Studios Stage Fight Against Internet Bill

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The Hollywood studios are fighting a behind-the-scenes battle in Sacramento to derail a bill they say would promote online piracy — though the bill has little to do with downloading movies.

Actually, the fight may have more to do with who's behind the legislation: the Electronic Frontier Foundation, a civil liberties and technology advocacy group that frequently opposes the studios' anti-piracy initiatives.

The measure by Assemblyman Joe Simitian (D-Palo Alto) would help Internet users maintain the anonymity they have in chat rooms and elsewhere on the Internet when sued in state court for something they said or did online.

Passed by the Assembly on June 2 and scheduled for a Senate Judiciary Committee hearing today, AB 1143 would require Internet services to notify customers of subpoenas seeking their identities and give customers 30 days to challenge the requests in court.

Because it would apply to lawsuits in state courts, the bill wouldn't affect people accused of pirating movies or other copyrighted works online. Copyright cases are heard in federal court.

Still, lobbyists for the movie, video game and retail industries argue that AB 1143 would take away one of the tools they need to ferret out Internet users who violate trade secrets, offer counterfeit goods or steal intellectual property.

The battle is the latest in a series between entertainment companies and privacy and consumer advocates. It's a near replay of the fight between the Recording Industry Assn. of America and Verizon Communications Inc. over the RIAA's use of federal court subpoenas to obtain the names of alleged music pirates who used Verizon's Internet services. Verizon released the names on a federal judge's order, but it is appealing the ruling.

For the studios' trade organization, the Motion Picture Assn. of America, the Electronic Frontier Foundation's support for AB 1143 is a main reason to work to block the bill, said Vans Stevenson, MPAA senior vice president for state legislative affairs. Alternatively, the group wants to exempt subpoenas related to intellectual property, a change the EFF says would gut the bill.

Stevenson said AB 1143 was part of the EFF's agenda "to make sure people have unfettered free access to everything on the Internet."

"It's clear that they have a legislative agenda, both defensively and offensively, to undermine the ability of the intellectual-property community to legitimately protect its work from theft."

Nonsense, said Cindy Cohn, legal director of San Francisco-based EFF. The purpose of AB 1143, she said, was to protect people from abusive "John Doe" lawsuits that aim to silence users online.
"You don't have the right to use the cover of anonymity to protect yourself" when breaking the law, Cohn said. But as it is, "the law is not giving a fair shake to those who are wrongly accused or who are accused for the purpose of shutting them up."

Simitian, whose Silicon Valley district has thrived on patents and other intellectual property, said both sides have legitimate concerns.

"I would hope that people would consider the bill based on merits, not motives, and based on consideration of the policy, not the players," he said. "I'm interested in doing good policy work. I'm not much interested in getting caught up in a spitting match between competing interest groups."

The EFF and the MPAA have been spitting at each other frequently in the last year.

They have faced off in state legislatures across the country over MPAA-sponsored bills to expand laws against the theft of services, which the EFF argued would weaken free-speech and privacy rights. They have butted heads at the Federal Communications Commission over a proposed regulation to bar retransmission of digital television broadcasts over the Internet, and in Congress over a bill to require anti-piracy technology in an array of digital devices.

The EFF is defending the distributors of a file-sharing program and the makers of DVD-copying software against copyright-infringement lawsuits brought by the MPAA. In the appeal of the Verizon case, the two groups are clashing over the ability of accused infringers to fight for their anonymity in court.

In Sacramento, AB 1143 is opposed by industries beyond the studios, the Screen Actors Guild and the Directors Guild of America. Several California-based video game companies — including Electronic Arts Inc., Eidos Interactive Ltd. and Capcom USA Inc. — weighed in against the bill this month, contending that it would interfere with their ability to bring cases against pirates. And Yahoo Inc., which has won several changes in the bill, said in a letter to the Senate Judiciary Committee last week that it couldn't support the bill unless more changes were made to clarify and limit the obligations of Internet services.

In a letter to Simitian, Yahoo lobbyist John Scheibel said his company expected to receive 600 subpoenas in 2003, up 50% from last year.

Yahoo, like many large Internet services, voluntarily alerts users when it receives a subpoena. Under current law, Internet services have to turn over the requested name and address within 10 days, leaving little time for a user to challenge the subpoena in court. Simitian's bill is designed to give users 30 days to challenge a subpoena.

Cohn said her office gets two to five requests for help each month from individuals or groups who want to fight a subpoena in a "John Doe" case. One such request came from four people sued in 2001 by an Arizona-based ambulance company, which accused them of making false statements about the company and said they might be in a position to reveal trade secrets on a Yahoo message board.

One of the four, who asked not to be identified, said the message board was filled with comments criticizing the company's management for causing its stock price to plummet. The company went "on a fishing expedition with subpoenas and shut people up," he said.

"If I hadn't had the EFF on my side, financially I'd be devastated," he said. The EFF's intervention protected the group's anonymity and led the company to drop the lawsuit, he said, but by that time the message board had been silenced.

The California bill was drafted for the EFF and Simitian by law students at the Samuelson Law, Technology & Public Policy Clinic at UC Berkeley. Deirdre K. Mulligan, director of the clinic, said Virginia adopted a similar statute two years ago, causing no apparent damage to the enforcement of intellectual-property rights there.

But the MPAA's Stevenson said the bill would diminish the studios' ability to protect their copyrighted works against theft, hacking and other online perils by giving violators a 30-day warning. "All we're seeking is a name, that's it," Stevenson said. "We're seeking a name behind the Internet address. We have a long history, in California
and elsewhere, of protecting people's 1st Amendment rights, and we're clearly on that side."

Besides, he said, California already provides plenty of protection against frivolous or abusive lawsuits. But Mulligan noted that those penalties typically don't kick in until after someone's identity is revealed.

"That's the problem with privacy," she said. "Once it's been disclosed, you can certainly get money back, but you can't get your privacy back."

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