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To require the Federal Trade Commission to issue rules regarding the disclosure of technological measures that restrict consumer flexibility to use and manipulate digital information and entertainment content.

IN THE SENATE OF THE UNITED STATES

MARCH 24, 2003

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require the Federal Trade Commission to issue rules regarding the disclosure of technological measures that restrict consumer flexibility to use and manipulate digital information and entertainment content.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Digital Consumer
5 Right to Know Act”.

6 **SEC. 2. CONGRESSIONAL FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—Congress finds the following:

1 (1) Consumers have developed a number of le-
2 gitimate expectations concerning how they may use
3 and manipulate legally acquired information or en-
4 tertainment content for reasonable, personal, and
5 noncommercial purposes. In addition, as digital tech-
6 nology creates new ways to use and manipulate con-
7 tent, consumers are likely to develop new expecta-
8 tions that reflect the new technological possibilities.

9 (2) Digital technologies also can facilitate un-
10 lawful reproduction and distribution of information
11 or entertainment content subject to copyright protec-
12 tion. To combat this problem, technology and con-
13 tent companies are developing and deploying tech-
14 nologies to prevent or deter such unlawful behavior.

15 (3) Such technologies could help promote a
16 competitive digital marketplace in which consumers
17 have a broad range of choices and media businesses
18 can pursue a variety of business models. However,
19 there are also significant risks.

20 (4) There is a risk that technologies developed
21 to prevent unlawful reproduction and distribution of
22 digital information and entertainment content could
23 have the side effect of restricting consumers' flexi-
24 bility to use and manipulate such content for reason-
25 able, personal, and noncommercial purposes.

1 (5) There is a risk that such technologies could
2 unfairly surprise consumers by frustrating their ex-
3 pectations concerning how they may use and manip-
4 ulate digital content they have legally acquired.

5 (6) There is a risk that such technologies could
6 result in greater market power for the holders of ex-
7 clusive rights and reduce competition, by limiting
8 the ability of unaffiliated entities to engage in the
9 lawful secondhand sale or distribution of such con-
10 tent.

11 (b) PURPOSES.—The purposes of this Act are—

12 (1) to ensure that consumers of digital informa-
13 tion and entertainment content are informed in ad-
14 vance of technological features that may restrict the
15 uses and manipulation of such content, so that—

16 (A) consumers may factor this information
17 into their purchasing decisions; and

18 (B) there will be a strong, market-based
19 incentive for the development of technologies
20 that address the problem of unlawful reproduc-
21 tion and distribution of content in ways that
22 still preserve the maximum possible flexibility
23 for consumers to use and manipulate such con-
24 tent for lawful and reasonable purposes; and

1 (2) to express the sense of Congress concerning
2 the importance of retaining competition among dis-
3 tribution channels for digital information and enter-
4 tainment content.

5 **SEC. 3. FAIR DISCLOSURE OF TECHNOLOGICAL USE RE-**
6 **STRICTIONS.**

7 (a) **FTC RULEMAKING.**—Not later than 1 year after
8 the date of enactment of this Act, the Federal Trade Com-
9 mission shall issue rules to implement the disclosure re-
10 quirements described in subsection (b).

11 (b) **DISCLOSURE REQUIREMENTS.**—

12 (1) **IN GENERAL.**—If a producer or distributor
13 of copyrighted digital content sells such content or
14 access to such content subject to technological fea-
15 tures that limit the practical ability of the purchaser
16 to play, copy, transmit, or transfer such content on,
17 to, or between devices or classes of devices that con-
18 sumers commonly use with respect to that type of
19 content, the producer or distributor shall disclose the
20 nature of such limitations to the purchaser in a clear
21 and conspicuous manner prior to such sale.

22 (2) **MANNER OF DISCLOSURE.**—The Federal
23 Trade Commission shall prescribe the manner of dis-
24 closure required under this subsection, which may
25 include labels on packaging or such other means as

1 the Commission determines appropriate to achieve
2 the purposes of this section. The Commission may
3 prescribe different manners of disclosure for dif-
4 ferent types of content and different distribution
5 channels.

6 (c) DISCLOSURE OF CERTAIN LIMITATIONS ON REA-
7 SONABLE CONSUMER ACTIVITIES.—The following are ex-
8 amples of limitations which shall trigger the disclosure re-
9 quirements of subsection (b):

10 (1) Limitations on the recording for later view-
11 ing or listening (popularly referred to as “time shift-
12 ing”) of audio or video programming delivered—

13 (A) via free over-the-air broadcasting; or

14 (B) as part of a multichannel video or
15 audio system in which the consumer obtains the
16 programming as part of a subscription package,
17 with no per view charges and no ability to select
18 the specific time at which individual programs
19 will be delivered.

20 (2) Limitations on the reasonable and non-
21 commercial use of legally acquired audio or video
22 content—

23 (A) in different physical locations of the
24 consumer’s choice (popularly referred to as
25 “space shifting”); or

1 (B) on the electronic platform or device of
2 the consumer's choice, including platforms or
3 devices requiring that the content be translated
4 into a comparable format before such use.

5 (3) Limitations on making backup copies of le-
6 gally acquired content distributed in a form or me-
7 dium that is subject to accidental erasure, damage,
8 or destruction in the ordinary course of use, includ-
9 ing through computer failure or computer viruses, to
10 be used only in the event that the original copies are
11 lost or damaged.

12 (4) Limitations on using limited excerpts of le-
13 gally acquired content for purposes such as criti-
14 cism, comment, news reporting, teaching, scholar-
15 ship, or research.

16 (5) Limitations on engaging in the secondhand
17 transfer or sale of legally acquired content to an-
18 other consumer, provided that the transferor does
19 not retain the content or any copy thereof and that
20 the transferee obtains only such rights to the use
21 and enjoyment of the content as the transferor pos-
22 sessed at the time of transfer.

23 (d) EXCEPTION TO DISCLOSURE REQUIREMENT.—
24 The Federal Trade Commission shall not require dislo-

1 sure under subsection (b) with respect to any limitation
2 that applies only to uses—

3 (1) that are sufficiently unusual or uncommon
4 that the burdens of prior disclosure would outweigh
5 the utility to consumers; or

6 (2) that have no significant application for law-
7 ful purposes.

8 (e) ANNUAL FTC REVIEW.—On an annual basis, the
9 Federal Trade Commission shall review the effectiveness
10 of its rules implementing this section to determine whether
11 revisions are warranted to serve the purposes of this sec-
12 tion. In conducting this review, the Commission shall con-
13 sider whether changes in technology or in consumer prac-
14 tices have led to new, legitimate consumer expectations
15 concerning specific uses of digital information or enter-
16 tainment content that would result in consumers suffering
17 unfair surprise if a technology were to limit those uses
18 without prior notice.

19 **SEC. 4. EFFECT ON OTHER LAWS.**

20 (a) NO LIMITING EFFECT ON FAIR USE.—Nothing
21 in this Act shall be interpreted to suggest that a consumer
22 activity not referred to in section 3(c) or in the Federal
23 Trade Commission’s rules implementing this Act may not
24 constitute a fair use within the meaning of section 107
25 of title 17, United States Code.

1 (b) UNLAWFUL REPRODUCTION OR DISTRIBUTION.—Nothing in this Act shall be interpreted to permit
2 TION.—Nothing in this Act shall be interpreted to permit
3 the otherwise unlawful reproduction or distribution of
4 copyrighted content or to shield a person engaging in such
5 activity from any type of legal action or judgment.

6 **SEC. 5. COMPETITION IN DISTRIBUTION CHANNELS.**

7 It is the sense of Congress that—

8 (1) competition among distribution outlets and
9 methods generally benefits consumers; and

10 (2) just as copyright holders have sold content
11 embodied in tangible products such as audio cas-
12 settes, videotapes, and compact discs to multiple
13 competing retail distributors, copyright holders sell-
14 ing digital content in electronic form for distribution
15 over the Internet should offer to license such content
16 to multiple unaffiliated distributors, to enable com-
17 petition among different distribution models and
18 technologies.

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