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To provide for consumer, educational institution, and library awareness about digital rights management technologies included in the digital media products they purchase, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER , 2003

Mr. Brownback introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To provide for consumer, educational institution, and library awareness about digital rights management technologies included in the digital media products they purchase, and for other purposes.

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

3 **SECTION 1.SHORT TITLE.**

4 This Act may be cited as the "Consumers, Schools, and Libraries Digital Rights
5 Management Awareness Act of 2003".

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) It is not in the interest of our nation's economy, marketplace innovation, nor
9 consumer or educational community welfare for an agency of the Federal government to

1 mandate the inclusion of access or redistribution control technologies used with digital
2 media products into consumer electronics products, computer products, or
3 telecommunications and advanced services network facilities and services, except
4 pursuant to a grant of specific and clear authority from Congress to assure a result in its
5 regulations, and when the mandate is derived from voluntary private-sector efforts that
6 protect the legal, reasonable, and customary practices of end-users.

7 (2) The limited introduction into commerce of access controlled compact discs
8 has caused some consumer, educational institution, and library confusion and
9 inconvenience, and has placed increased burdens on retailers, consumer electronics
10 manufacturers, and personal computer manufacturers responding to consumer,
11 educational institution, and library complaints.

12 (3) The private and public sectors should work together to prevent future
13 consumer, educational institution, library, and industry confusion and inconvenience as
14 legitimate access and redistribution control technologies become increasingly prevalent
15 in the marketplace.

16 (4) The private sector should make every effort, in a voluntary process, to provide
17 for consumer, educational institution, and library awareness and satisfaction as access
18 and redistribution control technology are increasingly deployed in the marketplace.

19 (5) The Federal Trade Commission, in the absence of successful private sector
20 efforts, should ensure that consumers, educational institutions, and libraries are provided
21 with adequate information with respect to the existence of access and redistribution
22 control technologies in the digital media products they purchase, and how such
23 technologies may implicate their ability to use such products.

1 (6) It is not in the interests of consumer welfare, privacy, and safety, or for the
2 continued development of the Internet as a communications and economic resource, for
3 the manufacturers of digital media products or their representatives to be permitted to
4 require Internet access service providers merely providing subscribers with transport for
5 electronic communications to disclose a subscriber's personal information, absent due
6 process and independent of the judicial scrutiny required to ensure that such requests are
7 legitimate.

8 (7) The Federal Trade Commission should ensure that consumers' welfare,
9 privacy, and safety are protected in regards to requests by manufacturers of digital media
10 products or their representatives for Internet service provider disclosure of subscribers'
11 personally identifiable information outside of the judicial process.

12 (8) It is not in the interests of our nation's economy, marketplace innovation, nor
13 consumer, educational institution, and library welfare to permit the advent of access or
14 redistribution control technologies to limit the existence of legitimate secondary markets
15 for digital media products, a traditional form of commerce that is founded in our nation's
16 economic traditions, provides critical resources for our nation's educational institutions
17 and libraries, and is otherwise consistent with applicable law.

18 **SEC.3. PROHIBITION ON FCC TECHNOLOGY MANDATES.**

19 (a) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

20 (1) a successful transition to digital television will occur based on the mutual
21 cooperation of all stakeholders, and no one stakeholder's property interests outweigh
22 another's interests;

1 (2) the transition to digital television will be successful to the degree it meets
2 consumers' expectations based on the ways they have come to expect to be able to
3 receive and use over-the-air television in the privacy of their own homes and otherwise;

4 (3) digital convergence provides new tools for industry to offer innovative and
5 varied products compared to the traditional analog marketplace, and it also provides
6 consumers with innovative and varied means of using digital content. In this respect,
7 interoperability between digital television products and digital cable systems remains an
8 important objective;

9 (4) a successful transition to digital television will maintain this important balance
10 of interests; and

11 (5) suggestions that consumers do not have certain expectations in the digital
12 marketplace simply because they have never had access to a particular digital capability,
13 or the expectation of using or relying on such a capability, are not dispositive of
14 reasonable and customary consumer access and use practices.

15 (b) PROHIBITION ON TECHNOLOGY MANDATES.—Except as specifically
16 authorized by Congress the Federal Communications Commission may not require a person
17 manufacturing, importing into, offering for sale, license or distribution in, or affecting, interstate
18 commerce in the United States a device, machine, or process that is designed, manufactured,
19 marketed for the purpose of, or that is capable of rendering, processing, transmitting, receiving
20 or reproducing a digital media product—

21 (1) to incorporate access control technology, or the ability to respond to such
22 technology, into the design of such a device, machine, or process; or

1 (2) to incorporate redistribution control technology, or the ability to respond to
2 such technology, into the design of such a device, machine, or process.

3 (c) EFFECT ON PENDING FCC RULEMAKING PROCEEDINGS.—

4 (1) Nothing herein shall prohibit or limit the Commission from issuing the
5 regulations proposed for adoption in the “cable plug and play” proceeding in CS Docket
6 No. 97-80 and PP Docket No. 00-67.

7 (2) If the Commission determines that it has the authority to issue regulations in
8 MB Docket No. 02-230, it shall not be barred by subsection (b) of this section from
9 issuing such regulations, provided, however, that such regulations shall—

10 (A) preserve reasonable and customary consumer, educational institution,
11 and library access and use practices;

12 (B) not include, directly or indirectly, any requirement that a device,
13 machine, or process designed, manufactured, marketed for the purpose of, or that
14 is capable of rendering, processing, transmitting, receiving or reproducing a
15 digital media product, be manufactured using any particular redistribution control
16 technology or technologies, but only may provide for establishment of objective
17 standards to achieve a functional requirement of preventing illegal redistribution
18 of digital terrestrial television broadcast programming to the public over the
19 Internet; and

20 (C) provide for manufacturer self-certification, to be enforced exclusively
21 by the Commission pursuant to its existing enforcement authority, that a
22 redistribution control technology meets the requirements in subparagraphs (A)

1 and (B) of this subsection and does not interfere with unrelated distribution of
2 content over the Internet.

3 **SEC. 4. CONSUMER, EDUCATIONAL INSTITUTION, AND LIBRARY AWARENESS.**

4 (a) CONSUMER, EDUCATIONAL INSTITUTION, AND LIBRARY DIGITAL
5 RIGHTS MANAGEMENT AWARENESS ADVISORY COMMITTEE.— The Federal Trade
6 Commission shall, as soon as practicable after the date of enactment of this Act, establish an
7 advisory committee for the purpose of informing the Commission about the ways in which
8 access control technology and redistribution control technology may affect consumer,
9 educational institution, and library use of digital media products based on their legal and
10 customary uses of such products, and how consumer, educational institution, and library
11 awareness about the existence of such technologies in the digital media products they purchase
12 or otherwise come to legally own may be achieved.

13 (b) ADVISORY COMMITTEE REQUIREMENTS.—In establishing an advisory
14 committee for purposes of subsection (a) of this section, the Commission shall—

15 (1) ensure that it includes representatives of radio and television broadcasters,
16 television programming producers, producers of motion pictures, producers of sound
17 recordings, publishers of literary works, producers of video games, cable operators,
18 satellite operators, consumer electronics manufacturers, computer manufacturers, any
19 other appropriate manufacturers of electronic devices capable of utilizing digital media
20 products, telecommunications service providers, advanced service providers, Internet
21 service providers, consumer interest groups, representatives of educational institutions,
22 representatives of libraries, and other interested individuals from the private sector, and is

1 fairly balanced in terms of political affiliation, the points of view represented, and the
2 functions to be performed by the committee; and

3 (2) provide to the committee such staff and resources as may be necessary to
4 permit it to perform its functions efficiently and promptly; and

5 (3) require the committee to submit a final report, approved by a majority of
6 members, of its recommendations within one year after the date of the appointment of the
7 initial members.

8 (c) FTC NOTICE AND LABELING.—Except as provided in subsection (d)—

9 (1) no person shall offer for sale, license, or use by a consumer, educational
10 institution, or a library an access controlled digital media product or a redistribution
11 controlled digital media product, unless that person has provided clear and conspicuous
12 notice or a label on the product, at the point of sale or distribution to such consumer,
13 educational institution or library as prescribed by the Federal Trade Commission, such
14 that the notice or label identifies any restrictions the access control technology or
15 redistribution control technology used in or with that digital media product is intended or
16 reasonably could be foreseen to have on the consumers', educational institutions', or
17 libraries' use of the product; and

18 (2) this subsection shall not apply to a distributor or vendor of a digital media
19 product unless such distributor or vendor has actual knowledge that the product contains
20 or is restricted by access control technology or redistribution control technology and that
21 the notice or label described in this subsection is not visible to the consumer, educational
22 institution, or library at the point of distribution or transmission.

1 (d) APPLICABILITY AND EFFECTIVE DATE.—Subsection (c) shall take effect 1
2 year after the date of enactment of this Act unless the Commission determines, in consultation
3 with the advisory committee created in subsection (b) of this section, that manufacturers of
4 digital media products have, by such date—

5 (1) established voluntary rules for notice and labeling of access controlled or
6 redistribution controlled digital media products, including when both access control
7 technology and redistribution control technology are used in or with digital media
8 products, designed to create consumer, educational institution, and library awareness
9 about the ways in which access control technology or redistribution control technology
10 will affect their legal, expected, and customary uses of digital media products; and

11 (2) agreed voluntarily to implement the rules for notice and labeling of access
12 controlled digital media products or redistribution controlled digital media products,
13 including when both access control technology and redistribution control technology are
14 used in or with digital media products.

15 **SEC. 5. CONSUMER PRIVACY.**

16 (a) IN GENERAL.—Notwithstanding any other provision of law, an Internet access
17 service may not be compelled to make available to a manufacturer of a digital media product or
18 its representative the identity or personal information of a subscriber or user of its service for use
19 in enforcing the manufacturer's rights relating to use of such product on the basis of a subpoena
20 or order issued at the request of the manufacturer or its representative except under a valid
21 subpoena or court order issued at the request of the manufacturer or its representative in a
22 pending civil lawsuit or as otherwise expressly authorized under the Federal Rules of Civil
23 Procedure or the civil procedure rules of a State.

1 (b) Subsection (a) shall not apply to requests for personal information authorized by
2 another provision of law relating to allegedly unlawful use of a digital media product residing,
3 and not merely stored for a temporary or transient period, on the system or network of the
4 Internet access service.

5 **SEC. 6. SECONDARY MARKETS FOR USED DIGITAL MEDIA PRODUCTS.**

6 (a) CONSUMER SECONDARY MARKETS.—The lawful owner of a digital media
7 product may transmit a copy of that product by means of a transmission to a single recipient as
8 long as the technology used by that person to transmit the copy automatically deletes the digital
9 media product contemporaneously with transmitting the copy.

10 (b) SECONDARY MARKETS FOR CHARITABLE DONATIONS TO
11 EDUCATIONAL INSTITUTIONS AND LIBRARIES.—A person manufacturing, importing
12 into, or offering for sale in, or affecting, interstate commerce in the United States a digital media
13 product may not incorporate, impose, or attempt to impose any access control technology or
14 redistribution control technology used in or with a digital media product that prevents a
15 consumer from donating digital media products they own to educational institutions or libraries,
16 subject to subsection (a).

17 (c) NO DISABLING TECHNOLOGY.—A person manufacturing, importing into, or
18 offering for sale in, or affecting, interstate commerce in the United States a digital media product
19 may not incorporate, impose, or attempt to impose any access control technology or
20 redistribution control technology used in or with a digital media product that limits consumer
21 resale of a digital media product described in subsection (a) or charitable donations described in
22 subsection (b) to specific venues or distribution channels.

23 **SEC. 7. REPORT TO CONGRESS.**

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

3 (1) The extent to which access controlled digital media products and
4 redistribution controlled digital media products have entered the market over the
5 preceding 2 years.

6 (2) The extent to which such digital media products allow consumers, educational
7 institutions, and libraries to engage in all lawful uses of the product, and to which the
8 Commission has received complaints from consumers, educational institutions, and
9 libraries about the implementation of return policies for consumers, schools, and libraries
10 who find that an access controlled digital media product or a redistribution controlled
11 digital media product does not operate properly in a device capable of utilizing the
12 product, or cannot be transmitted lawfully over the Internet.

13 (3) The extent to which manufacturers and retailers have been burdened by
14 consumer, educational institutions, and library returns of devices unable to play or
15 otherwise utilize access controlled digital media products or redistribution controlled
16 digital media products.

17 (4) The number of enforcement actions taken by the Commission under this Act.

18 (5) The number of convictions or settlements achieved as a result of those
19 enforcement actions.

20 (6) The number of requests Internet service providers have received from
21 manufacturers of digital media products or their representatives seeking disclosure of
22 subscribers' personal information, and the number of electronic requests Internet Service
23 Providers have received from manufacturers of digital media products or their

1 representatives requesting that a subscriber be disconnected from their service outside of
2 any judicial process.

3 (7) Legislative or other requirements the Commission recommends in creating an
4 office within the Commission to receive, verify, and process requests from manufacturers
5 of digital media companies or their representatives to obtain the personal information of a
6 subscriber to an Internet access service they legitimately suspect of misusing their
7 property.

8 (8) An analysis of the ways consumers, educational institutions, and libraries
9 commonly expect to be able to use digital media products, whether including access
10 control technology or redistribution control technology or otherwise, when they purchase,
11 legally own, or pay to use such products.

12 (9) Any proposed changes to this Act the Commission believes would enhance
13 enforcement, eliminate consumer, educational institution, and library confusion, or
14 otherwise address concerns raised by end-users with the Commission under this Act.

15 **SEC. 8. ENFORCEMENT.**

16 (a) ENFORCEMENT BY FEDERAL TRADE COMMISSION.—Except with regard to
17 section 3, this Act shall be enforced by the Federal Trade Commission.

18 (b) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR PRACTICE.—The violation of
19 any provision is an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the
20 Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

21 (c) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person
22 from violating sections 4, 5 or 6 of this Act in the same manner, by the same means, and with the
23 same jurisdiction, powers, and duties as though all applicable terms and provisions of the

1 Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of
2 this Act. Any entity that violates any provision of sections 4, 5 or 6 is subject to the penalties
3 and entitled to the privileges and immunities provided in the Federal Trade Commission Act in
4 the same manner as if all applicable terms and provisions of the Federal Trade Commission Act
5 were in incorporated into and made a part of those sections.

6 (d) 1 YEAR WINDOW FOR COMPLIANCE.—The Commission may not, less than 1
7 year after the date of enactment of this section, initiate an enforcement action under this section
8 for a violation of section 4.

9 **SEC. 9. DEFINITIONS.**

10 For the purposes of this Act:

11 (1) ACCESS CONTROLLED DIGITAL MEDIA PRODUCT.—The term “access
12 controlled digital media product” means a digital media product, as defined in this
13 section, to which an access control technology has been applied.

14 (2) ACCESS CONTROL TECHNOLOGY.—The term “access control
15 technology” means a technology or process that controls or inhibits the use, reproduction,
16 display, transmission or resale, or transfer of control of a license to use, of a digital media
17 product.

18 (3) DIGITAL MEDIA PRODUCT.—The term “digital media product” means—

- 19 (a) a literary work;
- 20 (b) a pictorial and graphic work;
- 21 (c) a motion picture or other audiovisual work;
- 22 (d) a sound recording; or
- 23 (e) a musical work, including accompanying words

1 that is distributed, broadcast, transmitted, performed, intended for sale, or licensed on
2 nonnegotiable terms, to the general public, in digital form, either electronically or fixed
3 in a physical medium.

4 (4) FUNCTIONAL REQUIREMENT.—The term “functional requirement”
5 means any rule or regulation enacted by the Federal Communications Commission that
6 requires a device, machine, or process designed, manufactured, marketed for the purpose
7 of, or that is capable of rendering, processing, transmitting, receiving or reproducing a
8 digital media product to be able to perform certain functions or include certain generic
9 capabilities, independent of any requirement that specific technologies be incorporated to
10 meet the functional requirement.

11 (5) INTERNET.—The term “Internet” has the meaning given that term in the
12 Internet Tax Freedom Act (47 U.S.C. 151 nt).

13 (6) INTERNET ACCESS SERVICE.—The term “Internet access service” has the
14 same meaning given that term in section 231(e)(4) of the Communications Act of 1934
15 (47 U.S.C. 231(e)(4)).

16 (7) MANUFACTURER.—The term “manufacturer of a digital media product”
17 means any person owning any right in the digital media product.

18 (8) PERSONAL INFORMATION.—The term "personal information" has the
19 same meaning given that term in section 1301(8) of the Children’s Online Privacy
20 Protection Act of 1998 (15 U.S.C. 6501(8)), including any other information about an
21 individual, and including information that an Internet access service collects and
22 combines with an identifier described in subparagraphs (A) through (F) of that section.

1 (8) REDISTRIBUTION CONTROLLED DIGITAL MEDIA PRODUCT.—The
2 term “redistribution controlled digital media product” means a digital media product, as
3 defined in this section, to which a redistribution control technology has been applied.

4 (9) REDISTRIBUTION CONTROL TECHNOLOGY.—The term “redistribution
5 control technology” means a technology or process that controls or inhibits the
6 transmission of a digital media product over the Internet following its initial receipt by a
7 member of the public, without regard to whether such transmission is for the purpose of
8 use, reproduction, performance, resale, or transfer of a license to use, the digital media
9 product.