

Furor over software rentals

A U.S. subcommittee bill threatens the existence of the nascent industry

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SPECIAL TO CW

Imagine walking into a software rental store and going home with copies of Final Word, Microsoft Word, Wordperfect and Xywrite, just as you might leave a video store with *The Terminator* and *Videodrome*. You return the software packages in a week, paying perhaps \$35, and go to a computer store to buy a copy of the one you liked best.

Now imagine a businessman away from home. He has five floppy disks' worth of Lotus Development Corp. 1-2-3 spreadsheets, but the office he is visiting uses Microsoft Corp.'s Excel. No problem. He goes to the local software rental store and checks out a copy of 1-2-3.

Such practices may not present any problems. However, the trouble with renting software, critics say, is that there is no assurance that customers will delete their copies of the programs. One of those critics is U.S. Sen. Orrin Hatch (R-Utah), who is sponsoring an amendment to U.S. copyright law that would outlaw most rentals of software in the U.S. before the practice becomes widespread. Renting software is more common in Canada and Japan, ac-

ording to a congressional committee staff member working with Hatch.

"The overwhelming rationale for renting a computer program is to make an unauthorized copy," Hatch said earlier this year. "Computer software cannot be enjoyed for an evening's entertainment and then returned. Unless Congress acts quickly, the embryonic rental industry could soon grow out of control, becoming a cancer that would kill off the legitimate software development industry by which it was created."

Hatch's bill, the Computer Software Rental Amendment Act of 1989, is based on the Record Rental Act of 1984, which eliminated the fledgling record rental business. The bill, which was approved by the Senate Subcommittee on Patents, Copyrights and Trademarks by a 5-to-1 vote July 26, would prohibit the renting, leasing or lending of software for commercial advantage without the copyright holder's consent.

Flak over infringement

The proposal drew heavy criticism from library groups, which claimed that the law would infringe on a library's right to freely collect and lend materials, and

from video rental chains that rent software cartridges for home video games. The bill was subsequently amended to exempt both groups, and the modified version is scheduled for a vote by the Senate Committee on the Judiciary this fall.

that software as a part of the rental, in the same context that we might supply a manual or a cable," says Rob Armstrong, manager of marketing for General Electric Rental/Lease in Atlanta.

Hatch's bill does not distinguish between renting applications and getting operating system software with a rented computer. The committee staff member says the issue was not considered in drafting the bill.

tion, a Cambridge, Mass.-based group of computer professionals organized to promote access to software, sees Hatch's bill as one more step in the slow erosion of the public's traditional rights under the copyright law.

"The law that Hatch is pushing would do away with a public freedom that has existed since the beginning of copyright law: the freedom to borrow and lend," says Richard M. Stallman, a Unix programmer and consultant based in Cambridge and president of the foundation.

Stallman, who is trying to help form the League for Programming Freedom to combat what he calls monopolies over emerging software standards, says he is against any plan to increase the software makers' power over the public.

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SEN. ORRIN HATCH (R-UTAH)

Everyone agrees that few organizations in the U.S. currently rent software as a business in its own right. "We think the problem is small right now. What we are trying to do is prevent it from growing," says Mary Jane Saunders, general counsel for the Software Publishers Association, a Washington, D.C.-based trade organization.

The most commonly rented programs in the U.S. are the MS-DOS and Apple Computer, Inc. Macintosh operating systems, which come with rented computers. PC renters contend that including the operating system software does not constitute a rental agreement. "We supply

Corey Mason, president of Rent-A-Mac, a national chain, says that he rents Macintosh application software with computers but only to match competitors' services. He loses money in the process and would be happy to see Hatch's bill become law.

"I firmly believe that renting software as a profit center is wrong because it permits the dishonest user an opportunity to copy an expensive program at a very low cost," Mason says. Most individuals that rent applications from him, he adds, are businessmen who need a computer and programs for a week or so while traveling.

The Free Software Founda-

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