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Consumer Federation of America

June 28, 2004

Dear Senator:

Subject: Oppose S. 2560, "The Inducing Infringement of Copyrights Act of 2004"

We are writing to you to express our serious concerns about "The Inducing Infringement of Copyrights Act of 2004" (S. 2560), which would significantly alter our nation's copyright law to the detriment of consumers. Because many companies and public interest groups have strong misgivings about this bill, we encourage the Senate to shine it under needed light, and explore its provisions in a hearing before the possibility of a vote by the full Senate.

Copyright protection is important, but it cannot be advanced by stripping American consumers of 200 year old rights of "fair use." S. 2560 would essentially nullify the landmark 1984 Supreme Court *Betamax* decision which reaffirmed those consumer "fair use" rights and stopped Hollywood's efforts to ban the VCR. That Court decision has served as the "Magna Carta" of the technology industry and paved the way for huge technological innovations such as the DVD player, the CD-Burner and Apple's iPod. Indeed, if S. 2560 had been in effect thirty years ago, it is unlikely that the Supreme Court would ever have heard the *Betamax* case because VCRs would probably never have been introduced by innovators in consumer electronics in the first place.

The *Betamax* case recognizes that technologies that have "substantial non-infringing uses" cannot be blocked because they may be used to infringe on copyright. The "Inducement Bill" stands this principle on its head. It creates an entirely new and broad cause of action for infringement by making it illegal for anyone to "intentionally induce" a violation of copyright law. "Induce" is defined to include "aiding" "abetting" "inducing" or "procuring". This is a radical departure from the *Betamax* doctrine.

S. 2560 would drastically change the face of American consumer electronics to the detriment of consumers. Indeed, since Internet Service Providers make it possible to transmit data over the Internet, every Internet service provider could be guilty of "inducement" to infringe copyrights under this approach. The huge potential liabilities inherent in S. 2560 would have a crippling effect on technological innovation in the consumer electronics field and cast a long shadow over the Internet.

This type of overly broad legislation can lead to a very slippery slope. If the manufacturers of DVD recorders or even photocopiers could be brought up on charges for a purchaser's misuse of those products, what other industries might be liable for their products being used in the

commission of a crime? Could Louisville Slugger be held liable if one of its bats were used to commit a crime? Could a company which produces pens be sued if its products are used to forge checks?

While there is reason to consider copyright protection legislation to handle the new world of digital consumer electronics, S. 2560 is far too broad and will have unintended and extremely detrimental consequences for both consumers and the creators of a huge range of consumer electronics.

We respectfully request that the appropriate Senate committees hold hearings on S. 2560 before any vote by the full Senate. Copyright protection and the doctrine of "fair use" are fundamental consumer issues, and Congress should fully explore the critical issues raised by this legislation before rushing to judgment.

We would be more than happy to discuss this matter with you further at your convenience.

Sincerely,



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