

—th Congress
—nd Session

S. _____

To modernize and enhance intellectual property laws, and for other purposes

IN THE SENATE OF THE UNITED STATES

M _____ introduced the following bill, which was read twice and referred to the Committee on the Judiciary

A BILL

To modernize and enhance intellectual property laws, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1.—SHORT TITLE

This Act may be cited as the "Reducing Copyright Abuse and Overreach Act."

SEC. 2.—PROTECTION AGAINST COPYRIGHT ABUSE

Title 17, United States Code, is amended by adding after Chapter 5:

“CHAPTER 5A. COPYRIGHT ABUSE AND REMEDIES

§ 514. ABUSE OF COPYRIGHT: MOTION TO STRIKE.

(a) IN GENERAL. —In any civil action for infringement under this title, the respondent shall have the right to file a motion to strike on the grounds that the claim misrepresents exclusive rights as defined in section 106 of this title, copyrightable subject matter as defined in sections 102 through 105 of this title, or

copyright ownership; or that the claim, if upheld, would have a significant harmful effect on competition or free expression.

(b) PROCEDURES. —

(1) The motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be scheduled by the clerk of the court for a hearing not more than 30 days after the service of the motion unless the docket conditions of the court require a later hearing.

(2) The motion shall be treated as one for summary judgment:

(A) the trial court shall use a time period appropriate to preferred or expedited motions; and,

(B) the moving party shall have a right of expedited appeal from a trial court order denying such a motion or from a trial court failure to rule on such a motion in expedited fashion;

(3) Discovery shall be suspended, pending decision on the motion and appeals, though the court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision;

(4) The responding party shall have the burden of proof, of going forward with the evidence, and of persuasion on the motion;

(5) The court shall make its determination based upon the facts contained in the pleadings and affidavits filed;

(6) The court shall grant the motion and dismiss the judicial claim, unless the court determines that the responding party has established a probability of prevailing on the claim;

(7) Any government body to which the moving party's acts were directed or the Attorney General of the United States or of any state may intervene to defend or otherwise support the moving party in the action;

(c) REMEDIES—

(1) A prevailing moving party on a motion to strike shall be entitled to recover his or her attorneys' fees and costs from the person or persons responsible. If the court finds that a motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorneys' fees to a responding party prevailing on the motion

SEC. 3 – PROHIBITION OF UNFAIR AND DECEPTIVE WARNING NOTICES

(a) CONDUCT PROHIBITED. —Not later than 180 days after the date of enactment of this Act, the Federal Trade Commission shall promulgate rules to prohibit, as an unfair and deceptive act or practice, any person from issuing warning notices that unfairly or deceptively overstate a person's rights with respect to a work protected under copyright law.

(b) DEFINITION. —For purposes of this section—

(1) the term “person” has the meaning given such term in section 551(2) of title 5, United States Code.

(c) ENFORCEMENT. —A violation of the rules required under subsection (a) constitutes an unfair method of competition and an unfair or deceptive act or practice under section 45(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)). The Commission shall enforce such rules in the same manner and by the same means, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act.

SEC. 4 – NOTICE OF TECHNOLOGICAL RESTRICTIONS

(a) NOTICE OF RESTRICTIONS ON CONSUMER PRODUCTS AND SERVICES. —Title 15, United States Code, is amended by adding after Chapter 50:

“CHAPTER 50A —NOTICE OF RESTRICTIONS ON CONSUMER PRODUCTS AND SERVICES

§ 2321. RULES GOVERNING NOTICE OF RESTRICTIONS

(a) NOTICE REQUIREMENT. —In order to improve the adequacy of information available to consumers, prevent deception, and improve competition in the marketplace, copyright holders and those acting under their authorization shall provide notice of any technological restrictions on consumers' ability to make uses of their products or services that would otherwise be lawful under copyright law.

(1) FULL AND CONSPICUOUS DISCLOSURE. —The term ‘notice’ means full and conspicuous disclosure of restrictions in simple and readily understood language.

(2) AVAILABILITY OF NOTICE TO CONSUMER. —The Federal Trade Commission (‘Commission’) shall prescribe rules requiring that such notice of restrictions be made available to the consumer (or prospective consumer) prior to the sale of the product or service to him.

(3) MANNER AND FORM FOR PRESENTATION AND DISPLAY OF INFORMATION. —The Commission may prescribe rules for determining the manner and form in which information with respect to any notice of restrictions on a consumer product or service shall be clearly and conspicuously presented or displayed so as not to mislead the reasonable, average consumer, when such information is contained in advertising, labeling, point-of-sale material, or other representations in writing.

§ 2322. REMEDIES.

(a) UNFAIR AND DECEPTIVE TRADE PRACTICE. —It shall be a violation of section 45(a)(1) of this title for any person to fail to comply with any requirement imposed on such person by section 2321 (or a rule thereunder).”

(b) DMCA DEFENSE. —Section 1201 of title 17, United States Code, is amended by adding at the end the following:

“(1) NOTICE REQUIREMENT. —Notice of the implementation of technological measures that effectively control access to a work protected under this title must be made in accordance with the requirements of section 2321 of title 15 of the United States Code and any rules prescribed thereunder. Failure to provide such notice shall be a defense against a claim of circumvention under section 1201(a), provided such technological control measures limit the ability of consumers to make noninfringing uses of said protected work.”

SEC. 5 – STATUS OF ESSENTIAL TRANSIENT COPIES

Section 112 of title 17, United States Code, is amended by adding after subsection (i) the following:

(j) Notwithstanding the provisions of section 106, it shall not be an infringement of copyright to create transient or incidental reproductions of copies or phonorecords that are an integral and essential part of a technological process and the primary purpose of which is to enable a lawful use.