

103^D CONGRESS
1ST SESSION

H. R. 3627

To amend the Export Administration Act of 1979 with respect to the control of computers and related equipment.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 22, 1993

Ms. CANTWELL (for herself and Mr. MANZULLO) introduced the following bill; which was referred to the Committee on Foreign Affairs

A BILL

To amend the Export Administration Act of 1979 with respect to the control of computers and related equipment.

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. GENERALLY AVAILABLE SOFTWARE.**

4 Section 17 of the Export Administration Act of 1979
5 (50 U.S.C. App. 2416) is amended by adding at the end
6 thereof the following new subsection:

7 “(g) COMPUTERS AND RELATED EQUIPMENT.—

8 “(1) GENERAL RULE.—Subject to paragraphs

9 (2) and (3), the Secretary shall have exclusive au-

10 thority to control exports of all computer hardware,

1 software, and technology for information security
2 (including encryption), except that which is specifi-
3 cally designed or modified for military use, including
4 command, control, and intelligence applications.

5 “(2) ITEMS NOT REQUIRING LICENSES.—No
6 validated license may be required, except pursuant
7 to the Trading With The Enemy Act or the Inter-
8 national Emergency Economic Powers Act (but only
9 to the extent that the authority of such Act is not
10 exercised to extend controls imposed under this Act),
11 for the export or reexport of—

12 “(A) any software, including software with
13 encryption capabilities, that is—

14 “(i) generally available, as is, and is
15 designed for installation by the purchaser;

16 or

17 “(ii) in the public domain or publicly
18 available because it is generally accessible
19 to the interested public in any form; or

20 “(B) any computing device solely because
21 it incorporates or employs in any form software
22 (including software with encryption capabilities)
23 exempted from any requirement for a validated
24 license under subparagraph (A).

1 “(3) SOFTWARE WITH ENCRYPTION CAPABILI-
2 TIES.—The Secretary shall authorize the export or
3 reexport of software with encryption capabilities for
4 nonmilitary end-uses in any country to which ex-
5 ports of software of similar capability are permitted
6 for use by financial institutions not controlled in fact
7 by United States persons, unless there is substantial
8 evidence that such software will be—

9 “(A) diverted to a military end-use or an
10 end-use supporting international terrorism;

11 “(B) modified for military or terrorist end-
12 use; or

13 “(C) reexported without requisite United
14 States authorization.

15 “(4) DEFINITIONS.—As used in this sub-
16 section—

17 “(A) the term ‘generally available’ means,
18 in the case of software (including software with
19 encryption capabilities), software that is offered
20 for sale, license, or transfer to any person with-
21 out restriction through any commercial means,
22 including, but not limited to, over-the-counter
23 retail sales, mail order transactions, phone
24 order transactions, electronic distribution, or
25 sale on approval;

1 “(B) the term ‘as is’ means, in the case of
2 software (including software with encryption ca-
3 pabilities), a software program that is not de-
4 signed, developed, or tailored by the software
5 company for specific purchasers, except that
6 such purchasers may supply certain installation
7 parameters needed by the software program to
8 function properly with the purchaser’s system
9 and may customize the software program by
10 choosing among options contained in the soft-
11 ware program;

12 “(C) the term ‘is designed for installation
13 by the purchaser’ means, in the case of soft-
14 ware (including software with encryption capa-
15 bilities)—

16 “(i) the software company intends for
17 the purchaser (including any licensee or
18 transferee), who may not be the actual
19 program user, to install the software pro-
20 gram on a computing device and has sup-
21 plied the necessary instructions to do so,
22 except that the company may also provide
23 telephone help line services for software in-
24 stallation, electronic transmission, or basic
25 operations; and—

1 “(ii) that the software program is de-
2 signed for installation by the purchaser
3 without further substantial support by the
4 supplier;

5 “(D) the term ‘computing device’ means a
6 device which incorporates one or more
7 microprocessor-based central processing units
8 that can accept, store, process or provide out-
9 put of data; and

10 “(E) the term ‘computer hardware’, when
11 used in conjunction with information security,
12 includes, but is not limited to, computer sys-
13 tems, equipment, application-specific assem-
14 blies, modules, and integrated circuits.”.

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