110TH CONGRESS
1ST SESSION

S. 1625

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

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IN THE SENATE OF THE UNITED STATES

JUNE 14, 2007

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

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A BILL

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

1 *Be it enacted by the Senate and House of Representa-*

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

5 "Counter Spy Act".

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

7 this Act is as follows:

SEC. 2. FEDERAL TRADE COMMISSION AUTHORITY TO COMBAT DECEPTIVE ACTS OR PRACTICES RELATING TO SPYWARE.

(a) IN GENERAL.—It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to install through unfair or deceptive acts or practices software on protected computers.

(b) RULE OF CONSTRUCTION.—This Act shall not be construed to limit in any way what is an unfair or deceptive act or practice under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

SEC. 3. PROHIBITED BEHAVIORS.

It is unlawful for a person who is not an authorized user of a protected computer to cause the installation on that computer of software that—

    (1) takes control of the protected computer by—

3

1   (A) ZOMBIES.—Transmitting or relaying

2   commercial electronic mail or a computer virus

3   from a protected computer if the transmission

4   or relaying is initiated by a person other than

5   an authorized user and without the authoriza-

6   tion of an authorized user;

7   (B) MODEM HIJACKING.—Accessing or

8   using the modem or Internet service of an au-

9   thorized user of a protected computer for the

10   purpose of—

11   (i) causing damage to the protected

12   computer; or

13   (ii) causing the authorized user to

14   incur financial charges for a service that is

15   not authorized by that authorized user;

16   (C) DENIAL OF SERVICE ATTACKS.—Using

17   a protected computer as part of an activity per-

18   formed by a group of computers for the purpose

19   of causing damage, including launching a denial

20   of service attack; or

21   (D) ENDLESS LOOP POP-UP ADVERTISE-

22   MENTS.—Opening multiple, sequential, stand-

23   alone advertisements in an authorized user's

24   protected computer without the authorization of

25   that user and with knowledge that a reasonable

1 computer user cannot close the advertisements

2 without turning off the computer or forcing an

3 application to close using means other than the

4 ordinary means for closing the application, ex-

5 cept that this subparagraph does not apply to

6 communications—

7   (i) originated by the computer's oper-

8   ating system;

9   (ii) originated by software that the

10   user knowingly chooses to activate;

11   (iii) originated by a service provider

12   that the user chooses to use; or

13   (iv) presented for any of the purposes

14   described in section 6;

15 (2) modifies—

16   (A) ENABLING IDENTITY THEFT.—An au-

17 thorized user's security or other settings related

18 to access to, or use of, the Internet on a pro-

19 tected computer that protect information about

20 the authorized user for the purpose of stealing

21 the authorized user's sensitive personal infor-

22 mation; or

23   (B) DISABLING SECURITY.—The security

24 settings of a protected computer for the pur-

1 pose of causing damage to that computer or an-
2 other computer; or
3   (C) BROWSER SETTINGS.—Through unfair
4   or deceptive means—
5   (i) the page that appears when an au-
6   thorized user launches an Internet browser
7   or similar software program used to access
8   and navigate the Internet;
9   (ii) the default provider or Web proxy
10   the authorized user uses to access or
11   search the Internet;
12   (iii) the authorized user's list of book-
13   marks used to access Web pages; or
14   (iv) the toolbars, buttons, and other
15   functions on a user's Internet browser or
16   software used to access and navigate the
17   Internet;
18   (3) prevents, without authorization from the au-
19   thorized user, that user's reasonable efforts to block
20   the installation of, to disable, or to uninstall soft-
21   ware by unfair or deceptive means, including—
22   (A) FALSIFYING OPTION TO DECLINE IN-
23   STALLS.—Presenting the authorized user with
24   an option to decline installation of software
25   with knowledge that, when the option is selected

1   by the authorized user, the installation never-

2   theless proceeds; or

3   (B) EVADING UNINSTALLS BY UNFAIR OR

4   DECEPTIVE MEANS.—

5   (i) falsely representing that the soft-

6   ware has been disabled;

7   (ii) requiring in an unfair or deceptive

8   manner the user to access the Internet to

9   remove the software with knowledge or

10   reckless disregard of the fact that the soft-

11   ware frequently operates in a manner that

12   prevents the user from accessing the Inter-

13   net;

14   (iii) changing the name, location or

15   other designation information of the soft-

16   ware for the purpose of preventing an au-

17   thorized user from locating the software to

18   remove it;

19   (iv) using randomized or intentionally

20   deceptive filenames, directory folders, for-

21   mats, or registry entries for the purpose of

22   avoiding detection and removal of the soft-

23   ware by an authorized user;

24   (v) causing the installation of software

25   in a particular computer directory or com-

1 puter memory for the purpose of evading

2 authorized users' attempts to remove the

3 software from the computer; or

4 (vi) requiring, without the authority of

5 the owner of the computer, that an author-

6 ized user obtain a special code or download

7 software from a third party to uninstall

8 the software.

9 **SEC. 4. INSTALLING PERSONAL INFORMATION COLLEC-**

10 **TION FEATURES ON A USER'S COMPUTER.**

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

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

13 the installation on that computer of software that collects

14 sensitive personal information from an authorized user,

15 unless that person provides a clear and conspicuous disclo-

16 sure of such collection and obtains the authorized user's

17 consent prior to any such collection of information in any

18 case in which the software extracts from the hard drive

19 or other storage medium of the protected computer the

20 authorized user's—

21 (1) Social Security number;

22 (2) tax identification number;

23 (3) driver's license number;

24 (4) passport number;

8

1 (5) any other government-issued identification

2 number;

3 (6) financial account, credit card, or debit card

4 numbers;

5 (7) account balances, or overdraft history; or

6 (8) other sensitive personal information.

7 (b) OTHER PERSONALLY IDENTIFYING INFORMA-

8 TION.—It is unlawful for a person who is not an author-

9 ized user of a protected computer to cause the installation

10 on that computer of software that engages in any of the

11 following practices without a prior disclosure that is clear-

12 ly and conspicuously available to, or with the knowledge

13 of, the authorized user, and for a purpose unrelated to

14 any of the purposes of the software or service described

15 to an authorized user:

16 (1) The use of a keystroke-logging function that

17 records all or substantially all keystrokes made by

18 an owner or operator of a computer and transfers

19 that information from the computer to another per-

20 son.

21 (2) Collection in a manner that correlates per-

22 sonally identifying information with a history of all

23 or substantially all of the Web sites visited by an

24 owner or operator, other than Web sites operated by

25 the person providing such software.

1   (3) Extracting from the hard drive or other

2   storage medium of the computer—

3   (A) the substantive contents of files, data,

4   software, or other information knowingly saved

5   or installed by the authorized user of a pro-

6   tected computer, exclusive of data that provide

7   a purely technical function; or

8   (B) the substantive contents of commu-

9   nications sent by a user of a protected com-

10   puter from that computer to any other com-

11   puter.

12 (c) EXCEPTION.—This section shall not be inter-

13 preted to restrict a person from causing the installation

14 of software that collects information for the provider of

15 an online service or website knowingly used or subscribed

16 to by an authorized user if the information collected is

17 used only to affect the user's experience while using the

18 online service or website.

19 (d) UNINSTALL FUNCTIONALITY.—

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

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

22   puter to cause the installation of software that per-

23   forms any function described in subsection (a) or (b)

24   if the software cannot subsequently be uninstalled or

25   disabled by an authorized user through a program

1 removal function that is usual and customary with

2 the computer's operating system or otherwise as

3 clearly and conspicuously disclosed to the user.

4 (2) CONSTRUCTION.—

5 (A) AUTHORITY TO UNINSTALL.—Software

6 that enables an authorized user of a protected

7 computer, such as a parent, employer, or sys-

8 tem administrator, to choose to prevent another

9 user of the same computer from uninstalling or

10 disabling the software shall not be considered to

11 prevent reasonable efforts to uninstall or dis-

12 able the software within the meaning of para-

13 graph (1) if at least 1 authorized user retains

14 the ability to uninstall or disable the software.

15 (B) RULE OF CONSTRUCTION.—This sub-

16 section shall not be construed to require indi-

17 vidual features or functions of a software pro-

18 gram, upgrades to a previously installed soft-

19 ware program, or software programs that were

20 installed on a bundled basis with other software

21 or with hardware to be capable of being

22 uninstalled or disabled separately from such

23 software or hardware.

1 **SEC. 5. ADWARE THAT CONCEALS ITS OPERATION.**

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

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

4 the installation on that computer of software that causes

5 advertising windows to appear on the protected computer

6 regardless of whether any other non-advertising-related

7 functionality of the software or of other software installed

8 as part of a bundle with such software is—

9 (1) activated by the authorized user; or

10 (2) conspicuously active on the protected com-

11 puter unless the software complies with subsection

12 (b).

13 (b) LABEL REQUIRED FOR CERTAIN ADVERTISE-

14 MENTS.—Subsection (a) does not apply if—

15 (1) the software displays to the user, each time

16 the software causes an advertisement to appear, a

17 clear and conspicuous label or other reasonable

18 means of identifying to the user of the computer the

19 identity or name of the software that caused the ad-

20 vertisement to appear;

21 (2) the software was installed as part of a bun-

22 dle of software, and the software displays to the user

23 the name of a program in such bundle that the au-

24 thorized user is likely to identify as the main compo-

25 nent of the software bundle; and

1   (3) a clear and conspicuous hypertext link to in-

2   structions concerning how the user may uninstall the

3   software causing the advertisement to appear

4   through usual and customary means within the com-

5   puter's operating system.

6   (c) EXCEPTION.—Software that causes advertise-

7 ments to be displayed without a clear and conspicuous

8 label or other reasonable means of identification shall not

9 give rise to liability under subsection (a) if those advertise-

10 ments are displayed to a user of the computer only when

11 a user is accessing or using an Internet website or online

12 service—

13   (1) owned or operated by the author or pub-

14   lisher of the software; or

15   (2) the owner or operator of which has author-

16   ized the author or publisher of the software to dis-

17   play such advertisements to users of that website or

18   service.

19 **SEC. 6. LIMITATIONS ON LIABILITY.**

20   (a) IN GENERAL.—The restrictions imposed by sec-

21 tion 3, 4, and 5 of this Act do not apply to any monitoring

22 of, or interaction with, a subscriber's Internet or other

23 network connection or service, or a protected computer,

24 by or at the direction of a telecommunications carrier,

25 cable operator, computer hardware or software provider,

1 financial institution or provider of information services or

2 interactive computer service for—

3   (1) network or computer security purposes;

4   (2) diagnostics;

5   (3) technical support;

6   (4) repair;

7   (5) network management;

8   (6) authorized updates of software or system

9   firmware;

10   (7) authorized remote system management;

11   (8) authorized provision of protection for users

12   of the computer from objectionable content;

13   (9) authorized scanning for computer software

14   used in violation of sections 3, 4, or 5 for removal

15   by an authorized user; or

16   (10) detection or prevention of the unauthorized

17   use of software fraudulent or other illegal activities.

18   (b) MANUFACTURER'S LIABILITY FOR THIRD-PARTY

19 SOFTWARE.—A manufacturer or retailer of a computer

20 shall not be liable under any provision of this Act for caus-

21 ing the installation on the computer, prior to the first re-

22 tail sale and delivery of the computer, of third-party

23 branded software, unless the manufacturer or retailer—

1   (1) uses the software to collect information

2   about a user of the computer or the use of a pro-

3   tected computer by that user; or

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

5   tisements for the manufacturer or retailer to be dis-

6   played to a user of the computer, or derives a finan-

7   cial benefit from other advertisements displayed on

8   the computer.

9 (c) EXCEPTION FOR AUTHORIZED INVESTIGATIVE

10 AGENCIES.—Nothing in this Act prohibits any lawfully

11 authorized investigative, protective, or intelligence activity

12 of a law enforcement agency of the United States, a State,

13 or a political subdivision of a State, or of an intelligence

14 agency of the United States.

15 (d) SERVICES PROVIDED OVER MVPD SYSTEMS.—

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

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

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

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

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

21 with the provision of multichannel video programming or

22 other services offered over a multichannel video program-

23 ming system or the collection or disclosure of subscriber

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

25 tion or disclosure of such information is subject to section

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

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

3 **SEC. 7. FTC ADMINISTRATION AND ENFORCEMENT.**

4 (a) IN GENERAL.—Except as provided in sections 8,

5 9, and 10, this Act shall be enforced by the Commission

6 as if a violation of this Act or of any regulation promul-

7 gated by the Commission under this Act were an unfair

8 or deceptive act or practice proscribed under section

9 18(a)(1)(B) of the Federal Trade Commission Act (15

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

11 (b) PENALTIES.—

12 (1) TREBLE FINE.—The penalty for a violation

13 of this Act or of any regulation promulgated by the

14 Commission under this Act may be increased by the

15 Commission to threefold the amount of penalty oth-

16 erwise applicable under section 5 of the Federal

17 Trade Commission Act (15 U.S.C. 45).

18 (2) PENALTY FOR PATTERN OR PRACTICE OF

19 VIOLATIONS.—

20 (A) IN GENERAL.—If the Commission de-

21 termines that a person has engaged in a pat-

22 tern or practice of activity that violates the pro-

23 visions of this Act, the Commission may, in its

24 discretion, seek a civil penalty for such pattern

25 or practice of violations in an amount, as deter-

1   mined by the Commission, of not more than

2    $3,000,000 for each such violation of this Act.

3   (B) TREATMENT OF SINGLE ACTION OR

4   CONDUCT.—For purposes of subparagraph (A),

5   any single action or conduct that violates this

6   Act with respect to multiple protected com-

7   puters shall be treated as a single violation.

8   (c) SEIZURE AND FORFEITURE OF TAINTED ASSETS

9   OF VIOLATOR.—In an enforcement action brought for a

10   violation of this Act under section 19(b) of the Federal

11   Trade Commission Act (15 U.S.C. 57b(b)), the Commis-

12   sion may petition the court to order the seizure and for-

13   feiture of any assets of the violator attributable to viola-

14   tion of this Act.

15   (d) ILL-GOTTEN GAINS.—The Commission may re-

16   quire any person who violates this Act to disgorge any ill-

17   gotten gains procured through unfair or deceptive acts or

18   practices in violation of this Act and shall seize any such

19   gains it has required to be disgorged.

20   (e) ACTIONS BY THE COMMISSION.—

21   (1) IN GENERAL.—The Commission shall pre-

22   vent any person from violating this Act in the same

23   manner, by the same means, and with the same ju-

24   risdiction, powers, and duties as though all applica-

25   ble terms and provisions of the Federal Trade Com-

1   mission Act (15 U.S.C. 41 et seq.) were incor-

2   porated into and made a part of this Act. Any entity

3   that violates any provision of this Act is subject to

4   the penalties and entitled to the privileges and im-

5   munities provided in the Federal Trade Commission

6   Act in the same manner, by the same means, and

7   with the same jurisdiction, power, and duties as

8   though all applicable terms and provisions of the

9   Federal Trade Commission Act were incorporated

10   into and made a part of this Act.

11   (2) OTHER AUTHORITY NOT AFFECTED.—Noth-

12   ing in this Act shall be construed to limit or affect

13   in any way the Commission's authority to bring en-

14   forcement actions or take any other measure under

15   the Federal Trade Commission Act (15 U.S.C. 41 et

16   seq.) or any other provision of law.

17   **SEC. 8. ENFORCEMENT BY OTHER AGENCIES.**

18   (a) IN GENERAL.—Compliance with this Act shall be

19   enforced exclusively under—

20   (1) section 8 of the Federal Deposit Insurance

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

22   (A) national banks, and Federal branches

23   and Federal agencies of foreign banks, and any

24   subsidiaries of such entities (except brokers,

25   dealers, persons providing insurance, invest-

1 ment companies, and investment advisers), by

2 the Office of the Comptroller of the Currency;

3 (B) member banks of the Federal Reserve

4 System (other than national banks), branches

5 and agencies of foreign banks (other than Fed-

6 eral branches, Federal agencies, and insured

7 State branches of foreign banks), commercial

8 lending companies owned or controlled by for-

9 eign banks, organizations operating under sec-

10 tion 25 or 25A of the Federal Reserve Act (12

11 U.S.C. 601 and 611), and bank holding compa-

12 nies and their nonbank subsidiaries or affiliates

13 (except brokers, dealers, persons providing in-

14 surance, investment companies and investment

15 advisers), by the Board of Governors of the

16 Federal Reserve System;

17 (C) banks insured by the Federal Deposit

18 Insurance Corporation (other than members of

19 the Federal Reserve System), insured State

20 branches of foreign banks, and any subsidiaries

21 of such entities (except brokers, dealers, per-

22 sons providing insurance, investment companies

23 and investment advisers), by the Board of Di-

24 rectors of the Federal Deposit Insurance Cor-

25 poration; and

1 (D) savings associations the deposits of
2 which are insured by the Federal Deposit In-
3 surance Corporation, and any subsidiaries of
4 such savings associations (except brokers, deal-
5 ers, persons providing insurance, investment
6 companies and investment advisers), by the Di-
7 rector of the Office of Thrift Supervision;

8 (2) the Federal Credit Union Act (12 U.S.C.
9 1751 et seq.) by the Board of the National Credit
10 Union Administration Board with respect to any
11 Federal credit union and any subsidiaries of such a
12 credit union;

13 (3) the Securities and Exchange Act of 1934
14 (15 U.S.C. 78a et seq.) by the Securities and Ex-
15 change Commission with respect to—

16 (A) a broker or dealer subject to that Act;
17 (B) an investment company subject to the
18 Investment Company Act of 1940 (15 U.S.C.
19 80a–1 et seq.); and

20 (C) an investment advisor subject to the
21 Investment Advisers Act of 1940 (15 U.S.C.
22 80b–1 et seq.);

23 (4) the Communications Act of 1934 (47
24 U.S.C. 151 et seq.) by the Federal Communications

1 Commission with respect to any person subject to

2 the provisions of that Act;

3   (5) part A of subtitle VII of title 49, United

4 States Code, by the Secretary of Transportation

5 with respect to any air carrier or foreign air carrier

6 subject to that part; and

7   (6) State insurance law, in the case of any per-

8 son engaged in providing insurance, by the applica-

9 ble State insurance authority of the State in which

10 the person is domiciled.

11 (b) EXERCISE OF CERTAIN POWERS.—For the pur-

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

13 section (a) of its powers under any Act referred to in that

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

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

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

17 ferred to in subsection (a), each of the agencies referred

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

19 forcing compliance with any requirement imposed under

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

21 **SEC. 9. STATE ENFORCEMENT.**

22 (a) IN GENERAL.—

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

24 attorney general of a State has reason to believe

25 that an interest of the residents of that State has

1   been or is threatened or adversely affected by the

2   engagement of any person in a practice that is pro-

3   hibited under this section, the State, as parens

4   patriae, may bring a civil action on behalf of the

5   residents of that State in a district court of the

6   United States of appropriate jurisdiction, or any

7   other court of competent jurisdiction—

8   (A) to enjoin that practice;

9   (B) to enforce compliance with this Act;

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

11   compensation on behalf of residents of the

12   State; or

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

14   may consider to be appropriate.

15   (2) NOTICE.—

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

17   under paragraph (1), the attorney general of a

18   State shall provide to the Commission—

19   (i) written notice of the action; and

20   (ii) a copy of the complaint for the ac-

21   tion.

22   (B) EXEMPTION.—

23   (i) IN GENERAL.—Subparagraph (A)

24   shall not apply with respect to the filing of

25   an action by an attorney general of a State

1   under this subsection, if the attorney gen-

2   eral of a State determines that it is not

3   feasible to provide the notice described in

4   that subparagraph before the filing of the

5   action.

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

7   scribed in clause (i), the attorney general

8   of a State shall provide notice and a copy

9   of the complaint to the Commission at the

10   same time as the attorney general files the

11   action.

12 (b) INTERVENTION.—

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

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

15 right to intervene in the action that is the subject

16 of the notice.

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

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

19 it shall have the right—

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

21   that arises in that action; and

22   (B) to file a petition for appeal.

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

24 civil action under subsection (a), nothing in this Act shall

25 be construed to prevent an attorney general of a State

1 from exercising the powers conferred on the attorney gen-

2 eral by the laws of that State—

3   (1) to conduct investigations;

4   (2) to administer oaths or affirmations; or

5   (3) to compel the attendance of witnesses or the

6   production of documentary and other evidence.

7   (d) ACTION BY THE COMMISSION MAY PRECLUDE

8 STATE ACTION.—In any case in which an action is insti-

9 tuted by or on behalf of the Commission for violation of

10 this Act, no State may, during the pendency of that action,

11 institute an action under subsection (a) against any de-

12 fendant named in the complaint in that action for violation

13 of that section.

14   (e) VENUE; SERVICE OF PROCESS.—

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

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

17   the United States that meets applicable require-

18   ments relating to venue under section 1391 of title

19   28, United States Code.

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

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

22   in any district in which the defendant—

23   (A) is an inhabitant; or

24   (B) may be found.

1 **SEC. 10. OTHER ENFORCEMENT.**

2   In the case of a violation of section 3(1)(B)(ii) that

3 causes a telecommunications carrier to incur costs for the

4 origination, transport, or termination of a call triggered

5 using the modem of a customer of such telecommuni-

6 cations carrier as a result of such violation, the tele-

7 communications carrier may bring a civil action against

8 the violator—

9   (1) to recover—

10   (A) the charges such carrier is obligated to

11   pay to another carrier or to an information

12   service provider as a result of the violation, in-

13   cluding but not limited to charges for the origi-

14   nation, transport, or termination of the call;

15   (B) the costs of handling customer inquir-

16   ies or complaints with respect to amounts billed

17   for such calls; and

18   (C) other related costs and reasonable at-

19   torneys fees; and

20   (2) to obtain an order to enjoin the violation.

21 **SEC. 11. EFFECT ON OTHER LAWS.**

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

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

24 authority to bring enforcement actions or take any other

25 measures under the Federal Trade Commission Act or any

26 other provision of law.

1 (b) PREEMPTION OF STATE OR LOCAL LAW.—Ex-
2 cept as provided in subsection (c), this Act supersedes any
3 provision of a statute, regulation, or rule, and any require-
4 ment, prohibition, or remedy under the law of any State
5 or political subdivision thereof that relates to, or confers
6 a remedy for—

7 (1) the installation or use of software to deliver
8 advertisements to a protected computer;

9 (2) the installation or use of software to collect
10 information about a user of a protected computer or
11 the user's use of that computer;

12 (3) the installation or use of software to allow
13 a person other than an authorized user of the com-
14 puter to direct or control a protected computer; or

15 (4) the method or manner of uninstalling or
16 disabling software that performs any of the func-
17 tions described in paragraphs (1) through (3).

18 (c) STATE LAW NOT SPECIFIC TO SOFTWARE.—This
19 Act shall not be construed to preempt actions or remedies
20 based upon—

21 (1) a State's generally applicable common law;
22 or

23 (2) any provision of generally applicable State
24 consumer protection law.

1 **SEC. 12. DEFINITIONS.**

2   In this Act:

3   (1) ADVERTISING WINDOW.—The term "adver-

4   tising window" means a window—

5   (A) that is displayed separately from other

6   windows displayed to the authorized user (at

7   the time a software program is activated) by

8   any other active program; and

9   (B) the content of which is entirely or in

10   substantial part related to advertising.

11   (2) AUTHORIZED USER.—The term "authorized

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

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

14   or accessing a computer with the authorization of

15   the owner or lessee.

16   (3) BUNDLE.—With respect to software, the

17   term "bundle" means a set of executable software

18   programs that are installed together.

19   (4) CAUSE THE INSTALLATION.—

20   (A) IN GENERAL.—The term "cause the

21   installation" when used with respect to par-

22   ticular software, means (with knowledge or con-

23   scious avoidance of actual knowledge that soft-

24   ware performs a function described in section 3,

25   4, or 5)—

1   (i) knowingly to provide the technical

2   means by which the software is installed;

3   or

4   (ii) knowingly to pay or provide other

5   consideration to, or knowingly to induce or

6   authorize, another person to provide the

7   technical means by which the software is

8   installed.

9   (B) EXCEPTIONS.—The term "cause the

10   installation" does not include providing—

11   (i) the Internet connection, telephone

12   connection, or other transmission or rout-

13   ing function through which software was

14   delivered to a protected computer for in-

15   stallation;

16   (ii) the storage or hosting of software

17   or of an Internet website through which

18   the software was made available by a third

19   party for installation to the protected com-

20   puter; or

21   (iii) an information location tool, such

22   as a directory, index, reference, pointer, or

23   hypertext link, through which a user of a

24   protected computer located software avail-

25   able for installation.

1 (5) COMMISSION.—The term ''Commission''

2 means the Federal Trade Commission.

3 (6) COOKIE.—The term ''cookie'' means a text

4 file—

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

6 behalf of, an Internet service provider, inter-

7 active computer service, or Internet website;

8 and

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

10 information that can be read or recognized

11 when the user of the computer subsequently ac-

12 cesses particular websites or online locations or

13 services.

14 (7) DAMAGE.—The term ''damage'' has the

15 meaning given that term in section 1030(e)(8) of

16 title 18, United States Code.

17 (8) INSTALL.—

18 (A) IN GENERAL.—The term ''install''

19 means—

20 (i) to write computer software to a

21 computer's persistent storage medium,

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

23 a way that the computer software is re-

24 tained on the computer after the computer

1   is turned off and subsequently restarted;

2   or

3   (ii) to write computer software to a

4   computer's temporary memory, such as

5   random access memory, in such a way that

6   the software is retained and continues to

7   operate after the user of the computer

8   turns off or exits the Internet service,

9   interactive computer service, or Internet

10   website from which the computer software

11   was obtained.

12   (B) EXCEPTION FOR TEMPORARY

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

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

15   sistent storage medium that is expressly re-

16   served for the temporary retention of recently

17   accessed or input data or information, if the

18   software retained in that area remains inoper-

19   ative unless a user of the computer chooses to

20   access that temporary retention area.

21   (9) LOSS.—The term "loss" has the meaning given

22 that term in section 1030(e)(11) of title 18, United States

23 Code.

1   (10) PERSON.—The term "person" has the
2   meaning given that term in section 3(32) of the
3   Communications Act of 1934 (47 U.S.C. 153(32)).
4   (11) PROTECTED COMPUTER.—The term "pro-
5   tected computer" has the meaning given that term
6   in section 1030(e)(2)(B) of title 18, United States
7   Code.
8   (12) PERSONALLY IDENTIFYING INFORMA-
9   TION.—The term "personally identifying informa-
10 tion" means, with respect to a protected computer—
11   (A) the authorized user's last name, com-
12   bined with the user's first initial or first name;
13   (B) the authorized user's home address;
14   (C) the authorized user's telephone num-
15   ber; or
16   (D) or other information that is sufficient
17   to identify an authorized user by name.
18   (13) SENSITIVE PERSONAL INFORMATION.—
19 The term "sensitive personal information" means an
20 individual's name, address, or telephone number,
21 when combined with that individual's—
22   (A) Social Security number, taxpayer iden-
23   tification number, or an employer identification
24   number that is the same as or is derived from
25   the Social Security number;

1 (B) financial account number, or credit

2 card or debit card number, combined with any

3 required security code, access code, or password

4 that would permit access to such individual's

5 account; or

6 (C) driver's license identification number

7 or State resident identification number.

8 (14) SOFTWARE.—The term "software" means

9 any program designed to cause a computer to per-

10 form a function or functions, but does not include a

11 cookie.

12 (15) UNFAIR OR DECEPTIVE ACT OR PRAC-

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

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

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

16 45).

17 **SEC. 13. CRIMINAL PENALTIES FOR CERTAIN UNAUTHOR-**

18 **IZED ACTIVITIES RELATING TO COMPUTERS.**

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

20 States Code, is amended by inserting after section 1030

21 the following:

22 **"§ 1030A. Illicit indirect use of protected computers**

23 "(a) FURTHERANCE OF CRIMINAL OFFENSE.—Who-

24 ever intentionally accesses a protected computer without

25 authorization, or exceeds authorized access to a protected

1 computer, by causing a computer program or code to be
2 copied onto the protected computer, and intentionally uses
3 that program or code in furtherance of another Federal
4 criminal offense shall be fined under this title or impris-
5 oned not more than 5 years, or both.

6 "(b) SECURITY PROTECTION.—Whoever intentionally
7 accesses a protected computer without authorization, or
8 exceeds authorized access to a protected computer, by
9 causing a computer program or code to be copied onto
10 the protected computer, and by means of that program
11 or code intentionally impairs the security protection of the
12 protected computer shall be fined under this title or im-
13 prisoned not more than 2 years, or both.

14 "(c) INDIVIDUAL EXEMPTION.—A person shall not
15 violate this section who solely provides—

16   "(1) an Internet connection, telephone connec-
17   tion, or other transmission or routing function
18   through which software is delivered to a protected
19   computer for installation;

20   "(2) the storage or hosting of software, or of an
21   Internet website, through which software is made
22   available for installation to a protected computer; or

23   "(3) an information location tool, such as a di-
24   rectory, index, reference, pointer, or hypertext link,

1 through which a user of a protected computer lo-

2 cates software available for installation.

3 "(d) NETWORK EXEMPTION.—A provider of a net-

4 work or online service that an authorized user of a pro-

5 tected computer uses or subscribes to shall not violate this

6 section by any monitoring or, interaction with, or installa-

7 tion of software for the purpose of—

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

9 service, or computer;

10 "(2) facilitating diagnostics, technical support,

11 maintenance, network management, or repair; or

12 "(3) preventing or detecting unauthorized,

13 fraudulent, or otherwise unlawful uses of the net-

14 work or service.

15 "(e) DEFINITIONS.—In this section:

16 "(1) COMPUTER; PROTECTED COMPUTER.—The

17 terms 'computer' and 'protected computer' have the

18 meanings given such terms in section 1030(e) of this

19 title.

20 "(2) STATE.—The term 'State' includes each of

21 the several States, the District of Columbia, Puerto

22 Rico, and any other territory or possession of the

23 United States.".

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

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

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

2 ing to section 1030 the following new item:

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

3 **SEC. 14. EFFECTIVE DATE.**

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

5 enactment of this Act.

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