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## **Copy Controls: Fair Use or Foul Play?**

**Hollywood, techies, and Congress wrangle to control what digital video you can store, swap, and see.**

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You may never get the chance to save and share your favorite TV shows and digital films over the Internet, Napster-like. Hollywood and the technology industry are teaming up to develop a technology, to be unveiled at the end of March, that will stop digital video from being transmitted on most networks--even your home network.

Hollywood says it's fighting a piracy horror show. Consumer advocates charge the industry is trying to control what you can and can't do with your PC. Computer companies fear angering their customers. But by whatever means, the entertainment industry and a more reluctant technology industry are working together to make sending protected video content over the Internet impossible--and illegal. And part of their incentive is that Congress has threatened to impose a plan if the industries don't quit sparring and propose one of their own.

The longstanding cross-industry coalition that developed this pending copy protection technology is called the Copy Protection Technology Working Group. They're the folks who created the standard called Content Scrambling System, which encrypts DVD content.

Their latest scheme would protect only content that is broadcast digitally. Estimates vary of how many people it would affect today. Robert Perry, who is director of marketing for Mitsubishi Digital Electronics America and a member of the CPTWG committee that crafted the proposal, says 2.5 million people in the United States can receive digital broadcasts that may be subject to the scheme. James Burger, who represents several computer companies in the CPTWG, says the number is much smaller. Still, cable companies are pushing digital broadcasting in major TV markets, and the FCC has mandated that by 2006 all U.S. broadcasters must broadcast digitally.

### **Built-in Copy Controls**

The CPTWG solution, which would be enforced by law or by Federal Communications Commission regulation, is a controversial one. Broadcasters would technologically "flag" a digital signal with a rule prohibiting the retransmission of video content over a TCP/IP network. All devices that receive digital broadcasts or play digital files--from TV sets to DVD players to TiVo-style digital video recorders and PCs--would have to recognize and honor the embedded copy protection flag. That means you could save broadcast video to your hard drive, and even copy it to a blank CD-RW disc for later playback. But if you were to try to transfer the video file over the Internet or a home network, the file would be unplayable. Networks that transmit data via IEEE 1394 (FireWire) or other protocols could be used to transfer a video file as long as it retained the technical flag.

Implementing this plan could take two years and should not affect current PCs, says Mitsubishi's Perry. The industry hopes you will have long since upgraded from your current system by the time its copy protection scheme rolls out.

The CPTWG committee that designed the specification is the Broadcast Protection Discussion Group. Other members include Michael Ripley, a staff engineer at Intel Labs, and Andy Setos, vice president of engineering at Fox Engineering Group. The approach is a compromise between the technology industry, movie studios, and consumer electronics makers, says Mitsubishi's Perry.

## Gearing Up to Fight

Not surprisingly, consumer advocates are opposed to the plan.

Copy protection will add cost to PCs and make them less functional, says Fred von Lohmann, intellectual property attorney with the Electronic Frontier Foundation. "Big industry groups should not be telling consumers what they can do or can't do with their computer and the Internet," he says.

Others say Hollywood shouldn't meddle with the computer industry just because the entertainment industry fears piracy.

"What happens when this technology gets hacked, as it will?" asks Burger, who represents the tech industry's interests at CPTWG. "Then do we spend millions more dollars coming up with another solution?" His clients include Apple, Microsoft, HP, Compaq, National Semiconductor, and Intel, and they don't like the sound of any of this.

A new player in the fray, [Digitalconsumer.org](http://Digitalconsumer.org), which is headed by the cofounders of Excite, **advocates legal enforcement** of a Consumer Technology Bill of Rights that would limit use of copy protection and codify fair use rights. The group is gathering support in the technology industry in addition to representing consumers.

## What About Fair Use?

Consumer advocates complain primarily that fair use and buyers' expectations are at risk. Fair use is a legal concept that basically says you aren't violating a copyright if you copy something you've bought--like a song--as long as that copy is for personal use, not for profit.

Laws such as the 1998 Digital Millennium Copyright Act, however, already threaten the fair use concept. Among its provisions is a clause that **makes it illegal** for anyone to bypass security measures to make a copy of protected content.

Movie studios cited the DMCA **in a suit** against the Web magazine 2600: The Hacker Quarterly, which published a link to a program called DeCSS, code that lets Linux users play DVDs on their computers. It is also the **source of charges** against Dmitry Sklyarov, a Russian programmer whose company developed software that subverts copy protection on Adobe Acrobat Reader.

Consumer advocates, who already dislike the DMCA, are likely to despise anything the CPTWG comes up with--like the proposed built-in copy protection in video broadcasts and entertainment equipment.

## Shotgun Marriage

However, the initiative has the not-so-harmonious support of CPTWG's members, including Intel, Warner Bros., Sony, Panasonic, Viacom, IBM, and Microsoft. They are begrudgingly working toward a compromise that addresses both industries' concerns and produces minimal annoyance for the consumer. They're cooperating because the alternative is worse.

Congress is essentially forcing the entertainment, computer, and consumer electronics industries into finding a way to protect copyrights, threatening to impose a solution if the participants can't agree on one. Sen. Fritz Hollings has threatened to introduce legislation mandating copy protection--an approach the computer industry especially wants to avoid.

Hollings's approach would "turn the personal computer into an expensive DVD player," says Leslie Vadasz, an Intel executive vice president, criticizing the approach in [recent congressional hearings](#). Much of the technology industry considers that tactic overbroad and overbearing.

## Easy to Steal?

Meanwhile, Hollywood's chagrin grows over what it considers blatant piracy. Illicit distribution of television programming over the Internet is hardly a threat on the level that Napster once presented the music industry. But Hollywood is eyeing with alarm the emergence of inexpensive PCs equipped with cable modems, TV tuner cards, and 40GB hard drives that could make capturing a Simpsons episode as commonplace as an MP3 download.

To get a sense of the scope of the problem, type "Friends" or "Star Trek" into a popular file-sharing network like Kazaa, BearShare, or LimeWire. You'll see a vast, completely free Internet video library of hundreds of shows that individuals are sharing.

The Motion Picture Association of America estimates losses to be around \$3 billion last year to all forms of piracy. A June report from the consulting firm Viant estimates 300,000 to 500,000 feature films are being swapped on the Internet every day. The entertainment industry isn't confining its crusade to CPTWG or Congress. ABC, CBS, and NBC are all suing Sonicblue, maker of the digital video recorder ReplayTV 4000. They contend ReplayTV 4000 violates their copyrights by enabling users to share recorded TV shows online. In addition, the MPAA and Recording Industry Association of America [are suing](#) peer-to-peer file-swapping sites Morpheus, Grokster, and Kazaa for copyright violations.

Yet PC vendors and the MPAA have a strong mutual interest in enabling PCs to show movies, says Fritz Attaway, executive vice president of the MPAA. "We are not advocating that PCs be less capable. They just need to be able to protect content."

But just as free speech protects hate speech as well as nobler sentiments, protecting copyrighted content may paint with a broad brush. The Jerry Springer Show is apparently headed for the same protection as a Lord of the Rings DVD.