

Union Calendar No. 213

111TH CONGRESS
1ST SESSION

H. R. 1319

[Report No. 111-361]

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 5, 2009

Mrs. BONO MACK (for herself, Mr. BARROW, and Mr. BARTON of Texas) introduced the following bill; which was referred to the Committee on Energy and Commerce

DECEMBER 8, 2009

Additional sponsors: Mr. DEAL of Georgia, Ms. DEGETTE, Mr. PALLONE, Mr. GONZALEZ, Mrs. CHRISTENSEN, Ms. CASTOR of Florida, Mr. SPACE, Mr. STUPAK, Ms. SUTTON, Mr. SARBANES, Mr. KAGEN, Mr. DONNELLY of Indiana, Mr. MATHESON, Mr. CHANDLER, Mr. BOREN, Mr. GRAYSON, Mr. CLEAVER, Ms. MCCOLLUM, Ms. ESHOO, Mr. JACKSON of Illinois, Mr. GORDON of Tennessee, Mr. HILL, Mr. GRIFFITH, Mr. SCOTT of Georgia, Mr. CLAY, Mrs. MALONEY, Mr. WEINER, Mr. PERLMUTTER, Mr. CHILDERS, Mr. TANNER, Mr. CALVERT, Mr. ISSA, Mrs. BLACKBURN, and Mr. RADANOVICH

DECEMBER 8, 2009

Deleted sponsor: Ms. ZOE LOFGREN of California (added March 16, 2009; deleted March 26, 2009)

DECEMBER 8, 2009

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 5, 2009]

A BILL

To prevent the inadvertent disclosure of information on a computer through the use of certain “peer-to-peer” file sharing software without first providing notice and obtaining consent from the 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,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Informed P2P User*
5 *Act”.*

6 **SEC. 2. CONDUCT PROHIBITED.**

7 *(a) NOTICE AND CONSENT REQUIRED FOR FILE-SHAR-*
8 *ING SOFTWARE.—*

9 *(1) NOTICE AND CONSENT REQUIRED PRIOR TO*
10 *INSTALLATION.—It is unlawful for any covered entity*
11 *to install on a protected computer or offer or make*
12 *available for installation or download on a protected*
13 *computer a covered file-sharing program unless such*
14 *program—*

15 *(A) immediately prior to the installation or*
16 *downloading of such program—*

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

22 *(ii) obtains the informed consent to the*
23 *installation of such program from an owner*
24 *or authorized user of the protected com-*
25 *puter; and*

1 (B) *immediately prior to initial activation*
2 *of a file-sharing function of such program—*

3 (i) *provides clear and conspicuous no-*
4 *tice of which files on the protected computer*
5 *are to be made available for searching and*
6 *copying to another computer; and*

7 (ii) *obtains the informed consent from*
8 *an owner or authorized user of the protected*
9 *computer for such files to be made available*
10 *for searching and copying to another com-*
11 *puter.*

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

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

22 (1) *to prevent the reasonable efforts of an owner*
23 *or authorized user of a protected computer from block-*
24 *ing the installation of a covered file-sharing program*
25 *or file-sharing function thereof; or*

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

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

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

10 **SEC. 3. ENFORCEMENT.**

11 (a) *UNFAIR AND DECEPTIVE ACTS AND PRACTICES.*—

12 *A violation of section 2 shall be treated as a violation of*
13 *a rule defining an unfair or deceptive act or practice pre-*
14 *scribed under section 18(a)(1)(B) of the Federal Trade*
15 *Commission Act (15 U.S.C. 57a(a)(1)(B)).*

16 (b) *FEDERAL TRADE COMMISSION ENFORCEMENT.*—

17 *The Federal Trade Commission shall enforce this Act in the*
18 *same manner, by the same means, and with the same juris-*
19 *diction as though all applicable terms and provisions of the*
20 *Federal Trade Commission Act were incorporated into and*
21 *made a part of this Act.*

22 (c) *PRESERVATION OF FEDERAL AND STATE AUTHOR-*

23 *ITY.*—*Nothing in this Act shall be construed to limit or su-*
24 *persede any other Federal or State law.*

1 **SEC. 4. DEFINITIONS.**

2 *As used in this Act—*

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

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

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

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

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

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

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

21 *(i) a file or files on the computer on*
22 *which such program is installed to be des-*
23 *ignated as available for searching and copy-*
24 *ing to one or more other computers;*

25 *(ii) the searching of files on the com-*
26 *puter on which such program is installed*

1 and the copying of any such file to another
2 computer—

3 (I) at the initiative of such other
4 computer and without requiring any
5 action by an owner or authorized user
6 of the computer on which such pro-
7 gram is installed; and

8 (II) without requiring an owner
9 or authorized user of the computer on
10 which such program is installed to
11 have selected or designated another
12 computer as the recipient of any such
13 file; and

14 (iii) an owner or authorized user of the
15 computer on which such program is in-
16 stalled to search files on one or more other
17 computers using the same or a compatible
18 program, application, or software, and copy
19 such files to such owner or user's computer;
20 and

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

23 (i) operate as a server that is accessible
24 over the Internet using the Internet Domain
25 Name system;

1 (ii) transmit or receive email messages,
2 instant messaging, real-time audio or video
3 communications, or real-time voice commu-
4 nications; or

5 (iii) provide network or computer secu-
6 rity, network management, maintenance,
7 diagnostics, technical support or repair, or
8 to detect or prevent fraudulent activities.

9 **SEC. 5. RULEMAKING.**

10 *The Federal Trade Commission may promulgate regu-*
11 *lations under section 553 of title 5, United States Code to*
12 *accomplish the purposes of this Act. In promulgating rules*
13 *under this Act, the Federal Trade Commission shall not re-*
14 *quire the deployment or use of any specific products or tech-*
15 *nologies.*

16 **SEC. 6. NONAPPLICATION TO GOVERNMENT.**

17 *The prohibition in section 2 of this Act shall not apply*
18 *to the Federal Government or any instrumentality of the*
19 *Federal Government, nor to any State government or gov-*
20 *ernment of a subdivision of a State.*

Amend the title so as to read: “A bill 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.”.

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