

108TH CONGRESS
1ST SESSION

S. 1621

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 16, 2003

Mr. BROWNBACK introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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 Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

7 **SEC. 2. FINDINGS.**

8 Congress finds the following:

1 (1) It is not in the interest of our Nation's
2 economy, marketplace innovation, nor consumer or
3 educational community welfare for an agency of the
4 Federal Government to mandate the inclusion of ac-
5 cess or redistribution control technologies used with
6 digital media products into consumer electronics
7 products, computer products, or telecommunications
8 and advanced services network facilities and services,
9 except pursuant to a grant of specific and clear au-
10 thority from Congress to assure a result in its regu-
11 lations, and when the mandate is derived from vol-
12 untary private-sector efforts that protect the legal,
13 reasonable, and customary practices of end-users.

14 (2) The limited introduction into commerce of
15 access controlled compact discs has caused some
16 consumer, educational institution, and library confu-
17 sion and inconvenience, and has placed increased
18 burdens on retailers, consumer electronics manufac-
19 turers, and personal computer manufacturers re-
20 sponding to consumer, educational institution, and
21 library complaints.

22 (3) The private and public sectors should work
23 together to prevent future consumer, educational in-
24 stitution, library, and industry confusion and incon-
25 venience as legitimate access and redistribution con-

1 trol technologies become increasingly prevalent in
2 the marketplace.

3 (4) The private sector should make every effort,
4 in a voluntary process, to provide for consumer, edu-
5 cational institution, and library awareness and satis-
6 faction as access and redistribution control tech-
7 nology are increasingly deployed in the marketplace.

8 (5) The Federal Trade Commission, in the ab-
9 sence of successful private sector efforts, should en-
10 sure that consumers, educational institutions, and li-
11 braries are provided with adequate information with
12 respect to the existence of access and redistribution
13 control technologies in the digital media products
14 they purchase, and how such technologies may impli-
15 cate their ability to use such products.

16 (6) It is not in the interests of consumer wel-
17 fare, privacy, and safety, or for the continued devel-
18 opment of the Internet as a communications and
19 economic resource, for the manufacturers of digital
20 media products or their representatives to be per-
21 mitted to require Internet access service providers
22 merely providing subscribers with transport for elec-
23 tronic communications to disclose a subscriber's per-
24 sonal information, absent due process and inde-

1 pendent of the judicial scrutiny required to ensure
2 that such requests are legitimate.

3 (7) The Federal Trade Commission should en-
4 sure that consumers' welfare, privacy, and safety are
5 protected in regards to requests by manufacturers of
6 digital media products or their representatives for
7 Internet service provider disclosure of subscribers'
8 personally identifiable information outside of the ju-
9 dicial process.

10 (8) It is not in the interests of our Nation's
11 economy, marketplace innovation, nor consumer,
12 educational institution, and library welfare to permit
13 the advent of access or redistribution control tech-
14 nologies to limit the existence of legitimate sec-
15 ondary markets for digital media products, a tradi-
16 tional form of commerce that is founded in our Na-
17 tion's economic traditions, provides critical resources
18 for our Nation's educational institutions and librar-
19 ies, and is otherwise consistent with applicable law.

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

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

23 (1) a successful transition to digital television
24 will occur based on the mutual cooperation of all

1 stakeholders, and no one stakeholder's property in-
2 terests outweigh another's interests;

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

8 (3) digital convergence provides new tools for
9 industry to offer innovative and varied products
10 compared to the traditional analog marketplace, and
11 it also provides consumers with innovative and var-
12 ied means of using digital content. In this respect,
13 interoperability between digital television products
14 and digital cable systems remains an important ob-
15 jective;

16 (4) a successful transition to digital television
17 will maintain this important balance of interests;
18 and

19 (5) suggestions that consumers do not have cer-
20 tain expectations in the digital marketplace simply
21 because they have never had access to a particular
22 digital capability, or the expectation of using or rely-
23 ing on such a capability, are not dispositive of rea-
24 sonable and customary consumer access and use
25 practices.

1 (b) PROHIBITION ON TECHNOLOGY MANDATES.—

2 Except as specifically authorized by Congress the Federal
3 Communications Commission may not require a person
4 manufacturing, importing into, offering for sale, license or
5 distribution in, or affecting, interstate commerce in the
6 United States a device, machine, or process that is de-
7 signed, manufactured, marketed for the purpose of, or
8 that is capable of rendering, processing, transmitting, re-
9 ceiving or reproducing a digital media product—

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

13 (2) to incorporate redistribution control tech-
14 nology, or the ability to respond to such technology,
15 into the design of such a device, machine, or process.

16 (c) EFFECT ON PENDING FCC RULEMAKING PRO-
17 CEEDINGS.—

18 (1) Nothing herein shall prohibit or limit the
19 Commission from issuing the regulations proposed
20 for adoption in the “cable plug and play” proceeding
21 in CS Docket No. 97–80 and PP Docket No. 00–
22 67.

23 (2) If the Commission determines that it has
24 the authority to issue regulations in MB Docket No.
25 02–230, it shall not be barred by subsection (b) of

1 this section from issuing such regulations, provided,
2 however, that such regulations shall—

3 (A) preserve reasonable and customary
4 consumer, educational institution, and library
5 access and use practices;

6 (B) not include, directly or indirectly, any
7 requirement that a device, machine, or process
8 designed, manufactured, marketed for the pur-
9 pose of, or that is capable of rendering, proc-
10 essing, transmitting, receiving or reproducing a
11 digital media product, be manufactured using
12 any particular redistribution control technology
13 or technologies, but only may provide for estab-
14 lishment of objective standards to achieve a
15 functional requirement of preventing illegal re-
16 distribution of digital terrestrial television
17 broadcast programming to the public over the
18 Internet; and

19 (C) provide for manufacturer self-certifi-
20 cation, to be enforced exclusively by the Com-
21 mission pursuant to its existing enforcement
22 authority, that a redistribution control tech-
23 nology meets the requirements in subpara-
24 graphs (A) and (B) of this subsection and does

1 not interfere with unrelated distribution of con-
2 tent over the Internet.

3 **SEC. 4. CONSUMER, EDUCATIONAL INSTITUTION, AND LI-**
4 **BRARY AWARENESS.**

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

19 (b) ADVISORY COMMITTEE REQUIREMENTS.—In es-
20 tablishing an advisory committee for purposes of sub-
21 section (a) of this section, the Commission shall—

22 (1) ensure that it includes representatives of
23 radio and television broadcasters, television pro-
24 gramming producers, producers of motion pictures,
25 producers of sound recordings, publishers of literary

1 works, producers of video games, cable operators,
2 satellite operators, consumer electronics manufactur-
3 ers, computer manufacturers, any other appropriate
4 manufacturers of electronic devices capable of uti-
5 lizing digital media products, telecommunications
6 service providers, advanced service providers, Inter-
7 net service providers, consumer interest groups, rep-
8 resentatives of educational institutions, representa-
9 tives of libraries, and other interested individuals
10 from the private sector, and is fairly balanced in
11 terms of political affiliation, the points of view rep-
12 resented, and the functions to be performed by the
13 committee;

14 (2) provide to the committee such staff and re-
15 sources as may be necessary to permit it to perform
16 its functions efficiently and promptly; and

17 (3) require the committee to submit a final re-
18 port, approved by a majority of members, of its rec-
19 ommendations within 1 year after the date of the
20 appointment of the initial members.

21 (c) FTC NOTICE AND LABELING.—Except as pro-
22 vided in subsection (d)—

23 (1) no person shall offer for sale, license, or use
24 by a consumer, educational institution, or a library
25 an access controlled digital media product or a redis-

1 tribution controlled digital media product, unless
2 that person has provided clear and conspicuous no-
3 tice or a label on the product, at the point of sale
4 or distribution to such consumer, educational insti-
5 tution or library as prescribed by the Federal Trade
6 Commission, such that the notice or label identifies
7 any restrictions the access control technology or re-
8 distribution control technology used in or with that
9 digital media product is intended or reasonably could
10 be foreseen to have on the consumers', educational
11 institutions', or libraries' use of the product; and

12 (2) this subsection shall not apply to a dis-
13 tributor or vendor of a digital media product unless
14 such distributor or vendor has actual knowledge that
15 the product contains or is restricted by access con-
16 trol technology or redistribution control technology
17 and that the notice or label described in this sub-
18 section is not visible to the consumer, educational in-
19 stitution, or library at the point of distribution or
20 transmission.

21 (d) **APPLICABILITY AND EFFECTIVE DATE.**—Sub-
22 section (c) shall take effect 1 year after the date of enact-
23 ment of this Act unless the Commission determines, in
24 consultation with the advisory committee created in sub-

1 section (b) of this section, that manufacturers of digital
2 media products have, by such date—

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

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

19 **SEC. 5. CONSUMER PRIVACY.**

20 (a) **IN GENERAL.**—Notwithstanding any other provi-
21 sion of law, an Internet access service may not be com-
22 pelled to make available to a manufacturer of a digital
23 media product or its representative the identity or per-
24 sonal information of a subscriber or user of its service for
25 use in enforcing the manufacturer’s rights relating to use

1 of such product on the basis of a subpoena or order issued
2 at the request of the manufacturer or its representative
3 except under a valid subpoena or court order issued at
4 the request of the manufacturer or its representative in
5 a pending civil lawsuit or as otherwise expressly author-
6 ized under the Federal Rules of Civil Procedure or the
7 civil procedure rules of a State.

8 (b) Subsection (a) shall not apply to requests for per-
9 sonal information authorized by another provision of law
10 relating to allegedly unlawful use of a digital media prod-
11 uct residing, and not merely stored for a temporary or
12 transient period, on the system or network of the Internet
13 access service.

14 **SEC. 6. SECONDARY MARKETS FOR USED DIGITAL MEDIA**
15 **PRODUCTS.**

16 (a) CONSUMER SECONDARY MARKETS.—The lawful
17 owner of a digital media product may transmit a copy of
18 that product by means of a transmission to a single recipi-
19 ent as long as the technology used by that person to trans-
20 mit the copy automatically deletes the digital media prod-
21 uct contemporaneously with transmitting the copy.

22 (b) SECONDARY MARKETS FOR CHARITABLE DONA-
23 TIONS TO EDUCATIONAL INSTITUTIONS AND LIBRAR-
24 IES.—A person manufacturing, importing into, or offering
25 for sale in, or affecting, interstate commerce in the United

1 States a digital media product may not incorporate, im-
2 pose, or attempt to impose any access control technology
3 or redistribution control technology used in or with a dig-
4 ital media product that prevents a consumer from donat-
5 ing digital media products they own to educational institu-
6 tions or libraries, subject to subsection (a).

7 (c) NO DISABLING TECHNOLOGY.—A person manu-
8 facturing, importing into, or offering for sale in, or affect-
9 ing, interstate commerce in the United States a digital
10 media product may not incorporate, impose, or attempt
11 to impose any access control technology or redistribution
12 control technology used in or with a digital media product
13 that limits consumer resale of a digital media product de-
14 scribed in subsection (a) or charitable donations described
15 in subsection (b) to specific venues or distribution chan-
16 nels.

17 **SEC. 7. REPORT TO CONGRESS.**

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

21 (1) The extent to which access controlled digital
22 media products and redistribution controlled digital
23 media products have entered the market over the
24 preceding 2 years.

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

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

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

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

23 (6) The number of requests Internet service
24 providers have received from manufacturers of dig-
25 ital media products or their representatives seeking

1 disclosure of subscribers' personal information, and
2 the number of electronic requests Internet Service
3 Providers have received from manufacturers of dig-
4 ital media products or their representatives request-
5 ing that a subscriber be disconnected from their
6 service outside of any judicial process.

7 (7) Legislative or other requirements the Com-
8 mission recommends in creating an office within the
9 Commission to receive, verify, and process requests
10 from manufacturers of digital media companies or
11 their representatives to obtain the personal informa-
12 tion of a subscriber to an Internet access service
13 they legitimately suspect of misusing their property.

14 (8) An analysis of the ways consumers, edu-
15 cational institutions, and libraries commonly expect
16 to be able to use digital media products, whether in-
17 cluding access control technology or redistribution
18 control technology or otherwise, when they purchase,
19 legally own, or pay to use such products.

20 (9) Any proposed changes to this Act the Com-
21 mission believes would enhance enforcement, elimi-
22 nate consumer, educational institution, and library
23 confusion, or otherwise address concerns raised by
24 end-users with the Commission under this Act.

1 **SEC. 8. ENFORCEMENT.**

2 (a) **ENFORCEMENT BY FEDERAL TRADE COMMIS-**
3 **SION.**—Except with regard to section 3, this Act shall be
4 enforced by the Federal Trade Commission.

5 (b) **VIOLATION IS UNFAIR OR DECEPTIVE ACT OR**
6 **PRACTICE.**—The violation of any provision is an unfair
7 or deceptive act or practice proscribed under section
8 18(a)(1)(B) of the Federal Trade Commission Act (15
9 U.S.C. 57a(a)(1)(B)).

10 (c) **ACTIONS BY THE COMMISSION.**—The Commission
11 shall prevent any person from violating sections 4, 5, or
12 6 of this Act in the same manner, by the same means,
13 and with the same jurisdiction, powers, and duties as
14 though all applicable terms and provisions of the Federal
15 Trade Commission Act (15 U.S.C. 41 et seq.) were incor-
16 porated into and made a part of this Act. Any entity that
17 violates any provision of sections 4, 5, or 6 is subject to
18 the penalties and entitled to the privileges and immunities
19 provided in the Federal Trade Commission Act in the
20 same manner as if all applicable terms and provisions of
21 the Federal Trade Commission Act were incorporated into
22 and made a part of those sections.

23 (d) **1 YEAR WINDOW FOR COMPLIANCE.**—The Com-
24 mission may not, less than 1 year after the date of enact-
25 ment of this section, initiate an enforcement action under
26 this section for a violation of section 4.

1 **SEC. 9. DEFINITIONS.**

2 For the purposes of this Act:

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

8 (2) ACCESS CONTROL TECHNOLOGY.—The term
9 “access control technology” means a technology or
10 process that controls or inhibits the use, reproduc-
11 tion, display, transmission or resale, or transfer of
12 control of a license to use, of a digital media prod-
13 uct.

14 (3) DIGITAL MEDIA PRODUCT.—The term “dig-
15 ital media product” means—

16 (A) a literary work;

17 (B) a pictorial and graphic work;

18 (C) a motion picture or other audiovisual
19 work;

20 (D) a sound recording; or

21 (E) a musical work, including accom-
22 panying words

23 that is distributed, broadcast, transmitted, per-
24 formed, intended for sale, or licensed on nonnego-
25 tiable terms, to the general public, in digital form,
26 either electronically or fixed in a physical medium.

1 (4) **FUNCTIONAL REQUIREMENT.**—The term
2 “functional requirement” means any rule or regula-
3 tion enacted by the Federal Communications Com-
4 mission that requires a device, machine, or process
5 designed, manufactured, marketed for the purpose
6 of, or that is capable of rendering, processing, trans-
7 mitting, receiving or reproducing a digital media
8 product to be able to perform certain functions or
9 include certain generic capabilities, independent of
10 any requirement that specific technologies be incor-
11 porated to meet the functional requirement.

12 (5) **INTERNET.**—The term “Internet” has the
13 meaning given that term in the Internet Tax Free-
14 dom Act (47 U.S.C. 151 nt).

15 (6) **INTERNET ACCESS SERVICE.**—The term
16 “Internet access service” has the same meaning
17 given that term in section 231(e)(4) of the Commu-
18 nications Act of 1934 (47 U.S.C. 231(e)(4)).

19 (7) **MANUFACTURER.**—The term “manufac-
20 turer of a digital media product” means any person
21 owning any right in the digital media product.

22 (8) **PERSONAL INFORMATION.**—The term “per-
23 sonal information” has the same meaning given that
24 term in section 1301(8) of the Children’s Online Pri-
25 vacy Protection Act of 1998 (15 U.S.C. 6501(8)),

1 including any other information about an individual,
2 and including information that an Internet access
3 service collects and combines with an identifier de-
4 scribed in subparagraphs (A) through (F) of that
5 section.

6 (8) REDISTRIBUTION CONTROLLED DIGITAL
7 MEDIA PRODUCT.—The term “redistribution con-
8 trolled digital media product” means a digital media
9 product, as defined in this section, to which a redis-
10 tribution control technology has been applied.

11 (9) REDISTRIBUTION CONTROL TECH-
12 NOLOGY.—The term “redistribution control tech-
13 nology” means a technology or process that controls
14 or inhibits the transmission of a digital media prod-
15 uct over the Internet following its initial receipt by
16 a member of the public, without regard to whether
17 such transmission is for the purpose of use, repro-
18 duction, performance, resale, or transfer of a license
19 to use, the digital media product.

○