

The Induce Act: Technological Innovation vs. the Senate
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Like a chameleon, the newly renamed Inducing Infringement of Copyrights Act, formerly the INDUCE Act [S. 2560], has transformed. Its original intent had to do with children.

In its original form, INDUCE was an acronym for: "**I**nducement **D**evolves into **U**nlawful **C**hild **E**xploitation." Understandably, the question that immediately comes to mind and was asked by many was this: "What does copyright infringement have to do with child exploitation?" Obviously, nothing at all and consequently, INDUCE, became "Induce" and this is now posted as the bill's summary at Thomas:

"Inducing Infringement of Copyrights Act of 2004 - States that whoever intentionally induces any copyright infringement shall be liable as an infringer."

The Induce Act title has morphed but the bill would still considerably stymie technological innovation. In its present form, this bill would indict technology-oriented companies for manufacturing any device that could "induce" or encourage buyers of their products to make illegal copies of songs, movies or computer programs.

The total and legal ramifications of the Induce Act are hard to comprehend even for copyright attorneys, but they are very concerned. The proposed bill will amend Section 5, Title 17, the Copyright Law. The amendment is only a few paragraphs in length but in those paragraphs, it contains changes that would dramatically and negatively impact technology, education and consumers. The proposed change in the law states that anyone who "induces" copyright infringement is a copyright infringer and therefore subject to fines and/or imprisonment. In other words, the bill would punish tech companies and consumer electronics makers who develop tools that could "induce" or encourage users to make unauthorized copies of copyright material such as music, movies or software. Without doubt, the Induce Act introduces a new form of copyright infringement. The URL for this short, but all too powerful legislation is found in the Related Links.

The bill has strong support from the powerful lobbies of the entertainment industries from Hollywood, the Motion Picture Association of America [MPAA], as well as the Recording Industry Association of America [RIAA]. It is interesting to note that since 1999 Sen. Hatch has received over \$150,000 to his campaign coffers from the movie and recording industries. One of the co-sponsors of the Induce Act, Sen. Patrick Leahy, [D-Vermont] has received over \$220,000 in the same time period from the same sources.

Manufacturers of technological devices are very concerned that the bill will prohibit innovation. They realize only too well that this bill has the potential of actually outlawing some of the newest and most popular digital devices now available on the market including Apple's iPod, DVD burners, digital storage devices, etc.

What is disconcerting is the observation that the Senate seems unduly biased towards this bill. This can be seen from the tenor of Senator Hatch's [R-Utah] remarks at the hearing. Senator Hatch stated,

"Our second panel consists of five private sector witnesses who can provide an array of perspectives on solving the filesharing problem."

The reference to a "filesharing *problem*" is a problematic. It shows prejudice and a preconceived position. What is not addressed by this legislation or its backers is the fact that the technologies implied by these words have substantial non-infringing uses as well. iPods, digital storage, ripping technologies, P2P filesharing, etc., all have uses that do not involve copyright infringement. Kevin McGuiness from the Net Coalition has succinctly defined the major problem with the Induce Act by stating:

"Legislation should target unlawful behavior, not platforms or technologies."

On the other side, RIAA's Mitch Bainwol, has stated that,

"Lawsuits have had phenomenal educational value."

This remark helps in understanding RIAA's position of suing students, including 12-year olds, for millions of dollars in MP3 and/or P2P filesharing lawsuits. Forget about a higher education degree; just conflict with RIAA for a phenomenal, educative experience.

It should be noted that during the Senate hearings in July support for the Induce Act came from the U.S. Register of Copyrights, Marybeth Peters. She is in favor of doing away with the 1984 U. S. Supreme Court ruling in the Sony Betamax decision. This decision is a landmark one which protected technologies "capable of non-infringing uses." Overturning a U.S. Supreme Court case has concerned many. Hundreds of new technologies have been developed since 1984. In Marybeth Peter's world, these new technological advancements would not have been marketed. The fact that both the Senate and the U. S. Register of Copyrights are in favor of the Induce Act is very troubling.

For further information and reading on this bill, please go to the article, "Copyright Bill to Kill Tech?" located in the Related Links.

The Induce Act is bad legislation. If passed, manufacturers of new products will be extremely reluctant to bring out new, digital technologies for fear of being sued by the MPAA and RIAA.

Box score:

Consumers = 0 Entertainment Industry = \$