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109TH CONGRESS
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[Report No. 109–32]

To protect users of the Internet from unknowing transmission of their personally identifiable information through spyware programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2005

Mrs. BONO (for herself, Mr. TOWNS, Mr. BARTON of Texas, Mr. BUYER, Mr. GILLMOR, Mr. HALL, Mr. RADANOVICH, Mr. WALDEN of Oregon, Mr. FERGUSON, Mr. WHITFIELD, Mrs. CUBIN, Mr. STEARNS, Mr. BILIRAKIS, Mr. TERRY, and Mr. OTTER) introduced the following bill; which was referred to the Committee on Energy and Commerce

APRIL 12, 2005

Additional sponsors: Mr. UPTON, Mr. GENE GREEN of Texas, Mr. BAKER, Ms. JACKSON-LEE of Texas, Mr. BUTTERFIELD, Mr. GORDON, Ms. SCHAKOWSKY, Mr. WAMP, Mr. HAYWORTH, Mr. SULLIVAN, Mr. CALVERT, Mr. EHLERS, Mr. PUTNAM, Mr. MARKEY, Mr. ISRAEL, Mr. GONZALEZ, Ms. SOLIS, Ms. WATSON, Mr. ENGEL, Mr. WYNN, Mr. ABERCROMBIE, Mr. DOOLITTLE, Ms. ESHOO, Mrs. DAVIS of California, Mr. STUPAK, Mr. RUSH, Mr. RYAN of Ohio, Mr. LINCOLN DIAZ-BALART of Florida, Mr. BOUCHER, Mr. BASS, Mr. SAM JOHNSON of Texas, Mr. LEWIS of Georgia, Mr. DUNCAN, Mr. BACHUS, Mr. INSLEE, Mr. SHAW, Mr. DINGELL, Mr. DOYLE, Mrs. MYRICK, Mr. MURPHY, Mrs. BLACKBURN, Mr. ROSS, Mr. ROTHMAN, Mr. SHADEGG, Mr. EDWARDS, Mr. MOORE of Kansas, and Mr. MCCAUL of Texas

APRIL 12, 2005

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on January 4, 2005]

A BILL

To protect users of the Internet from unknowing transmission of their personally identifiable information through spyware programs, 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 "Securely Protect Yourself*

5 *Against Cyber Trespass Act" or the "Spy Act".*

6 **SEC. 2. PROHIBITION OF DECEPTIVE ACTS OR PRACTICES**

7   **RELATING TO SPYWARE.**

8   *(a) PROHIBITION.—It is unlawful for any person, who*

9 *is not the owner or authorized user of a protected computer,*

10 *to engage in deceptive acts or practices that involve any*

11 *of the following conduct with respect to the protected com-*

12 *puter:*

13   *(1) Taking control of the computer by—*

14   *(A) utilizing such computer to send unsolic-*

15   *ited information or material from the computer*

16   *to others;*

3

(B) diverting the Internet browser of the computer, or similar program of the computer used to access and navigate the Internet—

(i) without authorization of the owner or authorized user of the computer; and

(ii) away from the site the user intended to view, to one or more other Web pages, such that the user is prevented from viewing the content at the intended Web page, unless such diverting is otherwise authorized;

(C) accessing, hijacking, or otherwise using the modem, or Internet connection or service, for the computer and thereby causing damage to the computer or causing the owner or authorized user or a third party defrauded by such conduct to incur charges or other costs for a service that is not authorized by such owner or authorized user;

(D) using the computer as part of an activity performed by a group of computers that causes damage to another computer; or

(E) delivering advertisements that a user of the computer cannot close without turning off the

1   *computer or closing all sessions of the Internet*

2   *browser for the computer.*

3   *(2) Modifying settings related to use of the com-*

4   *puter or to the computer's access to or use of the*

5   *Internet by altering—*

6   *(A) the Web page that appears when the*

7   *owner or authorized user launches an Internet*

8   *browser or similar program used to access and*

9   *navigate the Internet;*

10   *(B) the default provider used to access or*

11   *search the Internet, or other existing Internet*

12   *connections settings;*

13   *(C) a list of bookmarks used by the com-*

14   *puter to access Web pages; or*

15   *(D) security or other settings of the com-*

16   *puter that protect information about the owner*

17   *or authorized user for the purposes of causing*

18   *damage or harm to the computer or owner or*

19   *user.*

20   *(3) Collecting personally identifiable information*

21   *through the use of a keystroke logging function.*

22   *(4) Inducing the owner or authorized user of the*

23   *computer to disclose personally identifiable informa-*

24   *tion by means of a Web page that—*

1   *(A) is substantially similar to a Web page*

2   *established or provided by another person; and*

3   *(B) misleads the owner or authorized user*

4   *that such Web page is provided by such other*

5   *person.*

6   *(5) Inducing the owner or authorized user to in-*

7   *stall a component of computer software onto the com-*

8   *puter, or preventing reasonable efforts to block the in-*

9   *stallation or execution of, or to disable, a component*

10   *of computer software by—*

11   *(A) presenting the owner or authorized user*

12   *with an option to decline installation of such a*

13   *component such that, when the option is selected*

14   *by the owner or authorized user or when the*

15   *owner or authorized user reasonably attempts to*

16   *decline the installation, the installation neverthe-*

17   *less proceeds; or*

18   *(B) causing such a component that the*

19   *owner or authorized user has properly removed*

20   *or disabled to automatically reinstall or reac-*

21   *tivate on the computer.*

22   *(6) Misrepresenting that installing a separate*

23   *component of computer software or providing log-in*

24   *and password information is necessary for security or*

25   *privacy reasons, or that installing a separate compo-*

1 *nent of computer software is necessary to open, view,*

2 *or play a particular type of content.*

3   *(7) Inducing the owner or authorized user to in-*

4 *stall or execute computer software by misrepresenting*

5 *the identity or authority of the person or entity pro-*

6 *viding the computer software to the owner or user.*

7   *(8) Inducing the owner or authorized user to*

8 *provide personally identifiable, password, or account*

9 *information to another person—*

10   *(A) by misrepresenting the identity of the*

11 *person seeking the information; or*

12   *(B) without the authority of the intended*

13 *recipient of the information.*

14   *(9) Removing, disabling, or rendering inoper-*

15 *ative a security, anti-spyware, or anti-virus tech-*

16 *nology installed on the computer.*

17   *(10) Installing or executing on the computer one*

18 *or more additional components of computer software*

19 *with the intent of causing a person to use such com-*

20 *ponents in a way that violates any other provision of*

21 *this section.*

22 *(b) GUIDANCE.—The Commission shall issue guidance*

23 *regarding compliance with and violations of this section.*

24 *This subsection shall take effect upon the date of the enact-*

25 *ment of this Act.*

1 *(c) EFFECTIVE DATE.—Except as provided in sub-*
2 *section (b), this section shall take effect upon the expiration*
3 *of the 6-month period that begins on the date of the enact-*
4 *ment of this Act.*

SEC. 3. PROHIBITION OF COLLECTION OF CERTAIN INFOR-
MATION WITHOUT NOTICE AND CONSENT.

7 *(a) OPT-IN REQUIREMENT.—Except as provided in*
8 *subsection (e), it is unlawful for any person—*

9 *(1) to transmit to a protected computer, which*
10 *is not owned by such person and for which such per-*
11 *son is not an authorized user, any information collec-*
12 *tion program, unless—*

13 *(A) such information collection program*
14 *provides notice in accordance with subsection (c)*
15 *before execution of any of the information collec-*
16 *tion functions of the program; and*

17 *(B) such information collection program in-*
18 *cludes the functions required under subsection*
19 *(d); or*

20 *(2) to execute any information collection pro-*
21 *gram installed on such a protected computer unless—*

22 *(A) before execution of any of the informa-*
23 *tion collection functions of the program, the*
24 *owner or an authorized user of the protected*
25 *computer has consented to such execution pursu-*

1 ant to notice in accordance with subsection (c);

2 and

3   *(B) such information collection program in-*

4 *cludes the functions required under subsection*

5 *(d).*

6 *(b) INFORMATION COLLECTION PROGRAM.—*

7   *(1) IN GENERAL.—For purposes of this section,*

8 *the term "information collection program" means*

9 *computer software that performs either of the fol-*

10 *lowing functions:*

11   *(A) COLLECTION OF PERSONALLY IDENTIFI-*

12 *ABLE INFORMATION.—The computer software—*

13   *(i) collects personally identifiable in-*

14 *formation; and*

15   *(ii)(I) sends such information to a per-*

16 *son other than the owner or authorized user*

17 *of the computer, or*

18   *(II) uses such information to deliver*

19 *advertising to, or display advertising on,*

20 *the computer.*

21   *(B) COLLECTION OF INFORMATION REGARD-*

22 *ING WEB PAGES VISITED TO DELIVER ADVER-*

23 *TISING.—The computer software—*

24   *(i) collects information regarding the*

25 *Web pages accessed using the computer; and*

1   *(ii) uses such information to deliver*

2   *advertising to, or display advertising on,*

3   *the computer.*

4   *(2) EXCEPTION FOR SOFTWARE COLLECTING IN-*

5 *FORMATION REGARDING WEB PAGES VISITED WITHIN*

6 *A PARTICULAR WEB SITE.—Computer software that*

7 *otherwise would be considered an information collec-*

8 *tion program by reason of paragraph (1)(B) shall not*

9 *be considered such a program if—*

10   *(A) the only information collected by the*

11   *software regarding Web pages that are accessed*

12   *using the computer is information regarding*

13   *Web pages within a particular Web site;*

14   *(B) such information collected is not sent to*

15   *a person other than—*

16   *(i) the provider of the Web site*

17   *accessed; or*

18   *(ii) a party authorized to facilitate the*

19   *display or functionality of Web pages with-*

20   *in the Web site accessed; and*

21   *(C) the only advertising delivered to or dis-*

22   *played on the computer using such information*

23   *is advertising on Web pages within that par-*

24   *ticular Web site.*

25 *(c) NOTICE AND CONSENT.—*

1   *(1) IN GENERAL.—Notice in accordance with this*

2 *subsection with respect to an information collection*

3 *program is clear and conspicuous notice in plain lan-*

4 *guage, set forth as the Commission shall provide, that*

5 *meets all of the following requirements:*

6   *(A) The notice clearly distinguishes such no-*

7   *tice from any other information visually pre-*

8   *sented contemporaneously on the computer.*

9   *(B) The notice contains one of the following*

10   *statements, as applicable, or a substantially*

11   *similar statement:*

12   *(i) With respect to an information col-*

13   *lection program described in subsection*

14   *(b)(1)(A): "This program will collect and*

15   *transmit information about you. Do you ac-*

16   *cept?".*

17   *(ii) With respect to an information col-*

18   *lection program described in subsection*

19   *(b)(1)(B): "This program will collect infor-*

20   *mation about Web pages you access and*

21   *will use that information to display adver-*

22   *tising on your computer. Do you accept?".*

23   *(iii) With respect to an information*

24   *collection program that performs the actions*

25   *described in both subparagraphs (A) and*

11

1   *(B) of subsection (b)(1): "This program will*

2   *collect and transmit information about you*

3   *and will collect information about Web*

4   *pages you access and use that information*

5   *to display advertising on your computer.*

6   *Do you accept?".*

7   *(C) The notice provides for the user—*

8   *(i) to grant or deny consent referred to*

9   *in subsection (a) by selecting an option to*

10   *grant or deny such consent; and*

11   *(ii) to abandon or cancel the trans-*

12   *mission or execution referred to in sub-*

13   *section (a) without granting or denying*

14   *such consent.*

15   *(D) The notice provides an option for the*

16   *user to select to display on the computer, before*

17   *granting or denying consent using the option re-*

18   *quired under subparagraph (C), a clear descrip-*

19   *tion of—*

20   *(i) the types of information to be col-*

21   *lected and sent (if any) by the information*

22   *collection program;*

23   *(ii) the purpose for which such infor-*

24   *mation is to be collected and sent; and*

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1   *(iii) in the case of an information col-*

2   *lection program that first executes any of*

3   *the information collection functions of the*

4   *program together with the first execution of*

5   *other computer software, the identity of any*

6   *such software that is an information collec-*

7   *tion program.*

8   *(E) The notice provides for concurrent dis-*

9 *play of the information required under subpara-*

10 *graphs (B) and (C) and the option required*

11 *under subparagraph (D) until the user—*

12   *(i) grants or denies consent using the*

13   *option required under subparagraph (C)(i);*

14   *(ii) abandons or cancels the trans-*

15   *mission or execution pursuant to subpara-*

16   *graph (C)(ii); or*

17   *(iii) selects the option required under*

18   *subparagraph (D).*

19 *(2) SINGLE NOTICE.—The Commission shall pro-*

20 *vide that, in the case in which multiple information*

21 *collection programs are provided to the protected com-*

22 *puter together, or as part of a suite of functionally re-*

23 *lated software, the notice requirements of paragraphs*

24 *(1)(A) and (2)(A) of subsection (a) may be met by*

25 *providing, before execution of any of the information*

1 *collection functions of the programs, clear and con-*

2 *spicuous notice in plain language in accordance with*

3 *paragraph (1) of this subsection by means of a single*

4 *notice that applies to all such information collection*

5 *programs, except that such notice shall provide the*

6 *option under subparagraph (D) of paragraph (1) of*

7 *this subsection with respect to each such information*

8 *collection program.*

9 *(3) CHANGE IN INFORMATION COLLECTION.—If*

10 *an owner or authorized user has granted consent to*

11 *execution of an information collection program pur-*

12 *suant to a notice in accordance with this subsection:*

13 *(A) IN GENERAL.—No subsequent such no-*

14 *tice is required, except as provided in subpara-*

15 *graph (B).*

16 *(B) SUBSEQUENT NOTICE.—The person who*

17 *transmitted the program shall provide another*

18 *notice in accordance with this subsection and ob-*

19 *tain consent before such program may be used to*

20 *collect or send information of a type or for a*

21 *purpose that is materially different from, and*

22 *outside the scope of, the type or purpose set forth*

23 *in the initial or any previous notice.*

24 *(4) REGULATIONS.—The Commission shall issue*

25 *regulations to carry out this subsection.*

1   *(d) REQUIRED FUNCTIONS.—The functions required*

2 *under this subsection to be included in an information col-*

3 *lection program that executes any information collection*

4 *functions with respect to a protected computer are as fol-*

5 *lows:*

6   *(1) DISABLING FUNCTION.—With respect to any*

7   *information collection program, a function of the pro-*

8   *gram that allows a user of the program to remove the*

9   *program or disable operation of the program with re-*

10   *spect to such protected computer by a function that—*

11   *(A) is easily identifiable to a user of the*

12   *computer; and*

13   *(B) can be performed without undue effort*

14   *or knowledge by the user of the protected com-*

15   *puter.*

16   *(2) IDENTITY FUNCTION.—*

17   *(A) IN GENERAL.—With respect only to an*

18   *information collection program that uses infor-*

19   *mation collected in the manner described in sub-*

20   *paragraph (A)(ii)(II) or (B)(ii) of subsection*

21   *(b)(1) and subject to subparagraph (B) of this*

22   *paragraph, a function of the program that pro-*

23   *vides that each display of an advertisement di-*

24   *rected or displayed using such information, when*

25   *the owner or authorized user is accessing a Web*

1 *page or online location other than of the provider*

2 *of the computer software, is accompanied by the*

3 *name of the information collection program, a*

4 *logogram or trademark used for the exclusive*

5 *purpose of identifying the program, or a state-*

6 *ment or other information sufficient to clearly*

7 *identify the program.*

8 *(B) EXEMPTION FOR EMBEDDED ADVER-*

9 *TISEMENTS.—The Commission shall, by regula-*

10 *tion, exempt from the applicability of subpara-*

11 *graph (A) the embedded display of any advertise-*

12 *ment on a Web page that contemporaneously dis-*

13 *plays other information.*

14 *(3) RULEMAKING.—The Commission may issue*

15 *regulations to carry out this subsection.*

16 *(e) LIMITATION ON LIABILITY.—A telecommunications*

17 *carrier, a provider of information service or interactive*

18 *computer service, a cable operator, or a provider of trans-*

19 *mission capability shall not be liable under this section to*

20 *the extent that the carrier, operator, or provider—*

21 *(1) transmits, routes, hosts, stores, or provides*

22 *connections for an information collection program*

23 *through a system or network controlled or operated by*

24 *or for the carrier, operator, or provider; or*

1   *(2) provides an information location tool, such*

2   *as a directory, index, reference, pointer, or hypertext*

3   *link, through which the owner or user of a protected*

4   *computer locates an information collection program.*

5 **SEC. 4. ENFORCEMENT.**

6   *(a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—This*

7 *Act shall be enforced by the Commission under the Federal*

8 *Trade Commission Act (15 U.S.C. 41 et seq.). A violation*

9 *of any provision of this Act or of a regulation issued under*

10 *this Act shall be treated as an unfair or deceptive act or*

11 *practice violating a rule promulgated under section 18 of*

12 *the Federal Trade Commission Act (15 U.S.C. 57a).*

13   *(b) PENALTY FOR PATTERN OR PRACTICE VIOLA-*

14 *TIONS.—*

15   *(1) IN GENERAL.—Notwithstanding subsection*

16   *(a) and the Federal Trade Commission Act, in the*

17   *case of a person who engages in a pattern or practice*

18   *that violates section 2 or 3, the Commission may, in*

19   *its discretion, seek a civil penalty for such pattern or*

20   *practice of violations in an amount, as determined by*

21   *the Commission, of not more than—*

22   *(A) $3,000,000 for each violation of section*

23   *2; and*

24   *(B) $1,000,000 for each violation of section*

25   *3.*

1   *(2) TREATMENT OF SINGLE ACTION OR CON-*

2   *DUCT.—In applying paragraph (1)—*

3   *(A) any single action or conduct that vio-*

4   *lates section 2 or 3 with respect to multiple pro-*

5   *tected computers shall be treated as a single vio-*

6   *lation; and*

7   *(B) any single action or conduct that vio-*

8   *lates more than one paragraph of section 2(a)*

9   *shall be considered multiple violations, based on*

10   *the number of such paragraphs violated.*

11   *(c) REQUIRED SCIENTER.—Civil penalties sought*

12 *under this section for any action may not be granted by*

13 *the Commission or any court unless the Commission or*

14 *court, respectively, establishes that the action was com-*

15 *mitted with actual knowledge or knowledge fairly implied*

16 *on the basis of objective circumstances that such act is un-*

17 *fair or deceptive or violates this Act.*

18   *(d) FACTORS IN AMOUNT OF PENALTY.—In deter-*

19 *mining the amount of any penalty pursuant to subsection*

20 *(a) or (b), the court shall take into account the degree of*

21 *culpability, any history of prior such conduct, ability to*

22 *pay, effect on ability to continue to do business, and such*

23 *other matters as justice may require.*

24   *(e) EXCLUSIVENESS OF REMEDIES.—The remedies in*

25 *this section (including remedies available to the Commis-*

1 *sion under the Federal Trade Commission Act) are the ex-*

2 *clusive remedies for violations of this Act.*

3   *(f) EFFECTIVE DATE.—To the extent only that this sec-*

4 *tion applies to violations of section 2(a), this section shall*

5 *take effect upon the expiration of the 6-month period that*

6 *begins on the date of the enactment of this Act.*

7 **SEC. 5. LIMITATIONS.**

8   *(a) LAW ENFORCEMENT AUTHORITY.—Sections 2 and*

9 *3 shall not apply to—*

10   *(1) any act taken by a law enforcement agent in*

11   *the performance of official duties; or*

12   *(2) the transmission or execution of an informa-*

13   *tion collection program in compliance with a law en-*

14   *forcement, investigatory, national security, or regu-*

15   *latory agency or department of the United States or*

16   *any State in response to a request or demand made*

17   *under authority granted to that agency or depart-*

18   *ment, including a warrant issued under the Federal*

19   *Rules of Criminal Procedure, an equivalent State*

20   *warrant, a court order, or other lawful process.*

21   *(b) EXCEPTION RELATING TO SECURITY.—Nothing in*

22 *this Act shall apply to—*

23   *(1) any monitoring of, or interaction with, a*

24   *subscriber's Internet or other network connection or*

25   *service, or a protected computer, by a telecommuni-*

1 *cations carrier, cable operator, computer hardware or*

2 *software provider, or provider of information service*

3 *or interactive computer service, to the extent that such*

4 *monitoring or interaction is for network or computer*

5 *security purposes, diagnostics, technical support, or*

6 *repair, or for the detection or prevention of fraudulent*

7 *activities; or*

8 *(2) a discrete interaction with a protected com-*

9 *puter by a provider of computer software solely to de-*

10 *termine whether the user of the computer is author-*

11 *ized to use such software, that occurs upon—*

12 *(A) initialization of the software; or*

13 *(B) an affirmative request by the owner or*

14 *authorized user for an update of, addition to, or*

15 *technical service for, the software.*

16 *(c) GOOD SAMARITAN PROTECTION.—No provider of*

17 *computer software or of interactive computer service may*

18 *be held liable under this Act on account of any action volun-*

19 *tarily taken, or service provided, in good faith to remove*

20 *or disable a program used to violate section 2 or 3 that*

21 *is installed on a computer of a customer of such provider,*

22 *if such provider notifies the customer and obtains the con-*

23 *sent of the customer before undertaking such action or pro-*

24 *viding such service.*

1   *(d) LIMITATION ON LIABILITY.—A manufacturer or re-*

2 *tailer of computer equipment shall not be liable under this*

3 *Act to the extent that the manufacturer or retailer is pro-*

4 *viding third party branded computer software that is in-*

5 *stalled on the equipment the manufacturer or retailer is*

6 *manufacturing or selling.*

7   **SEC. 6. EFFECT ON OTHER LAWS.**

8   *(a) PREEMPTION OF STATE LAW.—*

9   *(1) PREEMPTION OF SPYWARE LAWS.—This Act*

10   *supersedes any provision of a statute, regulation, or*

11   *rule of a State or political subdivision of a State that*

12   *expressly regulates—*

13   *(A) deceptive conduct with respect to com-*

14   *puters similar to that described in section 2(a);*

15   *(B) the transmission or execution of a com-*

16   *puter program similar to that described in sec-*

17   *tion 3; or*

18   *(C) the use of computer software that dis-*

19   *plays advertising content based on the Web pages*

20   *accessed using a computer.*

21   *(2) ADDITIONAL PREEMPTION.—*

22   *(A) IN GENERAL.—No person other than the*

23   *Attorney General of a State may bring a civil*

24   *action under the law of any State if such action*

1   *is premised in whole or in part upon the defend-*

2   *ant violating any provision of this Act.*

3   *(B) PROTECTION OF CONSUMER PROTEC-*

4   *TION LAWS.—This paragraph shall not be con-*

5   *strued to limit the enforcement of any State con-*

6   *sumer protection law by an Attorney General of*

7   *a State.*

8   *(3) PROTECTION OF CERTAIN STATE LAWS.—*

9   *This Act shall not be construed to preempt the appli-*

10   *cability of—*

11   *(A) State trespass, contract, or tort law; or*

12   *(B) other State laws to the extent that those*

13   *laws relate to acts of fraud.*

14   *(b) PRESERVATION OF FTC AUTHORITY.—Nothing in*

15   *this Act may be construed in any way to limit or affect*

16   *the Commission's authority under any other provision of*

17   *law, including the authority to issue advisory opinions*

18   *(under part 1 of volume 16 of the Code of Federal Regula-*

19   *tions), policy statements, or guidance regarding this Act.*

20   **SEC. 7. ANNUAL FTC REPORT.**

21   *For the 12-month period that begins upon the effective*

22   *date under section 11(a) and for each 12-month period*

23   *thereafter, the Commission shall submit a report to the Con-*

24   *gress that—*

1   *(1) specifies the number and types of actions*

2   *taken during such period to enforce sections 2(a) and*

3   *section 3, the disposition of each such action, any*

4   *penalties levied in connection with such actions, and*

5   *any penalties collected in connection with such ac-*

6   *tions; and*

7   *(2) describes the administrative structure and*

8   *personnel and other resources committed by the Com-*

9   *mission for enforcement of this Act during such pe-*

10   *riod.*

11   *Each report under this subsection for a 12-month period*

12   *shall be submitted not later than 90 days after the expira-*

13   *tion of such period.*

14   **SEC. 8. FTC REPORT ON COOKIES.**

15   *(a) IN GENERAL.—Not later than the expiration of the*

16   *6-month period that begins on the date of the enactment*

17   *of this Act, the Commission shall submit a report to the*

18   *Congress regarding the use of cookies, including tracking*

19   *cookies, in the delivery or display of advertising to the own-*

20   *ers and users of computers. The report shall examine and*

21   *describe the methods by which cookies and the Web sites that*

22   *place them on computers function separately and together,*

23   *and shall compare the use of cookies with the use of infor-*

24   *mation collection programs (as such term is defined in sec-*

25   *tion 3) to determine the extent to which such uses are simi-*

1 *lar or different. The report may include such recommenda-*

2 *tions as the Commission considers necessary and appro-*

3 *priate, including treatment of cookies under this Act or*

4 *other laws.*

5   *(b) DEFINITION.—For purposes of this section, the*

6 *term "tracking cookie" means a cookie or similar text or*

7 *data file used alone or in conjunction with one or more*

8 *Web sites to transmit or convey personally identifiable in-*

9 *formation of a computer owner or user, or information re-*

10 *garding Web pages accessed by the owner or user, to a party*

11 *other than the intended recipient, for the purpose of—*

12   *(1) delivering or displaying advertising to the*

13   *owner or user; or*

14   *(2) assisting the intended recipient to deliver or*

15   *display advertising to the owner, user, or others.*

16   *(c) EFFECTIVE DATE.—This section shall take effect*

17 *on the date of the enactment of this Act.*

18 **SEC. 9. REGULATIONS.**

19   *(a) IN GENERAL.—The Commission shall issue the reg-*

20 *ulations required by this Act not later than the expiration*

21 *of the 6-month period beginning on the date of the enact-*

22 *ment of this Act. In exercising its authority to issue any*

23 *regulation under this Act, the Commission shall determine*

24 *that the regulation is consistent with the public interest and*

25 *the purposes of this Act. Any regulations issued pursuant*

1 *to this Act shall be issued in accordance with section 553*

2 *of title 5, United States Code.*

3 *(b) EFFECTIVE DATE.—This section shall take effect*

4 *on the date of the enactment of this Act.*

5 **SEC. 10. DEFINITIONS.**

6 *For purposes of this Act:*

7 *(1) CABLE OPERATOR.—The term "cable oper-*

8 *ator" has the meaning given such term in section 602*

9 *of the Communications Act of 1934 (47 U.S.C. 522).*

10 *(2) COLLECT.—The term "collect", when used*

11 *with respect to information and for purposes only of*

12 *section 3(b)(1)(A), does not include obtaining of the*

13 *information by a party who is intended by the owner*

14 *or authorized user of a protected computer to receive*

15 *the information pursuant to the owner or authorized*

16 *user—*

17 *(A) transferring the information to such in-*

18 *tended recipient using the protected computer; or*

19 *(B) storing the information on the protected*

20 *computer in a manner so that it is accessible by*

21 *such intended recipient.*

22 *(3) COMPUTER; PROTECTED COMPUTER.—The*

23 *terms "computer" and "protected computer" have the*

24 *meanings given such terms in section 1030(e) of title*

25 *18, United States Code.*

1   *(4) COMPUTER SOFTWARE.—*

2   *(A) IN GENERAL.—Except as provided in*

3   *subparagraph (B), the term "computer software"*

4   *means a set of statements or instructions that*

5   *can be installed and executed on a computer for*

6   *the purpose of bringing about a certain result.*

7   *(B) EXCEPTION.—Such term does not in-*

8   *clude computer software that is placed on the*

9   *computer system of a user by an Internet service*

10   *provider, interactive computer service, or Inter-*

11   *net Web site solely to enable the user subse-*

12   *quently to use such provider or service or to ac-*

13   *cess such Web site.*

14   *(C) RULE OF CONSTRUCTION REGARDING*

15   *COOKIES.—This paragraph may not be con-*

16   *strued to include, as computer software—*

17   *(i) a cookie; or*

18   *(ii) any other type of text or data file*

19   *that solely may be read or transferred by a*

20   *computer.*

21   *(5) COMMISSION.—The term "Commission"*

22   *means the Federal Trade Commission.*

23   *(6) DAMAGE.—The term "damage" has the*

24   *meaning given such term in section 1030(e) of title*

25   *18, United States Code.*

1   *(7) DECEPTIVE ACTS OR PRACTICES.—The term*

2   *"deceptive acts or practices" has the meaning appli-*

3   *cable to such term for purposes of section 5 of the*

4   *Federal Trade Commission Act (15 U.S.C. 45).*

5   *(8) DISABLE.—The term "disable" means, with*

6   *respect to an information collection program, to per-*

7   *manently prevent such program from executing any*

8   *of the functions described in section 3(b)(1) that such*

9   *program is otherwise capable of executing (including*

10   *by removing, deleting, or disabling the program), un-*

11   *less the owner or operator of a protected computer*

12   *takes a subsequent affirmative action to enable the*

13   *execution of such functions.*

14   *(9) INFORMATION COLLECTION FUNCTIONS.—The*

15   *term "information collection functions" means, with*

16   *respect to an information collection program, the*

17   *functions of the program described in subsection*

18   *(b)(1) of section 3.*

19   *(10) INFORMATION SERVICE.—The term "infor-*

20   *mation service" has the meaning given such term in*

21   *section 3 of the Communications Act of 1934 (47*

22   *U.S.C. 153).*

23   *(11) INTERACTIVE COMPUTER SERVICE.—The*

24   *term "interactive computer service" has the meaning*

1 given such term in section 230(f) of the Communica-

2 tions Act of 1934 (47 U.S.C. 230(f)).

3 (12) INTERNET.—The term "Internet" means

4 collectively the myriad of computer and telecommuni-

5 cations facilities, including equipment and operating

6 software, which comprise the interconnected world-

7 wide network of networks that employ the Trans-

8 mission Control Protocol/Internet Protocol, or any

9 predecessor or successor protocols to such protocol, to

10 communicate information of all kinds by wire or

11 radio.

12 (13) PERSONALLY IDENTIFIABLE INFORMA-

13 TION.—

14 (A) IN GENERAL.—The term "personally

15 identifiable information" means the following in-

16 formation, to the extent only that such informa-

17 tion allows a living individual to be identified

18 from that information:

19 (i) First and last name of an indi-

20 vidual.

21 (ii) A home or other physical address

22 of an individual, including street name,

23 name of a city or town, and zip code.

24 (iii) An electronic mail address.

25 (iv) A telephone number.

1   *(v) A social security number, tax iden-*

2   *tification number, passport number, driver's*

3   *license number, or any other government-*

4   *issued identification number.*

5   *(vi) A credit card number.*

6   *(vii) Any access code, password, or ac-*

7   *count number, other than an access code or*

8   *password transmitted by an owner or au-*

9   *thorized user of a protected computer to the*

10   *intended recipient to register for, or log*

11   *onto, a Web page or other Internet service*

12   *or a network connection or service of a sub-*

13   *scriber that is protected by an access code or*

14   *password.*

15   *(viii) Date of birth, birth certificate*

16   *number, or place of birth of an individual,*

17   *except in the case of a date of birth trans-*

18   *mitted or collected for the purpose of com-*

19   *pliance with the law.*

20   *(B) RULEMAKING.—The Commission may,*

21   *by regulation, add to the types of information*

22   *described in subparagraph (A) that shall be con-*

23   *sidered personally identifiable information for*

24   *purposes of this Act, except that such additional*

25   *types of information shall be considered person-*

1 *ally identifiable information only to the extent*

2 *that such information allows living individuals,*

3 *particular computers, particular users of com-*

4 *puters, or particular email addresses or other lo-*

5 *cations of computers to be identified from that*

6 *information.*

7 *(14) SUITE OF FUNCTIONALLY RELATED SOFT-*

8 *WARE.—The term suite of "functionally related soft-*

9 *ware" means a group of computer software programs*

10 *distributed to an end user by a single provider, which*

11 *programs are necessary to enable features or*

12 *functionalities of an integrated service offered by the*

13 *provider.*

14 *(15) TELECOMMUNICATIONS CARRIER.—The term*

15 *"telecommunications carrier" has the meaning given*

16 *such term in section 3 of the Communications Act of*

17 *1934 (47 U.S.C. 153).*

18 *(16) TRANSMIT.—The term "transmit" means,*

19 *with respect to an information collection program,*

20 *transmission by any means.*

21 *(17) WEB PAGE.—The term "Web page" means*

22 *a location, with respect to the World Wide Web, that*

23 *has a single Uniform Resource Locator or another*

24 *single location with respect to the Internet, as the*

25 *Federal Trade Commission may prescribe.*

1   *(18) WEB SITE.—The term "web site" means a*

2 *collection of Web pages that are presented and made*

3 *available by means of the World Wide Web as a single*

4 *Web site (or a single Web page so presented and made*

5 *available), which Web pages have such characteristics*

6 *in relation to each other as the Commission may pre-*

7 *scribe, which may include—*

8   *(A) a common domain name;*

9   *(B) a common theme or topic;*

10   *(C) common ownership, management, or*

11 *registration; and*

12   *(D) relationship to a common intended be-*

13 *ginning file or home page or other means of ac-*

14 *cessing or linking the pages together.*

15 **SEC. 11. APPLICABILITY AND SUNSET.**

16 *(a) EFFECTIVE DATE.—Except as specifically pro-*

17 *vided otherwise in this Act, this Act shall take effect upon*

18 *the expiration of the 12-month period that begins on the*

19 *date of the enactment of this Act.*

20 *(b) APPLICABILITY.—Section 3 shall not apply to an*

21 *information collection program installed on a protected*

22 *computer before the effective date under subsection (a) of*

23 *this section.*

24 *(c) SUNSET.—This Act shall not apply after December*

25 *31, 2010.*

Union Calendar No. 15

109TH CONGRESS
1ST SESSION
H. R. 29

[Report No. 109–32]

A BILL

To protect users of the Internet from unknowing transmission of their personally identifiable information through spyware programs, and for other purposes.

APRIL 12, 2005

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed