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(Original Signature of Member)

107TH CONGRESS
2D SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

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

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,*



1 **SECTION 1. LIMITATION ON LIABILITY FOR PROTECTION**
2 **OF COPYRIGHTED WORKS ON PEER-TO-PEER**
3 **NETWORKS.**

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

7 **“§ 514. Remedies for infringement: use of tech-**
8 **nologies to prevent infringement of copy-**
9 **righted works on peer-to-peer computer**
10 **networks**

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

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

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



1 “(A) impairs the availability within a pub-
2 licly accessible peer-to-peer file trading network
3 of a computer file or data that does not contain
4 a work, or portion thereof, in which the copy-
5 right owner has an exclusive right granted
6 under section 106, except as may be reasonably
7 necessary to impair the distribution, display,
8 performance, or reproduction of such a work, or
9 portion thereof, in violation of any of the exclu-
10 sive rights of the copyright owner under section
11 106;

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

14 “(C) causes economic loss of more than
15 \$50.00 per impairment to the property of the
16 affected file trader, other than economic loss in-
17 volving computer files or data made available
18 through a publicly accessible peer-to-peer file
19 trading network that contain works in which
20 the owner has an exclusive right granted under
21 section 106; or

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



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

4 “(A) the copyright owner has notified the De-
5 partment of Justice, in such manner as the Attorney
6 General shall specify, of the specific technologies the
7 copyright owner intends to use to impair the unau-
8 thorized distribution, display, performance, or repro-
9 duction of the owner’s copyrighted works over a pub-
10 licly accessible peer-to-peer file trading network; and

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

14 “(2) At the request of an affected file trader or the
15 assignee of an Internet Protocol address used by an af-
16 fected file trader, a copyright owner shall provide notice
17 to the affected file trader or assignee (as the case may
18 be) of—

19 “(A) the reason for impairing trading in the
20 computer file or data containing the copyrighted
21 work of the copyright owner;

22 “(B) the name and address of the copyright
23 owner; and

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



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

4 “(d) CAUSE OF ACTION FOR WRONGFUL IMPAIR-
5 MENT.—(1) If, pursuant to the authority provided by sub-
6 section (a), a copyright owner knowingly and intentionally
7 impairs the distribution, display, performance, or repro-
8 duction of a particular computer file or data, and has no
9 reasonable basis to believe that such distribution, display,
10 performance, or reproduction constitutes an infringement
11 of copyright, and an affected file trader suffers economic
12 loss in excess of \$250 as a result of the act by the copy-
13 right owner, the affected file trader may seek compensa-
14 tion for such economic loss in accordance with the fol-
15 lowing:

16 “(A) The affected file trader may file a claim
17 for such compensation with the Attorney General
18 not later than 1 year after the date on which the
19 claim accrues. The Attorney General shall, not later
20 than 10 days after the claim is filed, serve notice of
21 the claim on the copyright owner against whom the
22 claim is brought, and shall investigate the claim.
23 The claim shall be in writing under oath or affirma-
24 tion and shall contain such information and be in
25 such form as the Attorney General requires. The



1 claim shall not be made public by the Attorney Gen-
2 eral.

3 “(B) If the Attorney General determines after
4 such investigation that there is not reasonable cause
5 to believe that the facts alleged in the claim are
6 true, the Attorney General shall dismiss the claim
7 and promptly notify the affected file trader and the
8 copyright owner against whom the claim is brought
9 of the Attorney General’s action.

10 “(C) If the Attorney General determines after
11 such investigation that there is reasonable cause to
12 believe that the facts alleged in the claim are true,
13 the Attorney General shall promptly notify the af-
14 fected file trader and the copyright owner of the At-
15 torney General’s determination.

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

20 “(E) The affected file trader may seek com-
21 pensation for the economic loss that is the subject
22 of the claim, plus reasonable attorney’s fees, in the
23 appropriate United States district court by filing an
24 action in such court—



1 “(i) not later than 60 days after being no-
2 tified of the Attorney General’s determination
3 under subparagraph (C); or

4 “(ii) if the Attorney General has not made
5 a determination on the claim within the 120-
6 day period specified in subparagraph (D), not
7 later than 60 days after the end of that 120-
8 day period.

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

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

22 “(f) CONSTRUCTION WITH OTHER STATUTES.—(1)
23 Nothing in this section shall be construed as limiting the
24 authority of a copyright owner to take any otherwise law-



1 ful action to enforce any of the exclusive rights granted
2 by section 106.

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

8 “(3) Actions taken by a copyright owner pursuant to
9 subsection (a) shall not be considered by a court for any
10 other purpose under this title, including in determining
11 whether a particular use of a work is infringing.

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

16 “(h) DEFINITIONS.—In this section—

17 “(1) the term ‘economic loss’ means monetary
18 costs only;

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

22 “(A) is primarily designed to—

23 “(i) enable the connected computers
24 to transmit files or data to other connected
25 computers;



1 “(ii) enable the connected computers
2 to request the transmission of files or data
3 from other connected computers; and

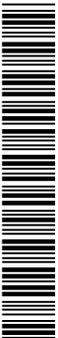
4 “(iii) enable the designation of files or
5 data on the connected computers as avail-
6 able for transmission; and

7 “(B) does not permanently route all file or
8 data inquiries or searches through a designated,
9 central computer located in the United States;
10 “(3) a peer-to-peer file trading network is ‘pub-
11 licly accessible’ if—

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

14 “(B) the network enables the transmission
15 of computer files or data over the Internet or
16 any other public network of computers;

17 “(4) the term ‘file trader’ means an individual
18 who is utilizing a publicly accessible, peer-to-peer file
19 trading network to transmit, make available for
20 transmission, or download computer files or data, or
21 the owner of a computer that is connected to a pub-
22 licly accessible, peer-to-peer file trading network and
23 is engaged in the transmission of computer files or
24 data through the peer-to-peer file trading network;



1 “(5) the term ‘distribution’, in the case of a
2 computer connected to a peer-to-peer file trading
3 network, includes the placement of a computer file
4 or data in an area of a computer that is accessible
5 to other computers connected to the peer-to-peer file
6 trading network; and

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

11 (b) CONFORMING AMENDMENT.—The table of sec-
12 tions for chapter 5 of title 17, United States Code, is
13 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.”.

