

Studios Face Tough Battle Protecting Hi-Def DVDs

May 5 2007

Hollywood studios may find it impossible to squash a Web-based movement to facilitate the illegal copying of high-definition DVDs, even though the law is on their side, because the information has already been distributed so widely.

In February, a hacker obtained a decryption key that enables copying of protected HD-DVD and Blu Ray movies and posted it on the Internet. Since then, a consortium of movie studios, known as the Advanced Access Content System Licensing Authority, have been waging a quiet war, mostly by sending cease-and-desist letters to various Web sites.

But although the law backs the movie studios, legal experts said the consortium will have little success trying to stop the dissemination of the critical code, which is already being both set to music and printed on T-shirts.

"It's sort of a violation without a satisfying remedy from the standpoint of the companies and the consortium ... because how are they going to sue every blogger and everyone who has access to the code?" said Richard Neff, an intellectual property attorney at Greenberg Glusker in Los Angeles.

One Web site, Digg.com, began pulling down the files after receiving a letter from AACCS, but reversed itself after users inundated it with criticism and files containing the offending string of 32 digits and letters.

Michael Ayers, chairman of the AACCS business group, said the consortium has "received some encouraging cooperation from a number of the parties we have dealt with." He said the AACCS's enforcement efforts are aimed only at copyright circumvention tools and not at "valuable public discourse" on whether digital files should be protected at all.

Studios have already begun shipping high-definition discs that cannot be copied using the posted key, he said.

The Electronic Frontier Foundation, a group that advocates for free speech on the Web, notes the AACCS's claims that hosting the key on a Web site violates the Digital Millennium Copyright Act were upheld by federal courts in 2000. The case involved an online magazine that published a computer program that unlocked DVD encryption codes.

This week's rebellion of Internet users poses a different set of facts that may not fall under the 2000 legal precedent, EFF senior attorney Fred von Lohmann said in a blog posting this week.

"It is difficult to say how a court would rule on this question, but it does create a specter of monetary liability for hosting providers, even if they otherwise comply with the 'notice-and-takedown' procedures required by the DMCA safe harbors," von Lohmann said.

The consortium's best bet, according to Neff, is to come up with a new code rather than "filing 250,000 lawsuits against lots of little happy hackers with nothing in their bank accounts."

Users at Digg.com and other sites do not have much of a free speech claim either, but the AACCS could put itself in a worse position by pursuing defendants who are not damaging them, said constitutional law professor David Kairys of Temple University School of Law.

"The big companies are really utilizing legal tactics that I think are questionable," he said. "The whole intent might be to shut people up rather than to assert a viable legal claim.

"The industry might have more to lose than to gain. Maybe they'll take a lesson from that (and) seek solutions rather than bullying people who are kind of having fun with a number."

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