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Public Knowledge Says “Inducing Infringement” Act is “Overbroad”

A bill that would criminalize actions that “induce” copyright infringement has come under fire from Public Knowledge. The bill, which proposes an addition to the Copyright Act is titled the “Inducing Infringement of Copyright Act of 2004,” was introduced last night by Senator Orrin Hatch, R-Utah, chairman of the Judiciary Committee, Sen. Patrick Leahy, D-Vt., the senior Democrat on the Judiciary Committee, Senate Majority Leader Bill Frist, R-Tenn, Senate Minority Leader Tom Daschle, D-SD, Senator Lindsey Graham, R-SC and Senator Barbara Boxer, D-Ca.

The Act would make it unlawful to “intentionally aid, abet, induce, or procure” copyright infringement, and defines intent as “acts from which a reasonable person would find intent to induce infringement based upon all relevant information about such acts then reasonably available to the actor...” This “reasonable person” standard is lower than the intent standard that usually applies to contributory or vicarious copyright infringement.

“Public Knowledge is concerned that the bill is overbroad, because it regards almost any action that leads to infringement to be a potential offense even if the person who engages in the act never intended to cause infringement,” said Gigi B. Sohn, president of Public Knowledge.

“Since the line between infringement and lawful use in copyright law depends on the specific situation and facts, someone might ‘aid or abet’ conduct he thought was lawful but that later proves to be infringement.” she said.

“We understand and respect the Senators’ goal of targeting egregious companies that promote infringement while sparing companies whose products may simply allow infringement,” Sohn said. “But we don’t believe the framework offered by the “Inducing Infringement” Act is the right approach to achieve that goal,” she said.

Mike Godwin, legal director of Public Knowledge, added that the bill “runs the risk of gutting the Supreme Court’s landmark ruling in *Sony Corp. v. Universal City Studios*” by discouraging and even outlawing future technologies that have substantial non-infringing uses. “No one will invest in, or invent new innovative technologies if the mere fact that they can be used unlawfully is enough to make both the investors and the inventors liable,” he said.

Public Knowledge is a public-interest advocacy and education organization that seeks to promote a balanced approach to intellectual property law and technology policy that reflects the “cultural bargain” intended by the framers of the constitution. More information available at:

<http://www.publicknowledge.org>

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