S T A T E O F N E W Y O R K

2916--A

2011-2012 Regular Sessions

I N A S S E M B L Y

January 21, 2011

Introduced by M. of A. MORELLE -- read once and referred to the Committee on Consumer Affairs and 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:

Section 1. The general business law is amended by adding a new section 349-e to read as follows:

S 349-E. FILE-SHARING APPLICATIONS. 1. FOR THE PURPOSE OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "COVERED FILE-SHARING PROGRAM" MEANS A COMPUTER PROGRAM, APPLICATION, OR SOFTWARE THAT IS MARKETED OR DISTRIBUTED TO THE PUBLIC AND THAT ENABLES: (I) A FILE OR FILES ON THE COMPUTER ON WHICH SUCH PROGRAM, APPLICATION, OR SOFTWARE IS INSTALLED TO BE DESIGNATED AS AVAILABLE FOR SEARCHING BY AND COPYING TO ONE OR MORE OTHER COMPUTERS; (II) THE TRANSMISSION OF SUCH DESIGNATED FILES DIRECTLY TO ONE OR MORE OTHER COMPUTERS; AND (III) A USER TO REQUEST THE TRANSMISSION OF SUCH DESIGNATED FILES DIRECTLY FROM ONE OR MORE OTHER COMPUTERS. COVERED FILE-SHARING PROGRAM DOES NOT MEAN A PROGRAM, APPLICATION OR SOFTWARE DESIGNED PRIMARILY TO OPERATE AS A SERVER THAT IS ACCESSIBLE OVER THE INTERNET USING THE INTERNET DOMAIN NAME SYSTEM, TO TRANSMIT OR RECEIVE EMAIL MESSAGES, INSTANT MESSAGING, REAL-TIME AUDIO OR VIDEO COMMUNICATIONS, OR REAL-TIME VOICE COMMUNICATIONS, OR TO PROVIDE NETWORK OR COMPUTER SECURITY, NETWORK MANAGEMENT, HOSTING AND BACKUP SERVICES, MAINTENANCE, DIAGNOSTICS, TECHNICAL SUPPORT OR REPAIR, OR TO DETECT OR PREVENT FRAUDULENT ACTIVITIES.

(B) "COVERED ENTITY" MEANS: (I) A PERSON, PARTNERSHIP, FIRM, ASSOCIATION, OR CORPORATION THAT DEVELOPS A COVERED FILE-SHARING PROGRAM; AND (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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DISSEMINATES OR DISTRIBUTES A COVERED FILE-SHARING PROGRAM AND IS OWNED OR OPERATED BY THE PERSON, PARTNERSHIP, FIRM, ASSOCIATION, OR CORPORATION THAT DEVELOPED THE COVERED FILE-SHARING PROGRAM.

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

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

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

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

(II) IMMEDIATELY PRIOR TO INITIAL ACTIVATION OF A FILE-SHARING FUNCTION OF SUCH PROGRAM:

(A) PROVIDES CLEAR AND CONSPICUOUS NOTICE OF WHICH FILES ON THE COMPUTER ARE TO BE MADE AVAILABLE FOR SEARCHING BY AND COPYING TO ANOTHER COMPUTER; AND

(B) OBTAINS THE INFORMED CONSENT FROM AN OWNER OR AUTHORIZED USER OF THE COMPUTER FOR SUCH FILES TO BE MADE AVAILABLE FOR SEARCHING AND COPYING TO ANOTHER COMPUTER.

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

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

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

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

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

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

5. NOTHING IN THIS SECTION SHALL IN ANY WAY LIMIT THE RIGHTS OR REMEDIES THAT ARE OTHERWISE AVAILABLE TO THE CONSUMER OR PURCHASER UNDER ANY OTHER LAW.

6. (A) THE ATTORNEY GENERAL MAY BRING A CIVIL ACTION AGAINST ANY COVERED ENTITY THAT VIOLATES ANY PROVISION OF THIS SECTION TO ENFORCE THE PROVISIONS OF THIS SECTION AND MAY RECOVER ANY OR ALL OF THE FOLLOWING:

(I) UP TO ONE HUNDRED THOUSAND DOLLARS FOR A KNOWING PATTERN OR PRACTICE OF SUCH VIOLATIONS; AND

(II) COSTS AND REASONABLE ATTORNEY'S FEES.

(B) WHENEVER THE ATTORNEY GENERAL BELIEVES FROM EVIDENCE SATISFACTORY TO HIM OR HER THAT A KNOWING VIOLATION OF THIS SECTION OR A PATTERN OR PRACTICE OF VIOLATING THIS SECTION HAS OCCURRED OR IS ABOUT TO OCCUR HE OR SHE MAY SEEK AN ORDER TO ENJOIN SUCH VIOLATION.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.