H. R. 1319

IN THE SENATE OF THE UNITED STATES

DECEMBER 9, 2009

Received; read twice and referred to the Committee on Commerce, Science, and Transportation

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
 - (ii) obtains the informed consent from an owner or authorized user of the protected computer for such files to be made available for searching and copying to another computer.
 - (2) Non-application to pre-installed software.—Nothing in paragraph (1)(A) shall apply to the installation of a covered file-sharing program on a computer prior to the first sale of such computer to an end user, provided that notice is provided to the end user who first purchases the computer that such a program has been installed on the computer.
 - (3) Non-application to software up-Grades.—Once the notice and consent requirements of paragraphs (1)(A) and (1)(B) have been satisfied with respect to the installation or initial activation of a covered file-sharing program on a protected computer after the effective date of this Act, the notice and consent requirements of paragraphs (1)(A)

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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—

- (A) make files on the protected computer available for searching by and copying to one or more other computers that were not already made available by the covered file-sharing program for searching by and copying to one or more other computers; or
- (B) add to the types or locations of files that can be made available by the covered filesharing program for searching by and copying 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

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1 (2) to prevent an owner or authorized user of 2 a protected computer from having a reasonable 3 means to either— (A) disable from the protected computer 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.
- (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: LORRAINE C. MILLER,

Clerk.