GAO

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1. Bill	2. Date	3. Pages
S.893	Jun 4, 1992 (79)	S7580-81

4. Action:

Violation of Software Copyrights: Senate passed S. 893, to amend title 18, United States Code, to impose criminal sanctions for violation of software copyright, after agreeing to the following amendment proposed thereto:

Pages S7580-81

Specter (for Hatch) Amendment No. 1868, to make a technical correction.

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CRIMINAL SANCTIONS FOR VIOLATION OF SOFTWARE COPYRIGHT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 437, S. 893, a bill to amend title 18, United States Code, to impose criminal sanctions for the violation of software copyright.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

A bill (S. 893) to amend title 18, United States Code, to impose criminal sanctions for violation of software copyright.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

AMENDMENT NO. 1868

(Purpose: Technical correction)

Mr. SPECTER. Mr. President, on behalf of Senator HATCH, I send a technical amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The bill clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER], for Mr. HATCH, proposes an amendment numbered 1868.

Mr. SPECTER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection it is so ordered.

The amendment is as follows:

On page 2, line 25, strike "49" and insert "50".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1868) was agreed to.

Mr. HATCH Mr. President, I am pleased that the Senate is acting today on S. 893, which I introduced last year. This bill will, if enacted into law, provide a strong tool for prosecutors who seek to limit 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. It is my understanding that this law, the criminal infringement of copyright statute found at 18 U.S.C. 2319, has worked well since its enactment. S. 893 provides the same recognition that the large-scale, commercially oriented copying of computer programs should be treated as a criminal offense.

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 led 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 not noted during the 1982 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. I am confident that the enactment today of these new penalties for large-scale violation of copyright in computer software will have a similar deterrent effect.

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 current penalties in these software cases are far too lenient as compared to other theft and forgery statutes for other schemes which are also very lucrative.

Under the language of S. 893, a person involved in software piracy will 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 1 or more computer programs during

any 180-day period. For offenses involving more than 10 but less that 50 copies, the penalties will include a fine of up to $250,000 or imprisonment of up to 2 years.

This provision was adopted by a unanimous voice vote of the Senate when it was proposed last year as part of the crime bill. When it was considered last fall as a separate bill by the Senate Judiciary Committee, it was also approved by unanimous vote. By enacting S. 893 today as a separate bill, we increase the likelihood that this legislation will become law and that the serious problem of unauthorized computer software copying will be brought under some degree of control.

The PRESIDING OFFICER. Without objection, the bill is deemed to have been read three times and passed.

So the bill (S. 893) was deemed passed, as follows:

S. 893

Be it enacted by the Senate and 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 50 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.".

Mr. SPECTER. Mr. President, I move to reconsider the vote by which the bill as amended was passed.

Mr. FORD. I move to lay that motion on the table.

The motion was agreed to.