

6930

I N S E N A T E

February 25, 2010

Introduced by Sen. C. JOHNSON -- 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-d to read as follows:
3 S 349-D. 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 INSTALLATION OF THE PROGRAM, AND REQUIRING AFFIRMATIVE
26 STEPS BY THE OWNER OR AUTHORIZED USER TO ACTIVATE ANY FEATURE ON THE
27 PROGRAM THAT WILL MAKE FILES ON THAT COMPUTER AVAILABLE TO THE PUBLIC;
28 OR

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

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1 (B) PREVENT REASONABLE EFFORTS TO DISABLE OR REMOVE, OR TO BLOCK THE
2 INSTALLATION OR EXECUTION OF, A COVERED FILE-SHARING PROGRAM ON THE
3 COMPUTER.

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

7 4. THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION AGAINST ANY SELLER OR
8 RESELLER WHO VIOLATES ANY PROVISION OF THIS SECTION TO ENFORCE THE
9 VIOLATION AND MAY RECOVER ANY OR ALL OF THE FOLLOWING:

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

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

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

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

20 S 2. This act shall take effect immediately.