[COMMITTEE PRINT]

(SHOWING THE TEXT OF THE BILL AS REPORTED BY THE COMMERCE,
TRADE, AND CONSUMER PROTECTION SUBCOMMITTEE, APRIL 19, 2007)

110TH CONGRESS
1ST SESSION
H. R. 964

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

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IN THE HOUSE OF REPRESENTATIVES

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Mr. TOWNS (for himself, Mrs. BONO, Mr. DINGELL, Mr. BARTON of Texas,
Mr. RUSH, Mr. STEARNS, Mr. MARKEY, Ms. SCHAKOWSKY, Mr. BOU-
CHER, 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. MATHE-
SON, 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

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A BILL

To protect users of the Internet from unknowing trans-
mission 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,*

1 **SECTION 1. SHORT TITLE.**

2 　　This Act may be cited as the "Securely Protect Your-

3 self Against Cyber Trespass Act" or the "Spy Act".

4 **SEC. 2. PROHIBITION OF UNFAIR OR DECEPTIVE ACTS OR**

5 　　　　**PRACTICES RELATING TO SPYWARE.**

6 　　(a) PROHIBITION.—It is unlawful for any person,

7 who is not the owner or authorized user of a protected

8 computer, to engage in unfair or deceptive acts or prac-

9 tices that involve any of the following conduct with respect

10 to the protected computer:

11 　　　　(1) Taking control of the computer by—

12 　　　　　　(A) utilizing such computer to send unso-

13 　　　　　　licited information or material from the com-

14 　　　　　　puter to others;

15 　　　　　　(B) diverting the Internet browser of the

16 　　　　　　computer, or similar program of the computer

17 　　　　　　used to access and navigate the Internet—

18 　　　　　　　　(i) without authorization of the owner

19 　　　　　　　　or authorized user of the computer; and

20 　　　　　　　　(ii) away from the site the user in-

21 　　　　　　　　tended to view, to one or more other Web

22 　　　　　　　　pages, such that the user is prevented from

23 　　　　　　　　viewing the content at the intended Web

24 　　　　　　　　page, unless such diverting is otherwise au-

25 　　　　　　　　thorized;

1   (C) accessing, hijacking, or otherwise using

2   the modem, or Internet connection or service,

3   for the computer and thereby causing damage

4   to the computer or causing the owner or au-

5   thorized user or a third party defrauded by

6   such conduct to incur charges or other costs for

7   a service that is not authorized by such owner

8   or authorized user;

9   (D) using the computer as part of an ac-

10   tivity performed by a group of computers that

11   causes damage to another computer; or

12   (E) delivering advertisements or a series of

13   advertisements that a user of the computer can-

14   not close or terminate without undue effort or

15   knowledge by the user or without turning off

16   the computer or closing all sessions of the

17   Internet browser for the computer.

18   (2) Modifying settings related to use of the

19 computer or to the computer's access to or use of

20 the Internet by altering—

21   (A) the Web page that appears when the

22   owner or authorized user launches an Internet

23   browser or similar program used to access and

24   navigate the Internet;

1   (B) the default provider used to access or

2 search the Internet, or other existing Internet

3 connections settings;

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

5 puter to access Web pages; or

6   (D) security or other settings of the com-

7 puter that protect information about the owner

8 or authorized user for the purposes of causing

9 damage or harm to the computer or owner or

10 user.

11   (3) Collecting personally identifiable informa-

12 tion through the use of a keystroke logging function.

13   (4) Inducing the owner or authorized user of

14 the computer to disclose personally identifiable infor-

15 mation by means of a Web page that—

16   (A) is substantially similar to a Web page

17 established or provided by another person; and

18   (B) misleads the owner or authorized user

19 that such Web page is provided by such other

20 person.

21   (5) Inducing the owner or authorized user to

22 install a component of computer software onto the

23 computer, or preventing reasonable efforts to block

24 the installation or execution of, or to disable, a com-

25 ponent of computer software by—

1 (A) presenting the owner or authorized
2 user with an option to decline installation of
3 such a component such that, when the option is
4 selected by the owner or authorized user or
5 when the owner or authorized user reasonably
6 attempts to decline the installation, the installa-
7 tion nevertheless proceeds; or

8 (B) causing such a component that the
9 owner or authorized user has properly removed
10 or disabled to automatically reinstall or reac-
11 tivate on the computer.

12 (6) Misrepresenting that installing a separate
13 component of computer software or providing log-in
14 and password information is necessary for security
15 or privacy reasons, or that installing a separate com-
16 ponent of computer software is necessary to open,
17 view, or play a particular type of content.

18 (7) Inducing the owner or authorized user to
19 install or execute computer software by misrepre-
20 senting the identity or authority of the person or en-
21 tity providing the computer software to the owner or
22 user.

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

1 (A) by misrepresenting the identity of the

2 person seeking the information; or

3 (B) without the authority of the intended

4 recipient of the information.

5 (9) Removing, disabling, or rendering inoper-

6 ative a security, anti-spyware, or anti-virus tech-

7 nology installed on the computer.

8 (10) Installing or executing on the computer

9 one or more additional components of computer soft-

10 ware with the intent of causing a person to use such

11 components in a way that violates any other provi-

12 sion of this section.

13 (b) GUIDANCE.—The Commission shall issue guid-

14 ance regarding compliance with and violations of this sec-

15 tion. This subsection shall take effect upon the date of

16 the enactment of this Act.

17 (c) EFFECTIVE DATE.—Except as provided in sub-

18 section (b), this section shall take effect upon the expira-

19 tion of the 6-month period that begins on the date of the

20 enactment of this Act.

21 **SEC. 3. PROHIBITION OF COLLECTION OF CERTAIN INFOR-**

22 **MATION WITHOUT NOTICE AND CONSENT.**

23 (a) OPT-IN REQUIREMENT.—Except as provided in

24 subsection (e), it is unlawful for any person—

1   (1) to transmit to a protected computer, which

2 is not owned by such person and for which such per-

3 son is not an authorized user, any information col-

4 lection program, unless—

5   (A) such information collection program

6 provides notice in accordance with subsection

7 (c) before downloading or installing any of the

8 information collection program; and

9   (B) such information collection program

10 includes the functions required under sub-

11 section (d); or

12   (2) to execute any information collection pro-

13 gram installed on such a protected computer un-

14 less—

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

16 tion collection functions of the program, the

17 owner or an authorized user of the protected

18 computer has consented to such execution pur-

19 suant to notice in accordance with subsection

20 (c); and

21   (B) such information collection program

22 includes the functions required under sub-

23 section (d).

24 (b) INFORMATION COLLECTION PROGRAM.—

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

2   the term "information collection program" means

3   computer software that performs either of the fol-

4   lowing functions:

5   (A) COLLECTION OF PERSONALLY IDENTI-

6   FIABLE INFORMATION.—The computer soft-

7   ware—

8   (i) collects personally identifiable in-

9   formation; and

10   (ii)(I) sends such information to a

11   person other than the owner or authorized

12   user of the computer, or

13   (II) uses such information to deliver

14   advertising to, or display advertising on,

15   the computer.

16   (B) COLLECTION OF INFORMATION RE-

17   GARDING INTERNET ACTIVITY TO DELIVER AD-

18   VERTISING.—The computer software—

19   (i) collects information regarding the

20   user's Internet activity using the computer;

21   and

22   (ii) uses such information to deliver

23   advertising to, or display advertising on,

24   the computer.

1 (2) EXCEPTION FOR SOFTWARE COLLECTING
2 INFORMATION REGARDING INTERNET ACTIVITY
3 WITHIN A PARTICULAR WEB SITE.—Computer soft-
4 ware that otherwise would be considered an informa-
5 tion collection program by reason of paragraph
6 (1)(B) shall not be considered such a program if—

7 (A) the only information collected by the
8 software regarding the user's internet activity is
9 information regarding Web pages within a par-
10 ticular Web site;

11 (B) such information collected is not sent
12 to a person other than—

13 (i) the provider of the Web site
14 accessed; or

15 (ii) a party authorized to facilitate the
16 display or functionality of Web pages with-
17 in the Web site accessed; and

18 (C) the only advertising delivered to or dis-
19 played on the computer using such information
20 is advertising on Web pages within that par-
21 ticular Web site.

22 (c) NOTICE AND CONSENT.—

23 (1) IN GENERAL.—Notice in accordance with
24 this subsection with respect to an information collec-
25 tion program is clear and conspicuous notice in plain

1 language, set forth as the Commission shall provide,

2 that meets all of the following requirements:

3   (A) The notice clearly distinguishes a

4 statement required under subparagraph (B)

5 from any other information visually presented

6 contemporaneously on the computer.

7   (B) The notice contains one of the fol-

8 lowing statements, as applicable, or a substan-

9 tially similar statement:

10   (i) With respect to an information col-

11 lection program described in subsection

12 (b)(1)(A): ''This program will collect and

13 transmit information about you. Do you

14 accept?''.

15   (ii) With respect to an information

16 collection program described in subsection

17 (b)(1)(B): ''This program will collect infor-

18 mation about Web pages you access and

19 will use that information to display adver-

20 tising on your computer. Do you accept?''.

21   (iii) With respect to an information

22 collection program that performs the ac-

23 tions described in both subparagraphs (A)

24 and (B) of subsection (b)(1): ''This pro-

25 gram will collect and transmit information

1 about you and will collect information

2 about Web pages you access and use that

3 information to display advertising on your

4 computer. Do you accept?''.

5 (C) The notice provides for the user—

6 (i) to grant or deny consent referred

7 to in subsection (a) by selecting an option

8 to grant or deny such consent; and

9 (ii) to abandon or cancel the trans-

10 mission or execution referred to in sub-

11 section (a) without granting or denying

12 such consent.

13 (D) The notice provides an option for the

14 user to select to display on the computer, before

15 granting or denying consent using the option

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

17 scription of—

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

19 lected and sent (if any) by the information

20 collection program;

21 (ii) the purpose for which such infor-

22 mation is to be collected and sent; and

23 (iii) in the case of an information col-

24 lection program that first executes any of

25 the information collection functions of the

1 program together with the first execution

2 of other computer software, the identity of

3 any such software that is an information

4 collection program.

5 (E) The notice provides for concurrent dis-

6 play of the information required under subpara-

7 graphs (B) and (C) and the option required

8 under subparagraph (D) until the user—

9 (i) grants or denies consent using the

10 option required under subparagraph (C)(i);

11 (ii) abandons or cancels the trans-

12 mission or execution pursuant to subpara-

13 graph (C)(ii); or

14 (iii) selects the option required under

15 subparagraph (D).

16 (2) SINGLE NOTICE.—The Commission shall

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

18 tion collection programs are provided to the pro-

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

20 functionally related software, the notice require-

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

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

23 of the information collection functions of the pro-

24 grams, clear and conspicuous notice in plain lan-

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

1 section by means of a single notice that applies to

2 all such information collection programs, except that

3 such notice shall provide the option under subpara-

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

5 respect to each such information collection program.

6   (3) CHANGE IN INFORMATION COLLECTION.—If

7 an owner or authorized user has granted consent to

8 execution of an information collection program pur-

9 suant to a notice in accordance with this subsection:

10   (A) IN GENERAL.—No subsequent such

11   notice is required, except as provided in sub-

12   paragraph (B).

13   (B) SUBSEQUENT NOTICE.—The person

14   who transmitted the program shall provide an-

15   other notice in accordance with this subsection

16   and obtain consent before such program may be

17   used to collect or send information of a type or

18   for a purpose that is materially different from,

19   and outside the scope of, the type or purpose

20   set forth in the initial or any previous notice.

21   (4) REGULATIONS.—The Commission shall

22 issue regulations to carry out this subsection.

23   (d) REQUIRED FUNCTIONS.—The functions required

24 under this subsection to be included in an information col-

25 lection program that executes any information collection

1 functions with respect to a protected computer are as fol-

2 lows:

3   (1) DISABLING FUNCTION.—With respect to

4 any information collection program, a function of

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

6 move the program or disable operation of the pro-

7 gram with respect to such protected computer by a

8 function that—

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

10   computer; and

11   (B) can be performed without undue effort

12   or knowledge by the user of the protected com-

13   puter.

14   (2) IDENTITY FUNCTION.—

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

16   information collection program that uses infor-

17   mation collected in the manner described in

18   subparagraph (A)(ii)(II) or (B)(ii) of subsection

19   (b)(1) and subject to subparagraph (B) of this

20   paragraph, a function of the program that pro-

21   vides that each display of an advertisement di-

22   rected or displayed using such information,

23   when the owner or authorized user is accessing

24   a Web page or online location other than of the

25   provider of the computer software, is accom-

15

1 panied by the name of the information collec-

2 tion program, a logogram or trademark used

3 for the exclusive purpose of identifying the pro-

4 gram, or a statement or other information suffi-

5 cient to clearly identify the program.

6 (B) EXEMPTION FOR EMBEDDED ADVER-

7 TISEMENTS.—The Commission shall, by regula-

8 tion, exempt from the applicability of subpara-

9 graph (A) the embedded display of any adver-

10 tisement on a Web page that contempora-

11 neously displays other information.

12 (3) RULEMAKING.—The Commission may issue

13 regulations to carry out this subsection.

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

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

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

17 of transmission capability shall not be liable under this

18 section to the extent that the carrier, operator, or pro-

19 vider—

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

21 connections for an information collection program

22 through a system or network controlled or operated

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

24 (2) provides an information location tool, such

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

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

2 computer locates an information collection program.

3 **SEC. 4. ENFORCEMENT.**

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

5 This Act shall be enforced by the Commission under the

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

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

8 issued under this Act shall be treated as an unfair or de-

9 ceptive act or practice violating a rule promulgated under

10 section 18 of the Federal Trade Commission Act (15

11 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 prac-

17 tice that violates section 2 or 3, the Commission

18 may, in its discretion, seek a civil penalty for such

19 pattern or practice of violations in an amount, as de-

20 termined by the Commission, of not more than—

21 (A) $3,000,000 for each violation of sec-

22 tion 2; and

23 (B) $1,000,000 for each violation of sec-

24 tion 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

5   protected computers shall be treated as a single

6   violation; 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

17   unfair 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

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

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

23   such other matters as justice may require.

24   (e) EXCLUSIVENESS OF REMEDIES.—The remedies

25   in this section (and other remedies available to the Com-

1 mission in an enforcement action against unfair and de-

2 ceptive acts and practices) are the exclusive remedies for

3 violations of this Act.

4   (f) EFFECTIVE DATE.—To the extent only that this

5 section applies to violations of section 2(a), this section

6 shall take effect upon the expiration of the 6-month period

7 that begins on the date of the enactment of this Act.

8 **SEC. 5. LIMITATIONS.**

9   (a) LAW ENFORCEMENT AUTHORITY.—Sections 2

10 and 3 shall not apply to—

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

12   in the performance of official duties; or

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

14   mation collection program in compliance with a law

15   enforcement, investigatory, national security, or reg-

16   ulatory agency or department of the United States

17   or any State in response to a request or demand

18   made under authority granted to that agency or de-

19   partment, including a warrant issued under the Fed-

20   eral Rules of Criminal Procedure, an equivalent

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

22   ess.

23   (b) EXCEPTION RELATING TO SECURITY.—Nothing

24 in this Act shall apply to—

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

2   subscriber's Internet or other network connection or

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

4   cations carrier, cable operator, computer hardware

5   or software provider, or provider of information serv-

6   ice or interactive computer service, to the extent that

7   such monitoring or interaction is for network or

8   computer security purposes, diagnostics, technical

9   support or repair, or for the detection or prevention

10   of fraudulent activities; or

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

12   puter by a provider of computer software solely to

13   determine whether the user of the computer is au-

14   thorized to use such software, that occurs upon—

15   (A) initialization of the software; or

16   (B) an affirmative request by the owner or

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

18   technical service for, the software.

19   (c) GOOD SAMARITAN PROTECTION.—

20   (1) IN GENERAL .—No provider of computer

21   software or of interactive computer service may be

22   held liable under this Act on account of any action

23   voluntarily taken, or service provided, in good faith

24   to remove or disable a program used to violate sec-

25   tion 2 or 3 that is installed on a computer of a cus-

1   tomer of such provider, if such provider notifies the

2   customer and obtains the consent of the customer

3   before undertaking such action or providing such

4   service.

5   (2) CONSTRUCTION.—Nothing in this sub-

6   section shall be construed to limit the liability of a

7   provider of computer software or of an interactive

8   computer service for any anti-competitive act other-

9   wise prohibited by law.

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

11   retailer of computer equipment shall not be liable under

12   this Act to the extent that the manufacturer or retailer

13   is providing third party branded computer software that

14   is installed on the equipment the manufacturer or retailer

15   is manufacturing or selling.

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

17   (a) PREEMPTION OF STATE LAW.—

18   (1) PREEMPTION OF SPYWARE LAWS.—This

19   Act supersedes any provision of a statute, regula-

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

21   State that expressly regulates—

22   (A) unfair or deceptive conduct with re-

23   spect to computers similar to that described in

24   section 2(a);

1   (B) the transmission or execution of a

2 computer program similar to that described in

3 section 3; or

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

5 plays advertising content based on the Web

6 pages accessed using a computer.

7 (2) ADDITIONAL PREEMPTION.—

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

9 the Attorney General of a State may bring a

10 civil action under the law of any State if such

11 action is premised in whole or in part upon the

12 defendant violating any provision of this Act.

13   (B) PROTECTION OF CONSUMER PROTEC-

14 TION LAWS.—This paragraph shall not be con-

15 strued to limit the enforcement of any State

16 consumer protection law by an Attorney Gen-

17 eral of a State.

18 (3) PROTECTION OF CERTAIN STATE LAWS.—

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

20 plicability of—

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

22   (B) other State laws to the extent that

23 those laws relate to acts of fraud.

24 (4) EFFECTIVE DATE.—The preemption pro-

25 vided for under this subsection shall take effect, with

1   respect to specific provisions of this Act, on the ef-

2   fective date for such provisions.

3   (b) PRESERVATION OF FTC AUTHORITY.—Nothing

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

5   the Commission's authority under any other provision of

6   law, including the authority to issue advisory opinions

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

8   tions), policy statements, or guidance regarding this Act.

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

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

11   the 6-month period that begins on the date on which final

12   regulations are issued under section 9, the Commission

13   shall submit a report to the Congress regarding the use

14   of cookies, including tracking cookies, in the delivery or

15   display of advertising to the owners and users of com-

16   puters. The report shall examine and describe the methods

17   by which cookies and the Web sites that place them on

18   computers function separately and together, and shall

19   compare the use of cookies with the use of information

20   collection programs (as such term is defined in section 3)

21   to determine the extent to which such uses are similar or

22   different. The report may include such recommendations

23   as the Commission considers necessary and appropriate,

24   including treatment of cookies under this Act or other

25   laws.

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

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

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

4 Web sites to transmit or convey, to a party other than

5 the intended recipient, personally identifiable information

6 of a computer owner or user, information regarding Web

7 pages accessed by the owner or user, or information re-

8 garding advertisements previously delivered to a computer,

9 for the purpose of—

10   (1) delivering or displaying advertising to the

11   owner or user; or

12   (2) assisting the intended recipient to deliver or

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

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

15 on the date of the enactment of this Act.

16   (d) PAPERWORK REDUCTION REQUIREMENTS.—The

17 requirements of subchapter I of chapter 35 of title 44,

18 United States Code, shall not apply to the report required

19 under this section.

20 **SEC. 8. FTC REPORT ON INFORMATION COLLECTION PRO-**

21   **GRAMS INSTALLED BEFORE EFFECTIVE**

22   **DATE.**

23   Not later than the expiration of the 6-month period

24 that begins on the date on which final regulations are

25 issued under section 9, the Commission shall submit a re-

24

1 port to the Congress on the extent to which there are in-

2 stalled on protected computers information collection pro-

3 grams that, but for installation prior to the effective date

4 under section 12(a), would be subject to the requirements

5 of section 3. The report shall include recommendations re-

6 garding the means of affording computer users affected

7 by such information collection programs the protections

8 of section 3, including recommendations regarding requir-

9 ing a one-time notice and consent by the owner or author-

10 ized user of a computer to the continued collection of in-

11 formation by such a program so installed on the computer.

12 The requirements of subchapter I of chapter 35 of title

13 44, United States Code, shall not apply to the report re-

14 quired under this section.

15 **SEC. 9. REGULATIONS.**

16 (a) IN GENERAL.—The Commission shall issue the

17 regulations required by this Act not later than the expira-

18 tion of the 9-month period beginning on the date of the

19 enactment of this Act. In exercising its authority to issue

20 any regulation under this Act, the Commission shall deter-

21 mine that the regulation is consistent with the public in-

22 terest and the purposes of this Act. Any regulations issued

23 pursuant to this Act shall be issued in accordance with

24 section 553 of title 5, United States Code.

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

3 **SEC. 10. DEFINITIONS.**

4   For purposes of this Act:

5   (1) CABLE OPERATOR.—The term "cable oper-
6   ator" has the meaning given such term in section
7   602 of the Communications Act of 1934 (47 U.S.C.
8   522).

9   (2) COLLECT.—The term "collect", when used
10   with respect to information and for purposes only of
11   section 3(b)(1)(A), does not include obtaining of the
12   information by a party who is intended by the owner
13   or authorized user of a protected computer to receive
14   the information or by a third party authorized by
15   such intended recipient to receive the information,
16   pursuant to the owner or authorized user—

17   (A) transferring the information to such
18   intended recipient using the protected com-
19   puter; or

20   (B) storing the information on the pro-
21   tected computer in a manner so that it is acces-
22   sible by such intended recipient.

23   (3) COMPUTER; PROTECTED COMPUTER.—The
24   terms "computer" and "protected computer" have

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

2 title 18, United States Code.

3 (4) COMPUTER SOFTWARE.—

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

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

6   ware" means a set of statements or instructions

7   that can be installed and executed on a com-

8   puter for the purpose of bringing about a cer-

9   tain result.

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

11   clude computer software that is placed on the

12   computer system of a user by an Internet serv-

13   ice provider, interactive computer service, or

14   Internet Web site solely to enable the user sub-

15   sequently to use such provider or service or to

16   access such Web site.

17   (C) RULE OF CONSTRUCTION REGARDING

18   COOKIES.—This paragraph may not be con-

19   strued to include, as computer software—

20   (i) a cookie; or

21   (ii) any other type of text or data file

22   that solely may be read or transferred by

23   a computer.

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

25 means the Federal Trade Commission.

27

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

13   such program is otherwise capable of executing (in-

14   cluding by removing, deleting, or disabling the pro-

15   gram), unless the owner or operator of a protected

16   computer takes a subsequent affirmative action to

17   enable the execution of such functions.

18   (9) INFORMATION COLLECTION FUNCTIONS.—

19   The term "information collection functions" means,

20   with respect to an information collection program,

21   the 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 tele-

9   communications facilities, including equipment and

10   operating software, which comprise the inter-

11   connected world-wide network of networks that em-

12   ploy the Transmission Control Protocol/Internet

13   Protocol, or any predecessor or successor protocols

14   to such protocol, to communicate information of all

15   kinds by wire or radio.

16   (13) PERSONALLY IDENTIFIABLE INFORMA-

17   TION.—

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

19   identifiable information" means the following

20   information, to the extent only that such infor-

21   mation 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, driv-

8   er's license number, or any other govern-

9   ment-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

13   or password transmitted by an owner or

14   authorized user of a protected computer to

15   the intended recipient to register for, or

16   log onto, a Web page or other Internet

17   service or a network connection or service

18   of a subscriber that is protected by an ac-

19   cess code or 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

4   considered personally identifiable information

5   for purposes of this Act, except that such addi-

6   tional types of information shall be considered

7   personally identifiable information only to the

8   extent that such information allows living indi-

9   viduals, particular computers, particular users

10   of computers, or particular email addresses or

11   other locations of computers to be identified

12   from that 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 pro-

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

17   vider, which programs enable features or

18   functionalities of an integrated service offered by the

19   provider.

20   (15) TELECOMMUNICATIONS CARRIER.—The

21   term ''telecommunications carrier'' has the meaning

22   given such term in section 3 of the Communications

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

10 collection of Web pages that are presented and made

11 available by means of the World Wide Web as a sin-

12 gle Web site (or a single Web page so presented and

13 made available), which Web pages have any of the

14 following characteristics:

15   (A) A common domain name.

16   (B) Common ownership, management, or

17   registration.

18 **SEC. 11. APPLICABILITY AND SUNSET.**

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

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

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

22 date of the enactment of this Act.

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

24 information collection program installed on a protected

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

2 this section.

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

4 ber 31, 2013.