

Who Will Police the Pirate-Hunters? wst 10-7-03

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By **Sam Brownback**

Technology changes faster than the law can keep up, and consumers are paying the price. This year we saw a court decision that opens your computer files and personal identity to anyone with an accusation and a checkbook—and as a result witnessed the music industry launch a “piracy” lawsuit against a 12-year-old girl.

Video, music and software are the intellectual property of their creator, just as a physical object can be somebody’s property. The law protects the rights of owners. At the same time, the law requires this protection to be balanced with the rights of consumers to fairly use the entertainment and information they purchase.

That’s why I have introduced the Consumers, Schools, and Libraries Digital Rights Management Awareness Act of 2003. This vital piece of legislation will restore consumers’ rights in the digital age, ensuring that their privacy and safety remain secure and that their right to use the digital property they pay for is not unfairly limited by technological copyright protection.

As the world converts from analog (physical copies of music and movies) to digital (video files and MP3 music), consumers are gaining tools that let them do things they could never easily do before, such as copy and share. Some of these new tools threaten the rights of copyright owners, so in 1998 Congress passed the Digital Millennium Copyright Act (DMCA), making it a crime to circumvent copyright protection.

Yet the DMCA has created a severe threat to Internet users’ privacy interests. The law has turned out to be so broad that a court recently ruled that copyright owners, or anyone posing as a copyright owner, can get a subpoena for the

personal information of any Internet user they accuse of violating a copyright.

There are many problems with such subpoenas. First, nearly everyone is a copyright holder automatically (if you’ve made a grocery list, you’re a copyright holder), so anyone can get a subpoena. Second, the subpoena doesn’t require evidence or fact. Third, there is no due process or judicial review required under interpretation of this law that provides an Internet user a forum to rebut such an allegation.

That means your privacy is threatened. Salespersons, ex-spouses, absolute strangers—anyone

A charge of piracy—no proof required—ends your privacy.

can pose as a copyright owner and obtain your name, address and telephone number. While this subpoena is defended as an anti-piracy tool by organizations such as the Recording Industry Association of America (RIAA), the overriding consequences are about privacy, not piracy. Already we have witnessed the efforts of a pornographer, Titan Media, to use this subpoena to identify Americans whom it accuses of stealing its porn. Now this pornographer is offering a gracious amnesty program: Buy its products, or else it will use the DMCA subpoena to publicly identify you. Titan probably calls that intellectual-property protection. I call that blackmail.

Most recently we’ve seen this subpoena used by the RIAA to file a lawsuit against an Internet user it has accused of piracy, but who reportedly has not pirated copyrighted music or even downloaded the popular peer-to-peer file sharing software onto her computer.

Your safety is threatened even more directly:

Imagine what pedophiles and stalkers could do with this power to track down their targets.

The Consumers, Schools, and Libraries Digital Rights Management Awareness Act of 2003 restores judicial review and due process to the system, ensuring that consumers are protected from dangerous or harassing pursuit by strangers. For instance, it forces anyone who seeks private subscriber information to do so in a court of law, with the due process protections and review of a judge that only a courtroom can provide.

Beyond the privacy issue, the DMCA as currently interpreted skews the constitutionally-required balance between the interests of owners of intellectual property, and the consumers and educators who use movies, music, software and other media. The Consumers, Schools, and Libraries Digital Rights Management Awareness Act of 2003 restores the balance. It does so by creating a voluntary industry-devised labeling system so people know before they buy how copyright-protection and digital-rights-management tools may affect their use of media products. The bill also seeks to ensure that consumers can resell digital products they have legally purchased, as a used product, and continue to donate used products to schools and libraries. While the bill encourages government efforts to combat piracy, it prohibits the government from mandating anti-piracy technology in the law. If we write today’s technology into the law, what will happen when new technology comes along?

Copyright law in the digital age should help, not hinder, the amazing pace of technological progress. These measures ensure that, in the digital world, long-held consumers’ rights will still be protected.

Mr. Brownback is a Republican senator from Kansas.