Senators seek consensus from P2P parties on new law

By Brooks Boliek

WASHINGTON -- A group of Senate leaders is charging the country's highest-ranking copyright official with rewriting legislation designed to punish P2P operators who entice people to illegally distribute copyrighted works.

In a letter signed by four top-ranking senators, the lawmakers ask Register of Copyrights Mary Beth Peters to schedule high-level meetings with copyright owners such as the record companies and movie studios, people who run peer-to-peer networks and technology companies in an effort to build a consensus for the legislation.

Senate Republican leader Sen. Bill Frist, R-Tenn., Democratic leader Sen. Tom Daschle, D-S.D., Judiciary Committee chairman Sen. Orrin Hatch, R-Utah; and the committee's senior Democrat, Patrick Leahy, D-Vt., signed the letter seeking Peters' assistance with the legislation.

All four senators have co-authored the controversial Inducing Infringements of Copyrights Act, which allows creative artists and copyright holders to sue companies that profit from encouraging the public to commit copyright piracy.

During a hearing before the Senate Judiciary Committee last month, the legislation came under fire from technology companies and consumer electronics manufacturers for going too far. Consumer Electronics Assn. CEO Gary Shapiro called it a "deadly new tool" that would put a "massive liability bull's-eye" on technology companies.

At the time, Peters said she thought the bill "would be a positive addition to the copyright law."

Since then, the senators have decided to take a second look at the legislation, hoping to build support for a modified version of the bill.

"We do recognize, however, that some technology companies are concerned that claims for intentional inducement of infringement might be misused frivolously against entities who distribute legitimate copying devices or programs such as computers, CD burners, personal video recorders, e-mail services, etc.," the senators wrote. "We are open to any constructive input on how Congress can best frame a technology-neutral law directed at a small set of bad actors while protecting our legitimate technology industries from frivolous litigation."

While the senators were striking a more conciliatory note, they appeared to be unwilling to drop their controversial stance on "secondary liability" -- the legal concept that puts P2P operators at risk under the bill.

"There is little dispute that entities intentionally encouraging and promoting widespread infringement should be held secondarily liable for the infringement they intend to induce," they wrote. "The imposition of such liability is particularly appropriate given that much
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file-sharing software automates the redistribution of infringing files so effectively that people making hundreds of works available for distribution to millions of persons around the globe can testify that they had no idea that they were engaged in the massive, global redistribution of those protected works."

Nevertheless, the senators tell Peters that "we remain open to other approaches" asking her "to attempt to achieve consensus proposals" and deliver them to the senators by Sept. 7.

Senate aides said the letter doesn't mean that the senators have given up on their bill, although final passage this year is unlikely given that it is an election year and Congress has much unfinished work left to do.

"This was a step contemplated from the beginning," one aide said. "It's a another step toward getting a bill through Congress."

Consumer Electronics Assn. officials said they were pleased that the lawmakers decided to open up the process.

"All we've ever asked for is for this to be a fair and open process," CEA spokesman Jeff Joseph said. "From that perspective, this is a great development."

But questions remain about how fair the process will be, Joseph said.

"We are a bit concerned about the role Peters will play," he said. "She's already stated in the hearing that she doesn't believe in the principles of the Betamax decision."

In the Betamax case, the U.S. Supreme Court decided that the VCR did not infringe on copyrights because it has other legitimate uses like shifting the time a television program can be viewed.

RIAA CEO Mitch Bainwol said he was encouraged by the senators' decision, viewing it as a sign that the lawmakers weren't going to let the measure languish.

"This is an important sign that the sponsors understand the urgency of moving forward," he said. "Paralysis is not an option. We remain eager to work on a common-sense compromise that fulfills the ultimate objective of targeting bad actors who are jeopardizing the future of music."