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An Act that induces a lot of reactions

By Christine Boese
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(CNN) -- I was deeply troubled a few weeks ago when the Senate Judiciary Committee listened to testimony about a proposed bill called the Inducing Infringement of Copyrights Act (S. 2560) introduced by Sens. Orrin Hatch, R-Utah, and Patrick Leahy, D-Vermont.

In their quest to put a stop to illegal online music swapping, these lawmakers to have written a law that would make MP3 players, such as Apple iPods, illegal.

The bill allows copyright infringement liability lawsuits against the makers of any device or software utility that "induces" or encourages users to make illegal copies of copyrighted digital material. The bill is targeting peer-to-peer (P2P) file sharing such as Grokster or Morpheus, but some claim it is so broadly worded that even Apple iPods would become illegal.

I read the articles on the proposed Induce Act and mulled them over, looking for something in the commentary that I just wasn't seeing. Don't get me wrong. There is plenty of good information on the Internet for critical thinkers to evaluate the so-called "Induce Act" on their own -- articles in the popular media, the full text of the bill, a demonstration of what a lawsuit filed under the Act would look like at the Electronic Frontier Foundation and even a Web site called "savetheipod.com."

But I want to consider a larger issue behind the so-called Induce Act: What makes a good law?

One principle I find important for a law is that it be consistently applicable. I'm not too fond of laws that create loopholes as if they were the U.S. tax code, you know, where the law only applies to people with green hair hopping on one foot every second Tuesday.

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I also want to think about the overused word, paradigm. I know it tends to induce giggling, but I am talking about its primary meaning: a model or exemplar. We ought to be thinking about the Induce Act in terms of what models it is using for digital copying.

With new inventions, we tend to model how we think about them with items we've used before; for example, before a car was a car, it was a "horseless carriage."

Sometimes people think about computer hard drives as being like a bucket, something in which to catch and carry things around. But what if a bucket isn't the best model for thinking about a hard drive? What other models might we use? A ditto machine? A telephone? Those models have different primary functions beyond catch and carry.

In their quest to put a stop to illegal online music swapping, these lawmakers seem to have written a law that would do more than make iPods illegal. Based on its model, any item that can hold and reproduce digital copies could be illegal. The law appears to catch in its bucket all personal computers, as well as digital cameras, including the ones attached to cell phones. Even office copy machines would have to be thrown out.

And in principle, all copying would be suspect, including film cameras and video recorders. If we apply the principle presented in the Induce Act's model to all media, even the lowly pencil could be construed as inducing people to break the law.

The people who get to decide on the models actually have a lot of power. And the Induce Act is trying to do just that, to remodel the evolving landscape of cyberspace. There's a lot more to this Induce Act than meets the eye.

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