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Court Hears Appeal of Hacker Wanting To Post Descrambling Code on Internet

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NEW YORK -- Throngs of self-described Web freedom fighters packed a federal appeals court as the publisher of a hacker magazine appealed a judge's order that bars him from posting a DVD descrambling code on the Internet.

The order, handed down in August by a lower court judge in Manhattan, was sought by the major Hollywood studios. The motion-picture industry successfully argued during last year's trial of Eric Corley, publisher of 2600 magazine, that the underground software would promote rampant DVD piracy on the Web.

He appealed, and the case could eventually wind up in the Supreme Court as the first major test of the 1998 Digital Millennium Copyright Act. Mr. Corley's supporters, which include free-speech group Electronic Frontier Foundation, say the law prohibits the development of code-breaking programs and tramples the First Amendment rights of computer programmers.

The program, called DeCSS, breaks encryption codes on ordinary DVDs and allows movies to be freely copied. The program was invented by European computer buffs, although Mr. Corley was sued when he posted it on his Web site, 2600.com (www.2600.com), allegedly as part of a news story on computer security.

Kathleen Sullivan, dean of Stanford University's law school, argued on Mr. Corley's behalf and urged a three-judge panel to reverse the decision. "It's over-inclusive," she said. "It stops fair use in digital form."

Ms. Sullivan noted the descrambling program isn't solely used for illegal purposes by online movie pirates. She cited one example of a colorblind DVD owner, who might download a copy in order to alter the movie's color pixels for easier viewing. The law, she said, "stops innocent users."

The panel, which reserved decision, indicated that it was skeptical of her argument. "It's not obvious to you that some people will engage in fair use and other people will steal movies?" asked one judge. Ms. Sullivan replied, "DeCSS itself is not an act of copyright infringement."

Charles Sims, a lawyer who represents the movie studios, called the descrambling program "a danger of the digital age." Placing the code on a Web site is "analogous to the publication of a bank vault combination in a national newspaper," he said, adding that the disputed provisions of the 1998 copyright law "make the Napsterization of motion pictures less likely."

Government Backs Injunction

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The federal government has weighed in on the dispute, siding with Hollywood, and asking the appeals court to uphold the injunction.

Assistant U.S. Attorney Daniel S. Alter told the panel that DeCSS was created for the sole purpose of "ripping" open DVDs to make perfect copies to distribute illegally over the Internet. "This is something that Congress can protect against," he added. "This case does not deal with fair use."

The cavernous courtroom at the 2nd Circuit Court of Appeals was packed with an odd mix of soberly attired motion-picture representatives and casually dressed young computer buffs, who looked as though they had left their skateboards outside to come watch the proceeding.

Fred Benenson, 17, said he and some friends took the day off from high school in Connecticut to hear the arguments. "I think it's the closest thing to a political revolution our generation is going to get, fighting laws over the Internet," he explained. Mr. Benenson said he supports Mr. Corley because a computer program is "no different from real speech. The functionality of a program is really no different from the functionality of a book."

Mr. Corley himself watched the arguments in the middle of a sea of people several pews back from the front. Afterward, he stuck a baseball cap on his head backwards and headed outside for a press conference organized by his lawyers. "I thought [the appeal] was great," he said. "The judges asked some good questions."

The judges ordered the parties to submit written briefs by May 10. They didn't indicate when they will hand down a decision.

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