Outlook

A LOOK AT . . . WHOSE IDEAS, ANYWAY? Facing a Pay-Per-Use Future
Pamela Samuelson

Our culture sets great store by shared information. That's why libraries occupy such a revered place in our communities. It's why I can borrow a copy of "Memoirs of a Geisha" from a neighbor who's finished reading it, and why it's okay for me to photocopy an article on quilting for my mother or forward an electronic newsletter about legislative developments to my colleagues. For the most part, our private and non-commercial use of copyrighted works is beyond the reach of the law, which allows for their "fair use."

Nobody worries much about casual uses such as these. An article I give to a friend could, of course, be copied and redistributed. But that's an awkward process, unlikely to have any real impact on the article's future sales. The Internet changes that. Any product that can be recorded digitally—from a photograph to a piece of music—can be readily duplicated, redistributed and resold. Out of fear that this may undercut a commercial product's value, "content producers" (a catch-all name for those in the major motion picture, recording and publishing industries) have been exploring possibilities for creating security systems that will limit access to their products. They have also been fighting to extend and strengthen copyright legislation. In its waning days, the 105th Congress passed the Digital Millennium Copyright Act (DMCA), granting copyright owners unprecedented new rights to protect their works. President Clinton signed the legislation into law last week.

It is important to understand that many content producers consider they have an absolute right to protect all access to and uses of their works. They challenge the proliferation of technologies that can be used by ordinary folks to make unauthorized—and, in their view, illegal—copies (anything from photocopies of articles to videotapes of television programs to tapes of recorded music). And worst of all, from their perspective, are digital technologies, which some copyright owners fear will ruin their industries.

The main goal of the DMCA is to bring U.S. law in line with the 1996 international treaty of the World Intellectual Property Organization (WIPO). One element that sparked heated debate concerned a proposed amendment that would make it illegal to bypass the sort of electronic security systems that companies have been developing to protect intellectual property. Although about 40 House members argued that the WIPO treaty merely required the United States to make it illegal for people to bypass such systems for the purpose of infringing copyright, content producers wanted tougher rules. They wanted to make it a crime to circumvent these systems for any purpose (except to allow law enforcement and national security agencies to engage in legitimate activities).

Educators, librarians and computer scientists retorted that such broad bans would threaten many legitimate uses and inhibit computer security research and innovation in the high-tech field: It is impossible to engage in encryption research, for example, without bypassing protection systems; yet encryption research is vital to
advancement of computer security.

The bill that finally passed the House and Senate embodied compromises. Among other things, it calls for a two-year moratorium on the ban on circumventing electronic security systems in order to let the Librarian of Congress study its impact on fair use.

Content producers meanwhile are continuing to explore the possibility of counteracting the digital threat by creating tight technical locks on their works. One recently released example is the Divx digital video disc system. Designed to displace the videocassette rental market, Divx enables users to acquire the right to watch a Divx movie for $4.95 on their Divx home player for a 48-hour period. All Divx discs are designed so that no unauthorized copies can be made; after 48 hours, a built-in system prevents further use of the disc. Similarly, if a viewer wants to share a Divx disc within the 48-hour period by playing it on a neighbor’s machine, he will have to negotiate a new $4.95 license. (A central computer keeps track of every use made of Divx discs.)

It remains to be seen whether systems such as Divx will be successful in the marketplace. But it is clear that the widespread use of such systems for copyrighted works--especially in scientific, research or educational settings--runs counter to existing practices and assumptions. Most people believe that it is acceptable to make private, non-commercial use of copyrighted works. If it were necessary to defeat a security system to make a private copy or share one’s copy, many of us would regard it as acceptable, too, just as purchasers of software products felt justified in hacking around copy-protect schemes in order to make back-up copies of software.

Although abstruse in its details, the DMCA has broad implications for the future of fair use. Of course the Internet presents new challenges to copyright, and possibilities for abuse. But giving private companies such strong control over the flow of information in society is not the right answer.

Pamela Samuelson is a professor of law and information management at the University of California at Berkeley.

http://www.washingtonpost.com

ig,.TWP

Document wp000000020010919dub1019ai

© 2012 Factiva, Inc. All rights reserved.