

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 1319**

**OFFERED BY** Mr. Waxman

Strike all after the enacting clause and insert the following:

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

1 for searching and copying to one or more  
2 other computers; and

3 (ii) obtains the informed consent to  
4 the installation of such program from an  
5 owner or authorized user of the protected  
6 computer; and

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

9 (i) provides clear and conspicuous no-  
10 tice of which files on the protected com-  
11 puter are to be made available for search-  
12 ing and copying to another computer; and

13 (ii) obtains the informed consent from  
14 an owner or authorized user of the pro-  
15 tected computer for such files to be made  
16 available for searching and copying to an-  
17 other computer.

18 (2) NON-APPLICATION TO PRE-INSTALLED  
19 SOFTWARE.—Nothing in subparagraph (A) shall  
20 apply to the installation of a covered file-sharing  
21 program on a computer prior to the first sale of  
22 such computer to an end user, provided that notice  
23 is provided to the end user who first purchases the  
24 computer that such a program has been installed on  
25 the computer.

1 (b) PREVENTING THE DISABLING OR REMOVAL OF  
2 CERTAIN SOFTWARE.—It is unlawful for any covered enti-  
3 ty—

4 (1) to prevent the reasonable efforts of an  
5 owner or authorized user of a protected computer  
6 from blocking the installation of a covered file-shar-  
7 ing program or file-sharing function thereof; or

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

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

13 (B) remove from the protected computer  
14 any covered file-sharing program that the cov-  
15 ered entity caused to be installed on that com-  
16 puter or induced another individual to install.

17 **SEC. 3. ENFORCEMENT.**

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

23 (b) FEDERAL TRADE COMMISSION ENFORCE-  
24 MENT.—The Federal Trade Commission shall enforce this  
25 Act in the same manner, by the same means, and with

1 the same jurisdiction as though all applicable terms and  
2 provisions of the Federal Trade Commission Act were in-  
3 corporated into and made a part of this Act.

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

7 **SEC. 4. DEFINITIONS.**

8 As used in this Act—

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

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

14 (A) a commercial entity that develops a  
15 covered file-sharing program; and

16 (B) a commercial entity that disseminates  
17 or distributes a covered file-sharing program  
18 and is owned or operated by the commercial en-  
19 tity that developed the covered file-sharing pro-  
20 gram;

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

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

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

4 (i) a file or files on the computer on  
5 which such program is installed to be des-  
6 igned as available for searching and  
7 copying to one or more other computers;

8 (ii) the searching of files on the com-  
9 puter on which such program is installed  
10 and the copying of any such file to another  
11 computer—

12 (I) at the initiative of such other  
13 computer and without requiring any  
14 action by an owner or authorized user  
15 of the computer on which such pro-  
16 gram is installed; and

17 (II) without requiring an owner  
18 or authorized user of the computer on  
19 which such program is installed to  
20 have selected or designated another  
21 computer as the recipient of any such  
22 file; and

23 (iii) an owner or authorized user of  
24 the computer on which such program is in-  
25 stalled to search files on one or more other

1 computers using the same or a compatible  
2 program, application, or software, and  
3 copy such files to such owner or user's  
4 computer; and

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

7 (i) operate as a server that is acces-  
8 sible over the Internet using the Internet  
9 Domain Name system;

10 (ii) transmit or receive email mes-  
11 sages, instant messaging, real-time audio  
12 or video communications, or real-time voice  
13 communications; or

14 (iii) provide network or computer se-  
15 curity, network management, maintenance,  
16 diagnostics, technical support or repair, or  
17 to detect or prevent fraudulent activities.

18 **SEC. 5. RULEMAKING.**

19 The Federal Trade Commission may promulgate reg-  
20 ulations under section 553 of title 5, United States Code  
21 to accomplish the purposes of this Act. In promulgating  
22 rules under this Act, the Federal Trade Commission shall  
23 not require the deployment or use of any specific products  
24 or technologies.

1 **SEC. 6. NONAPPLICATION TO GOVERNMENT.**

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

