

4435

2011-2012 Regular Sessions

I N   S E N A T E

April 5, 2011

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Introduced by Sen. ROBACH -- read twice and ordered printed, and when  
printed to be committed to the Committee on Consumer Protection

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 ASSEM-  
BLY, 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 SECTION  
4     "COVERED FILE-SHARING PROGRAM" MEANS A COMPUTER PROGRAM, APPLICATION, OR  
5     SOFTWARE THAT ENABLES THE COMPUTER ON WHICH SUCH PROGRAM, APPLICATION,  
6     OR SOFTWARE IS INSTALLED TO DESIGNATE FILES AS AVAILABLE FOR SEARCHING  
7     BY AND COPYING TO ONE OR MORE OTHER COMPUTERS, TO TRANSMIT SUCH DESIG-  
8     NATED FILES DIRECTLY TO ONE OR MORE OTHER COMPUTERS, AND TO REQUEST THE  
9     TRANSMISSION OF SUCH DESIGNATED FILES DIRECTLY FROM ONE OR MORE OTHER  
10    COMPUTERS. COVERED FILE-SHARING PROGRAM DOES NOT MEAN A PROGRAM, APPLI-  
11    CATION, OR SOFTWARE DESIGNED PRIMARILY TO OPERATE AS A SERVER THAT IS  
12    ACCESSIBLE OVER THE INTERNET USING THE INTERNET DOMAIN NAME SYSTEM, TO  
13    TRANSMIT OR RECEIVE EMAIL MESSAGES, INSTANT MESSAGING, REAL-TIME AUDIO  
14    OR VIDEO COMMUNICATIONS, OR REAL-TIME VOICE COMMUNICATIONS, OR TO  
15    PROVIDE NETWORK OR COMPUTER SECURITY, NETWORK MANAGEMENT, HOSTING AND  
16    BACKUP SERVICES, MAINTENANCE, DIAGNOSTICS, TECHNICAL SUPPORT OR REPAIR,  
17    OR TO DETECT OR PREVENT FRAUDULENT ACTIVITIES.  
18    2. A PERSON OR ENTITY THAT IS NOT AN OWNER OR AUTHORIZED USER OF A  
19    COMPUTER MAY NOT:  
20    (A) INSTALL, OFFER TO INSTALL, OR MAKE AVAILABLE FOR INSTALLATION,  
21    REINSTALLATION OR UPDATE A COVERED FILE-SHARING PROGRAM ONTO THE COMPUT-  
22    ER WITHOUT FIRST PROVIDING CLEAR AND CONSPICUOUS NOTICE TO THE OWNER OR  
23    AUTHORIZED USER OF THE COMPUTER THAT THE FILES ON THAT COMPUTER WILL BE  
24    MADE AVAILABLE TO THE PUBLIC, OBTAINING CONSENT OF THE OWNER OR AUTHOR-  
25    IZED USER TO INSTALL THE PROGRAM, AND REQUIRING AFFIRMATIVE STEPS BY THE

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

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1 OWNER OR AUTHORIZED USER TO ACTIVATE ANY FEATURE ON THE PROGRAM THAT  
2 WILL MAKE FILES ON THAT COMPUTER AVAILABLE TO THE PUBLIC; OR

3 (B) CAUSE DIRECTLY OR INDIRECTLY FILES TO BE STORED ON THE COMPUTER,  
4 INCLUDING FILES THAT CONTAIN MATERIAL THE CONSUMER DOES NOT HAVE AUTHOR-  
5 ITY TO DISTRIBUTE, TO BE SEARCHED AND COPIED BY THIRD PARTIES UNKNOWN TO  
6 THE CONSUMER AND WITHOUT THE CONSUMER AFFIRMATIVELY SELECTING THE  
7 PARTICULAR FILES TO BE MADE AVAILABLE; OR

8 (C) PREVENT REASONABLE EFFORTS TO DISABLE OR REMOVE, OR TO BLOCK THE  
9 INSTALLATION OR EXECUTION OF, A COVERED FILE-SHARING PROGRAM ON THE  
10 COMPUTER.

11 3. THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION SHALL NOT APPLY  
12 TO A COMPUTER PROGRAM DESIGNED PRIMARILY TO DO ANY OF THE FOLLOWING:

13 (A) OPERATE AS A SERVER THAT IS ACCESSIBLE OVER THE INTERNET USING THE  
14 INTERNET DOMAIN NAME SYSTEM;

15 (B) TRANSMIT OR RECEIVE EMAIL MESSAGES OR REAL-TIME VOICE COMMUNI-  
16 CATIONS;

17 (C) TRANSMIT OR RECEIVE INFORMATION BASED ON A SEARCH OF THE INTERNET;  
18 OR

19 (D) FACILITATE THE TECHNICAL FUNCTIONING OR MAINTENANCE OF ASSOCIATED  
20 SOFTWARE, SUCH AS DATA CACHING, SECURITY UPDATES, UPDATING THE PROGRAM,  
21 OR DIAGNOSTICS.

22 4. NOTHING IN THIS SECTION SHALL IN ANY WAY LIMIT THE RIGHTS OR REME-  
23 DIES THAT ARE OTHERWISE AVAILABLE TO A CONSUMER OR PURCHASER UNDER ANY  
24 OTHER LAW.

25 5. THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION AGAINST ANY SELLER OR  
26 RESELLER WHO VIOLATES ANY PROVISION OF THIS SECTION TO ENFORCE THE  
27 PROVISIONS OF THIS SECTION AND MAY RECOVER ANY OR ALL OF THE FOLLOWING:

28 (A) UP TO ONE HUNDRED THOUSAND DOLLARS FOR A KNOWING PATTERN OR PRAC-  
29 TICE OF SUCH VIOLATIONS;

30 (B) COSTS AND REASONABLE ATTORNEY'S FEES; AND

31 (C) WHENEVER THE ATTORNEY GENERAL BELIEVES FROM EVIDENCE SATISFACTORY  
32 TO HIM OR HER THAT A KNOWING VIOLATION OF THIS SECTION OR A PATTERN OR  
33 PRACTICE OF VIOLATING THIS SECTION HAS OCCURRED OR IS ABOUT TO OCCUR, AN  
34 ORDER TO ENJOIN SUCH VIOLATION.

35 6. NOTHING IN THIS SECTION IS INTENDED TO EXTEND, LIMIT OR CONFLICT  
36 WITH THE NOTICE AND RELATED OBLIGATIONS OF PROVIDERS SUBJECT TO 47  
37 C.F.R. PART 9 OR ANY SUCCESSOR REGULATION OR LAW.

38 S 2. This act shall take effect immediately.