

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5211

To amend title 17, United States Code, to limit the liability of copyright owners for protecting their works on peer-to-peer networks.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2002

Mr. BERMAN (for himself, Mr. COBLE, Mr. SMITH of Texas, and Mr. WEXLER) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To amend title 17, United States Code, to limit the liability of copyright owners for protecting their works on peer-to-peer networks.

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. LIMITATION ON LIABILITY FOR PROTECTION**  
4 **OF COPYRIGHTED WORKS ON PEER-TO-PEER**  
5 **NETWORKS.**

6 (a) IN GENERAL.—Chapter 5 of title 17, United  
7 States Code, is amended by adding at the end the fol-  
8 lowing new section:

1 **“§ 514. Remedies for infringement: use of tech-**  
2 **nologies to prevent infringement of copy-**  
3 **righted works on peer-to-peer computer**  
4 **networks**

5 “(a) IN GENERAL.—Notwithstanding any State or  
6 Federal statute or other law, and subject to the limitations  
7 set forth in subsections (b) and (c), a copyright owner  
8 shall not be liable in any criminal or civil action for dis-  
9 abling, interfering with, blocking, diverting, or otherwise  
10 impairing the unauthorized distribution, display, perform-  
11 ance, or reproduction of his or her copyrighted work on  
12 a publicly accessible peer-to-peer file trading network, if  
13 such impairment does not, without authorization, alter,  
14 delete, or otherwise impair the integrity of any computer  
15 file or data residing on the computer of a file trader.

16 “(b) EXCEPTIONS.—Subsection (a) shall not apply to  
17 a copyright owner in a case in which—

18 “(1) in the course of taking an action permitted  
19 by subsection (a), the copyright owner—

20 “(A) impairs the availability within a pub-  
21 licly accessible peer-to-peer file trading network  
22 of a computer file or data that does not contain  
23 a work, or portion thereof, in which the copy-  
24 right owner has an exclusive right granted  
25 under section 106, except as may be reasonably  
26 necessary to impair the distribution, display,

1 performance, or reproduction of such a work, or  
2 portion thereof, in violation of any of the exclu-  
3 sive rights of the copyright owner under section  
4 106;

5 “(B) causes economic loss to any person  
6 other than affected file traders; or

7 “(C) causes economic loss of more than  
8 \$50.00 per impairment to the property of the  
9 affected file trader, other than economic loss in-  
10 volving computer files or data made available  
11 through a publicly accessible peer-to-peer file  
12 trading network that contain works in which  
13 the owner has an exclusive right granted under  
14 section 106; or

15 “(2) the copyright owner fails to comply with  
16 the requirements of subsection (c).

17 “(c) NOTIFICATION REQUIREMENT.—(1) A copyright  
18 owner shall not be liable under subsection (a) for an act  
19 to which subsection (a) applies only if—

20 “(A) the copyright owner has notified the De-  
21 partment of Justice, in such manner as the Attorney  
22 General shall specify, of the specific technologies the  
23 copyright owner intends to use to impair the unau-  
24 thorized distribution, display, performance, or repro-

1       duction of the owner’s copyrighted works over a pub-  
2       licly accessible peer-to-peer file trading network; and

3               “(B) the notification under paragraph (1) was  
4       made at least 7 days before the copyright owner en-  
5       gaged in the act.

6       “(2) At the request of an affected file trader or the  
7       assignee of an Internet Protocol address used by an af-  
8       fected file trader, a copyright owner shall provide notice  
9       to the affected file trader or assignee (as the case may  
10      be) of—

11              “(A) the reason for impairing trading in the  
12      computer file or data containing the copyrighted  
13      work of the copyright owner;

14              “(B) the name and address of the copyright  
15      owner; and

16              “(C) the right of the affected file trader to  
17      bring an action described in subsection (d).

18       “(3) The notification by a copyright owner under  
19      paragraph (1) shall not be construed for any purpose as  
20      an admission of an unlawful act.

21       “(d) CAUSE OF ACTION FOR WRONGFUL IMPAIR-  
22      MENT.—(1) If, pursuant to the authority provided by sub-  
23      section (a), a copyright owner knowingly and intentionally  
24      impairs the distribution, display, performance, or repro-  
25      duction of a particular computer file or data, and has no

1 reasonable basis to believe that such distribution, display,  
2 performance, or reproduction constitutes an infringement  
3 of copyright, and an affected file trader suffers economic  
4 loss in excess of \$250 as a result of the act by the copy-  
5 right owner, the affected file trader may seek compensa-  
6 tion for such economic loss in accordance with the fol-  
7 lowing:

8           “(A) The affected file trader may file a claim  
9           for such compensation with the Attorney General  
10          not later than 1 year after the date on which the  
11          claim accrues. The Attorney General shall, not later  
12          than 10 days after the claim is filed, serve notice of  
13          the claim on the copyright owner against whom the  
14          claim is brought, and shall investigate the claim.  
15          The claim shall be in writing under oath or affirma-  
16          tion and shall contain such information and be in  
17          such form as the Attorney General requires. The  
18          claim shall not be made public by the Attorney Gen-  
19          eral.

20           “(B) If the Attorney General determines after  
21          such investigation that there is not reasonable cause  
22          to believe that the facts alleged in the claim are  
23          true, the Attorney General shall dismiss the claim  
24          and promptly notify the affected file trader and the

1 copyright owner against whom the claim is brought  
2 of the Attorney General's action.

3 “(C) If the Attorney General determines after  
4 such investigation that there is reasonable cause to  
5 believe that the facts alleged in the claim are true,  
6 the Attorney General shall promptly notify the af-  
7 fected file trader and the copyright owner of the At-  
8 torney General's determination.

9 “(D) The Attorney General shall make the de-  
10 termination on reasonable cause as promptly as pos-  
11 sible, but in no case later than 120 days after the  
12 date on which the claim is filed.

13 “(E) The affected file trader may seek com-  
14 pensation for the economic loss that is the subject  
15 of the claim, plus reasonable attorney's fees, in the  
16 appropriate United States district court by filing an  
17 action in such court—

18 “(i) not later than 60 days after being no-  
19 tified of the Attorney General's determination  
20 under subparagraph (C); or

21 “(ii) if the Attorney General has not made  
22 a determination on the claim within the 120-  
23 day period specified in subparagraph (D), not  
24 later than 60 days after the end of that 120-  
25 day period.

1       “(2) The cause of action established by this sub-  
2 section shall only be available as a remedy against impair-  
3 ing actions that would not be lawful but for subsection  
4 (a).

5       “(e) SUITS BY UNITED STATES.—The Attorney Gen-  
6 eral of the United States may seek injunctive relief in the  
7 appropriate United States district court to prevent a copy-  
8 right owner from engaging in impairing activities that  
9 would not be lawful but for subsection (a) if that owner  
10 has engaged in a pattern or practice of impairing the dis-  
11 tribution, display, performance, or reproduction of com-  
12 puter files or data without a reasonable basis to believe  
13 that infringement of copyright has occurred.

14       “(f) CONSTRUCTION WITH OTHER STATUTES.—(1)  
15 Nothing in this section shall be construed as limiting the  
16 authority of a copyright owner to take any otherwise law-  
17 ful action to enforce any of the exclusive rights granted  
18 by section 106.

19       “(2) Nothing in this section shall limit any remedies  
20 available to a person under section 1030 of title 18, or  
21 under any other State or Federal statute or any other law,  
22 against a copyright owner who fails to qualify for the pro-  
23 tections afforded under subsection (a).

24       “(3) Actions taken by a copyright owner pursuant to  
25 subsection (a) shall not be considered by a court for any

1 other purpose under this title, including in determining  
2 whether a particular use of a work is infringing.

3 “(g) NONDISCLOSURE OF INFORMATION.—Informa-  
4 tion contained in any notification under subsection  
5 (c)(1)(A) may not be made available to the public under  
6 section 552 of title 5.

7 “(h) DEFINITIONS.—In this section—

8 “(1) the term ‘economic loss’ means monetary  
9 costs only;

10 “(2) ‘peer-to-peer file trading network’ means  
11 two or more computers which are connected by com-  
12 puter software that—

13 “(A) is primarily designed to—

14 “(i) enable the connected computers  
15 to transmit files or data to other connected  
16 computers;

17 “(ii) enable the connected computers  
18 to request the transmission of files or data  
19 from other connected computers; and

20 “(iii) enable the designation of files or  
21 data on the connected computers as avail-  
22 able for transmission; and

23 “(B) does not permanently route all file or  
24 data inquiries or searches through a designated,  
25 central computer located in the United States;



1           “(3) a peer-to-peer file trading network is ‘pub-  
2           licly accessible’ if—

3                   “(A) participation in the network is sub-  
4                   stantially open to the public; and

5                   “(B) the network enables the transmission  
6                   of computer files or data over the Internet or  
7                   any other public network of computers;

8           “(4) the term ‘file trader’ means an individual  
9           who is utilizing a publicly accessible, peer-to-peer file  
10          trading network to transmit, make available for  
11          transmission, or download computer files or data, or  
12          the owner of a computer that is connected to a pub-  
13          licly accessible, peer-to-peer file trading network and  
14          is engaged in the transmission of computer files or  
15          data through the peer-to-peer file trading network;

16           “(5) the term ‘distribution’, in the case of a  
17          computer connected to a peer-to-peer file trading  
18          network, includes the placement of a computer file  
19          or data in an area of a computer that is accessible  
20          to other computers connected to the peer-to-peer file  
21          trading network; and

22           “(6) the term ‘copyright owner’ means a legal  
23          or beneficial owner of an exclusive right under sec-  
24          tion 106 and any party authorized to act on the  
25          owner’s behalf.”.

1           (b) CONFORMING AMENDMENT.—The table of sec-  
2 tions for chapter 5 of title 17, United States Code, is  
3 amended by adding at the end the following new item:

“514. Remedies for infringement: use of technologies to prevent infringement of  
copyrighted works on peer-to-peer computer networks.”.

