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110TH CONGRESS
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[Report No. 110–169]

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

FEBRUARY 8, 2007

Mr. TOWNS (for himself, Mrs. BONO, Mr. DINGELL, Mr. BARTON of Texas, Mr. RUSH, Mr. STEARNS, Mr. MARKEY, Ms. SCHAKOWSKY, Mr. BOUCHER, Mr. GORDON of Tennessee, Ms. ESHOO, Mr. STUPAK, Mr. GENE GREEN of Texas, Ms. DEGETTE, Mrs. CAPPS, Mr. DOYLE, Ms. SOLIS, Mr. GONZALEZ, Mr. INSLEE, Ms. HOOLEY, Mr. WEINER, Mr. MATHESON, Mr. BUTTERFIELD, Mr. HASTERT, Mr. RADANOVICH, Mr. TERRY, Mrs. MYRICK, Mr. BURGESS, and Mr. ENGEL) introduced the following bill; which was referred to the Committee on Energy and Commerce

MAY 24, 2007

Additional sponsors: Mr. UPTON, Mrs. CUBIN, Mr. MCCAUL of Texas, Mr. MCCOTTER, Mr. FARR, Mr. MCHUGH, Mr. MCNERNEY, Mr. PRICE of North Carolina, Ms. WATSON, Mr. MOORE of Kansas, Mr. BUYER, Mr. FOSSELLA, and Mr. CALVERT

MAY 24, 2007

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 February 8, 2007]

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 UNFAIR OR DECEPTIVE ACTS OR***
7 ***PRACTICES 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 unfair or deceptive acts or practices that in-*
11 *volve any of the following conduct with respect to the pro-*
12 *tected computer:*

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;*

(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 or a series of advertisements that a user of the computer cannot close or terminate without undue effort or

knowledge by the user or without turning off the computer or closing all sessions of the Internet browser for the computer.

(2) Modifying settings related to use of the computer or to the computer's access to or use of the Internet by altering—

(A) the Web page that appears when the owner or authorized user launches an Internet browser or similar program used to access and navigate the Internet;

(B) the default provider used to access or search the Internet, or other existing Internet connections settings;

(C) a list of bookmarks used by the computer to access Web pages; or

(D) security or other settings of the computer that protect information about the owner or authorized user for the purposes of causing damage or harm to the computer or owner or user.

(3) Collecting personally identifiable information through the use of a keystroke logging function.

(4) Inducing the owner or authorized user of the computer to disclose personally identifiable information by means of a Web page that—

(A) is substantially similar to a Web page established or provided by another person; and

(B) misleads the owner or authorized user that such Web page is provided by such other person.

(5) Inducing the owner or authorized user to install a component of computer software onto the computer, or preventing reasonable efforts to block the installation or execution of, or to disable, a component of computer software by—

(A) presenting the owner or authorized user with an option to decline installation of such a component such that, when the option is selected by the owner or authorized user or when the owner or authorized user reasonably attempts to decline the installation, the installation nevertheless proceeds; or

(B) causing such a component that the owner or authorized user has properly removed or disabled to automatically reinstall or reactivate on the computer.

(6) Misrepresenting that installing a separate component of computer software or providing log-in and password information is necessary for security or privacy reasons, or that installing a separate compo-

nent of computer software is necessary to open, view, or play a particular type of content.

(7) Inducing the owner or authorized user to install or execute computer software by misrepresenting the identity or authority of the person or entity providing the computer software to the owner or user.

(8) Inducing the owner or authorized user to provide personally identifiable, password, or account information to another person—

(A) by misrepresenting the identity of the person seeking the information; or

(B) without the authority of the intended recipient of the information.

(9) Removing, disabling, or rendering inoperative a security, anti-spyware, or anti-virus technology installed on the computer.

(10) Installing or executing on the computer one or more additional components of computer software with the intent of causing a person to use such components in a way that violates any other provision of this section.

(b) GUIDANCE.—The Commission shall issue guidance regarding compliance with and violations of this section. This subsection shall take effect upon the date of the enactment 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.*

5 ***SEC. 3. PROHIBITION OF COLLECTION OF CERTAIN INFOR-***
6 ***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 downloading or installing any of the in-*
16 *formation collection 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-*

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

(B) such information collection program includes the functions required under subsection (d).

(b) INFORMATION COLLECTION PROGRAM.—

(1) IN GENERAL.—For purposes of this section, the term "information collection program" means computer software that performs either of the following functions:

(A) COLLECTION OF PERSONALLY IDENTIFIABLE INFORMATION.—The computer software—

(i) collects personally identifiable information; and

(ii)(I) sends such information to a person other than the owner or authorized user of the computer, or

(II) uses such information to deliver advertising to, or display advertising on, the computer.

(B) COLLECTION OF INFORMATION REGARDING INTERNET ACTIVITY TO DELIVER ADVERTISING.—The computer software—

1 *(i) collects information regarding the*
2 *user's Internet activity using the computer;*
3 *and*
4 *(ii) uses such information to deliver*
5 *advertising to, or display advertising on,*
6 *the computer.*
7 *(2) EXCEPTION FOR SOFTWARE COLLECTING IN-*
8 *FORMATION REGARDING INTERNET ACTIVITY WITHIN A*
9 *PARTICULAR WEB SITE.—Computer software that oth-*
10 *erwise would be considered an information collection*
11 *program by reason of paragraph (1)(B) shall not be*
12 *considered such a program if—*
13 *(A) the only information collected by the*
14 *software regarding the user's internet activity,*
15 *and used to deliver advertising to, or display ad-*
16 *vertising on, the protected computer, is—*
17 *(i) information regarding Web pages*
18 *within a particular Web site; or*
19 *(ii) in the case of any Internet-based*
20 *search function, user-supplied search terms*
21 *necessary to complete the search and return*
22 *results to the user;*
23 *(B) such information collected is not sent to*
24 *a person other than—*

1 *(i) the provider of the Web site accessed*
2 *or Internet-based search function; or*
3 *(ii) a party authorized to facilitate the*
4 *display or functionality of Web pages with-*
5 *in the Web site accessed; and*
6 *(C) the only advertising delivered to or dis-*
7 *played on the computer using such information*
8 *is advertising on Web pages within that par-*
9 *ticular Web site.*
10 *(c) NOTICE AND CONSENT.—*
11 *(1) IN GENERAL.—Notice in accordance with this*
12 *subsection with respect to an information collection*
13 *program is clear and conspicuous notice in plain lan-*
14 *guage, set forth as the Commission shall provide, that*
15 *meets all of the following requirements:*
16 *(A) The notice clearly distinguishes a state-*
17 *ment required under subparagraph (B) from any*
18 *other information visually presented contempora-*
19 *neously on the computer.*
20 *(B) The notice contains one of the following*
21 *statements, as applicable, or a substantially*
22 *similar statement:*
23 *(i) With respect to an information col-*
24 *lection program described in subsection*
25 *(b)(1)(A): "This program will collect and*

transmit information about you. Do you accept?".

(ii) With respect to an information collection program described in subsection (b)(1)(B): "This program will collect information about Web pages you access and will use that information to display advertising on your computer. Do you accept?".

(iii) With respect to an information collection program that performs the actions described in both subparagraphs (A) and (B) of subsection (b)(1): "This program will collect and transmit information about you and will collect information about Web pages you access and use that information to display advertising on your computer. Do you accept?".

(C) The notice provides for the user—

(i) to grant or deny consent referred to in subsection (a) by selecting an option to grant or deny such consent; and

(ii) to abandon or cancel the transmission or execution referred to in subsection (a) without granting or denying such consent.

1 *(D) The notice provides an option for the*
2 *user to select to display on the computer, before*
3 *granting or denying consent using the option re-*
4 *quired under subparagraph (C), a clear descrip-*
5 *tion of—*
6 *(i) the types of information to be col-*
7 *lected and sent (if any) by the information*
8 *collection program;*
9 *(ii) the purpose for which such infor-*
10 *mation is to be collected and sent; and*
11 *(iii) in the case of an information col-*
12 *lection program that first executes any of*
13 *the information collection functions of the*
14 *program together with the first execution of*
15 *other computer software, the identity of any*
16 *such software that is an information collec-*
17 *tion program.*
18 *(E) The notice provides for concurrent dis-*
19 *play of the information required under subpara-*
20 *graphs (B) and (C) and the option required*
21 *under subparagraph (D) until the user—*
22 *(i) grants or denies consent using the*
23 *option required under subparagraph (C)(i);*

(ii) abandons or cancels the transmission or execution pursuant to subparagraph (C)(ii); or

(iii) selects the option required under subparagraph (D).

(2) SINGLE NOTICE.—The Commission shall provide that, in the case in which multiple information collection programs are provided to the protected computer together, or as part of a suite of functionally related software, the notice requirements of paragraphs (1)(A) and (2)(A) of subsection (a) may be met by providing, before execution of any of the information collection functions of the programs, clear and conspicuous notice in plain language in accordance with paragraph (1) of this subsection by means of a single notice that applies to all such information collection programs, except that such notice shall provide the option under subparagraph (D) of paragraph (1) of this subsection with respect to each such information collection program.

(3) CHANGE IN INFORMATION COLLECTION.—If an owner or authorized user has granted consent to execution of an information collection program pursuant to a notice in accordance with this subsection:

1 *(A) IN GENERAL.—No subsequent such no-*
2 *tice is required, except as provided in subpara-*
3 *graph (B).*
4 *(B) SUBSEQUENT NOTICE.—The person who*
5 *transmitted the program shall provide another*
6 *notice in accordance with this subsection and ob-*
7 *tain consent before such program may be used to*
8 *collect or send information of a type or for a*
9 *purpose that is materially different from, and*
10 *outside the scope of, the type or purpose set forth*
11 *in the initial or any previous notice.*
12 *(4) REGULATIONS.—The Commission shall issue*
13 *regulations to carry out this subsection.*
14 *(d) REQUIRED FUNCTIONS.—The functions required*
15 *under this subsection to be included in an information col-*
16 *lection program that executes any information collection*
17 *functions with respect to a protected computer are as fol-*
18 *lows:*
19 *(1) DISABLING FUNCTION.—With respect to any*
20 *information collection program, a function of the pro-*
21 *gram that allows a user of the program to remove the*
22 *program or disable operation of the program with re-*
23 *spect to such protected computer by a function that—*
24 *(A) is easily identifiable to a user of the*
25 *computer; and*

1 *(B) can be performed without undue effort*
2 *or knowledge by the user of the protected com-*
3 *puter.*
4 *(2) IDENTITY FUNCTION.—*
5 *(A) IN GENERAL.—With respect only to an*
6 *information collection program that uses infor-*
7 *mation collected in the manner described in sub-*
8 *paragraph (A)(ii)(II) or (B)(ii) of subsection*
9 *(b)(1) and subject to subparagraph (B) of this*
10 *paragraph, a function of the program that pro-*
11 *vides that each display of an advertisement di-*
12 *rected or displayed using such information, when*
13 *the owner or authorized user is accessing a Web*
14 *page or online location other than of the provider*
15 *of the computer software, is accompanied by the*
16 *name of the information collection program, a*
17 *logogram or trademark used for the exclusive*
18 *purpose of identifying the program, or a state-*
19 *ment or other information sufficient to clearly*
20 *identify the program.*
21 *(B) EXEMPTION FOR EMBEDDED ADVER-*
22 *TISEMENTS.—The Commission shall, by regula-*
23 *tion, exempt from the applicability of subpara-*
24 *graph (A) the embedded display of any advertise-*

1 *ment on a Web page that contemporaneously dis-*
2 *plays other information.*
3 *(3) RULEMAKING.—The Commission may issue*
4 *regulations to carry out this subsection.*
5 *(e) LIMITATION ON LIABILITY.—A telecommunications*
6 *carrier, a provider of information service or interactive*
7 *computer service, a cable operator, or a provider of trans-*
8 *mission capability shall not be liable under this section to*
9 *the extent that the carrier, operator, or provider—*
10 *(1) transmits, routes, hosts, stores, or provides*
11 *connections for an information collection program*
12 *through a system or network controlled or operated by*
13 *or for the carrier, operator, or provider; or*
14 *(2) provides an information location tool, such*
15 *as a directory, index, reference, pointer, or hypertext*
16 *link, through which the owner or user of a protected*
17 *computer locates an information collection program.*
18 *(f) STUDY AND ADDITIONAL EXEMPTION.—*
19 *(1) STUDY AND REPORT.—The Commission shall*
20 *conduct a study to determine the applicability of the*
21 *information collection prohibitions of this section to*
22 *information that is input directly by users in a field*
23 *provided on a website. The study shall examine—*
24 *(A) the nature of such fields for user input;*

1 *(B) the use of a user's information once*
2 *input and whether such information is sent to a*
3 *person other than the provider of the Web site;*
4 *(C) whether such information is used to de-*
5 *liver advertisements to the user's computer; and*
6 *(D) the extent of any notice provided to the*
7 *user prior to such input.*
8 *(2) REPORT.—The Commission shall transmit a*
9 *report on such study to the Committee on Energy and*
10 *Commerce of the House of Representatives and the*
11 *Committee on Commerce, Science, and Transpor-*
12 *tation of the Senate not later than the expiration of*
13 *the 6-month period that begins on the date on which*
14 *final regulations are issued under section 9. The re-*
15 *quirements of subchapter I of chapter 35 of title 44,*
16 *United States Code, shall not apply to the report re-*
17 *quired under this subsection.*
18 *(3) REGULATION.—If the Commission finds that*
19 *users have adequate notice regarding the uses of any*
20 *information input directly by the user in a field pro-*
21 *vided on a website, such that an exemption from the*
22 *requirements of this section, or a modification of the*
23 *notice required by this section is appropriate for such*
24 *information, and that such an exemption or modifica-*
25 *tion is consistent with the public interest, the protec-*

1 *tion of consumers, and the purposes of this Act, the*
2 *Commission may prescribe such an exemption or*
3 *modification by regulation.*

4 ***SEC. 4. ENFORCEMENT.***

5 *(a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—This*
6 *Act shall be enforced by the Commission under the Federal*
7 *Trade Commission Act (15 U.S.C. 41 et seq.). A violation*
8 *of any provision of this Act or of a regulation issued under*
9 *this Act shall be treated as an unfair or deceptive act or*
10 *practice violating a rule promulgated under section 18 of*
11 *the Federal Trade Commission Act (15 U.S.C. 57a).*

12 *(b) PENALTY FOR PATTERN OR PRACTICE VIOLA-*
13 *TIONS.—*

14 *(1) IN GENERAL.—Notwithstanding subsection*
15 *(a) and the Federal Trade Commission Act, in the*
16 *case of a person who engages in a pattern or practice*
17 *that violates section 2 or 3, the Commission may, in*
18 *its discretion, seek a civil penalty for such pattern or*
19 *practice of violations in an amount, as determined by*
20 *the Commission, of not more than—*

21 *(A) $3,000,000 for each violation of section*
22 *2; and*

23 *(B) $1,000,000 for each violation of section*
24 *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 (and other remedies available to the Commis-*

1 *sion in an enforcement action against unfair and deceptive*
2 *acts and practices) are the exclusive remedies for violations*
3 *of this Act.*

4 *(f) EFFECTIVE DATE.—To the extent only that this sec-*
5 *tion applies to violations of section 2(a), this section shall*
6 *take effect upon the expiration of the 6-month period that*
7 *begins on the date of the enactment of this Act.*

8 ***SEC. 5. LIMITATIONS.***

9 *(a) LAW ENFORCEMENT AUTHORITY.—Sections 2 and*
10 *3 shall not apply to—*

11 *(1) any act taken by a law enforcement agent in*
12 *the performance of official duties; or*

13 *(2) the transmission or execution of an informa-*
14 *tion collection program in compliance with a law en-*
15 *forcement, investigatory, national security, or regu-*
16 *latory agency or department of the United States or*
17 *any State in response to a request or demand made*
18 *under authority granted to that agency or depart-*
19 *ment, including a warrant issued under the Federal*
20 *Rules of Criminal Procedure, an equivalent State*
21 *warrant, a court order, or other lawful process.*

22 *(b) EXCEPTION RELATING TO SECURITY.—Nothing in*
23 *this Act shall apply to—*

24 *(1) any monitoring of, or interaction with, a*
25 *protected computer—*

1 *(A) in connection with the provision of a*
2 *network access service or other service or product*
3 *with respect to which the user of the protected*
4 *computer is an actual or prospective customer,*
5 *subscriber, registered user, or account holder;*
6 *(B) by the provider of that service or prod-*
7 *uct or with such provider's authorization; and*
8 *(C) that involves or enables the collection of*
9 *information about the user's activities only with*
10 *respect to the user's relationship with or use of*
11 *such service or product,*
12 *to the extent that such monitoring or interaction is*
13 *for the purpose of network security, computer secu-*
14 *rity, diagnostics, technical support or repair, network*
15 *management, authorized updates of software, or for*
16 *the detection or prevention of fraudulent activities; or*
17 *(2) a discrete interaction with a protected com-*
18 *puter by a provider of computer software solely to de-*
19 *termine whether the user of the computer is author-*
20 *ized to use such software, that occurs upon—*
21 *(A) initialization of the software; or*
22 *(B) an affirmative request by the owner or*
23 *authorized user for an update of, addition to, or*
24 *technical service for, the software.*
25 *(c) GOOD SAMARITAN PROTECTION.—*

1 *(1) IN GENERAL.—No provider of computer soft-*
2 *ware or of interactive computer service may be held*
3 *liable under this Act on account of any action volun-*
4 *tarily taken, or service provided, in good faith to re-*
5 *move or disable a program used to violate section 2*
6 *or 3 that is installed on a computer of a customer of*
7 *such provider, if such provider notifies the customer*
8 *and obtains the consent of the customer before under-*
9 *taking such action or providing such service.*
10 *(2) CONSTRUCTION.—Nothing in this subsection*
11 *shall be construed to limit the liability of a provider*
12 *of computer software or of an interactive computer*
13 *service for any anti-competitive act otherwise prohib-*
14 *ited by law.*
15 *(d) LIMITATION ON LIABILITY.—A manufacturer or re-*
16 *tailer of computer equipment shall not be liable under this*
17 *Act to the extent that the manufacturer or retailer is pro-*
18 *viding third party branded computer software that is in-*
19 *stalled on the equipment the manufacturer or retailer is*
20 *manufacturing or selling.*
21 *(e) SERVICES PROVIDED BY CABLE OPERATORS AND*
22 *SATELLITE CARRIERS.—It shall not be a violation of sec-*
23 *tion 3 for a satellite carrier (as such term is defined in*
24 *section 338(k) of the Communications Act of 1934 (47*

U.S.C. 338(k)) or cable operator (as such term is defined in section 631(a)(2) of such Act (47 U.S.C. 551(a)(2))) to—

(1) utilize a navigation device (as such term is defined in the rules of the Federal Communications Commission);

(2) interact with such a navigation device; or

(3) transmit software to or execute software installed on such a navigation device to provide service or collect or disclose subscriber information,

if the provision of such service, the utilization of or the interaction with such device, or the collection of or disclosure of such information, is subject to section 338(i) or section 631 of the Communications Act of 1934.

SEC. 6. EFFECT ON OTHER LAWS.

(a) PREEMPTION OF STATE LAW.—

(1) PREEMPTION OF SPYWARE LAWS.—This Act supersedes any provision of a statute, regulation, or rule of a State or political subdivision of a State that expressly regulates—

(A) unfair or deceptive conduct with respect to computers similar to that described in section 2(a);

(B) the transmission or execution of a computer program similar to that described in section 3; or

1 *(C) the use of computer software that dis-*
2 *plays advertising content based on the Web pages*
3 *accessed using a computer.*
4 *(2) ADDITIONAL PREEMPTION.—*
5 *(A) IN GENERAL.—No person other than the*
6 *Attorney General of a State may bring a civil*
7 *action under the law of any State if such action*
8 *is premised in whole or in part upon the defend-*
9 *ant violating any provision of this Act.*
10 *(B) PROTECTION OF CONSUMER PROTEC-*
11 *TION LAWS.—This paragraph shall not be con-*
12 *strued to limit the enforcement of any State con-*
13 *sumer protection law by an Attorney General of*
14 *a State.*
15 *(3) PROTECTION OF CERTAIN STATE LAWS.—*
16 *This Act shall not be construed to preempt the appli-*
17 *cability of—*
18 *(A) State trespass, contract, or tort law; or*
19 *(B) other State laws to the extent that those*
20 *laws relate to acts of fraud.*
21 *(4) EFFECTIVE DATE.—The preemption provided*
22 *for under this subsection shall take effect, with respect*
23 *to specific provisions of this Act, on the effective date*
24 *for such provisions.*

1 *(b) PRESERVATION OF FTC AUTHORITY.—Nothing in*
2 *this Act may be construed in any way to limit or affect*
3 *the Commission's authority under any other provision of*
4 *law, including the authority to issue advisory opinions*
5 *(under part 1 of volume 16 of the Code of Federal Regula-*
6 *tions), policy statements, or guidance regarding this Act.*

7 ***SEC. 7. FTC REPORT ON COOKIES.***

8 *(a) IN GENERAL.—Not later than the expiration of the*
9 *6-month period that begins on the date on which final regu-*
10 *lations are issued under section 9, the Commission shall*
11 *submit a report to the Congress regarding the use of cookies*
12 *in the delivery or display of advertising to the owners and*
13 *users of computers. The report shall examine the extent to*
14 *which cookies are or may be used to transmit to a third*
15 *party personally identifiable information of a computer*
16 *owner or user, information regarding Web pages accessed*
17 *by the owner or user, or information regarding advertise-*
18 *ments previously delivered to a computer, for the purpose*
19 *of—*

20 *(1) delivering or displaying advertising to the*
21 *owner or user; or*

22 *(2) assisting the intended recipient to deliver or*
23 *display advertising to the owner, user, or others.*

24 *The report shall examine and describe the methods by which*
25 *cookies and the Web sites that place them on computers*

1 *function separately and together, and shall compare the use*
2 *of cookies with the use of information collection programs*
3 *(as such term is defined in section 3) to determine the extent*
4 *to which such uses are similar or different. The report may*
5 *include such recommendations as the Commission considers*
6 *necessary and appropriate, including treatment of cookies*
7 *under this Act or other laws.*

8 *(b) EFFECTIVE DATE.—This section shall take effect*
9 *on the date of the enactment of this Act.*

10 *(c) PAPERWORK REDUCTION REQUIREMENTS.—The*
11 *requirements of subchapter I of chapter 35 of title 44,*
12 *United States Code, shall not apply to the report required*
13 *under this section.*

14 ***SEC. 8. FTC REPORT ON INFORMATION COLLECTION PRO-***
15 ***GRAMS INSTALLED BEFORE EFFECTIVE DATE.***

16 *Not later than the expiration of the 6-month period*
17 *that begins on the date on which final regulations are issued*
18 *under section 9, the Commission shall submit a report to*
19 *the Congress on the extent to which there are installed on*
20 *protected computers information collection programs that,*
21 *but for installation prior to the effective date under section*
22 *11(a), would be subject to the requirements of section 3. The*
23 *report shall include recommendations regarding the means*
24 *of affording computer users affected by such information*
25 *collection programs the protections of section 3, including*

recommendations regarding requiring a one-time notice and consent by the owner or authorized user of a computer to the continued collection of information by such a program so installed on the computer. The requirements of subchapter I of chapter 35 of title 44, United States Code, shall not apply to the report required under this section.

SEC. 9. REGULATIONS.

(a) IN GENERAL.—The Commission shall issue the regulations required by this Act not later than the expiration of the 9-month period beginning on the date of the enactment of this Act. In exercising its authority to issue any regulation under this Act, the Commission shall determine that the regulation is consistent with the public interest and the purposes of this Act. Any regulations issued pursuant to this Act shall be issued in accordance with section 553 of title 5, United States Code.

(b) EFFECTIVE DATE.—This section shall take effect on the date of the enactment of this Act.

SEC. 10. DEFINITIONS.

For purposes of this Act:

(1) CABLE OPERATOR.—The term "cable operator" has the meaning given such term in section 602 of the Communications Act of 1934 (47 U.S.C. 522).

(2) COLLECT.—The term "collect", when used with respect to information and for purposes only of

section 3(b)(1)(A), does not include obtaining of the information by a party who is intended by the owner or authorized user of a protected computer to receive the information or by a third party authorized by such intended recipient to receive the information, pursuant to the owner or authorized user—

(A) transferring the information to such intended recipient using the protected computer; or

(B) storing the information on the protected computer in a manner so that it is accessible by such intended recipient.

(3) COMPUTER; PROTECTED COMPUTER.—The terms "computer" and "protected computer" have the meanings given such terms in section 1030(e) of title 18, United States Code.

(4) COMPUTER SOFTWARE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "computer software" means a set of statements or instructions that can be installed and executed on a computer for the purpose of bringing about a certain result.

(B) EXCEPTIONS.—Such term does not include—

(i) computer software that is placed on the computer system of a user by an Inter-

net service provider, interactive computer service, or Internet Web site solely to enable the user subsequently to use such provider or service or to access such Web site; or

(ii) a text or data file known as a cookie, to the extent that the text or data file—

(I) is used, written to, or placed on the computer of a user by an Internet service provider, interactive computer service, or Internet website, or any entity acting with the authorization of and on behalf of such Internet service provider, interactive computer service, or Internet website; and

(II) can be read or recognized solely to return information to such Internet service provider, interactive computer service, or Internet website, or any entity acting with the authorization of and on behalf of such Internet service provider, interactive computer service, or Internet website.

(5) COMMISSION.—The term "Commission" means the Federal Trade Commission.

1 *(6) DAMAGE.—The term "damage" has the*
2 *meaning given such term in section 1030(e) of title*
3 *18, United States Code.*
4 *(7) UNFAIR OR DECEPTIVE ACTS OR PRAC-*
5 *TICES.—The term "unfair or deceptive acts or prac-*
6 *tices" has the meaning applicable to such term for*
7 *purposes of section 5 of the Federal Trade Commis-*
8 *sion Act (15 U.S.C. 45).*
9 *(8) DISABLE.—The term "disable" means, with*
10 *respect to an information collection program, to per-*
11 *manently prevent such program from executing any*
12 *of the functions described in section 3(b)(1) that such*
13 *program is otherwise capable of executing (including*
14 *by removing, deleting, or disabling the program), un-*
15 *less the owner or operator of a protected computer*
16 *takes a subsequent affirmative action to enable the*
17 *execution of such functions.*
18 *(9) INFORMATION COLLECTION FUNCTIONS.—The*
19 *term "information collection functions" means, with*
20 *respect to an information collection program, the*
21 *functions of the program described in subsection*
22 *(b)(1) of section 3.*
23 *(10) INFORMATION SERVICE.—The term "infor-*
24 *mation service" has the meaning given such term in*

1 *section 3 of the Communications Act of 1934 (47*
2 *U.S.C. 153).*
3 *(11) INTERACTIVE COMPUTER SERVICE.—The*
4 *term "interactive computer service" has the meaning*
5 *given such term in section 230(f) of the Communica-*
6 *tions Act of 1934 (47 U.S.C. 230(f)).*
7 *(12) INTERNET.—The term "Internet" means*
8 *collectively the myriad of computer and telecommuni-*
9 *cations facilities, including equipment and operating*
10 *software, which comprise the interconnected world-*
11 *wide network of networks that employ the Trans-*
12 *mission Control Protocol/Internet Protocol, or any*
13 *predecessor or successor protocols to such protocol, to*
14 *communicate information of all kinds by wire or*
15 *radio.*
16 *(13) PERSONALLY IDENTIFIABLE INFORMA-*
17 *TION.—*
18 *(A) IN GENERAL.—The term "personally*
19 *identifiable information" means the following in-*
20 *formation, to the extent only that such informa-*
21 *tion allows a living individual to be identified*
22 *from that information:*
23 *(i) First and last name of an indi-*
24 *vidual.*

1 *(ii) A home or other physical address*
2 *of an individual, including street name,*
3 *name of a city or town, and zip code.*
4 *(iii) An electronic mail address.*
5 *(iv) A telephone number.*
6 *(v) A social security number, tax iden-*
7 *tification number, passport number, driver's*
8 *license number, or any other government-*
9 *issued identification number.*
10 *(vi) A credit card number.*
11 *(vii) Any access code, password, or ac-*
12 *count number, other than an access code or*
13 *password transmitted by an owner or au-*
14 *thorized user of a protected computer to the*
15 *intended recipient to register for, or log*
16 *onto, a Web page or other Internet service*
17 *or a network connection or service of a sub-*
18 *scriber that is protected by an access code or*
19 *password.*
20 *(viii) Date of birth, birth certificate*
21 *number, or place of birth of an individual,*
22 *except in the case of a date of birth trans-*
23 *mitted or collected for the purpose of com-*
24 *pliance with the law.*

1 *(B) RULEMAKING.—The Commission may,*
2 *by regulation, add to the types of information*
3 *described in subparagraph (A) that shall be con-*
4 *sidered personally identifiable information for*
5 *purposes of this Act, except that such additional*
6 *types of information shall be considered person-*
7 *ally identifiable information only to the extent*
8 *that such information allows living individuals,*
9 *particular computers, particular users of com-*
10 *puters, or particular email addresses or other lo-*
11 *cations of computers to be identified from that*
12 *information.*
13 *(14) SUITE OF FUNCTIONALLY RELATED SOFT-*
14 *WARE.—The term suite of "functionally related soft-*
15 *ware" means a group of computer software programs*
16 *distributed to an end user by a single provider, which*
17 *programs enable features or functionalities of an inte-*
18 *grated service offered by the provider.*
19 *(15) TELECOMMUNICATIONS CARRIER.—The term*
20 *"telecommunications carrier" has the meaning given*
21 *such term in section 3 of the Communications Act of*
22 *1934 (47 U.S.C. 153).*
23 *(16) TRANSMIT.—The term "transmit" means,*
24 *with respect to an information collection program,*
25 *transmission by any means.*

1 *(17) WEB PAGE.—The term "Web page" means*
2 *a location, with respect to the World Wide Web, that*
3 *has a single Uniform Resource Locator or another*
4 *single location with respect to the Internet, as the*
5 *Federal Trade Commission may prescribe.*
6 *(18) WEB SITE.—The term "web site" means a*
7 *collection of Web pages that are presented and made*
8 *available by means of the World Wide Web as a single*
9 *Web site (or a single Web page so presented and made*
10 *available), which Web pages have any of the following*
11 *characteristics:*
12 *(A) A common domain name.*
13 *(B) Common ownership, management, or*
14 *registration.*
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, 2013.*

Union Calendar No. 101

110TH CONGRESS
1ST SESSION

H. R. 964

[Report No. 110–169]

A BILL

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

MAY 24, 2007

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