

AMENDMENT NO. _____ Calendar No. _____

Purpose: To amend chapter 5 of title 17, United States Code, relating to inducement of copyright infringement, and for other purposes.

IN THE SENATE OF THE UNITED STATES—108th Cong., 2d Sess.

S. 2560

To amend chapter 5 of title 17, United States Code, relating to inducement of copyright infringement, and for other purposes.

Referred to the Committee on _____
and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by _____

Viz:

- 1 Strike all after the enacting clause and insert the fol-
- 2 lowing:
- 3 **SECTION 1. SHORT TITLE.**
- 4 This Act may be cited as the “Inducing Infringement
- 5 of Copyrights Act of 2004”.

1 **SEC. 2. INTENTIONAL INDUCEMENT OF COPYRIGHT IN-**
2 **FRINGEMENT.**

3 Section 501 of title 17, United States Code, is
4 amended by adding at the end the following:

5 “(g)(1) Whoever intentionally induces, by manufac-
6 turing, offering to the public, providing, or otherwise traf-
7 ficking in any product or service, any violation of sub-
8 section (a) shall be liable as an infringer.

9 “(2)(A) A determination that a person intentionally
10 induces another under this subsection shall require that
11 the person engaged in conscious and deliberate affirmative
12 acts that a reasonable person would expect to result in
13 widespread violations of subsection (a) taking into consid-
14 eration the totality of the circumstances.

15 “(B) For purposes of this subsection, actual or con-
16 structive knowledge by the actor of the infringing acts of
17 another person using a device, service or software devel-
18 oped, manufactured, sold, imported, or marketed by the
19 actor is not itself sufficient to demonstrate the requisite
20 intent.

21 “(C) No action may be filed under this subsection
22 that alleges liability for intentional inducement of copy-
23 right infringement by manufacturing, offering to the pub-
24 lic, providing, or otherwise trafficking in any product or
25 service based solely on evidence of a consumer’s use of
26 that product or service, if—

1 “(i) such use is private and noncommercial;

2 “(ii) such use is not for financial gain; and

3 “(iii) any copies or phonorecords resulting from
4 such use are not made publicly available.

5 “(D) For purposes of this subsection intentional in-
6 ducement does not include merely—

7 “(i) providing venture capital, financial assist-
8 ance, payment services, or financial services;

9 “(ii) advertising, marketing or promoting a de-
10 vice, service or software when doing so does not en-
11 courage the use of that device, service or software
12 for infringing purposes;

13 “(iii) providing information on the use of a de-
14 vice, service or software when one is the creator or
15 distributor of that device, service or software and
16 the information does not encourage the use of that
17 device, service or software for infringing purposes,
18 including through instruction manuals, handbooks,
19 user guides or customer support services; or

20 “(iv) providing information on the use of a de-
21 vice, service or software when one is a person not af-
22 filiated with the creator or distributor of that device,
23 service or software and such information is provided
24 in the context of commentary, criticism, or reviews
25 of the device, service or software.

1 “(3)(A) In granting injunctive relief under section
2 502 for a violation of this subsection, the court shall, to
3 the extent practicable, limit the scope of the injunctive re-
4 lief so as not to prevent or restrain noninfringing uses of
5 the product or service. No award of actual damages under
6 section 504(c) shall be made for a violation of this sub-
7 section unless the court finds that such violation was com-
8 mitted deliberately and repeatedly.

9 “(B) Notwithstanding subparagraph (A), a court
10 may award statutory damages pursuant to section 504(c)
11 if the court finds that the defendant engaged in a pattern
12 or practice of violations of subsection (g)(1).

13 “(4) Nothing in this subsection shall enlarge or di-
14 minish the doctrines of direct, vicarious, or contributory
15 liability for copyright infringement, nor to alter or dimin-
16 ish the authority of the courts of appropriate jurisdiction
17 to adapt or evolve those doctrines, including any defenses
18 thereto or any limitations on rights or remedies for in-
19 fringement and including those articulated in Sony Corp.
20 v. Universal City Studios, Inc. **【Case citation?】**

21 “(5) The limitations on liability in section 512 shall
22 apply to actions filed under this section.”.