

Digital Media Consumers' Rights Act of 2005.

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109th CONGRESS

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H. R. 1201

To amend the Federal Trade Commission Act to provide that the advertising or sale of a mislabeled copy-protected music disc is an unfair method of competition and an unfair and deceptive act or practice, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

March 9, 2005

Mr. BOUCHER (for himself, Mr. DOOLITTLE, and Mr. BARTON of Texas) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Federal Trade Commission Act to provide that the advertising or sale of a mislabeled copy-protected music disc is an unfair method of competition and an unfair and deceptive act or practice, and for other purposes.

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

SECTION 1. SHORT TITLE. ➡

This Act may be cited as the `Digital Media Consumers' Rights Act of 2005'.

SEC. 2. FINDINGS. ➡

Congress finds the following:

(1) The limited introduction into commerce of 'copy-protected compact discs' has caused consumer confusion and placed increased, unwarranted burdens on retailers, consumer electronics manufacturers, and personal computer manufacturers responding to consumer complaints, conditions which will worsen as larger numbers of such discs are introduced into commerce.

(2) Recording companies introducing new forms of copy protection should have the freedom to innovate, but should also be responsible for providing adequate notice to consumers about restrictions on the playability and recordability of 'copy-protected compact discs'.

(3) The Federal Trade Commission should be empowered and directed to ensure the adequate labeling of prerecorded digital music disc products.

SEC. 3. INADEQUATELY LABELED COPY-PROTECTED COMPACT DISCS. ➡

The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended by inserting after section 24 the following new section:

SEC. 24A. INADEQUATELY LABELED COPY-PROTECTED COMPACT DISCS.

(a) Definitions- In this section:

(1) The term 'Commission' means the Federal Trade Commission.

(2) The term 'audio compact disc' means a substrate packaged as a commercial prerecorded audio product, containing a sound recording or recordings, that conforms to all specifications and requirements for Red Book Audio and bears a duly licensed and authorized 'Compact disc Digital Audio' logo.

(3) The term 'prerecorded digital music disc product' means a commercial audio product comprised of a substrate in the form of a disc in which is recorded a sound recording or sound recordings generally in accordance with Red Book Audio specifications but that does not conform to all licensed requirements for Red Book Audio: Provided, That a substrate containing a prerecorded sound recording that conforms to the licensing requirements applicable to a DVD-Audio disc or a Super Audio Compact Disc is not a prerecorded digital music disc product.

(4) The term 'Red Book Audio' means audio data digitized at 44,100 samples per second (44.1 kHz) with a range of 65,536 possible values as defined in the 'Compact Disc-Digital Audio System Description' (first published in 1980 by Philips N.V. and Sony Corporation, as updated from time to time).

(b) Prohibited Acts-

`(1) The introduction into commerce, sale, offering for sale, or advertising for sale of a prerecorded digital music disc product which is mislabeled or falsely or deceptively advertised or invoiced, within the meaning of this section or any rules or regulations prescribed by the Commission pursuant to subsection (d), is unlawful and shall be deemed an unfair method of competition and an unfair and deceptive act or practice in commerce under section 5(a)(1).

`(2) Prior to the time a prerecorded digital music disc product is sold and delivered to the ultimate consumer, it shall be unlawful to remove or mutilate, or cause or participate in the removal or mutilation of, any label required by this section or any rules or regulations prescribed by the Commission pursuant to subsection (d) to be affixed to such prerecorded digital music disc product. Any person violating this subsection shall be deemed to have engaged in an unfair method of competition and an unfair and deceptive act or practice in commerce under this Act.

`(c) Mislabeled Discs- For purposes of this section, a prerecorded digital music disc product shall be considered to be mislabeled if it--

`(1) bears any logo or marking which, in accordance with common practice, identifies it as an audio compact disc;

`(2) fails to bear a label on the packaging in which it is sold at retail in words that are prominent and plainly legible on the front of the packaging that--

`(A) it is not an audio compact disc;

`(B) it might not play properly in all devices capable of playing an audio compact disc; and

`(C) it might not be recordable on a personal computer or other device capable of recording content from an audio compact disc; or

`(3) fails to provide the following information on the packaging in which it is sold at retail in words that are prominent and plainly legible--

`(A) any minimum recommended software requirements for playback or recordability on a personal computer;

`(B) any restrictions on the number of times song files may be downloaded to the hard drive of a personal computer; and

`(C) the applicable return policy for consumers who find that the prerecorded digital music disc product does not play properly in a device capable of playing an audio compact disc.

`(d) Rulemaking- (1) The Commission may develop such rules and regulations as it deems appropriate to prevent the prohibited acts set forth in subsection (b) and to require the proper labeling of prerecorded digital music disc products under subsection (c).

`(2)(A) The Commission may develop such additional rules and regulations as it deems necessary to establish appropriate labeling requirements applicable to new audio discs, using new playback formats (including DVD-Audio discs and Super Audio Compact Discs), if the Commission finds, with respect to a particular type of disc, that

`(i) the manner in which the discs are displayed at retail, packaged, or marketed results in

substantial consumer confusion about the playability and recordability of such discs;

`(ii) the discs are not appropriately labeled with respect to their playability on standard audio compact disc playback devices; and

`(iii)(I) the discs are not recordable on a personal computer; or

`(II) if the discs are recordable, a recording made from such a disc is bound to a particular device.

`(B) To the maximum extent practicable, the Commission shall seek to ensure that any rules and regulations developed under this paragraph impose labeling requirements comparable to the requirements imposed under the rules and regulations developed under paragraph (1).'

SEC. 4. REPORT TO CONGRESS. ➔

Not later than 2 years after the date of enactment of this Act, the Federal Trade Commission shall submit to Congress a report detailing the following:

(1) The extent to which prerecorded digital music disc products (as defined in section 24A of the Federal Trade Commission Act, as added by section 3 of this Act) have entered the market over the preceding 2 years.

(2) The extent to which the Commission has received complaints from consumers about the implementation of return policies for consumers who find that a prerecorded digital music disc product does not play properly in a device capable of playing an audio compact disc (as defined in section 24A of such Act).

(3) The extent to which manufacturers and retailers have been burdened by consumer returns of devices unable to play prerecorded digital music disc products.

(4) The number of enforcement actions taken by the Commission pursuant to section 24A of such Act.

(5) The number of convictions or settlements achieved as a result of enforcement actions taken by the Commission pursuant to section 24A of such Act.

(6) Any proposed changes to this Act, with respect to prerecorded digital music disc products, that the Commission believes would enhance enforcement, eliminate consumer confusion, or otherwise address concerns raised by consumers with the Commission.

SEC. 5. FAIR USE AMENDMENTS. ➔

(a) Scientific Research- Subsections (a)(2)(A) and (b)(1)(A) of section 1201 of title 17, United States Code, are each amended by inserting after `title' in subsection (a)(2)(A) and after `thereof' in subsection (b)(1)(A) the following: `unless the person is acting solely in furtherance of scientific research into technological measures'.

(b) Fair Use Restoration- Section 1201(c) of title 17, United States Code, is amended--

(1) in paragraph (1), by inserting before the period at the end the following: `and it is not a violation of this section to circumvent a technological measure in order to obtain access to the work for purposes of making noninfringing use of the work'; and

(2) by adding at the end the following new paragraph:

`(5) Except in instances of direct infringement, it shall not be a violation of the Copyright Act to manufacture or distribute a hardware or software product capable of substantial noninfringing uses.'.