To require the Federal Trade Commission to prescribe regulations to protect the privacy of personal information collected from and about individuals who are not covered by the Children’s Online Privacy Protection Act of 1998 on the Internet, to provide greater individual control over the collection and use of that information, and for other purposes.

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

A BILL

To require the Federal Trade Commission to prescribe regulations to protect the privacy of personal information collected from and about individuals who are not covered by the Children’s Online Privacy Protection Act of 1998 on the Internet, to provide greater individual control over the collection and use of that information, and for other purposes.
SECTION 1. SHORT TITLE.

This Act may be cited as the “Online Privacy Protection Act of 1999”.

SEC. 2. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH THE COLLECTION, USE AND DISCLOSURE OF PERSONAL INFORMATION.

(a) Acts Prohibited.—

(1) In general.—It is unlawful for an operator of a Web site or online service to collect, use or disclose personal information in a manner that violates the regulations prescribed under subsection (b).

(2) Disclosure.—Notwithstanding paragraph (1), neither an operator of a Web site or online service nor the operator’s agent shall be held to be liable under this Act for any disclosure made in good faith and following reasonable procedures in responding to a request under subsection (b)(1)(B) by an individual for disclosure of personal information pertaining to such individual.

(b) Regulations.—

(1) In general.—Not later than 1 year after the date of the enactment of this Act, the Commission shall promulgate under section 553 of title 5, United States Code, regulations that—
(A) require the operator of any Web site or online service—

   (i) to provide notice on its Web site, in a clear and conspicuous manner, of the identity of the operator, what personal information is collected by the operator, how the operator uses such information, and what information may be shared with other companies; and

   (ii) to provide a meaningful and simple online process for individuals to consent to or limit the disclosure of personal information for purposes unrelated to those for which such information was obtained or described in the notice under clause (i);

(B) require the operator to provide, upon request of an individual under this subparagraph who has provided personal information to that Web site or online service, upon proper identification—

   (i) a description of the specific types of personal information collected by that operator that was sold or transferred to an external company; and
(ii) notwithstanding any other provision of law, a means that is reasonable under the circumstances for the individual to obtain the personal information described in paragraph (i) from such individual; and

(C) require the operator of such Web site or online service to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information it collects or maintains.

(2) WHEN PURPOSE LIMITATION NOT REQUIRED.—The regulations shall provide that the purpose limitation required under paragraph (1)(A)(ii) is not required for—

(A) transactional information where identifiable information is not removed;

(B) personal information where it is used to render or conduct a legitimate business activity related to the business of the operator (for example, the use of an e-mail address to respond to an e-mail communication); or

(C) the collection, use, or dissemination of such information by the operator of such a Web
site or online service necessary to the extent permitted under other provisions of law.

(3) WHEN ACCESS NOT REQUIRED.—The regulations shall provide that access as required under paragraph (1)(B)(ii) is not required—

(A) to transactional information where identifiable information is not removed;

(B) to information that is commercially confidential to the operator and is obtained from sources outside of the individual’s contact with the operator’s web site;

(C) to information that is solely for internal company processes and is neither sold, transferred, nor used for activities external to the web site’s operator;

(D) to information that is discarded upon the conclusion of the process that generates it; or

(E) to information that has no impact upon an individual.

(4) TERMINATION OF SERVICE.—The regulations shall permit the operator of a Web site or an online service to terminate service provided to an individual who has refused, under the regulations prescribed under paragraph (1)(B)(ii), to permit the op-
erator’s further use or maintenance in retrievable form, or future collection, of personal information.

(c) ENFORCEMENT.—Subject to sections 3 and 5, a violation of a regulation prescribed under subsection (a) shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(d) NO REQUIREMENT TO COLLECT OR MAINTAIN DATA.—Nothing in this Act shall be interpreted to require an operator to collect or maintain any data that would not otherwise be collected or maintained.

SEC. 3. SAFE HARBORS.

(a) GUIDELINES.—An operator may satisfy the requirements of regulations issued under section 2(b) by following a set of self-regulatory guidelines, issued by representatives of the marketing or online industries, or by other persons, approved under subsection (b).

(b) INCENTIVES.—

(1) SELF-REGULATORY INCENTIVES.—In prescribing regulations under section 2, the Commission shall provide incentives for self-regulation by operators to implement the protections afforded under the regulatory requirements described in subsection (b) of that section.
(2) Deemed Compliance.—Such incentives shall include provisions for ensuring that a person will be deemed to be in compliance with the requirements of the regulations under section 2 if that person complies with guidelines that, after notice and comment, are approved by the Commission upon making a determination that the guidelines meet the requirements of the regulations issued under section 2.

(3) Expedited Response to Requests.—The Commission shall act upon requests for safe harbor treatment within 180 days of the filing of the request, and shall set forth in writing its conclusions with regard to such requests.

(c) Appeals.—Final action by the Commission on a request for approval of guidelines, or the failure to act within 180 days on a request for approval of guidelines, submitted under subsection (b) may be appealed to a district court of the United States of appropriate jurisdiction as provided for in section 706 of title 5, United States Code.

SEC. 4. ACTIONS BY STATES.

(a) In General.—

(1) Civil Actions.—In any case in which the attorney general of a State has reason to believe
that an interest of the residents of that State has
been or is threatened or adversely affected by the
engagement of any person in a practice that violates
any regulation of the Commission prescribed under
section 2(b) of this Act, the State may bring a civil
action on behalf of the residents of the State in a
district court of the United States of appropriate ju-
risdiction to—

(A) enjoin that practice;

(B) enforce compliance with the regulation;

(C) obtain damage, restitution, or other
compensation on behalf of residents of the
State; or

(D) obtain such other relief as the court
may consider to be appropriate.

(2) NOTICE.—

(A) IN GENERAL.—Before filing an action
under paragraph (1), the attorney general of
the State involved shall provide to the
Commission—

(i) written notice of that action; and

(ii) a copy of the complaint for that
action.

(B) EXEMPTION.—
(i) **In general.**—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before the filing of the action.

(ii) **Notification.**—In an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(b) **Intervention.**—

(1) **In general.**—On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) **Effect of intervention.**—If the Commission intervenes in an action under subsection (a), it shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.
(3) AMICUS CURIAE.—Upon application to the court, a person whose self-regulatory guidelines have been approved by the Commission and are relied upon as a defense by any defendant to a proceeding under this section may file amicus curiae in that proceeding.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) VENUE; SERVICE OF PROCESS.—

(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(2) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

(A) is an inhabitant; or
(B) may be found.

**SEC. 6. ADMINISTRATION AND APPLICABILITY OF ACT.**

(a) In General.—Except as otherwise provided, this Act shall be enforced by the Commission under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(b) Provisions.—Compliance with the requirements imposed under this Act shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act (12 U.S.C. 601 et seq. and 611 et. seq.), by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State
branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(3) the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the National Credit Union Administration Board with respect to any Federal credit union;

(4) part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land
bank association, Federal intermediate credit bank,
or production credit association.

(c) Exercise of Certain Powers.—For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any other Act referred to in that subsection, a violation of any requirement imposed under this Act shall be deemed to be a violation of a requirement imposed under that other Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on such agency by law.

(d) Actions by the Commission.—The Commission shall prevent any person from violating a rule of the Commission under section 2 in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this title. Any entity that violates such rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and
provisions of the Federal Trade Commission Act were in
corporated into and made a part of this title.

(c) Effect on Other Laws.—Nothing contained in
this Act shall be construed to limit the authority of the
Commission under any other provisions of law.

(f) Preemption.—Except as otherwise provided in
this Act, this Act supersedes State law to the extent that
it establishes a rule of law applicable to an online privacy
action that is inconsistent with State law. Nothing in this
Act supersedes State law with respect to prosecution of
fraud.

SEC. 6. Review.

Not later than 5 years after the effective date of the
regulations initially issued under section 2, the Commiss-
ion shall—

(1) review the implementation of this Act, in-
cluding the effect of the implementation of this title
on practices relating to the collection and disclosure
of information; and

(2) prepare and submit to Congress a report on
the results of the review under paragraph (1).

SEC. 7. Effective Date.

Sections 3(a), 5, and 6 of this Act shall take effect
on the later of—
(1) the date that is 18 months after the date of enactment of this Act; or

(2) the date on which the Commission rules on the first application filed for safe harbor treatment under section 3 if the Commission does not rule on the first such application within one year after the date of enactment of this Act, but in no case later than the date that is 30 months after the date of enactment of this Act.

SEC. 8. DEFINITIONS.

In this Act:

(1) INDIVIDUAL.—The term “individual” means a natural person of age 13 and above.

(2) OPERATOR.—The term “operator”—

(A) means any person who operates a Web site located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such Web site or online service, or on whose behalf such information is collected or maintained, where such Web site or online service is operated for commercial purposes, including any person offering products or services for sale through that Web site or online service, involving commerce—
(i) among the several States or with 1
or more foreign nations;
(ii) in any territory of the United
States or in the District of Columbia, or
between any such territory and—
(I) another such territory; or
(II) any State or foreign nation;
or
(iii) between the District of Columbia
and any State, territory, or foreign nation;
but
(B) does not include any nonprofit entity
that would otherwise be exempt from coverage
under section 5 of the Federal Trade Commiss-
(3) COMMISSION.—The term “Commission”
means the Federal Trade Commission.
(4) DISCLOSURE.—The term “disclosure”
means, with respect to personal information the re-
lease of personal information collected in identifiable
form by an operator for any purpose, except where
such information is provided to a person other than
the operator who provides support for the internal
operations of the Web site and does not disclose or
use that information for any other purpose.
(5) **Federal agency.**—The term “Federal agency” means an agency, as that term is defined in section 551(1) of title 5, United States Code.

(6) **Internet.**—The term “Internet” means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

(7) **Transactional information.**—The term “transactional information” means information generated in connection with the process of requesting, accessing, or otherwise using the Internet.

(8) **Personal information.**—The term “personal information” means information collected online from an individual that identifies that individual, including—

(A) first and last name;

(B) home and other physical address;

(C) email address;

(D) social security number;

(E) telephone number;
(F) any other identifier that the Commission determines identifies an individual; or

(G) information that is maintained with, or can be searched or retrieved by means of, data described in subparagraphs (A) through (F).