

4435--A

2011-2012 Regular Sessions

I N S E N A T E

April 5, 2011

Introduced by Sen. ROBACH -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to file-sharing applications

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The general business law is amended by adding a new section
2 349-e to read as follows:
3 S 349-E. FILE-SHARING APPLICATIONS. 1. FOR THE PURPOSE OF THIS
4 SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:
5 (A) "COVERED FILE-SHARING PROGRAM" MEANS A COMPUTER PROGRAM, APPLICATION,
6 OR SOFTWARE THAT IS MARKETING OR DISTRIBUTED TO THE PUBLIC AND THAT
7 ENABLES: (I) A FILE OR FILES ON THE COMPUTER ON WHICH SUCH PROGRAM,
8 APPLICATION, OR SOFTWARE IS INSTALLED TO BE DESIGNATED AS AVAILABLE FOR
9 SEARCHING BY AND COPYING TO ONE OR MORE OTHER COMPUTERS; (II) THE TRANSMISSION
10 OF SUCH DESIGNATED FILES DIRECTLY TO ONE OR MORE OTHER COMPUTERS;
11 AND (III) A USER TO REQUEST THE TRANSMISSION OF SUCH DESIGNATED
12 FILES DIRECTLY FROM ONE OR MORE OTHER COMPUTERS. COVERED FILE-SHARING
13 PROGRAM DOES NOT MEAN A PROGRAM, APPLICATION OR SOFTWARE DESIGNED PRIMARILY
14 TO OPERATE AS A SERVER THAT IS ACCESSIBLE OVER THE INTERNET USING
15 THE INTERNET DOMAIN NAME SYSTEM, TO TRANSMIT OR RECEIVE EMAIL MESSAGES,
16 INSTANT MESSAGING, REAL-TIME AUDIO OR VIDEO COMMUNICATIONS, OR REAL-TIME
17 VOICE COMMUNICATIONS, OR TO PROVIDE NETWORK OR COMPUTER SECURITY,
18 NETWORK MANAGEMENT, HOSTING AND BACKUP SERVICES, MAINTENANCE, DIAGNOSTICS,
19 TECHNICAL SUPPORT OR REPAIR, OR TO DETECT OR PREVENT FRAUDULENT
20 ACTIVITIES.
21 (B) "COVERED ENTITY" MEANS: (I) A PERSON, PARTNERSHIP, FIRM, ASSOCIATION,
22 OR CORPORATION THAT DEVELOPS A COVERED FILE-SHARING PROGRAM; AND
23 (II) A PERSON, PARTNERSHIP, FIRM, ASSOCIATION, OR CORPORATION THAT

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 DISSEMINATES OR DISTRIBUTES A COVERED FILE-SHARING PROGRAM AND IS OWNED
2 OR OPERATED BY THE PERSON, PARTNERSHIP, FIRM, ASSOCIATION, OR CORPO-
3 RATION THAT DEVELOPED THE COVERED FILE-SHARING PROGRAM.

4 2. (A) IT SHALL BE UNLAWFUL FOR ANY COVERED ENTITY TO INSTALL ON ANY
5 COMPUTER, OTHER THAN A COMPUTER OWNED BY SUCH ENTITY, OR OFFER OR MAKE
6 AVAILABLE FOR INSTALLATION OR DOWNLOAD ON ANY COMPUTER A COVERED
7 FILE-SHARING PROGRAM UNLESS SUCH PROGRAM:

8 (I) IMMEDIATELY PRIOR TO THE INSTALLATION OR DOWNLOADING OF SUCH
9 PROGRAM:

10 (A) PROVIDES CLEAR AND CONSPICUOUS NOTICE THAT SUCH PROGRAM ALLOWS
11 FILES ON THE COMPUTER TO BE MADE AVAILABLE FOR SEARCHING BY AND COPYING
12 TO ONE OR MORE OTHER COMPUTERS; AND

13 (B) OBTAINS THE INFORMED CONSENT TO THE INSTALLATION OF SUCH PROGRAM
14 FROM AN OWNER OR AUTHORIZED USER OF THE COMPUTER; AND

15 (II) IMMEDIATELY PRIOR TO INITIAL ACTIVATION OF A FILE-SHARING FUNC-
16 TION OF SUCH PROGRAM:

17 (A) PROVIDES CLEAR AND CONSPICUOUS NOTICE OF WHICH FILES ON THE
18 COMPUTER ARE TO BE MADE AVAILABLE FOR SEARCHING BY AND COPYING TO ANOTH-
19 ER COMPUTER; AND

20 (B) OBTAINS THE INFORMED CONSENT FROM AN OWNER OR AUTHORIZED USER OF
21 THE COMPUTER FOR SUCH FILES TO BE MADE AVAILABLE FOR SEARCHING AND COPY-
22 ING TO ANOTHER COMPUTER.

23 (B) NOTHING IN SUBPARAGRAPH (I) OF PARAGRAPH (A) OF THIS SUBDIVISION
24 SHALL APPLY TO THE INSTALLATION OF A COVERED FILE-SHARING PROGRAM ON A
25 COMPUTER PRIOR TO THE FIRST SALE OF SUCH COMPUTER TO AN END USER,
26 PROVIDED THAT NOTICE IS PROVIDED TO THE END USER WHO FIRST PURCHASES THE
27 COMPUTER THAT SUCH A PROGRAM HAS BEEN INSTALLED ON THE COMPUTER.

28 (C) ONCE THE NOTICE AND CONSENT REQUIREMENTS OF SUBPARAGRAPHS (I) AND
29 (II) OF PARAGRAPH (A) OF THIS SUBDIVISION HAVE BEEN SATISFIED WITH
30 RESPECT TO THE INSTALLATION OR INITIAL ACTIVATION OF A COVERED
31 FILE-SHARING PROGRAM ON A COMPUTER AFTER THE EFFECTIVE DATE OF THIS
32 SECTION, THE NOTICE AND CONSENT REQUIREMENTS OF SUBPARAGRAPHS (I) AND
33 (II) OF PARAGRAPH (A) OF THIS SUBDIVISION SHALL NOT APPLY TO THE INSTAL-
34 LATION OR INITIAL ACTIVATION OF SOFTWARE MODIFICATIONS OR UPGRADES TO A
35 COVERED FILE-SHARING PROGRAM INSTALLED ON THAT PROTECTED COMPUTER AT THE
36 TIME OF THE SOFTWARE MODIFICATIONS OR UPGRADES SO LONG AS THOSE SOFTWARE
37 MODIFICATIONS OR UPGRADES DO NOT:

38 (I) MAKE FILES ON THE COMPUTER AVAILABLE FOR SEARCHING BY AND COPYING
39 TO ONE OR MORE OTHER COMPUTERS THAT WERE NOT ALREADY MADE AVAILABLE BY
40 THE COVERED FILE-SHARING PROGRAM FOR SEARCHING BY AND COPYING TO ONE OR
41 MORE OTHER COMPUTERS; OR

42 (II) ADD TO THE TYPES OR LOCATIONS OF FILES THAT CAN BE MADE AVAILABLE
43 BY THE COVERED FILE-SHARING PROGRAM FOR SEARCHING BY AND COPYING TO ONE
44 OR MORE OTHER COMPUTERS.

45 3. IT SHALL BE UNLAWFUL FOR ANY COVERED ENTITY TO PREVENT REASONABLE
46 EFFORTS TO DISABLE OR REMOVE, OR TO BLOCK THE INSTALLATION OR EXECUTION
47 OF, A COVERED FILE-SHARING PROGRAM ON ANY COMPUTER.

48 4. THE PROVISIONS OF SUBDIVISIONS TWO AND THREE OF THIS SECTION SHALL
49 NOT APPLY TO THE STATE OR ITS POLITICAL SUBDIVISIONS.

50 5. NOTHING IN THIS SECTION SHALL IN ANY WAY LIMIT THE RIGHTS OR REME-
51 DIES THAT ARE OTHERWISE AVAILABLE TO THE CONSUMER OR PURCHASER UNDER ANY
52 OTHER LAW.

53 6. (A) THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION AGAINST ANY
54 COVERED ENTITY THAT VIOLATES ANY PROVISION OF THIS SECTION TO ENFORCE
55 THE PROVISIONS OF THIS SECTION AND MAY RECOVER ANY OR ALL OF THE FOLLOW-
56 ING:

1 (I) UP TO ONE HUNDRED THOUSAND DOLLARS FOR A KNOWING PATTERN OR PRAC-
2 TICE OF SUCH VIOLATIONS; AND
3 (II) COSTS AND REASONABLE ATTORNEY'S FEES.
4 (B) WHENEVER THE ATTORNEY GENERAL BELIEVES FROM EVIDENCE SATISFACTORY
5 TO HIM OR HER THAT A KNOWING VIOLATION OF THIS SECTION OR A PATTERN OR
6 PRACTICE OF VIOLATING THIS SECTION HAS OCCURRED OR IS ABOUT TO OCCUR HE
7 OR SHE MAY SEEK AN ORDER TO ENJOIN SUCH VIOLATION.
8 S 2. This act shall take effect on the ninetieth day after it shall
9 have become a law.