GAO

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1. Bill	2. Date	3. Pages
S.893	Apr 23, 1991 (60)	S4862-63

4. Action:

INTRODUCED BY MR. HATCH AND MR. DeCONCINI

By Mr. HATCH (for himself and Mr. DECONCINI):

S. 893. A bill to amend title 18, United States Code, to impose criminal sanctions for violation of software copyright; to the Committee on the Judiciary.

CRIMINAL SANCTIONS FOR VIOLATIONS OF SOFTWARE COPYRIGHT

Mr. HATCH. Mr. President, I rise today, with my good friend from Arizona, Senator DECONCINI, to introduce legislation that we believe will help to deter the growing problem of computer software piracy. In 1982, Congress provided strong criminal penalties for persons involved in the unauthorized production or distribution of multiple copies of phonorecords, sound recordings, and motion pictures. Likewise, this legislation would provide the same enhanced criminal sanctions for

the violation of copyright in computer programs.

The willful infringement of copyright in computer software programs is a widespread practice that is threatening the U.S. software industry. The easy accessibility of computer programs distributed in magnetic media format, together with distribution of popular applications programs, has lead to persistent large-scale copying of these programs. Studies indicate that for every authorized copy of software programs in circulation, there is an illegal copy also in circulation. Losses to the personal computer software industry from all illegal copying were estimated to be $1.6 billion in 1989. If we do not address the piracy of these programs, we may soon see a decline in this vibrant and important sector of our economy.

Not only is the software industry seriously damaged, but the public is also victimized by these acts of piracy. The consumer is paying full price for a product which he believes is legitimate. However, not only may there be imperfections in the actual reproduction, but the quality of the product is often lower as a result of cheap equipment. Furthermore, the consumer is ineligible for the important support and backup services typically offered by the software publisher.

As was noted during the hearings on increasing the penalties for illegal copying of records, sound recordings, and motion pictures, stiffer penalties toward piracy do act as a deterrent to these types of crimes. Enhanced penalties for large-scale violation of software copyright would be more in line with the seriousness of the crime.

Currently there is no differentiation in penalties between small and large acts of piracy. Because acts of software piracy are only misdemeanors for the first offense, prosecutors are deterred from prosecuting, and there is little deterrence for these criminal acts. The penalties in these software cases are far too lenient as compared to other theft and forgry statutes for other schemes which are also very lucrative.

Under the language of this bill, a person involved in software piracy would be subject to a fine of up to $250,000 and imprisonment of up to 5 years if the offense involves the reproduction or distribution of at least 50 copies in one or more computer programs during any 180-day period. For offenses involving more than 10 but less than 50 copies, the penalties would include a fine of up to $250,000 or imprisonment of up to 2 years.

Mr. President, we believe that this legislation is overdue. We must act now to protect this important industry. I urge my colleagues to cosponsor and support this measure, and I ask unanimous consent that a copy of this legislation be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 893

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That (a) section 2319(b)(1) of title 18, United States Code, is amended—

(1) in paragraph (B) by striking "or" after the semicolon;

(2) redesignating paragraph (C) as paragraph (D);

(3) by adding after paragraph (B) the following:

"(C) involves the reproduction or distribution, during any 180-day period, of at least 50 copies infringing the copyright in one or more computer programs (including any tape, disk, or other medium embodying such programs); or";

(4) in new paragraph (D) by striking "or" after "recording,"; and

(5) in new paragraph (D) by adding ", or a computer program", before the semicolon.

(b) Section 2319(b)(2) of title 18, United States Code, is amended—

(1) in paragraph (A) by striking "or" after the semicolon;

(2) in paragraph (B) by striking "and" at the end thereof and inserting "or"; and

(3) by adding after paragraph (B) the following:

"(C) involves the reproduction or distribution, during any 180-day period, of more than 10 but less than 49 copies infringing the copyright in one or more computer programs (including any tape, disk, or other medium embodying such programs); and".

(c) Section 2319(c) of title 18, United States Code, is amended—

(1) in paragraph (1) by striking "and" after the semicolon;

(2) in paragraph (2) by striking the period at the end thereof and inserting "; and"; and

(3) by adding at the end thereof the following:

"(3) the term 'computer program' has the same meaning as set forth in section 101 of title 17, United States Code.".