

Suspend the Rules and Pass the Bill, HR. 1319, with An Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

111TH CONGRESS
1ST SESSION

H. R. 1319

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

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,*

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

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

20 (c) PRESERVATION OF FEDERAL AND STATE AUTHORITY.—Nothing in this Act shall be construed to limit
21 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.

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 with-
out first providing notice and obtaining consent from an
owner or authorized user of the computer.”.