

108th Congress
Second Session

S.2560

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

A Bill

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ‘Inducing Infringement of Copyrights Act of 2004’.

SEC. 2. INTENTIONAL INDUCEMENT OF COPYRIGHT INFRINGEMENT.

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

‘(g)(1) Whoever intentionally induces, by manufacturing, offering to the public, providing, or otherwise trafficking in any product or service, any violation identified in subsection (a) shall be liable as an infringer.

‘(2) For inducement to be intentional the actor must have engaged in conscious and deliberate affirmative acts which a reasonable person would expect to result in widespread violations of subsection (a) taking into consideration a totality of the circumstances.

- (a) For the purpose of this subsection, actual or constructive knowledge by the actor of the infringing acts of another person using a device, service or software developed, manufactured, sold, imported, or marketed by the actor is not itself sufficient to demonstrate the requisite intent.
- (b) No action may be brought under this subsection that alleges liability for intentional inducement of copyright infringement by manufacturing, offering to the public, providing, or otherwise trafficking in any product or service based solely on evidence of a consumer’s use of that product or service, so long

as such use is private and noncommercial, such use is not for financial gain, and any copies or phonorecords resulting from such use are not made publicly available.

- (c) For the purpose of this subsection intentional inducement does not include merely:
- (i) providing venture capital, financial assistance, payment services, or financial services;
 - (ii) advertising, marketing or promoting a device, service or software when doing so does not encourage the use of that device, service or software for infringing purposes;
 - (iii) providing information on the use of a device, service or software when one is the creator or distributor of that device, service or software and the information does not encourage the use of that device, service or software for infringing purposes, including through instruction manuals, handbooks, user guides or customer support services; or
 - (iv) providing information on the use of a device, service or software when one is a person not affiliated with the creator or distributor of that device, service or software and such information is provided in the context of commentary, criticism, or reviews of the device, service or software.

‘(4) In granting injunctive relief under Section 502 for a violation of this subsection, the court shall, to the extent practicable, limit the scope of the injunctive relief so as not to prevent or restrain noninfringing uses of the product or service. No award of actual damages under Section 504(c) shall be made for a violation of this subsection unless the court finds that such violation was committed deliberately and repeatedly. Notwithstanding the foregoing, a court may award statutory damages pursuant to Section 504(c) if the court finds that the defendant engaged in a pattern or practice of violations of subsection (g)(1).

‘(5) Nothing in this subsection shall enlarge or diminish the doctrines of direct, vicarious, or contributory liability for copyright infringement, nor to alter or diminish the authority of the courts of appropriate jurisdiction to adapt or evolve those doctrines, including any defenses thereto or any limitations on rights or remedies for infringement and including those articulated in *Sony Corp. v. Universal City Studios, Inc.*

‘(6) The limitations on liability in section 512 shall apply to actions brought under this section.