108TH CONGRESS
2D SESSION

H. R. 2929

AN ACT

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

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To protect users of the Internet from unknowing trans-
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 1   *Be it enacted by the Senate and House of Representa-*

 2   *tives of the United States of America in Congress assembled,*

3

1 　　　　(C) accessing or using the modem, or
2 Internet connection or service, for the computer
3 and thereby causing damage to the computer or
4 causing the owner or authorized user to incur
5 unauthorized financial charges;

6 　　　　(D) using the computer as part of an ac-
7 tivity performed by a group of computers that
8 causes damage to another computer; or

9 　　　　(E) delivering advertisements that a user
10 of the computer cannot close without turning
11 off the computer or closing all sessions of the
12 Internet browser for the computer.

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

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

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

23 　　　　(C) a list of bookmarks used by the com-
24 puter to access Web pages; or

1   (D) security or other settings of the com-
2   puter that protect information about the owner
3   or authorized user for the purposes of causing
4   damage or harm to the computer or owner or
5   user.

6   (3) Collecting personally identifiable informa-
7 tion through the use of a keystroke logging function.

8   (4) Inducing the owner or authorized user to
9 install a computer software component onto the
10 computer, or preventing reasonable efforts to block
11 the installation or execution of, or to disable, a com-
12 puter software component by—

13   (A) presenting the owner or authorized
14   user with an option to decline installation of a
15   software component such that, when the option
16   is selected by the owner or authorized user, the
17   installation nevertheless proceeds; or

18   (B) causing a computer software compo-
19   nent that the owner or authorized user has
20   properly removed or disabled to automatically
21   reinstall or reactivate on the computer.

22   (5) Misrepresenting that installing a separate
23 software component or providing log-in and pass-
24 word information is necessary for security or privacy
25 reasons, or that installing a separate software com-

5

1 ponent is necessary to open, view, or play a par-
2 ticular type of content.

3 (6) Inducing the owner or authorized user to
4 install or execute computer software by misrepre-
5 senting the identity or authority of the person or en-
6 tity providing the computer software to the owner or
7 user.

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

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

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

15 (8) Removing, disabling, or rendering inoper-
16 ative a security, anti-spyware, or anti-virus tech-
17 nology installed on the computer.

18 (9) Installing or executing on the computer one
19 or more additional computer software components
20 with the intent of causing a person to use such com-
21 ponents in a way that violates any other provision of
22 this section.

23 (b) GUIDANCE.—The Commission shall issue guid-
24 ance regarding compliance with and violations of this sec-

1 tion. This subsection shall take effect upon the date of
2 the enactment of this Act.

3 (c) EFFECTIVE DATE.—Except as provided in sub-
4 section (b), this section shall take effect upon the expira-
5 tion of the 6-month period that begins on the date of the
6 enactment of this Act.

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

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

11 (1) to transmit to a protected computer, which
12 is not owned by such person and for which such per-
13 son is not an authorized user, any information col-
14 lection program, unless—

15 (A) such information collection program
16 provides notice in accordance with subsection
17 (c) before execution of any of the information
18 collection functions of the program; and

19 (B) such information collection program
20 includes the functions required under sub-
21 section (d); or

22 (2) to execute any information collection pro-
23 gram installed on such a protected computer
24 unless—

1   (A) before execution of any of the informa-

2   tion collection functions of the program, the

3   owner or an authorized user of the protected

4   computer has consented to such execution pur-

5   suant to notice in accordance with subsection

6   (c); and

7   (B) such information collection program

8   includes the functions required under sub-

9   section (d).

10 (b) INFORMATION COLLECTION PROGRAM.—For pur-

11 poses of this section, the term "information collection pro-

12 gram" means computer software that—

13   (1)(A) collects personally identifiable informa-

14   tion; and

15   (B)(i) sends such information to a person other

16   than the owner or authorized user of the computer,

17   or

18   (ii) uses such information to deliver advertising

19   to, or display advertising, on the computer; or

20   (2)(A) collects information regarding the Web

21   pages accessed using the computer; and

22   (B) uses such information to deliver advertising

23   to, or display advertising on, the computer.

24 (c) NOTICE AND CONSENT.—

1 (1) IN GENERAL.—Notice in accordance with
2 this subsection with respect to an information collec-
3 tion program is clear and conspicuous notice in plain
4 language, set forth as the Commission shall provide,
5 that meets all of the following requirements:

6 (A) The notice clearly distinguishes such
7 notice from any other information visually pre-
8 sented contemporaneously on the protected
9 computer.

10 (B) The notice contains one of the fol-
11 lowing statements, as applicable, or a substan-
12 tially similar statement:

13 (i) With respect to an information col-
14 lection program described in subsection
15 (b)(1): ''This program will collect and
16 transmit information about you. Do you
17 accept?''.

18 (ii) With respect to an information
19 collection program described in subsection
20 (b)(2): ''This program will collect informa-
21 tion about Web pages you access and will
22 use that information to display advertising
23 on your computer. Do you accept?''.

24 (iii) With respect to an information
25 collection program that performs the ac-

1 tions described in both paragraphs (1) and

2 (2) of subsection (b): "This program will

3 collect and transmit information about you

4 and your computer use and will collect in-

5 formation about Web pages you access and

6 use that information to display advertising

7 on your computer. Do you accept?".

8 (C) The notice provides for the user—

9 (i) to grant or deny consent referred

10 to in subsection (a) by selecting an option

11 to grant or deny such consent; and

12 (ii) to abandon or cancel the trans-

13 mission or execution referred to in sub-

14 section (a) without granting or denying

15 such consent.

16 (D) The notice provides an option for the

17 user to select to display on the computer, before

18 granting or denying consent using the option

19 required under subparagraph (C), a clear de-

20 scription of—

21 (i) the types of information to be col-

22 lected and sent (if any) by the information

23 collection program;

24 (ii) the purpose for which such infor-

25 mation is to be collected and sent; and

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

5   of other computer software, the identity of

6   any such software that is an information

7   collection 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   (ii) selects the option required under

18   subparagraph (D).

19   (2) SINGLE NOTICE.—The Commission shall

20 provide that, in the case in which multiple informa-

21 tion collection programs are provided to the pro-

22 tected computer together, or as part of a suite of

23 functionally-related software, the notice require-

24 ments of paragraphs (1)(A) and (2)(A) of subsection

25 (a) may be met by providing, before execution of any

1 of the information collection functions of the pro-

2 grams, clear and conspicuous notice in plain lan-

3 guage in accordance with paragraph (1) of this sub-

4 section by means of a single notice that applies to

5 all such information collection programs, except that

6 such notice shall provide the option under subpara-

7 graph (D) of paragraph (1) of this subsection with

8 respect to each such information 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

14   notice is required, except as provided in sub-

15   paragraph (B).

16   (B) SUBSEQUENT NOTICE.—The person

17   who transmitted the program shall provide an-

18   other notice in accordance with this subsection

19   and obtain consent before such program may be

20   used to collect or send information of a type or

21   for a purpose that is materially different from,

22   and outside the scope of, the type or purpose

23   set forth in the initial or any previous notice.

24   (4) REGULATIONS.—The Commission shall

25 issue 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

7   any information collection program, a function of

8   the program that allows a user of the program to re-

9   move the program or disable operation of the pro-

10   gram with respect to such protected computer by a

11   function that—

12   (A) is easily identifiable to a user of the

13   computer; and

14   (B) can be performed without undue effort

15   or knowledge by the user of the protected com-

16   puter.

17   (2) IDENTITY FUNCTION.—With respect only to

18   an information collection program that uses informa-

19   tion collected in the manner described in paragraph

20   (1)(B)(ii) or (2)(B) of subsection (b), a function of

21   the program that provides that each display of an

22   advertisement directed or displayed using such infor-

23   mation when the owner or authorized user is access-

24   ing a Web page or online location other than of the

25   provider of the software is accompanied by the name

1   of the information collection program, a logogram or

2   trademark used for the exclusive purpose of identi-

3   fying the program, or a statement or other informa-

4   tion sufficient to clearly identify the program.

5   (3) RULEMAKING.—The Commission may issue

6   regulations to carry out this subsection.

7   (e) LIMITATION ON LIABILITY.—A telecommuni-

8 cations carrier, a provider of information service or inter-

9 active computer service, a cable operator, or a provider

10 of transmission capability shall not be liable under this

11 section to the extent that the carrier, operator, or

12 provider—

13   (1) transmits, routes, hosts, stores, or provides

14   connections for an information collection program

15   through a system or network controlled or operated

16   by or for the carrier, operator, or provider; or

17   (2) provides an information location tool, such

18   as a directory, index, reference, pointer, or hypertext

19   link, through which the owner or user of a protected

20   computer locates an information collection program.

21 **SEC. 4. ENFORCEMENT.**

22   (a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—

23 This Act shall be enforced by the Commission under the

24 Federal Trade Commission Act (15 U.S.C. 41 et seq.).

25 A violation of any provision of this Act or of a regulation

14

issued under this Act committed with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such act is unfair or deceptive or violates this Act shall be treated as an unfair or deceptive act or practice violating a rule promulgated under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a).

(b) PENALTY FOR PATTERN OR PRACTICE VIOLATIONS.—

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

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

(B) $1,000,000 for each violation of section 3.

(2) TREATMENT OF SINGLE ACTION OR CONDUCT.—In applying paragraph (1)—

(A) any single action or conduct that violates section 2 or 3 with respect to multiple protected computers shall be treated as a single violation; and

1   (B) any single action or conduct that vio-

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

3   shall be considered multiple violations, based on

4   the number of such paragraphs violated.

5   (c) EXCLUSIVENESS OF REMEDIES.—The remedies

6 in this section (including remedies available to the Com-

7 mission under the Federal Trade Commission Act) are the

8 exclusive remedies for violations of this Act.

9   (d) EFFECTIVE DATE.—This section shall take effect

10 on the date of the enactment of this Act, but only to the

11 extent that this section applies to violations of section

12 2(a).

13 **SEC. 5. LIMITATIONS.**

14   (a) LAW ENFORCEMENT AUTHORITY.—Sections 2

15 and 3 of this Act shall not apply to—

16   (1) any act taken by a law enforcement agent

17   in the performance of official duties; or

18   (2) the transmission or execution of an infor-

19   mation collection program in compliance with a law

20   enforcement, investigatory, national security, or reg-

21   ulatory agency or department of the United States

22   or any State in response to a request or demand

23   made under authority granted to that agency or de-

24   partment, including a warrant issued under the Fed-

25   eral Rules of Criminal Procedure, an equivalent

1 State warrant, a court order, or other lawful proc-

2 ess.

3 (b) EXCEPTION RELATING TO SECURITY.—Nothing

4 in this Act shall apply to—

5   (1) any monitoring of, or interaction with, a

6   subscriber's Internet or other network connection or

7   service, or a protected computer, by a telecommuni-

8   cations carrier, cable operator, computer hardware

9   or software provider, or provider of information serv-

10   ice or interactive computer service, to the extent that

11   such monitoring or interaction is for network or

12   computer security purposes, diagnostics, technical

13   support, or repair, or for the detection or prevention

14   of fraudulent activities; or

15   (2) a discrete interaction with a protected com-

16   puter by a provider of computer software solely to

17   determine whether the user of the computer is au-

18   thorized to use such software, that occurs upon—

19   (A) initialization of the software; or

20   (B) an affirmative request by the owner or

21   authorized user for an update of, addition to, or

22   technical service for, the software.

23 (c) GOOD SAMARITAN PROTECTION.—No provider of

24 computer software or of interactive computer service may

25 be held liable under this Act on account of any action vol-

1 untarily taken, or service provided, in good faith to remove

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

3 is installed on a computer of a customer of such provider,

4 if such provider notifies the customer and obtains the con-

5 sent of the customer before undertaking such action or

6 providing such service.

7 　　(d) LIMITATION ON LIABILITY.—A manufacturer or

8 retailer of computer equipment shall not be liable under

9 this Act to the extent that the manufacturer or retailer

10 is providing third party branded software that is installed

11 on the equipment the manufacturer or retailer is manufac-

12 turing or selling.

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

14 　　(a) PREEMPTION OF STATE LAW.—

15 　　　　(1) PREEMPTION OF SPYWARE LAWS.—This

16 　　　Act supersedes any provision of a statute, regula-

17 　　　tion, or rule of a State or political subdivision of a

18 　　　State that expressly regulates—

19 　　　　　　(A) deceptive conduct with respect to com-

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

21 　　　　　　(B) the transmission or execution of a

22 　　　　　computer program similar to that described in

23 　　　　　section 3; or

1   (C) the use of computer software that dis-

2   plays advertising content based on the Web

3   pages accessed using a computer.

4   (2) ADDITIONAL PREEMPTION.—

5   (A) IN GENERAL.—No person other than

6   the Attorney General of a State may bring a

7   civil action under the law of any State if such

8   action is premised in whole or in part upon the

9   defendant 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

13   consumer protection law by an Attorney Gen-

14   eral of a State.

15   (3) PROTECTION OF CERTAIN STATE LAWS.—

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

17 plicability of—

18   (A) State trespass, contract, or tort law; or

19   (B) other State laws to the extent that

20   those laws relate to acts of fraud.

21 (b) PRESERVATION OF FTC AUTHORITY.—Nothing

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

23 the Commission's authority under any other provision of

24 law, including the authority to issue advisory opinions

1 (under Part 1 of Volume 16 of the Code of Federal Regu-

2 lations), policy statements, or guidance regarding this Act.

3 **SEC. 7. ANNUAL FTC REPORT.**

4 For the 12-month period that begins upon the effec-

5 tive date under section 11(a) and for each 12-month pe-

6 riod thereafter, the Commission shall submit a report to

7 the Congress that—

8 (1) specifies the number and types of actions

9 taken during such period to enforce sections 2(a)

10 and 3, the disposition of each such action, any pen-

11 alties levied in connection with such actions, and any

12 penalties collected in connection with such actions;

13 and

14 (2) describes the administrative structure and

15 personnel and other resources committed by the

16 Commission for enforcement of this Act during such

17 period.

18 Each report under this subsection for a 12-month period

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

20 tion of such period.

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

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

23 the 6-month period that begins on the date of the enact-

24 ment of this Act, the Commission shall submit a report

25 to the Congress regarding the use of tracking cookies in

1 the delivery or display of advertising to the owners and

2 users of computers. The report shall examine and describe

3 the methods by which such tracking cookies and the

4 websites that place them on computers function separately

5 and together, and the extent to which they are covered

6 or affected by this Act. The report may include such rec-

7 ommendations as the Commission considers necessary and

8 appropriate, including treatment of tracking cookies under

9 this Act or other laws.

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

11 term "tracking cookie" means a cookie or similar text or

12 data file used alone or in conjunction with one or more

13 websites to transmit or convey personally identifiable in-

14 formation of a computer owner or user, or information re-

15 garding Web pages accessed by the owner or user, to a

16 party other than the intended recipient, for the purpose

17 of—

18   (1) delivering or displaying advertising to the

19   owner or user; or

20   (2) assisting the intended recipient to deliver or

21   display advertising to the owner, user, or others.

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

23 on the date of the enactment of this Act.

SEC. 9. REGULATIONS.

(a) IN GENERAL.—The Commission shall issue the regulations required by this Act not later than the expiration of the 6-month period beginning on the date of the enactment 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, 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 pursuant to the owner or authorized user—

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

1   (B) storing the information on the pro-

2 tected computer in a manner so that it is acces-

3 sible by such intended recipient.

4 (3) COMPUTER; PROTECTED COMPUTER.—The

5 terms "computer" and "protected computer" have

6 the meanings given such terms in section 1030(e) of

7 title 18, United States Code.

8 (4) COMPUTER SOFTWARE.—

9 (A) IN GENERAL.—Except as provided in

10 subparagraph (B), the term "computer soft-

11 ware" means a set of statements or instructions

12 that can be installed and executed on a com-

13 puter for the purpose of bringing about a cer-

14 tain result.

15 (B) EXCEPTION FOR COOKIES.—Such term

16 does not include—

17 (i) a cookie or other text or data file

18 that is placed on the computer system of

19 a user by an Internet service provider,

20 interactive computer service, or Internet

21 website to return information to such pro-

22 vider, service, or website; or

23 (ii) computer software that is placed

24 on the computer system of a user by an

25 Internet service provider, interactive com-

1   puter service, or Internet website solely to

2   enable the user subsequently to use such

3   provider or service or to access such

4   website.

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

6 means the Federal Trade Commission.

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

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

9 18, United States Code.

10   (7) DECEPTIVE ACTS OR PRACTICES.—The

11 term "deceptive acts or practices" has the meaning

12 applicable to such term for purposes of section 5 of

13 the Federal Trade Commission Act (15 U.S.C. 45).

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

15 respect to an information collection program, to per-

16 manently prevent such program from executing any

17 of the functions described in section 3(b) that such

18 program is otherwise capable of executing (including

19 by removing, deleting, or disabling the program), un-

20 less the owner or operator of a protected computer

21 takes a subsequent affirmative action to enable the

22 execution of such functions.

23   (9) INFORMATION COLLECTION FUNCTIONS.—

24 The term "information collection functions" means,

25 with respect to an information collection program,

1   the functions of the program described in subsection

2   (b) of section 3.

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

4   mation service" has the meaning given such term in

5   section 3 of the Communications Act of 1934 (47

6   U.S.C. 153).

7   (11) INTERACTIVE COMPUTER SERVICE.—The

8   term "interactive computer service" has the meaning

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

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

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

12   collectively the myriad of computer and tele-

13   communications facilities, including equipment and

14   operating software, which comprise the inter-

15   connected world-wide network of networks that em-

16   ploy the Transmission Control Protocol/Internet

17   Protocol, or any predecessor or successor protocols

18   to such protocol, to communicate information of all

19   kinds by wire or radio.

20   (13) PERSONALLY IDENTIFIABLE INFORMA-

21   TION.—

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

23   identifiable information" means the following

24   information, to the extent only that such infor-

25

mation allows a living individual to be identified
from that information:

        (i) First and last name of an individual.

        (ii) A home or other physical address of an individual, including street name, name of a city or town, and zip code.

        (iii) An electronic mail address.

        (iv) A telephone number.

        (v) A social security number, tax identification number, passport number, driver's license number, or any other government-issued identification number.

        (vi) A credit card number.

        (vii) Any access code, password, or account number, other than an access code or password transmitted by an owner or authorized user of a protected computer to the intended recipient to register for, or log onto, a Web page or other Internet service or a network connection or service of a subscriber that is protected by an access code or password.

        (viii) Date of birth, birth certificate number, or place of birth of an individual,

1   except in the case of a date of birth trans-

2   mitted or collected for the purpose of com-

3   pliance with the law.

4   (B) RULEMAKING.—The Commission may,

5   by regulation, add to the types of information

6   specified under paragraph (1) that shall be con-

7   sidered personally identifiable information for

8   purposes of this Act, except that such informa-

9   tion may not include any record of aggregate

10   data that does not identify particular persons,

11   particular computers, particular users of com-

12   puters, or particular email addresses or other

13   locations of computers with respect to the

14   Internet.

15   (14) SUITE OF FUNCTIONALLY RELATED SOFT-

16   WARE.—The term 'suite of functionally related

17   software' means a group of computer software pro-

18   grams distributed to an end user by a single pro-

19   vider, which programs are necessary to enable fea-

20   tures or functionalities of an integrated service of-

21   fered by the provider.

22   (15) TELECOMMUNICATIONS CARRIER.—The

23   term "telecommunications carrier" has the meaning

24   given such term in section 3 of the Communications

25   Act of 1934 (47 U.S.C. 153).

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

2 with respect to an information collection program,

3 transmission by any means.

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

5 a location, with respect to the World Wide Web, that

6 has a single Uniform Resource Locator or another

7 single location with respect to the Internet, as the

8 Federal Trade Commission may prescribe.

9 SEC. 11. APPLICABILITY AND SUNSET.

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

11 vided otherwise in this Act, this Act shall take effect upon

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

13 date of the enactment of this Act.

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

15 information collection program installed on a protected

16 computer before the effective date under subsection (a) of

17 this section.

18 (c) SUNSET.—This Act shall not apply after Decem-

19 ber 31, 2009.

Passed the House of Representatives October 5, 2004.

Attest:

Clerk.