

111TH CONGRESS  
2D SESSION

# S. 3027

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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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 23, 2010

Ms. KLOBUCHAR (for herself and Mr. THUNE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## 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.

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 “P2P Cyber Protection  
5 and Informed User Act”.

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

7 (a) NOTICE AND CONSENT REQUIRED FOR FILE-  
8 SHARING SOFTWARE.—

1           (1) NOTICE AND CONSENT REQUIRED PRIOR TO  
2       INSTALLATION.—It is unlawful for any covered enti-  
3       ty to install on a protected computer or offer or  
4       make available for installation or download on a pro-  
5       tected computer a covered file-sharing program un-  
6       less such program—

7           (A) immediately prior to the installation or  
8       downloading of such program—

9           (i) provides clear and conspicuous no-  
10       tice that such program allows files on the  
11       protected computer to be made available  
12       for searching by and copying to one or  
13       more other computers; and

14          (ii) obtains the informed consent to  
15       the installation of such program from an  
16       owner or authorized user of the protected  
17       computer; and

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

20          (i) provides clear and conspicuous no-  
21       tice of which files on the protected com-  
22       puter are to be made available for search-  
23       ing by and copying to another computer;  
24       and

1 (ii) obtains the informed consent from  
2 an owner or authorized user of the pro-  
3 tected computer for such files to be made  
4 available for searching and copying to an-  
5 other computer.

6 (2) NON-APPLICATION TO PRE-INSTALLED  
7 SOFTWARE.—Nothing in paragraph (1)(A) shall  
8 apply to the installation of a covered file-sharing  
9 program on a computer prior to the first sale of  
10 such computer to an end user, provided that notice  
11 is provided to the end user who first purchases the  
12 computer that such a program has been installed on  
13 the computer.

14 (3) NON-APPLICATION TO SOFTWARE UP-  
15 GRADES.—Once the notice and consent requirements  
16 of paragraphs (1)(A) and (1)(B) have been satisfied  
17 with respect to the installation or initial activation  
18 of a covered file-sharing program on a protected  
19 computer after the effective date of this Act, the no-  
20 tice and consent requirements of paragraphs (1)(A)  
21 and (1)(B) do not apply to the installation or initial  
22 activation of software modifications or upgrades to  
23 a covered file-sharing program installed on that pro-  
24 tected computer at the time of the software modi-

1       fications or upgrades so long as those software  
2       modifications or upgrades do not—

3               (A) make files on the protected computer  
4               available for searching by and copying to one or  
5               more other computers that were not already  
6               made available by the covered file-sharing pro-  
7               gram for searching by and copying to one or  
8               more other computers; or

9               (B) add to the types or locations of files  
10              that can be made available by the covered file-  
11              sharing program for searching by and copying  
12              to one or more other computers.

13       (b) PREVENTING THE DISABLING OR REMOVAL OF  
14       CERTAIN SOFTWARE.—It is unlawful for any covered enti-  
15       ty—

16              (1) to prevent the reasonable efforts of an  
17              owner or authorized user of a protected computer  
18              from blocking the installation of a covered file-shar-  
19              ing program or file-sharing function thereof; or

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

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

1 (B) remove from the protected computer  
2 any covered file-sharing program that the cov-  
3 ered entity caused to be installed on that com-  
4 puter or induced another individual to install.

5 (c) NON-APPLICATION TO INTELLIGENCE OR LAW  
6 ENFORCEMENT ACTIVITIES.—This section does not pro-  
7 hibit any lawfully authorized investigative, protective, or  
8 intelligence activity of a law enforcement agency of the  
9 United States, a State, or a political subdivision of a  
10 State, or of an intelligence agency of the United States.

11 **SEC. 3. ENFORCEMENT.**

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

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

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

1 **SEC. 4. DEFINITIONS.**

2 In this Act:

3 (1) **COMMERCIAL ENTITY.**—The term “commer-  
 4 cial entity” means an entity engaged in acts or prac-  
 5 tices in or affecting commerce, as such term is de-  
 6 fined in section 4 of the Federal Trade Commission  
 7 Act (15 U.S.C. 44).

8 (2) **COVERED ENTITY.**—The term “covered en-  
 9 tity” means—

10 (A) a commercial entity that develops a  
 11 covered file-sharing program; and

12 (B) a commercial entity that disseminates  
 13 or distributes a covered file-sharing program  
 14 and is owned or operated by the commercial en-  
 15 tity that developed the covered file-sharing pro-  
 16 gram.

17 (3) **COVERED FILE-SHARING PROGRAM.**—The  
 18 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;

(ii) the searching of files on the protected computer on which such program is installed and the copying of any such file to a computer owned by another person—

(I) at the initiative of such other computer and without requiring any action by an owner or authorized user of the protected computer on which such program is installed; and

(II) without requiring an owner or authorized user of the protected computer on which such program is installed to have selected or designated a computer owned by another person as the recipient of any such file; and

(iii) the protected computer on which such program is installed to search files on one or more other computers owned by another person using the same or a compatible program, application, or software, and to copy files from the other computer to such protected computer; and

(B) does not include a program, application, 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 e-mail 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.

13 (4) INITIAL ACTIVATION OF A FILE-SHARING  
14 PROGRAM.—The term “initial activation of a file-  
15 sharing function” means—

16 (A) the first time the file-sharing function  
17 of a covered file-sharing program is activated  
18 on a protected computer; and

19 (B) does not include subsequent uses of  
20 the program on that protected computer.

21 (5) PROTECTED COMPUTER.—The term “pro-  
22 tected computer” has the meaning given such term  
23 in section 1030(e)(2) of title 18, United States  
24 Code.



1   **SEC. 5. RULEMAKING.**

2           The Federal Trade Commission may promulgate reg-  
3   ulations under section 553 of title 5, United States Code  
4   to accomplish the purposes of this Act. In promulgating  
5   rules under this Act, the Federal Trade Commission shall  
6   not require the deployment or use of any specific product  
7   or technology.

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