Dan Gillmor: Entertainment industry’s copyright fight puts consumers in cross hairs

By Dan Gillmor

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If the business people who rule the entertainment industry had been as powerful 25 years ago as they are today, you’d be breaking the law if you set your videocassette recorder to tape your favorite Olympic event for later viewing. The VCR, assuming the entertainment industry would have allowed a manufacturer to sell it, would not have a fast-forward button because it would let you skip through the commercials without viewing them.

As for tape recorders, you would not have been able to make a copy of the music you just bought so you could play it in your car.

If all this sounds fanciful, you should note the latest news from the copyright front. Hollywood has launched a new legal barrage against the makers of personal video recorders, while the record companies are getting ready to put copy protection on CDs.

Personal video recorders, also called PVRs, use computer hard disks to store your favorite shows. They let you search listings electronically and then set the devices to record programs based on your preferences, such as genres or the names of shows or even actors.

In its latest example of gross interference with the rights of average people, the big TV networks and Hollywood studios have sued several PVR companies, including SonicBlue, the Santa Clara-based company that makes the ReplayTV PVR. Replay is the most sophisticated of the current batch of such devices, but the lawsuit is ultimately aimed at all the PVR companies and their customers.

One of the new lawsuits is breathtaking in its arrogance. According to the Los Angeles Times, MGM’s lawyers whine that the ability of ReplayTV customers to use the keyword function would “cause substantial harm to the market for prerecorded DVD, videocassette and other copies of those episodes and films.” To Hollywood, this is a massive bug in the system. To customers, it’s a fabulous feature.

The studios and TV networks are also whining about the feature that lets users fast-forward through commercials or skip them entirely. The entertainment companies are understandably worried about this trend, but so what? My employer would like you to read the paper all the way through and at least glance at every advertisement, but the fact that you don’t have to is one of the reader-friendly pieces of the transaction.

You may think Hollywood is overstepping with such tactics. Unfortunately, the industry and its allies, including those in the software business, are winning every legal battle they fight. They’re winning because they wield the infamous 1998 Digital Millennium Copyright Act, or DMCA, a law that gives producers of digital content nearly absolute control over how it can be used.

It’s what the record companies used to stomp out Napster, and a key weapon in their new campaign to encrypt CDs or otherwise protect them against what they consider unauthorized copying. Never mind that Congress previously gave customers the explicit right to make personal copies of the music they’d purchased. If you buy one of these turkey CDs, take it back and demand a refund.

Give a hand to consumer-electronics manufacturer Philips (www.philips.com) for taking a stand on the side of customers. Philips, co-inventor of the CD, has called the copy-protected CDs what they are:
dysfunctional goods.

Meanwhile, U.S. Rep. Rick Boucher, D-Va., has asked the record companies just what they think they’re doing with the copy-protected CDs, which may violate a law predating the DMCA. Boucher is one of an alarmingly few members of Congress who understands just how far the entertainment industry is willing to go in its greed.

Why should you care if you can’t make a copy of a CD to play in your car? Because the industry’s attack is much wider. Your rights are intertwined with scholarship, with the public commons of knowledge that the owners of information want to close off. The damage will be far-reaching if they succeed.

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