BitTorrent and the Induce Act – On A Collision Course

A new technology and a proposed law appear destined to meet.

On June 22, 2004, Sen. Orrin G. Hatch, R-Utah, introduced a bill in the U.S. Senate that would allow copyright owners to sue peer-to-peer companies that profit from encouraging minors and others to commit copyright infringement.

Hatch's bill, known as the Induce Act (S. 2560), states that whoever "intentionally induces" or "intentionally aids, abets, counsels or procures" any copyright violation "shall be liable as an infringer." "Tragically," Hatch says, "some corporations now seem to think that they can legally profit by inducing children to steal.

Privacy Please
Disclosure of Privacy Policies and Practices Now Required

As of July 1, 2004, companies that own commercial websites or online services that collect certain information from California residents must now post policies describing what information is collected and how it might be shared. It is no longer optional for certain companies to decide whether to post a privacy policy. The requirements appear in California's Online Privacy Protection Act (CA Bus. & Prof. Code, Section 22575 et seq.), which is the first state law of its kind. Companies that have in the past posted privacy policies should review the new requirements in order to bring them into compliance with the Act's requirements such as, stating the effective date of the policy. Companies would be well advised to institute programs to perform internal audits of their commercial websites and business divisions that use information gathered from the website in order to ensure compliance with the Act.

If a commercial website collects information from California residents that are individuals who seek or acquire, by purchase or lease, any goods, services, money, or credit for personal, family or household purposes, the Act will apply. The Act does not apply to websites or online services that are not operated for commercial purposes, nor to third parties that operate, host or manage but do not own the website or on-line service.
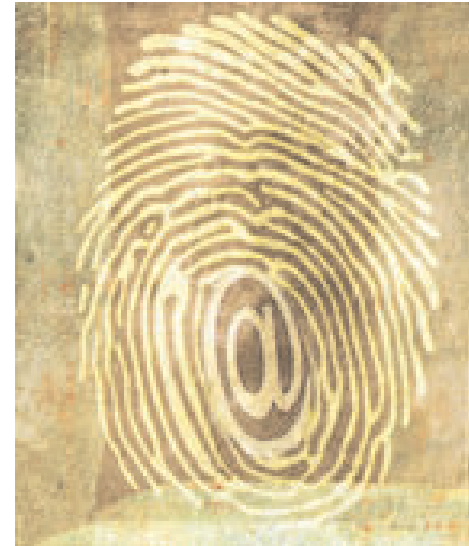
If **any** of the following kinds of information is collected from a California resident, the website owner must comply with the Online Privacy Protection Act:

1. A first and last name; or
2. A home or other physical address, including street name and city or town; or
3. An e-mail address; or
4. A telephone number; or
5. A social security number; or
6. Any other identifier that permits the physical or online contacting of a specific individual.

All such information, and any other information that the website or online service collects online concerning the user and then combines and maintains it in a personally identifiable form with any types of information described above, is considered "personally identifiable information."

The mandated privacy policies must describe each category of personally identifiable information collected and describe the categories of third parties with whom it may be shared. If the website maintains a process to permit a consumer to review and request changes to his or her personally identifiable information, the privacy policy must now describe it. The website must also have a formal process for providing notice of changes to the privacy policy, and must describe that process in the privacy policy.

Companies should also be careful to state the effective date of the policy, which is also a mandate of the Act.

Websites must post the privacy policy in any of the following ways:

1. Post the privacy policy on the homepage or first significant page after entering the Website; or
2. Post an icon with a hypertext link to the privacy policy that contains the word "privacy" on the homepage or first significant page after entering the Website. The icon link must use a color that contrasts with the background color of the web page or is otherwise distinguishable; or
3. Post an textual hypertext link to the privacy policy on the homepage or first significant page after entering the Website that (a) includes the word "privacy", (b) is written in capital letters equal to or greater in size than the surrounding text, or (c) is written in type larger than the surrounding text, or in contrasting type, font or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the language; or
4. Post any other functional hyperlink that is so displayed that a reasonable person would notice it.

Online services are permitted to use any other reasonably accessible means of making the privacy policy available for consumers of the online service. The unfair competition provisions (Sec. 17200, et. Seq.) of the California Business and Professions Code will be used to enforce the Act. The Act provides a grace period of thirty (30) days for a website owner to comply with the Act after receiving a notice of noncompliance. A website owner will be in violation of the Act if the owner fails to comply with the Act or the website's posted privacy policy "knowingly and willfully" or "negligently and materially."

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Some think they can legally lure children into breaking the law with false promises of 'free music.' "

The Induce Act would target companies and individuals involved in producing technologies that seek to induce and profit from copyright infringement.

BitTorrent is a product that would appear to be covered by the Induce Act. Indeed, its creator, Bram Cohen, who was awarded Wired Magazine's 2004Rave Award for software development, appears to be taunting the recording and movie industries in the press. But what is BitTorrent and what does it do?

BitTorrent is a peer-to-peer file sharing protocol which solves problems of bandwidth capacity and high costs associated with the distribution of large, popular files. Under traditional file sharing methods such as HTTP, multiple users simultaneously downloading the same file clutter bandwidth and experience frustrating delays. The heavy traffic often stresses the hosting machine. But BitTorrent technology allows users to simultaneously upload pieces of a file to each other, shifting the costs of uploading to the end user and allowing for file transfer performance to improve as download activity increases.

To begin a BitTorrent deployment, a static file with the extension .torrent is placed on an ordinary web server. The .torrent contains information such as the file's name, its length, hashing information, and the URL of a tracker, a small centralized server responsible only for helping downloaders find each other. Trackers speak a very simple protocol layered on top of HTTP through which a downloader sends information about the file it's downloading, the port on which it's listening, and similar information, and the tracker responds with a list of contact information for peers downloading the same file. Downloaders then use this information to connect to each other. To initially make a file available, a downloader that happens to have the complete file already, known as a seed, must be started. The bandwidth requirements of the tracker and web server are very low, while the seed must send out at least one complete copy of the original file.

The essence of BitTorrent technology is the utilization of peer distribution, so the biggest hurdle for trackers is to effectively coordinate information flow about which peers have what. To efficiently organize this information, BitTorrent cuts files into pieces of fixed size, typically a quarter megabyte. Each downloader reports to all of its peers what pieces it has, and the program allows peers to continuously download other pieces from every peer it can. Simply having peers announce what they have results in less than a tenth of a percent bandwidth overhead and reliably utilizes all available upload capacity.

The innovative technology supporting BitTorrent might be rivaled only by the program's exceedingly simple interface. Users launch the program by clicking on a hyperlink to the file they wish to download and are given a standard "save as" dialog, followed by a download progress dialog showing both an upload and a download rate.

A recent newsworthy application that extends BitTorrent's use beyond its already heralded ability to download a DVD's worth of data in hours rather than days is its marriage with RSS (Really Simple Syndication) technology. RSS is an XML-based protocol used to serve news headlines and weblog entries in a streamlined, organized format, allowing users to subscribe to feeds of their favorite content. Using both technologies in conjunction could allow for a user to keep continually current an RSS feed of a favorite band, actor, show, game or other "big media object" without making them suffer the "click and wait" delay associated with downloading huge files on demand. The features of BitTorrent simplify and speed up transfers of online content. Whether those transfers are legal or illegal is a different question. Those who utilize BitTorrent to promote or facilitate illegal downloads may soon find themselves face to face with the Induce Act.

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