

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5544

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.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 3, 2002

Mr. BOUCHER (for himself and Mr. DOOLITTLE) 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

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## 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.

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 “Digital Media Con-  
5 sumers’ Rights Act of 2002”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) The limited introduction into commerce of  
4 “copy-protected compact discs” has caused con-  
5 sumer confusion and placed increased, unwarranted  
6 burdens on retailers, consumer electronics manufac-  
7 turers, and personal computer manufacturers re-  
8 sponding to consumer complaints, conditions which  
9 will worsen as larger numbers of such discs are in-  
10 troduced into commerce.

11 (2) Recording companies introducing new forms  
12 of copy protection should have the freedom to inno-  
13 vate, but should also be responsible for providing  
14 adequate notice to consumers about restrictions on  
15 the playability and recordability of “copy-protected  
16 compact discs”.

17 (3) The Federal Trade Commission should be  
18 empowered and directed to ensure the adequate la-  
19 beling of prerecorded digital music disc products.

20 **SEC. 3. INADEQUATELY LABELED COPY-PROTECTED COM-**  
21 **PACT DISCS.**

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

1 “INADEQUATELY LABELED COPY-PROTECTED COMPACT  
2 DISCS

3 “SEC. 24A. (a) DEFINITIONS.—In this section:

4 “(1) The term ‘Commission’ means the Federal  
5 Trade Commission.

6 “(2) The term ‘audio compact disc’ means a  
7 substrate packaged as a commercial prerecorded  
8 audio product, containing a sound recording or re-  
9 cordings, that conforms to all specifications and re-  
10 quirements for Red Book Audio and bears a duly li-  
11 censed and authorized ‘Compact disc Digital Audio’  
12 logo.

13 “(3) The term ‘prerecorded digital music disc  
14 product’ means a commercial audio product com-  
15 prised of a substrate in the form of a disc in which  
16 is recorded a sound recording or sound recordings  
17 generally in accordance with Red Book Audio speci-  
18 fications but that does not conform to all licensed  
19 requirements for Red Book Audio: *Provided*, That a  
20 substrate containing a prerecorded sound recording  
21 that conforms to the licensing requirements applica-  
22 ble to a DVD-Audio disc or a Super Audio Compact  
23 Disc is not a prerecorded digital music disc product.

24 “(4) The term ‘Red Book Audio’ means audio  
25 data digitized at 44,100 samples per second (44.1

1 kHz) with a range of 65,536 possible values as de-  
2 fined in the ‘Compact Disc-Digital Audio System  
3 Description’ (first published in 1980 by Philips N.V.  
4 and Sony Corporation, as updated from time to  
5 time).

6 “(b) PROHIBITED ACTS.—(1) The introduction into  
7 commerce, sale, offering for sale, or advertising for sale  
8 of a prerecorded digital music disc product which is mis-  
9 labeled or falsely or deceptively advertised or invoiced,  
10 within the meaning of this section or any rules or regula-  
11 tions prescribed by the Commission pursuant to subsection  
12 (d), is unlawful and shall be deemed an unfair method of  
13 competition and an unfair and deceptive act or practice  
14 in commerce under section 5(a)(1).

15 “(2) Prior to the time a prerecorded digital music  
16 disc product is sold and delivered to the ultimate con-  
17 sumer, it shall be unlawful to remove or mutilate, or cause  
18 or participate in the removal or mutilation of, any label  
19 required by this section or any rules or regulations pre-  
20 scribed by the Commission pursuant to subsection (d) to  
21 be affixed to such prerecorded digital music disc product.  
22 Any person violating this subsection shall be deemed to  
23 have engaged in an unfair method of competition and an  
24 unfair and deceptive act or practice in commerce under  
25 this Act.

1       “(c) MISLABELED DISCS.—For purposes of this sec-  
2 tion, a prerecorded digital music disc product shall be con-  
3 sidered to be mislabeled if it—

4               “(1) bears any logo or marking which, in ac-  
5 cordance with common practice, identifies it as an  
6 audio compact disc;

7               “(2) fails to bear a label on the packaging in  
8 which it is sold at retail in words that are prominent  
9 and plainly legible on the front of the packaging  
10 that—

11                       “(A) it is not an audio compact disc;

12                       “(B) it might not play properly in all de-  
13 vices capable of playing an audio compact disc;  
14 and

15                       “(C) it might not be recordable on a per-  
16 sonal computer or other device capable of re-  
17 cording content from an audio compact disc; or

18               “(3) fails to provide the following information  
19 on the packaging in which it is sold at retail in  
20 words that are prominent and plainly legible—

21                       “(A) any minimum recommended software  
22 requirements for playback or recordability on a  
23 personal computer;

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

4           “(C) the applicable return policy for con-  
5           sumers who find that the prerecorded digital  
6           music disc product does not play properly in a  
7           device capable of playing an audio compact disc.

8           “(d) RULEMAKING.—(1) The Commission may de-  
9           velop such rules and regulations as it deems appropriate  
10          to prevent the prohibited acts set forth in subsection (b)  
11          and to require the proper labeling of prerecorded digital  
12          music disc products under subsection (c).

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

19                 “(i) the manner in which the discs are displayed  
20                 at retail, packaged, or marketed results in substan-  
21                 tial consumer confusion about the playability and re-  
22                 cordability of such discs;

23                 “(ii) the discs are not appropriately labeled with  
24                 respect to their playability on standard audio com-  
25                 pact disc playback devices; and

1           “(iii)(I) the discs are not recordable on a per-  
2           sonal computer; or

3           “(II) if the discs are recordable, a recording  
4           made from such a disc is bound to a particular de-  
5           vice.

6           “(B) To the maximum extent practicable, the Com-  
7           mission shall seek to ensure that any rules and regulations  
8           developed under this paragraph impose labeling require-  
9           ments comparable to the requirements imposed under the  
10          rules and regulations developed under paragraph (1).”.

11 **SEC. 4. REPORT TO CONGRESS.**

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

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

20               (2) The extent to which the Commission has re-  
21               ceived complaints from consumers about the imple-  
22               mentation of return policies for consumers who find  
23               that a prerecorded digital music disc product does  
24               not play properly in a device capable of playing an

1 audio compact disc (as defined in section 24A of  
2 such Act).

3 (3) The extent to which manufacturers and re-  
4 tailers have been burdened by consumer returns of  
5 devices unable to play prerecorded digital music disc  
6 products.

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

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

14 (6) Any proposed changes to this Act, with re-  
15 spect to prerecorded digital music disc products,  
16 that the Commission believes would enhance enforce-  
17 ment, eliminate consumer confusion, or otherwise  
18 address concerns raised by consumers with the Com-  
19 mission.

20 **SEC. 5. FAIR USE AMENDMENTS.**

21 (a) **SCIENTIFIC RESEARCH.**—Subsections (a)(2)(A)  
22 and (b)(1)(A) of section 1201 of title 17, United States  
23 Code, are each amended by inserting after “title” in sub-  
24 section (a)(2)(A) and after “thereof” in subsection  
25 (b)(1)(A) the following: “unless the person is acting solely



1 in furtherance of scientific research into technological pro-  
2 tection measures”.

3 (b) FAIR USE RESTORATION.—Section 1201(c) of  
4 title 17, United States Code, is amended—

5 (1) in paragraph (1), by inserting before the pe-  
6 riod at the end the following: “and it is not a viola-  
7 tion of this section to circumvent a technological  
8 measure in connection with access to, or the use of,  
9 a work if such circumvention does not result in an  
10 infringement of the copyright in the work”; and

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

13 “(5) It shall not be a violation of this title to manu-  
14 facture, distribute, or make noninfringing use of a hard-  
15 ware or software product capable of enabling significant  
16 noninfringing use of a copyrighted work.”.

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