109TH CONGRESS
1ST SESSION

S. 687

To regulate the unauthorized installation of computer software, to require clear disclosure to computer users of certain computer software features that may pose a threat to user privacy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 20, 2005

Mr. BURNS (for himself, Mr. WYDEN, Mrs. BOXER, and Mr. NELSON of Florida) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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A BILL

To regulate the unauthorized installation of computer software, to require clear disclosure to computer users of certain computer software features that may pose a threat to user privacy, 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; TABLE OF CONTENTS.**

4   (a) SHORT TITLE.—This Act may be cited as the

5 "Software Principles Yielding Better Levels of Consumer

6 Knowledge Act" or the "SPY BLOCK Act".

7   (b) TABLE OF CONTENTS.—The table of contents for

8 this Act is as follows:

SEC. 2. PROHIBITED PRACTICES RELATED TO SOFTWARE INSTALLATION IN GENERAL.

(a) SURREPTITIOUS INSTALLATION.—

(1) IN GENERAL.—It is unlawful for a person who is not an authorized user of a protected computer to cause the installation of software on the computer in a manner that—

(A) conceals from the user of the computer the fact that the software is being installed; or

(B) prevents the user of the computer from having an opportunity to knowingly grant or withhold consent to the installation.

(2) EXCEPTION.—This subsection does not apply to—

(A) the installation of software that falls within the scope of a previous grant of authorization by an authorized user;

1 (B) the installation of an upgrade to a

2 software program that has already been in-

3 stalled on the computer with the authorization

4 of an authorized user;

5 (C) the installation of software before the

6 first retail sale and delivery of the computer; or

7 (D) the installation of software that ceases

8 to operate when the user of the computer exits

9 the software or service through which the user

10 accesses the Internet, if the software so in-

11 stalled does not begin to operate again when

12 the user accesses the Internet via that computer

13 in the future.

14 (b) MISLEADING INDUCEMENTS TO INSTALL.—It is

15 unlawful for a person who is not an authorized user of

16 a protected computer to induce an authorized user of the

17 computer to consent to the installation of software on the

18 computer by means of a materially false or misleading rep-

19 resentation concerning—

20 (1) the identity of an operator of an Internet

21 website or online service at which the software is

22 made available for download from the Internet;

23 (2) the identity of the author, publisher, or au-

24 thorized distributor of the software;

25 (3) the nature or function of the software; or

1   (4) the consequences of not installing the soft-

2 ware.

3   (c) PREVENTING REASONABLE EFFORTS TO

4 UNINSTALL.—

5   (1) IN GENERAL.—It is unlawful for a person

6 who is not an authorized user of a protected com-

7 puter to cause the installation of software on the

8 computer if the software cannot subsequently be

9 uninstalled or disabled by an authorized user

10 through a program removal function that is usual

11 and customary with the user's operating system, or

12 otherwise as clearly and conspicuously disclosed to

13 the user.

14   (2) LIMITATIONS.—

15   (A) AUTHORITY TO UNINSTALL.—Software

16   that enables an authorized user of a computer,

17   such as a parent, employer, or system adminis-

18   trator, to choose to prevent another user of the

19   same computer from uninstalling or disabling

20   the software shall not be considered to prevent

21   reasonable efforts to uninstall or disable the

22   software within the meaning of this subsection

23   if at least 1 authorized user retains the ability

24   to uninstall or disable the software.

1   (B) CONSTRUCTION.—This subsection

2   shall not be construed to require individual fea-

3   tures or functions of a software program, up-

4   grades to a previously installed software pro-

5   gram, or software programs that were installed

6   on a bundled basis with other software or with

7   hardware to be capable of being uninstalled or

8   disabled separately from such software or hard-

9   ware.

10 **SEC. 3. INSTALLING SURREPTITIOUS INFORMATION COL-**

11 **LECTION FEATURES ON A USER'S COMPUTER.**

12   (a) IN GENERAL.—It is unlawful for a person who

13 is not an authorized user of a protected computer to—

14   (1) cause the installation on that computer of

15   software that includes a surreptitious information

16   collection feature; or

17   (2) use software installed in violation of para-

18   graph (1) to collect information about a user of the

19   computer or the use of a protected computer by that

20   user.

21   (b) AUTHORIZATION STATUS.—This section shall not

22 be interpreted to prohibit a person from causing the instal-

23 lation of software that collects and transmits only infor-

24 mation that is reasonably needed to determine whether or

1 not the user of a protected computer is licensed or author-

2 ized to use the software.

3 (c) SURREPTITIOUS INFORMATION COLLECTION

4 FEATURE DEFINED.—For purposes of this section, the

5 term "surreptitious information collection feature" means

6 a feature of software that—

7   (1) collects information about a user of a pro-

8   tected computer or the use of a protected computer

9   by that user, and transmits such information to any

10   other person or computer—

11   (A) on an automatic basis or at the direc-

12   tion of person other than an authorized user of

13   the computer, such that no authorized user

14   knowingly triggers or controls the collection and

15   transmission;

16   (B) in a manner that is not transparent to

17   an authorized user at or near the time of the

18   collection and transmission, such that no au-

19   thorized user is likely to be aware of it when in-

20   formation collection and transmission are occur-

21   ring; and

22   (C) for purposes other than—

23   (i) facilitating the proper technical

24   functioning of a capability, function, or

25   service that an authorized user of the com-

1   puter has knowingly used, executed, or en-

2   abled; or

3   (ii) enabling the provider of an online

4   service knowingly used or subscribed to by

5   an authorized user of the computer to

6   monitor or record the user's usage of the

7   service, or to customize or otherwise affect

8   the provision of the service to the user

9   based on such usage; and

10   (2) begins to collect and transmit such informa-

11   tion without prior notification that—

12   (A) clearly and conspicuously discloses to

13   an authorized user of the computer the type of

14   information the software will collect and the

15   types of ways the information may be used and

16   distributed; and

17   (B) is provided at a time and in a manner

18   such that an authorized user of the computer

19   has an opportunity, after reviewing the infor-

20   mation contained in the notice, to prevent ei-

21   ther—

22   (i) the installation of the software; or

23   (ii) the beginning of the operation of

24   the information collection and transmission

25   capability described in paragraph (1).

1 **SEC. 4. ADWARE THAT CONCEALS ITS OPERATION.**

2 (a) IN GENERAL.—It is unlawful for a person who

3 is not an authorized user of a protected computer to cause

4 the installation on that computer of software that causes

5 advertisements to be displayed to the user without a label

6 or other reasonable means of identifying to the user of

7 the computer, each time such an advertisement is dis-

8 played, which software caused the advertisement's deliv-

9 ery.

10 (b) EXCEPTION.—Software that causes advertise-

11 ments to be displayed without a label or other reasonable

12 means of identification shall not give rise to liability under

13 subsection (a) if those advertisements are displayed to a

14 user of the computer—

15 (1) only when a user is accessing an Internet

16 website or online service—

17 (A) operated by the publisher of the soft-

18 ware; or

19 (B) the operator of which has provided ex-

20 press consent to the display of such advertise-

21 ments to users of the website or service; or

22 (2) only in a manner or at a time such that a

23 reasonable user would understand which software

24 caused the delivery of the advertisements.

SEC. 5. OTHER PRACTICES THAT THWART USER CONTROL OF COMPUTER.

It is unlawful for a person who is not an authorized user of a protected computer to engage in an unfair or deceptive act or practice that involves—

(1) utilizing the computer to send unsolicited information or material from the user's computer to other computers;

(2) diverting an authorized user's Internet browser away from the Internet website the user intended to view to 1 or more other websites, unless such diversion has been authorized by the website the user intended to view;

(3) displaying an advertisement, series of advertisements, or other content on the computer through windows in an Internet browser, in such a manner that the user of the computer cannot end the display of such advertisements or content without turning off the computer or terminating all sessions of the Internet browser (except that this paragraph shall not apply to the display of content related to the functionality or identity of the Internet browser);

(4) modifying settings relating to the use of the computer or to the computer's access to or use of the Internet, including—

1   (A) altering the default Web page that ini-

2   tially appears when a user of the computer

3   launches an Internet browser;

4   (B) altering the default provider or Web

5   proxy used to access or search the Internet;

6   (C) altering bookmarks used to store fa-

7   vorite Internet website addresses; or

8   (D) altering settings relating to security

9   measures that protect the computer and the in-

10   formation stored on the computer against unau-

11   thorized access or use; or

12   (5) removing, disabling, or rendering inoper-

13 ative a security or privacy protection technology in-

14 stalled on the computer.

15 **SEC. 6. LIMITATIONS ON LIABILITY.**

16   (a) PASSIVE TRANSMISSION, HOSTING, OR LINK-

17 ING.—A person shall not be deemed to have violated any

18 provision of this Act solely because the person provided—

19   (1) the Internet connection, telephone connec-

20 tion, or other transmission or routing function

21 through which software was delivered to a protected

22 computer for installation;

23   (2) the storage or hosting of software or of an

24 Internet website through which software was made

25 available for installation to a protected computer; or

1   (3) an information location tool, such as a di-
2   rectory, index, reference, pointer, or hypertext link,
3   through which a user of a protected computer lo-
4   cated software available for installation.

5   (b) NETWORK SECURITY.—It is not a violation of
6 section 2, 3, or 5 for a provider of a network or online
7 service used by an authorized user of a protected com-
8 puter, or to which any authorized user of a protected com-
9 puter subscribes, to monitor, interact with, or install soft-
10 ware for the purpose of—

11   (1) protecting the security of the network, serv-
12   ice, or computer;

13   (2) facilitating diagnostics, technical support,
14   maintenance, network management, or repair; or

15   (3) preventing or detecting unauthorized, fraud-
16   ulent, or otherwise unlawful uses of the network or
17   service.

18   (c) MANUFACTURER'S LIABILITY FOR THIRD-PARTY
19 SOFTWARE.—A manufacturer or retailer of a protected
20 computer shall not be liable under any provision of this
21 Act for causing the installation on the computer, prior to
22 the first retail sale and delivery of the computer, of third-
23 party branded software, unless the manufacturer or re-
24 tailer—

1   (1) uses a surreptitious information collection

2   feature included in the software to collect informa-

3   tion about a user of the computer or the use of a

4   protected computer by that user; or

5   (2) knows that the software will cause adver-

6   tisements for the manufacturer or retailer to be dis-

7   played to a user of the computer.

8   (d) INVESTIGATIONAL EXCEPTION.—Nothing in this

9 Act prohibits any lawfully authorized investigative, protec-

10 tive, or intelligence activity of a law enforcement agency

11 of the United States, a State, or a political subdivision

12 of a State, or of an intelligence agency of the United

13 States.

14   (e) SERVICES PROVIDED OVER MVPD SYSTEMS.—

15 It is not a violation of this Act for a multichannel video

16 programming distributor (as defined in section 602(13) of

17 the Communications Act of 1934 (47 U.S.C. 522(13)) to

18 utilize a navigation device, or interact with such a device,

19 or to install or use software on such a device, in connection

20 with the provision of multichannel video programming or

21 other services offered over a multichannel video program-

22 ming system or the collection or disclosure of subscriber

23 information, if the provision of such service or the collec-

24 tion or disclosure of such information is subject to section

1 338(i) or section 631 of the Communications Act of 1934

2 (47 U.S.C. 338(i) or 551).

3 **SEC. 7. FTC RULEMAKING AUTHORITY.**

4 (a) IN GENERAL.—Subject to the limitations of sub-

5 section (b), the Commission may issue such rules in ac-

6 cordance with section 553 of title 5, United States Code,

7 as may be necessary to implement or clarify the provisions

8 of this Act.

9 (b) SAFE HARBORS.—

10 (1) IN GENERAL.—The Commission may issue

11 regulations establishing specific wordings or formats

12 for—

13 (A) notification that is sufficient under

14 section 3(c)(2) to prevent a software feature

15 from being a surreptitious information collec-

16 tion feature (as defined in section 3(c)); or

17 (B) labels or other means of identification

18 that are sufficient to avoid violation of section

19 4(a).

20 (2) FUNCTION OF COMMISSION'S SUGGESTED

21 WORDINGS OR FORMATS.—

22 (A) USAGE IS VOLUNTARY.—The Commis-

23 sion may not require the use of any specific

24 wording or format prescribed under paragraph

25 (1) to meet the requirements of section 3 or 4.

1   (B) OTHER MEANS OF COMPLIANCE.—The

2   use of a specific wording or format prescribed

3   under paragraph (1) shall not be the exclusive

4   means of providing notification, labels, or other

5   identification that meet the requirements of sec-

6   tions 3 and 4.

7   (c) LIMITATIONS ON LIABILITY.—In addition to the

8 limitations on liability specified in section 6, the Commis-

9 sion may by regulation establish additional limitations or

10 exceptions upon a finding that such limitations or excep-

11 tions are reasonably necessary to promote the public inter-

12 est and are consistent with the purposes of this Act. No

13 such additional limitation of liability may be made contin-

14 gent upon the adoption of any specific wording or format

15 specified in regulations under subsection (b)(1).

16 **SEC. 8. ADMINISTRATION AND ENFORCEMENT.**

17   (a) IN GENERAL.—Except as provided in subsection

18 (b), this Act shall be enforced by the Commission as if

19 a violation of this Act or of any regulation promulgated

20 by the Commission under this Act were an unfair or de-

21 ceptive act or practice proscribed under section

22 18(a)(1)(B) of the Federal Trade Commission Act (15

23 U.S.C. 57a(a)(1)(B)).

1 (b) ENFORCEMENT BY CERTAIN OTHER AGEN-

2 CIES.—Compliance with this Act shall be enforced

3 under—

4   (1) section 8 of the Federal Deposit Insurance

5 Act (12 U.S.C. 1818), in the case of—

6   (A) national banks, and Federal branches

7 and Federal agencies of foreign banks, by the

8 Office of the Comptroller of the Currency;

9   (B) member banks of the Federal Reserve

10 System (other than national banks), branches

11 and agencies of foreign banks (other than Fed-

12 eral branches, Federal agencies, and insured

13 State branches of foreign banks), commercial

14 lending companies owned or controlled by for-

15 eign banks, and organizations operating under

16 section 25 or 25A of the Federal Reserve Act

17 (12 U.S.C. 601 and 611), by the Board; and

18   (C) banks insured by the Federal Deposit

19 Insurance Corporation (other than members of

20 the Federal Reserve System) and insured State

21 branches of foreign banks, by the Board of Di-

22 rectors of the Federal Deposit Insurance Cor-

23 poration;

24   (2) section 8 of the Federal Deposit Insurance

25 Act (12 U.S.C. 1818), by the Director of the Office

1 of Thrift Supervision, in the case of a savings associa-

2 tion the deposits of which are insured by the Federal

3 Deposit Insurance Corporation;

4 (3) the Federal Credit Union Act (12 U.S.C.

5 1751 et seq.) by the National Credit Union Adminis-

6 tration Board with respect to any Federal credit

7 union;

8 (4) part A of subtitle VII of title 49, United

9 States Code, by the Secretary of Transportation

10 with respect to any air carrier or foreign air carrier

11 subject to that part;

12 (5) the Packers and Stockyards Act, 1921 (7

13 U.S.C. 181 et seq.) (except as provided in section

14 406 of that Act (7 U.S.C. 226, 227)), by the Sec-

15 retary of Agriculture with respect to any activities

16 subject to that Act; and

17 (6) the Farm Credit Act of 1971 (12 U.S.C.

18 2001 et seq.) by the Farm Credit Administration

19 with respect to any Federal land bank, Federal land

20 bank association, Federal intermediate credit bank,

21 or production credit association.

22 (c) EXERCISE OF CERTAIN POWERS.—For the pur-

23 pose of the exercise by any agency referred to in sub-

24 section (b) of its powers under any Act referred to in that

25 subsection, a violation of this Act is deemed to be a viola-

1 tion of a requirement imposed under that Act. In addition

2 to its powers under any provision of law specifically re-

3 ferred to in subsection (b), each of the agencies referred

4 to in that subsection may exercise, for the purpose of en-

5 forcing compliance with any requirement imposed under

6 this Act, any other authority conferred on it by law.

7   (d) ACTIONS BY THE COMMISSION.—The Commis-

8 sion shall prevent any person from violating this Act in

9 the same manner, by the same means, and with the same

10 jurisdiction, powers, and duties as though all applicable

11 terms and provisions of the Federal Trade Commission

12 Act (15 U.S.C. 41 et seq.) were incorporated into and

13 made a part of this Act. Any entity that violates any provi-

14 sion of that section is subject to the penalties and entitled

15 to the privileges and immunities provided in the Federal

16 Trade Commission Act in the same manner, by the same

17 means, and with the same jurisdiction, power, and duties

18 as though all applicable terms and provisions of the Fed-

19 eral Trade Commission Act were incorporated into and

20 made a part of that section.

21 **SEC. 9. ACTIONS BY STATES.**

22   (a) IN GENERAL.—

23   (1) CIVIL ACTIONS.—In any case in which the

24   attorney general of a State has reason to believe

25   that an interest of the residents of that State has

1 been or is threatened or adversely affected by the

2 engagement of any person in a practice that this Act

3 prohibits, the State, as parens patriae, may bring a

4 civil action on behalf of the residents of the State in

5 a district court of the United States of appropriate

6 jurisdiction—

7   (A) to enjoin that practice;

8   (B) to enforce compliance with the rule;

9   (C) to obtain damage, restitution, or other

10   compensation on behalf of residents of the

11   State; or

12   (D) to obtain such other relief as the court

13   may consider to be appropriate.

14 (2) NOTICE.—

15   (A) IN GENERAL.—Before filing an action

16   under paragraph (1), the attorney general of

17   the State involved shall provide to the Commis-

18   sion—

19   (i) written notice of that action; and

20   (ii) a copy of the complaint for that

21   action.

22   (B) EXEMPTION.—

23   (i) IN GENERAL.—Subparagraph (A)

24   shall not apply with respect to the filing of

25   an action by an attorney general of a State

1   under this subsection, if the attorney gen-

2   eral determines that it is not feasible to

3   provide the notice described in that sub-

4   paragraph before the filing of the action.

5   (ii) NOTIFICATION.—In an action de-

6   scribed in clause (i), the attorney general

7   of a State shall provide notice and a copy

8   of the complaint to the Commission at the

9   same time as the attorney general files the

10   action.

11 (b) INTERVENTION.—

12   (1) IN GENERAL.—On receiving notice under

13 subsection (a)(2), the Commission shall have the

14 right to intervene in the action that is the subject

15 of the notice.

16   (2) EFFECT OF INTERVENTION.—If the Com-

17 mission intervenes in an action under subsection (a),

18 it shall have the right—

19   (A) to be heard with respect to any matter

20   that arises in that action; and

21   (B) to file a petition for appeal.

22 (c) CONSTRUCTION.—For purposes of bringing any

23 civil action under subsection (a), nothing in this subtitle

24 shall be construed to prevent an attorney general of a

1 State from exercising the powers conferred on the attorney

2 general by the laws of that State to—

3   (1) conduct investigations;

4   (2) administer oaths or affirmations; or

5   (3) compel the attendance of witnesses or the

6 production of documentary and other evidence.

7   (d) ACTIONS BY THE COMMISSION.—In any case in

8 which an action is instituted by or on behalf of the Com-

9 mission for violation of this Act, no State may, during the

10 pendency of that action, institute an action under sub-

11 section (a) against any defendant named in the complaint

12 in that action for violation of that section.

13   (e) VENUE; SERVICE OF PROCESS.—

14   (1) VENUE.—Any action brought under sub-

15   section (a) may be brought in the district court of

16   the United States that meets applicable require-

17   ments relating to venue under section 1391 of title

18   28, United States Code.

19   (2) SERVICE OF PROCESS.—In an action

20   brought under subsection (a), process may be served

21   in any district in which the defendant—

22   (A) is an inhabitant; or

23   (B) may be found.

1 **SEC. 10. EFFECT ON OTHER LAWS.**

2 (a) FEDERAL LAW.—Nothing in this Act shall be

3 construed to limit or affect in any way the Commission's

4 authority to bring enforcement actions or take any other

5 measures under the Federal Trade Commission Act or any

6 other provision of law.

7 (b) STATE LAW.—

8   (1) STATE LAW CONCERNING INFORMATION

9   COLLECTION SOFTWARE OR ADWARE.—This Act su-

10   persedes any statute, regulation, or rule of a State

11   or political subdivision of a State that expressly lim-

12   its or restricts the installation or use of software on

13   a protected computer to—

14   (A) collect information about the user of

15   the computer or the user's Internet browsing

16   behavior or other use of the computer; or

17   (B) cause advertisements to be delivered to

18   the user of the computer,

19   except to the extent that any such statute, regula-

20   tion, or rule prohibits deception in connection with

21   the installation or use of such software.

22   (2) STATE LAW CONCERNING NOTICE OF SOFT-

23   WARE INSTALLATION.—This Act supersedes any

24   statute, regulation, or rule of a State or political

25   subdivision of a State that prescribes specific meth-

1 ods for providing notification before the installation

2 of software on a computer.

3   (3) STATE LAW NOT SPECIFIC TO SOFTWARE.—

4 This Act shall not be construed to preempt the ap-

5 plicability of State criminal, trespass, contract, tort,

6 or anti-fraud law.

7 **SEC. 11. LIABILITY PROTECTIONS FOR ANTI-SPYWARE**

8   **SOFTWARE OR SERVICES.**

9   No provider of computer software or of an interactive

10 computer service may be held liable under this Act or any

11 other provision of law for identifying, naming, removing,

12 disabling, or otherwise affecting the operation or potential

13 operation on a computer of computer software published

14 by a third party, if—

15   (1) the provider's software or interactive com-

16 puter service is intended to identify, prevent the in-

17 stallation or execution of, remove, or disable com-

18 puter software that is or was installed in violation of

19 section 2, 3, or 4 of this Act or used to violate sec-

20 tion 5 of this Act;

21   (2) an authorized user of the computer has con-

22 sented to the use of the provider's computer soft-

23 ware or interactive computer service on the com-

24 puter;

1   (3) the provider believes in good faith that the

2   installation or operation of the third-party computer

3   software involved or involves a violation of section 2,

4   3, 4, or 5 of this Act; and

5   (4) the provider either notifies and obtains the

6   consent of an authorized user of the computer before

7   taking any action to remove, disable, or otherwise

8   affect the operation or potential operation of the

9   third-party software on the computer, or has ob-

10   tained prior authorization from an authorized user

11   to take such action without providing such notice

12   and consent.

SEC. 12. PENALTIES FOR CERTAIN UNAUTHORIZED ACTIVI-

TIES RELATING TO COMPUTERS.

15   (a) IN GENERAL.—Chapter 47 of title 18, United

16 States Code, is amended by inserting after section 1030

17 the following:

"§ 1030A. Illicit indirect use of protected computers

19   "(a) Whoever intentionally accesses a protected com-

20 puter without authorization, or exceeds authorized access

21 to a protected computer, by causing a computer program

22 or code to be copied onto the protected computer, and in-

23 tentionally uses that program or code in furtherance of

24 another Federal criminal offense shall be fined under this

25 title or imprisoned 5 years, or both.

1 ''(b) Whoever intentionally accesses a protected com-
2 puter without authorization, or exceeds authorized access
3 to a protected computer, by causing a computer program
4 or code to be copied onto the protected computer, and by
5 means of that program or code intentionally impairs the
6 security protection of the protected computer shall be
7 fined under this title or imprisoned not more than 2 years,
8 or both.

9 ''(c) A person shall not violate this section who solely
10 provides—

11   ''(1) an Internet connection, telephone connec-
12   tion, or other transmission or routing function
13   through which software is delivered to a protected
14   computer for installation;

15   ''(2) the storage or hosting of software, or of an
16   Internet website, through which software is made
17   available for installation to a protected computer; or

18   ''(3) an information location tool, such as a di-
19   rectory, index, reference, pointer, or hypertext link,
20   through which a user of a protected computer lo-
21   cates software available for installation.

22 ''(d) A provider of a network or online service that
23 an authorized user of a protected computer uses or sub-
24 scribes to shall not violate this section by any monitoring

1 of, interaction with, or installation of software for the pur-

2 pose of—

3   "(1) protecting the security of the network,

4   service, or computer;

5   "(2) facilitating diagnostics, technical support,

6   maintenance, network management, or repair; or

7   "(3) preventing or detecting unauthorized,

8   fraudulent, or otherwise unlawful uses of the net-

9   work or service.

10   "(e) No person may bring a civil action under the

11 law of any State if such action is premised in whole or

12 in part upon the defendant's violating this section. For

13 the purposes of this subsection, the term 'State' includes

14 the District of Columbia, Puerto Rico, and any other terri-

15 tory or possession of the United States.".

16   (b) CONFORMING AMENDMENT.—The table of sec-

17 tions at the beginning of chapter 47 of title 18, United

18 States Code, is amended by inserting after the item relat-

19 ing to section 1030 the following new item:

"1030A. Illicit indirect use of protected computers.".

20 **SEC. 13. DEFINITIONS.**

21   In this Act:

22   (1) AUTHORIZED USER.—The term "authorized

23   user", when used with respect to a computer, means

24   the owner or lessee of a computer, or someone using

1 or accessing a computer with the actual or apparent

2 authorization of the owner or lessee.

3   (2) CAUSE THE INSTALLATION.—The term

4 "cause the installation" when used with respect to

5 particular software, means to knowingly provide the

6 technical means by which the software is installed,

7 or to knowingly pay or provide other consideration

8 to, or to knowingly induce or authorize, another per-

9 son to do so.

10   (3) COMMISSION.—The term "Commission"

11 means the Federal Trade Commission.

12   (4) COOKIE.—The term "cookie" means a text

13 file—

14   (A) that is placed on a computer by, or on

15 behalf of, an Internet service provider, inter-

16 active computer service, or Internet website;

17 and

18   (B) the sole function of which is to record

19 information that can be read or recognized

20 when the user of the computer subsequently ac-

21 cesses particular websites or online locations or

22 services.

23   (5) FIRST RETAIL SALE AND DELIVERY.—The

24 term "first retail sale and delivery" means the first

25 sale, for a purpose other than resale, of a protected

1 computer and the delivery of that computer to the

2 purchaser or a recipient designated by the purchaser

3 at the time of such first sale. For purposes of this

4 paragraph, the lease of a computer shall be consid-

5 ered a sale of the computer for a purpose other than

6 resale.

7 (6) INSTALL.—

8 (A) IN GENERAL.—The term "install"

9 means—

10 (i) to write computer software to a

11 computer's persistent storage medium,

12 such as the computer's hard disk, in such

13 a way that the computer software is re-

14 tained on the computer after the computer

15 is turned off and subsequently restarted;

16 or

17 (ii) to write computer software to a

18 computer's temporary memory, such as

19 random access memory, in such a way that

20 the software is retained and continues to

21 operate after the user of the computer

22 turns off or exits the Internet service,

23 interactive computer service, or Internet

24 website from which the computer software

25 was obtained.

1   (B) EXCEPTION FOR TEMPORARY

2   CACHE.—The term "install" does not include

3   the writing of software to an area of the per-

4   sistent storage medium that is expressly re-

5   served for the temporary retention of recently

6   accessed or input data or information if the

7   software retained in that area remains inoper-

8   ative unless a user of the computer chooses to

9   access that temporary retention area.

10   (7) PERSON.—The term "person" has the

11 meaning given that term in section 3(32) of the

12 Communications Act of 1934 (47 U.S.C. 153(32)).

13   (8) PROTECTED COMPUTER.—The term "pro-

14 tected computer" has the meaning given that term

15 in section 1030(e)(2)(B) of title 18, United States

16 Code.

17   (9) SOFTWARE.—The term "software" means

18 any program designed to cause a computer to per-

19 form a desired function or functions. Such term does

20 not include any cookie.

21   (10) UNFAIR OR DECEPTIVE ACT OR PRAC-

22 TICE.—The term "unfair or deceptive act or prac-

23 tice" has the same meaning as when used in section

24 5 of the Federal Trade Commission Act (15 U.S.C.

25 45).

1   (11) UPGRADE.—The term "upgrade", when

2   used with respect to a previously installed software

3   program, means additional software that is issued

4   by, or with the authorization of, the publisher or any

5   successor to the publisher of the software program

6   to improve, correct, repair, enhance, supplement, or

7   otherwise modify the software program.

8 **SEC. 14. EFFECTIVE DATE.**

9   This Act shall take effect 180 days after the date of

10 enactment of this Act.

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