Statement of

The Honorable Patrick Leahy

United States Senator
Vermont
July 22, 2004

"Protecting Innovation and Art while Preventing Piracy"
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I would like to thank Chairman Hatch for holding this hearing today and to also thank our witnesses for being here. I am glad we can discuss the "Inducing Infringement of Copyrights Act" with an eye towards moving this legislation in the fall. The issues facing the copyright and technology communities in the digital age are daunting, and the role of Congress must be to bring those communities together in consensus. The Chairman and I recognize that the process of legislating in such an area will be both tense and intense. But we are committed to building that consensus that is the hallmark of successful and useful legislation, and we will make sure that our commitment results in law.

I am always glad to hear from the Register of Copyrights, Marybeth Peters, who will testify about the need for this bill and about how it clarifies longstanding principles of contributory copyright liability without targeting technology. I agree with her, and I encourage our other witnesses to study her statement. Mr. Bainwol says that while technology is not to blame, we need to target those who have hijacked technology and undermined the rights of copyright holders. I agree. Mr. Holleyman declares that mere knowledge of a given technology's potential to be used to infringe another's copyright should not by itself constitute inducement. I agree, and I wish to offer the Business Software Association my sincere thanks for bringing its open-minded cooperation and considerable expertise to the earlier drafting stages of this bill.

I am heartened even by the testimony of those skeptical of the bill. Mr. Shapiro says that the Sony-Betamax ruling is good law. I agree. Mr. Greenberg and Mr. McGuiness urge Congress to craft our intellectual property laws so that they promote technological growth. I agree, and I believe we have done this with our bill.

As Senator Hatch and I have worked to promote the great possibilities of the Internet and the technologies that capitalize on its potential, one problem consistently appears: the copyright holders often fear these very same new and exciting technologies. Their reticence is not without merit. Our copyright industries lose billions of dollars each year to copyright piracy, and just as importantly, our artists lose the rights to their own works.

By clarifying a longstanding principle of secondary copyright liability, S.2560 will give copyright holders reason to embrace new technologies. And while the legal principle is an old one, the problems of inducement for copyright are a relatively new product of the digital age - an age in which it is easy (and often profitable) to induce others to violate copyrights through illegal

downloading from the Internet. The 1976 Copyright Act codified the principle that copyright holders not only have exclusive rights inhering in their copyrights, but that only they can authorize others to exercise those rights - such as the right to distribute and the right to make copies of their work. Since the advent of the Internet, some have harnessed peer-to-peer technology to run roughshod over these rights, and the courts have grappled with how to apply existing common law principles to the resulting legal cases, all the while calling for congressional guidance. The "Inducing Infringement of Copyrights Act" does this by reaffirming Congress's intent in the 1976 Act.

The patent code already provides liability for inducing infringement. And our experience there shows us that such provisions work: over the years, the number of patents has steadily grown and patent-related industries continue to thrive. But while, it has long been relatively simple, and economically worthwhile, to induce patent infringement, only recently has the ability to illegally download music, books, software, and films made it necessary for Congress to clarify that this principle also applies to copyrights.

Of course, there are significant differences between patents and copyrights, and we are not transplanting one liability regime to another part of the code. But we have learned useful lessons in the patent realm, and we should not ignore that utility when it can benefit the appropriate enforcement of copyrights.

In making this clarification, our bill does not undermine the Sony-Betamax decision, it does not undermine the "fair use" doctrine, and it does not target or penalize any technology. In fact, our bill will help companies like Apple who, through their iTunes service and iPod devices, offer legitimate alternatives to illegal downloading. This bill will protect our copyright holders and spur innovation.

Finally, I would like to draw attention to a letter sent by Mr. McGuiness and some others in the consumer electronics industry to the Committee on July 6. It states: "...We agree with the need to penalize those who intentionally cause copyright infringement..." That is precisely what S.2560 does. While I understand that some have concerns with the specifics our legislation, I say to you this: work with us. No one wants to undermine the iPod, but we must recognize that some people use peer-to-peer technology in ways that are wrong and illegal

Thank you again to all of our witnesses for being here today and for your testimony. I look forward to working with you during the next month to produce a version of this legislation that can pass the Senate this fall.