

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

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# H. R. 29

## 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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## AN ACT

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,*

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 that a user  
13          of the computer cannot close without undue ef-  
14          fort or knowledge by the user or without turn-  
15          ing off the computer or closing all sessions of  
16          the Internet browser for the computer.

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

20                (A) the Web page that appears when the  
21                owner or authorized user launches an Internet  
22                browser or similar program used to access and  
23                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 execution of any of the information  
8 collection functions of the 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  
14 unless—

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 IDENTIFI-  
6           FIABLE INFORMATION.—The computer  
7           software—

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 WEB PAGES VISITED TO DELIVER AD-  
18           VERTISING.—The computer software—

19                  (i) collects information regarding the  
20           Web pages accessed 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 WEB PAGES VISITED  
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 Web pages that are accessed  
9 using the computer is information regarding  
10 Web pages within a particular 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 such  
4 notice from any other information visually pre-  
5 sented contemporaneously on the computer.

6 (B) The notice contains one of the fol-  
7 lowing statements, as applicable, or a substan-  
8 tially similar statement:

9 (i) With respect to an information col-  
10 lection program described in subsection  
11 (b)(1)(A): “This program will collect and  
12 transmit information about you. Do you  
13 accept?”.

14 (ii) With respect to an information  
15 collection program described in subsection  
16 (b)(1)(B): “This program will collect infor-  
17 mation about Web pages you access and  
18 will use that information to display adver-  
19 tising on your computer. Do you accept?”.

20 (iii) With respect to an information  
21 collection program that performs the ac-  
22 tions described in both subparagraphs (A)  
23 and (B) of subsection (b)(1): “This pro-  
24 gram will collect and transmit information  
25 about you and will collect information

1 about Web pages you access and use that  
2 information to display advertising on your  
3 computer. Do you accept?''.

4 (C) The notice provides for the user—

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

8 (ii) to abandon or cancel the trans-  
9 mission or execution referred to in sub-  
10 section (a) without granting or denying  
11 such consent.

12 (D) The notice provides an option for the  
13 user to select to display on the computer, before  
14 granting or denying consent using the option  
15 required under subparagraph (C), a clear de-  
16 scription of—

17 (i) the types of information to be col-  
18 lected and sent (if any) by the information  
19 collection program;

20 (ii) the purpose for which such infor-  
21 mation is to be collected and sent; and

22 (iii) in the case of an information col-  
23 lection program that first executes any of  
24 the information collection functions of the  
25 program together with the first execution

1 of other computer software, the identity of  
2 any such software that is an information  
3 collection program.

4 (E) The notice provides for concurrent dis-  
5 play of the information required under subpara-  
6 graphs (B) and (C) and the option required  
7 under subparagraph (D) until the user—

8 (i) grants or denies consent using the  
9 option required under subparagraph (C)(i);

10 (ii) abandons or cancels the trans-  
11 mission or execution pursuant to subpara-  
12 graph (C)(ii); or

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

15 (2) SINGLE NOTICE.—The Commission shall  
16 provide that, in the case in which multiple informa-  
17 tion collection programs are provided to the pro-  
18 tected computer together, or as part of a suite of  
19 functionally related software, the notice require-  
20 ments of paragraphs (1)(A) and (2)(A) of subsection  
21 (a) may be met by providing, before execution of any  
22 of the information collection functions of the pro-  
23 grams, clear and conspicuous notice in plain lan-  
24 guage in accordance with paragraph (1) of this sub-  
25 section by means of a single notice that applies to

1 all such information collection programs, except that  
2 such notice shall provide the option under subpara-  
3 graph (D) of paragraph (1) of this subsection with  
4 respect to each such information collection program.

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

9 (A) IN GENERAL.—No subsequent such  
10 notice is required, except as provided in sub-  
11 paragraph (B).

12 (B) SUBSEQUENT NOTICE.—The person  
13 who transmitted the program shall provide an-  
14 other notice in accordance with this subsection  
15 and obtain consent before such program may be  
16 used to collect or send information of a type or  
17 for a purpose that is materially different from,  
18 and outside the scope of, the type or purpose  
19 set forth in the initial or any previous notice.

20 (4) REGULATIONS.—The Commission shall  
21 issue regulations to carry out this subsection.

22 (d) REQUIRED FUNCTIONS.—The functions required  
23 under this subsection to be included in an information col-  
24 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-

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  
19          provider—

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 (including remedies available to the Com-

1 mission under the Federal Trade Commission Act) are the  
2 exclusive remedies for violations of this Act.

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

7 **SEC. 5. LIMITATIONS.**

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

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

12 (2) the transmission or execution of an infor-  
13 mation collection program in compliance with a law  
14 enforcement, investigatory, national security, or reg-  
15 ulatory agency or department of the United States  
16 or any State in response to a request or demand  
17 made under authority granted to that agency or de-  
18 partment, including a warrant issued under the Fed-  
19 eral Rules of Criminal Procedure, an equivalent  
20 State warrant, a court order, or other lawful proc-  
21 ess.

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

24 (1) any monitoring of, or interaction with, a  
25 subscriber's Internet or other network connection or

1 service, or a protected computer, by a telecommuni-  
2 cations carrier, cable operator, computer hardware  
3 or software provider, or provider of information serv-  
4 ice or interactive computer service, to the extent that  
5 such monitoring or interaction is for network or  
6 computer security purposes, diagnostics, technical  
7 support, or repair, or for the detection or prevention  
8 of fraudulent activities; or

9 (2) a discrete interaction with a protected com-  
10 puter by a provider of computer software solely to  
11 determine whether the user of the computer is au-  
12 thorized to use such software, that occurs upon—

13 (A) initialization of the software; or

14 (B) an affirmative request by the owner or  
15 authorized user for an update of, addition to, or  
16 technical service for, the software.

17 (c) GOOD SAMARITAN PROTECTION.—No provider of  
18 computer software or of interactive computer service may  
19 be held liable under this Act on account of any action vol-  
20 untarily taken, or service provided, in good faith to remove  
21 or disable a program used to violate section 2 or 3 that  
22 is installed on a computer of a customer of such provider,  
23 if such provider notifies the customer and obtains the con-  
24 sent of the customer before undertaking such action or  
25 providing such service.

1 (d) LIMITATION ON LIABILITY.—A manufacturer or  
2 retailer of computer equipment shall not be liable under  
3 this Act to the extent that the manufacturer or retailer  
4 is providing third party branded computer software that  
5 is installed on the equipment the manufacturer or retailer  
6 is manufacturing or selling.

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

8 (a) PREEMPTION OF STATE LAW.—

9 (1) PREEMPTION OF SPYWARE LAWS.—This  
10 Act supersedes any provision of a statute, regula-  
11 tion, or rule of a State or political subdivision of a  
12 State that expressly regulates—

13 (A) unfair or deceptive conduct with re-  
14 spect to computers similar to that described in  
15 section 2(a);

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

19 (C) the use of computer software that dis-  
20 plays advertising content based on the Web  
21 pages accessed using a computer.

22 (2) ADDITIONAL PREEMPTION.—

23 (A) IN GENERAL.—No person other than  
24 the Attorney General of a State may bring a  
25 civil action under the law of any State if such

1           action is premised in whole or in part upon the  
2           defendant violating any provision of this Act.

3                   (B) PROTECTION OF CONSUMER PROTEC-  
4           TION LAWS.—This paragraph shall not be con-  
5           strued to limit the enforcement of any State  
6           consumer protection law by an Attorney Gen-  
7           eral of a State.

8                   (3) PROTECTION OF CERTAIN STATE LAWS.—  
9           This Act shall not be construed to preempt the ap-  
10          plicability of—

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

12                   (B) other State laws to the extent that  
13          those laws relate to acts of fraud.

14                   (b) PRESERVATION OF FTC AUTHORITY.—Nothing  
15          in this Act may be construed in any way to limit or affect  
16          the Commission’s authority under any other provision of  
17          law, including the authority to issue advisory opinions  
18          (under part 1 of volume 16 of the Code of Federal Regula-  
19          tions), policy statements, or guidance regarding this Act.

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

21           For the 12-month period that begins upon the effec-  
22          tive date under section 12(a) and for each 12-month pe-  
23          riod thereafter, the Commission shall submit a report to  
24          the Congress that—

1           (1) specifies the number and types of actions  
2 taken during such period to enforce section 2(a) and  
3 section 3, the disposition of each such action, any  
4 penalties levied in connection with such actions, and  
5 any penalties collected in connection with such ac-  
6 tions; and

7           (2) describes the administrative structure and  
8 personnel and other resources committed by the  
9 Commission for enforcement of this Act during such  
10 period.

11 Each report under this subsection for a 12-month period  
12 shall be submitted not later than 90 days after the expira-  
13 tion of such period.

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

15       (a) IN GENERAL.—Not later than the expiration of  
16 the 6-month period that begins on the date of the enact-  
17 ment of this Act, the Commission shall submit a report  
18 to the Congress regarding the use of cookies, including  
19 tracking cookies, in the delivery or display of advertising  
20 to the owners and users of computers. The report shall  
21 examine and describe the methods by which cookies and  
22 the Web sites that place them on computers function sepa-  
23 rately and together, and shall compare the use of cookies  
24 with the use of information collection programs (as such  
25 term is defined in section 3) to determine the extent to

1 which such uses are similar or different. The report may  
2 include such recommendations as the Commission con-  
3 siderers necessary and appropriate, including treatment of  
4 cookies under this Act or other laws.

5 (b) DEFINITION.—For purposes of this section, the  
6 term “tracking cookie” means a cookie or similar text or  
7 data file used alone or in conjunction with one or more  
8 Web sites to transmit or convey, to a party other than  
9 the intended recipient, personally identifiable information  
10 of a computer owner or user, information regarding Web  
11 pages accessed by the owner or user, or information re-  
12 garding advertisements previously delivered to a computer,  
13 for the purpose of—

14 (1) delivering or displaying advertising to the  
15 owner or user; or

16 (2) assisting the intended recipient to deliver or  
17 display advertising to the owner, user, or others.

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

20 **SEC. 9. 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 of the enactment of this Act, the  
25 Commission shall submit a report to the Congress on the

1 extent to which there are installed on protected computers  
2 information collection programs that, but for installation  
3 prior to the effective date under section 12(a), would be  
4 subject to the requirements of section 3. The report shall  
5 include recommendations regarding the means of afford-  
6 ing computer users affected by such information collection  
7 programs the protections of section 3, including rec-  
8 ommendations regarding requiring a one-time notice and  
9 consent by the owner or authorized user of a computer  
10 to the continued collection of information by such a pro-  
11 gram so installed on the computer.

12 **SEC. 10. REGULATIONS.**

13 (a) IN GENERAL.—The Commission shall issue the  
14 regulations required by this Act not later than the expira-  
15 tion of the 6-month period beginning on the date of the  
16 enactment of this Act. In exercising its authority to issue  
17 any regulation under this Act, the Commission shall deter-  
18 mine that the regulation is consistent with the public in-  
19 terest and the purposes of this Act. Any regulations issued  
20 pursuant to this Act shall be issued in accordance with  
21 section 553 of title 5, United States Code.

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

24 **SEC. 11. DEFINITIONS.**

25 For purposes of this Act:

1           (1) CABLE OPERATOR.—The term “cable oper-  
2           ator” has the meaning given such term in section  
3           602 of the Communications Act of 1934 (47 U.S.C.  
4           522).

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

13                 (A) transferring the information to such  
14                 intended recipient using the protected com-  
15                 puter; or

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

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

23          (4) COMPUTER SOFTWARE.—

24                 (A) IN GENERAL.—Except as provided in  
25                 subparagraph (B), the term “computer soft-

1           ware” means a set of statements or instructions  
2           that can be installed and executed on a com-  
3           puter for the purpose of bringing about a cer-  
4           tain result.

5           (B) EXCEPTION.—Such term does not in-  
6           clude computer software that is placed on the  
7           computer system of a user by an Internet serv-  
8           ice provider, interactive computer service, or  
9           Internet Web site solely to enable the user sub-  
10          sequently to use such provider or service or to  
11          access such Web site.

12          (C) RULE OF CONSTRUCTION REGARDING  
13          COOKIES.—This paragraph may not be con-  
14          strued to include, as computer software—

15                  (i) a cookie; or

16                  (ii) any other type of text or data file  
17                  that solely may be read or transferred by  
18                  a computer.

19          (5) COMMISSION.—The term “Commission”  
20          means the Federal Trade Commission.

21          (6) DAMAGE.—The term “damage” has the  
22          meaning given such term in section 1030(e) of title  
23          18, United States Code.

24          (7) DECEPTIVE ACTS OR PRACTICES.—The  
25          term “deceptive acts or practices” has the meaning

1 applicable to such term for purposes of section 5 of  
2 the Federal Trade Commission Act (15 U.S.C. 45).

3 (8) DISABLE.—The term “disable” means, with  
4 respect to an information collection program, to per-  
5 manently prevent such program from executing any  
6 of the functions described in section 3(b)(1) that  
7 such program is otherwise capable of executing (in-  
8 cluding by removing, deleting, or disabling the pro-  
9 gram), unless the owner or operator of a protected  
10 computer takes a subsequent affirmative action to  
11 enable the execution of such functions.

12 (9) INFORMATION COLLECTION FUNCTIONS.—  
13 The term “information collection functions” means,  
14 with respect to an information collection program,  
15 the functions of the program described in subsection  
16 (b)(1) of section 3.

17 (10) INFORMATION SERVICE.—The term “infor-  
18 mation service” has the meaning given such term in  
19 section 3 of the Communications Act of 1934 (47  
20 U.S.C. 153).

21 (11) INTERACTIVE COMPUTER SERVICE.—The  
22 term “interactive computer service” has the meaning  
23 given such term in section 230(f) of the Communica-  
24 tions Act of 1934 (47 U.S.C. 230(f)).

1           (12) INTERNET.—The term “Internet” means  
2 collectively the myriad of computer and tele-  
3 communications facilities, including equipment and  
4 operating software, which comprise the inter-  
5 connected world-wide network of networks that em-  
6 ploy the Transmission Control Protocol/Internet  
7 Protocol, or any predecessor or successor protocols  
8 to such protocol, to communicate information of all  
9 kinds by wire or radio.

10           (13) PERSONALLY IDENTIFIABLE INFORMA-  
11 TION.—

12           (A) IN GENERAL.—The term “personally  
13 identifiable information” means the following  
14 information, to the extent only that such infor-  
15 mation allows a living individual to be identified  
16 from that information:

17                   (i) First and last name of an indi-  
18 vidual.

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

22                   (iii) An electronic mail address.

23                   (iv) A telephone number.

24                   (v) A social security number, tax iden-  
25 tification number, passport number, driv-

1 er's license number, or any other govern-  
2 ment-issued identification number.

3 (vi) A credit card number.

4 (vii) Any access code, password, or ac-  
5 count number, other than an access code  
6 or password transmitted by an owner or  
7 authorized user of a protected computer to  
8 the intended recipient to register for, or  
9 log onto, a Web page or other Internet  
10 service or a network connection or service  
11 of a subscriber that is protected by an ac-  
12 cess code or password.

13 (viii) Date of birth, birth certificate  
14 number, or place of birth of an individual,  
15 except in the case of a date of birth trans-  
16 mitted or collected for the purpose of com-  
17 pliance with the law.

18 (B) RULEMAKING.—The Commission may,  
19 by regulation, add to the types of information  
20 described in subparagraph (A) that shall be  
21 considered personally identifiable information  
22 for purposes of this Act, except that such addi-  
23 tional types of information shall be considered  
24 personally identifiable information only to the  
25 extent that such information allows living indi-

1           viduals, particular computers, particular users  
2           of computers, or particular email addresses or  
3           other locations of computers to be identified  
4           from that information.

5           (14) SUITE OF FUNCTIONALLY RELATED SOFT-  
6           WARE.—The term suite of “functionally related soft-  
7           ware” means a group of computer software pro-  
8           grams distributed to an end user by a single pro-  
9           vider, which programs are necessary to enable fea-  
10          tures or functionalities of an integrated service of-  
11          fered by the provider.

12          (15) TELECOMMUNICATIONS CARRIER.—The  
13          term “telecommunications carrier” has the meaning  
14          given such term in section 3 of the Communications  
15          Act of 1934 (47 U.S.C. 153).

16          (16) TRANSMIT.—The term “transmit” means,  
17          with respect to an information collection program,  
18          transmission by any means.

19          (17) WEB PAGE.—The term “Web page” means  
20          a location, with respect to the World Wide Web, that  
21          has a single Uniform Resource Locator or another  
22          single location with respect to the Internet, as the  
23          Federal Trade Commission may prescribe.

24          (18) WEB SITE.—The term “web site” means a  
25          collection of Web pages that are presented and made

1 available by means of the World Wide Web as a sin-  
2 gle Web site (or a single Web page so presented and  
3 made available), which Web pages have any of the  
4 following characteristics:

5 (A) A common domain name.

6 (B) Common ownership, management, or  
7 registration.

8 **SEC. 12. APPLICABILITY AND SUNSET.**

9 (a) **EFFECTIVE DATE.**—Except as specifically pro-  
10 vided otherwise in this Act, this Act shall take effect upon  
11 the expiration of the 12-month period that begins on the  
12 date of the enactment of this Act.

13 (b) **APPLICABILITY.**—Section 3 shall not apply to an  
14 information collection program installed on a protected  
15 computer before the effective date under subsection (a) of  
16 this section.

17 (c) **SUNSET.**—This Act shall not apply after Decem-  
18 ber 31, 2011.

Passed the House of Representatives May 23, 2005.

Attest:

*Clerk.*