the incentives for long-term growth in the digital age."

One of the most prominent critics of attempts to increase control over copyrighted material applauded the new report. "I think it's exciting," said the critic, Lawrence Lessig, a professor at Stanford Law School and founder of the school's Center for Internet and Society. "The points they are making are obviously right," he said, "but the only way people will get it is if more credible, mainstream organizations begin to utter it."

Jane C. Ginsburg, a law professor at Columbia University and a copyright expert, had a more mixed view of the report. The recommendations are "very thoughtful and sensible," she said, noting that she agreed with the report's conclusion that government mandates are a bad idea. But she said in an e-mail message responding to questions about the report that it "makes unsubstantiated, misleading, or misinformed statements about copyright law." In fact, she said, "A little less preaching to the technologist 'choir' might have made this a better 'sell' to copyright owners and, perhaps, to lawmakers."

Jack Valenti, the president of the Motion Picture Association of America, said that he had not yet seen the report but was strongly critical of the view that his industry was trying to place unfair burdens on consumers. "They say it will stifle innovation - that's malarkey," he said. "If all of this digital property is free, who is going to invest 50 to 60 million dollars to make a movie?" he asked.

The report addresses that point by calling on the entertainment industries to come up with new ways of doing business that can accommodate and even profit from digital distribution. It cited the success of [Apple Computer's](#) iTunes Music Store as one online business that offered consumers an easy-to-use alternative to free music services.

"In the music business, 'cheap and great' is likely to be at least as attractive to consumers as 'free and crummy,'" the report said.

The report also endorsed the private use of so-called digital rights management systems to place some restrictions on copying, so long as they are not required by government and do not impose too great a burden on consumers. The group also recommended finding economic tools that could encourage copyright holders to allow their works to enter the public domain somewhat earlier than the law allows.

The group called for a two-year moratorium on changes to copyright laws and regulations to allow for more public debate. "Our first concern should be to 'do no harm,'" the report said.

Cary H. Sherman, the president of the Recording Industry Association of America, said that "there isn't a lot here to disagree with" from his industry's perspective, since the recording industry signed an agreement with technology companies a year ago stating that it would not push for government-mandated technology solutions for its copyright problems.

"I certainly agree that there shouldn't be any rush to judgment where new technologies and intellectual property issues are in conflict," he said, "but one should also not assume that one could wait forever."