House Bill To Create Anti-Piracy Czar Advances

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A House committee passed an anti-piracy bill yesterday that would stiffen penalties for illegally copying and distributing music and movies and would create an "intellectual property czar" at the White House level -- a job that the Justice Department warned would "undermine" its independence.

The bill, introduced in December by Rep. John Conyers Jr. (D-Mich.) and 17 co-sponsors and known as the Pro IP Act, is championed by a broad base of intellectual-property holders, including entertainment companies, auto parts manufacturers, drugmakers and unions. It now heads to the House floor, and advocates hope it will pass this summer.

In addition to creating the position of IP czar, the bill would amend federal copyright law to add resources to the fight against piracy and raise the ceiling on damages that could be awarded by a civil court to a rights-holder whose work had been pirated.

The authority of the czar remains a point of contention. The Justice Department blasted the bill after it was introduced, calling it unnecessary and worrying that an enforcement position at the Cabinet level could become easily politicized.

During yesterday's markup of the bill, committee members tried to mollify the Justice Department and head off a veto by clarifying that the czar would not make policy but coordinate anti-piracy efforts across government.

But the changes in language did little to persuade the agency.

"Establishing such an office would undermine the traditional independence of the Department of Justice in criminal enforcement matters," department spokesman Peter Carr wrote in an e-mail yesterday. "Establishing such an office in the White House would codify precisely the type of political interference in the independent exercise of DOJ prosecutorial judgment that many..."
members of Congress and senators have alleged over the last couple years."

White House spokesman Tony Fratto said, "The White House has very serious concerns with the legislation."

The bill was initially and vigorously opposed by some in the tech community, most notably William Patry, senior copyright lawyer for Google, who called it the most "outrageously gluttonous IP bill ever introduced in the U.S." in a posting on his blog in December.

Patry and others opposed a section backed by the music industry that has since been struck from the bill. Referred to as the "compilation clause," it would have targeted users who illegally share music CDs, assigning penalties for each song pirated from a CD, rather than one penalty per disc. Even though the music industry lost the clause, it remains pleased with most of the bill. In March, Patry wrote on his blog that he was "very happy" the clause had been removed. He did not respond yesterday to an e-mail request for comment.

Early opponents fought hard to tone down what they said were the draconian elements of the bill.

"We just generally didn't like the whole tenor of, 'Oh, my God, we need to cut off people's toes' if they commit copyright infringement," said Gigi B. Sohn, president of Public Knowledge, a public-interest group that has advocated reducing some penalties for copyright violation. Sohn said her group is generally comfortable with the bill as approved yesterday but said Public Knowledge has its own six-point plan for revising copyright laws that it will seek to have introduced as legislation this summer.

Sohn's group advocates an "orphan works" copyright law that would allow a content-creator such as a musician or a filmmaker to use a piece of copyrighted material if the rights-holder cannot be found and would provide reasonable compensation if the rights-holder emerges.

NBC Universal chief executive Jeff Zucker is a lead backer of the Pro IP Act. Universal movies and NBC TV shows are among the countless works pirated in the United States and abroad, both on counterfeit DVDs and online.

The federal government estimates that U.S. businesses lose $250 billion per year in sales to pirated goods.

Zucker was pleased with the bill's progress yesterday.

"This is such an important step in combating this incredibly serious piracy and counterfeiting problem that's getting worse, not better," Zucker said in an interview.

The Motion Picture Association of America, the trade group of the big movie studios, and the Recording Industry Association of America, the trade group of the major music labels, continue to wage an expensive and sometimes unpopular campaign of education and enforcement against piracy, including lawsuits against individuals.

Asked if the worsening piracy problem meant that the campaigns have been ineffective, Zucker said: "I dread to think where we would be if those measures hadn't been taken."

NBC Universal general counsel Rick Cotton, head of the U.S. Chamber of Commerce Coalition Against Counterfeiting and Piracy, said the U.S.-based campaigns of the MPAA and RIAA don't reach every potential pirate, particularly those overseas.

Cotton said that NBC Universal movies and TV shows have been heavily pirated on DVD in Asia but that now several Web sites are popping up in China that offer pirated online versions of its content, compounding the problem. In Europe, online piracy is the bigger problem, and new pirate havens are constantly emerging, Cotton said.

For instance, the office of the U.S. Trade Representative added Spain and Greece to this
year's "watch list" of countries that, in the view of the United States, are not tough enough on pirates. China and Russia continue to head the list.

A Senate version of the Pro IP Act was introduced last fall by Sen. Patrick J. Leahy (D-Vt.) and is in committee.