

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1319

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## AN ACT

To prevent the inadvertent disclosure of information on a computer through certain “peer-to-peer” file sharing programs without first providing notice and obtaining consent from an owner or authorized user of the computer.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Informed P2P User  
3 Act”.

4 **SEC. 2. CONDUCT PROHIBITED.**

5 (a) NOTICE AND CONSENT REQUIRED FOR FILE-  
6 SHARING SOFTWARE.—

7 (1) NOTICE AND CONSENT REQUIRED PRIOR TO  
8 INSTALLATION.—It is unlawful for any covered enti-  
9 ty to install on a protected computer or offer or  
10 make available for installation or download on a pro-  
11 tected computer a covered file-sharing program un-  
12 less such program—

13 (A) immediately prior to the installation or  
14 downloading of such program—

15 (i) provides clear and conspicuous no-  
16 tice that such program allows files on the  
17 protected computer to be made available  
18 for searching by and copying to one or  
19 more other computers; and

20 (ii) obtains the informed consent to  
21 the installation of such program from an  
22 owner or authorized user of the protected  
23 computer; and

24 (B) immediately prior to initial activation  
25 of a file-sharing function of such program—

1 (i) provides clear and conspicuous no-  
2 tice of which files on the protected com-  
3 puter are to be made available for search-  
4 ing by and copying to another computer;  
5 and

6 (ii) obtains the informed consent from  
7 an owner or authorized user of the pro-  
8 tected computer for such files to be made  
9 available for searching and copying to an-  
10 other computer.

11 (2) NON-APPLICATION TO PRE-INSTALLED  
12 SOFTWARE.—Nothing in paragraph (1)(A) shall  
13 apply to the installation of a covered file-sharing  
14 program on a computer prior to the first sale of  
15 such computer to an end user, provided that notice  
16 is provided to the end user who first purchases the  
17 computer that such a program has been installed on  
18 the computer.

19 (3) NON-APPLICATION TO SOFTWARE UP-  
20 GRADES.—Once the notice and consent requirements  
21 of paragraphs (1)(A) and (1)(B) have been satisfied  
22 with respect to the installation or initial activation  
23 of a covered file-sharing program on a protected  
24 computer after the effective date of this Act, the no-  
25 tice and consent requirements of paragraphs (1)(A)

1 and (1)(B) do not apply to the installation or initial  
2 activation of software modifications or upgrades to  
3 a covered file-sharing program installed on that pro-  
4 tected computer at the time of the software modi-  
5 fications or upgrades so long as those software  
6 modifications or upgrades do not—

7 (A) make files on the protected computer  
8 available for searching by and copying to one or  
9 more other computers that were not already  
10 made available by the covered file-sharing pro-  
11 gram for searching by and copying to one or  
12 more other computers; or

13 (B) add to the types or locations of files  
14 that can be made available by the covered file-  
15 sharing program for searching by and copying  
16 to one or more other computers.

17 (b) PREVENTING THE DISABLING OR REMOVAL OF  
18 CERTAIN SOFTWARE.—It is unlawful for any covered enti-  
19 ty—

20 (1) to prevent the reasonable efforts of an  
21 owner or authorized user of a protected computer  
22 from blocking the installation of a covered file-shar-  
23 ing program or file-sharing function thereof; or

1           (2) to prevent an owner or authorized user of  
2           a protected computer from having a reasonable  
3           means to either—

4                   (A) disable from the protected computer  
5                   any covered file-sharing program; or

6                   (B) remove from the protected computer  
7                   any covered file-sharing program that the cov-  
8                   ered entity caused to be installed on that com-  
9                   puter or induced another individual to install.

10 **SEC. 3. ENFORCEMENT.**

11           (a) UNFAIR AND DECEPTIVE ACTS AND PRAC-  
12           TICES.—A violation of section 2 shall be treated as a viola-  
13           tion of a rule defining an unfair or deceptive act or prac-  
14           tice prescribed under section 18(a)(1)(B) of the Federal  
15           Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

16           (b) FEDERAL TRADE COMMISSION ENFORCE-  
17           MENT.—The Federal Trade Commission shall enforce this  
18           Act in the same manner, by the same means, and with  
19           the same jurisdiction as though all applicable terms and  
20           provisions of the Federal Trade Commission Act were in-  
21           corporated into and made a part of this Act.

22           (c) PRESERVATION OF FEDERAL AND STATE AU-  
23           THORITY.—Nothing in this Act shall be construed to limit  
24           or supersede any other Federal or State law.

1 **SEC. 4. DEFINITIONS.**

2 As used in this Act—

3 (1) the term “commercial entity” means an en-  
4 tity engaged in acts or practices in or affecting com-  
5 merce, as such term is defined in section 4 of the  
6 Federal Trade Commission Act (15 U.S.C. 44);

7 (2) the term “covered entity” means—

8 (A) a commercial entity that develops a  
9 covered file-sharing program; and

10 (B) a commercial entity that disseminates  
11 or distributes a covered file-sharing program  
12 and is owned or operated by the commercial en-  
13 tity that developed the covered file-sharing pro-  
14 gram;

15 (3) the term “protected computer” has the  
16 meaning given such term in section 1030(e)(2) of  
17 title 18, United States Code; and

18 (4) the term “covered file-sharing program”—

19 (A) means a program, application, or soft-  
20 ware that is commercially marketed or distrib-  
21 uted to the public and that enables—

22 (i) a file or files on the protected com-  
23 puter on which such program is installed  
24 to be designated as available for searching  
25 by and copying to one or more other com-  
26 puters owned by another person;

1 (ii) the searching of files on the pro-  
2 tected computer on which such program is  
3 installed and the copying of any such file  
4 to a computer owned by another person—

5 (I) at the initiative of such other  
6 computer and without requiring any  
7 action by an owner or authorized user  
8 of the protected computer on which  
9 such program is installed; and

10 (II) without requiring an owner  
11 or authorized user of the protected  
12 computer on which such program is  
13 installed to have selected or des-  
14 ignated a computer owned by another  
15 person as the recipient of any such  
16 file; and

17 (iii) the protected computer on which  
18 such program is installed to search files on  
19 one or more other computers owned by an-  
20 other person using the same or a compat-  
21 ible program, application, or software, and  
22 to copy files from the other computer to  
23 such protected computer; and

24 (B) does not include a program, applica-  
25 tion, or software designed primarily to—

1 (i) operate as a server that is acces-  
2 sible over the Internet using the Internet  
3 Domain Name system;

4 (ii) transmit or receive email mes-  
5 sages, instant messaging, real-time audio  
6 or video communications, or real-time voice  
7 communications; or

8 (iii) provide network or computer se-  
9 curity, network management, hosting and  
10 backup services, maintenance, diagnostics,  
11 technical support or repair, or to detect or  
12 prevent fraudulent activities; and

13 (5) the term “initial activation of a file-sharing  
14 function” means—

15 (A) the first time the file sharing function  
16 of a covered file-sharing program is activated  
17 on a protected computer; and

18 (B) does not include subsequent uses of  
19 the program on that protected computer.

20 **SEC. 5. RULEMAKING.**

21 The Federal Trade Commission may promulgate reg-  
22 ulations under section 553 of title 5, United States Code  
23 to accomplish the purposes of this Act. In promulgating  
24 rules under this Act, the Federal Trade Commission shall



1 not require the deployment or use of any specific products  
2 or technologies.

3 **SEC. 6. NONAPPLICATION TO GOVERNMENT.**

4 The prohibition in section 2 of this Act shall not  
5 apply to the Federal Government or any instrumentality  
6 of the Federal Government, nor to any State government  
7 or government of a subdivision of a State.

Passed the House of Representatives December 8,  
2009.

Attest:

*Clerk.*

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