

110TH CONGRESS
1ST SESSION

H. R. 964

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 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 IDENTIFI-
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,
9 and used to deliver advertising to, or display
10 advertising on, the protected computer, is—

11 (i) information regarding Web pages
12 within a particular Web site; or

13 (ii) in the case of any Internet-based
14 search function, user-supplied search terms
15 necessary to complete the search and re-
16 turn results to the user;

17 (B) such information collected is not sent
18 to a person other than—

19 (i) the provider of the Web site
20 accessed or Internet-based search function;

21 or

22 (ii) a party authorized to facilitate the
23 display or functionality of Web pages with-
24 in the Web site accessed; and

1 (C) the only advertising delivered to or dis-
2 played on the computer using such information
3 is advertising on Web pages within that par-
4 ticular Web site.

5 (e) NOTICE AND CONSENT.—

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

11 (A) The notice clearly distinguishes a
12 statement required under subparagraph (B)
13 from any other information visually presented
14 contemporaneously on the computer.

15 (B) The notice contains one of the fol-
16 lowing statements, as applicable, or a substan-
17 tially similar statement:

18 (i) With respect to an information col-
19 lection program described in subsection
20 (b)(1)(A): “This program will collect and
21 transmit information about you. Do you
22 accept?”.

23 (ii) With respect to an information
24 collection program described in subsection
25 (b)(1)(B): “This program will collect infor-

1 mation about Web pages you access and
2 will use that information to display adver-
3 tising on your computer. Do you accept?”.

4 (iii) With respect to an information
5 collection program that performs the ac-
6 tions described in both subparagraphs (A)
7 and (B) of subsection (b)(1): “This pro-
8 gram will collect and transmit information
9 about you and will collect information
10 about Web pages you access and use that
11 information to display advertising on your
12 computer. Do you accept?”.

13 (C) The notice provides for the user—

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

17 (ii) to abandon or cancel the trans-
18 mission or execution referred to in sub-
19 section (a) without granting or denying
20 such consent.

21 (D) The notice provides an option for the
22 user to select to display on the computer, before
23 granting or denying consent using the option
24 required under subparagraph (C), a clear de-
25 scription of—

1 (i) the types of information to be col-
2 lected and sent (if any) by the information
3 collection program;

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

6 (iii) in the case of an information col-
7 lection program that first executes any of
8 the information collection functions of the
9 program together with the first execution
10 of other computer software, the identity of
11 any such software that is an information
12 collection program.

13 (E) The notice provides for concurrent dis-
14 play of the information required under subpara-
15 graphs (B) and (C) and the option required
16 under subparagraph (D) until the user—

17 (i) grants or denies consent using the
18 option required under subparagraph (C)(i);

19 (ii) abandons or cancels the trans-
20 mission or execution pursuant to subpara-
21 graph (C)(ii); or

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

24 (2) SINGLE NOTICE.—The Commission shall
25 provide that, in the case in which multiple informa-

1 tion collection programs are provided to the pro-
2 tected computer together, or as part of a suite of
3 functionally related software, the notice require-
4 ments of paragraphs (1)(A) and (2)(A) of subsection
5 (a) may be met by providing, before execution of any
6 of the information collection functions of the pro-
7 grams, clear and conspicuous notice in plain lan-
8 guage in accordance with paragraph (1) of this sub-
9 section by means of a single notice that applies to
10 all such information collection programs, except that
11 such notice shall provide the option under subpara-
12 graph (D) of paragraph (1) of this subsection with
13 respect to each such information collection program.

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

18 (A) IN GENERAL.—No subsequent such
19 notice is required, except as provided in sub-
20 paragraph (B).

21 (B) SUBSEQUENT NOTICE.—The person
22 who transmitted the program shall provide an-
23 other notice in accordance with this subsection
24 and obtain consent before such program may be
25 used to collect or send information of a type or

1 for a purpose that is materially different from,
2 and outside the scope of, the type or purpose
3 set forth in the initial or any previous notice.

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

6 (d) REQUIRED FUNCTIONS.—The functions required
7 under this subsection to be included in an information col-
8 lection program that executes any information collection
9 functions with respect to a protected computer are as fol-
10 lows:

11 (1) DISABLING FUNCTION.—With respect to
12 any information collection program, a function of
13 the program that allows a user of the program to re-
14 move the program or disable operation of the pro-
15 gram with respect to such protected computer by a
16 function that—

17 (A) is easily identifiable to a user of the
18 computer; and

19 (B) can be performed without undue effort
20 or knowledge by the user of the protected com-
21 puter.

22 (2) IDENTITY FUNCTION.—

23 (A) IN GENERAL.—With respect only to an
24 information collection program that uses infor-
25 mation collected in the manner described in

1 subparagraph (A)(ii)(II) or (B)(ii) of subsection
2 (b)(1) and subject to subparagraph (B) of this
3 paragraph, a function of the program that pro-
4 vides that each display of an advertisement di-
5 rected or displayed using such information,
6 when the owner or authorized user is accessing
7 a Web page or online location other than of the
8 provider of the computer software, is accom-
9 panied by the name of the information collec-
10 tion program, a logogram or trademark used
11 for the exclusive purpose of identifying the pro-
12 gram, or a statement or other information suffi-
13 cient to clearly identify the program.

14 (B) EXEMPTION FOR EMBEDDED ADVER-
15 TISEMENTS.—The Commission shall, by regula-
16 tion, exempt from the applicability of subpara-
17 graph (A) the embedded display of any adver-
18 tisement on a Web page that contempora-
19 neously displays other information.

20 (3) RULEMAKING.—The Commission may issue
21 regulations to carry out this subsection.

22 (e) LIMITATION ON LIABILITY.—A telecommuni-
23 cations carrier, a provider of information service or inter-
24 active computer service, a cable operator, or a provider
25 of transmission capability shall not be liable under this

1 section to the extent that the carrier, operator, or pro-
2 vider—

3 (1) transmits, routes, hosts, stores, or provides
4 connections for an information collection program
5 through a system or network controlled or operated
6 by or for the carrier, operator, or provider; or

7 (2) provides an information location tool, such
8 as a directory, index, reference, pointer, or hypertext
9 link, through which the owner or user of a protected
10 computer locates an information collection program.

11 (f) STUDY AND ADDITIONAL EXEMPTION.—

12 (1) STUDY AND REPORT.—The Commission
13 shall conduct a study to determine the applicability
14 of the information collection prohibitions of this sec-
15 tion to information that is input directly by users in
16 a field provided on a website. The study shall exam-
17 ine—

18 (A) the nature of such fields for user
19 input;

20 (B) the use of a user's information once
21 input and whether such information is sent to
22 a person other than the provider of the Web
23 site;

1 (C) whether such information is used to
2 deliver advertisements to the user's computer;
3 and

4 (D) the extent of any notice provided to
5 the user prior to such input.

6 (2) REPORT.—The Commission shall transmit a
7 report on such study to the Committee on Energy
8 and Commerce of the House of Representatives and
9 the Committee on Commerce, Science, and Trans-
10 portation of the Senate not later than the expiration
11 of the 6-month period that begins on the date on
12 which final regulations are issued under section 9.
13 The requirements of subchapter I of chapter 35 of
14 title 44, United States Code, shall not apply to the
15 report required under this subsection.

16 (3) REGULATION.—If the Commission finds
17 that users have adequate notice regarding the uses
18 of any information input directly by the user in a
19 field provided on a website, such that an exemption
20 from the requirements of this section, or a modifica-
21 tion of the notice required by this section is appro-
22 priate for such information, and that such an ex-
23 emption or modification is consistent with the public
24 interest, the protection of consumers, and the pur-

1 poses of this Act, the Commission may prescribe
2 such an exemption or modification by regulation.

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 protected computer—

3 (A) in connection with the provision of a
4 network access service or other service or prod-
5 uct with respect to which the user of the pro-
6 tected computer is an actual or prospective cus-
7 tomer, subscriber, registered user, or account
8 holder;

9 (B) by the provider of that service or prod-
10 uct or with such provider’s authorization; and

11 (C) that involves or enables the collection
12 of information about the user’s activities only
13 with respect to the user’s relationship with or
14 use of such service or product,

15 to the extent that such monitoring or interaction is
16 for the purpose of network security, computer secu-
17 rity, diagnostics, technical support or repair, net-
18 work management, authorized updates of software,
19 or for the detection or prevention of fraudulent ac-
20 tivities; or

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

25 (A) initialization of the software; or

1 (B) an affirmative request by the owner or
2 authorized user for an update of, addition to, or
3 technical service for, the software.

4 (c) GOOD SAMARITAN PROTECTION.—

5 (1) IN GENERAL.—No provider of computer
6 software or of interactive computer service may be
7 held liable under this Act on account of any action
8 voluntarily taken, or service provided, in good faith
9 to remove or disable a program used to violate sec-
10 tion 2 or 3 that is installed on a computer of a cus-
11 tomer of such provider, if such provider notifies the
12 customer and obtains the consent of the customer
13 before undertaking such action or providing such
14 service.

15 (2) CONSTRUCTION.—Nothing in this sub-
16 section shall be construed to limit the liability of a
17 provider of computer software or of an interactive
18 computer service for any anti-competitive act other-
19 wise prohibited by law.

20 (d) LIMITATION ON LIABILITY.—A manufacturer or
21 retailer of computer equipment shall not be liable under
22 this Act to the extent that the manufacturer or retailer
23 is providing third party branded computer software that
24 is installed on the equipment the manufacturer or retailer
25 is manufacturing or selling.

1 (e) SERVICES PROVIDED BY CABLE OPERATORS AND
2 SATELLITE CARRIERS.—It shall not be a violation of sec-
3 tion 3 for a satellite carrier (as such term is defined in
4 section 338(k) of the Communications Act of 1934 (47
5 U.S.C. 338(k)) or cable operator (as such term is defined
6 in section 631(a)(2) of such Act (47 U.S.C. 551(a)(2)))
7 to—

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

11 (2) interact with such a navigation device; or

12 (3) transmit software to or execute software in-
13 stalled on such a navigation device to provide service
14 or collect or disclose subscriber information,

15 if the provision of such service, the utilization of or the
16 interaction with such device, or the collection of or disclo-
17 sure of such information, is subject to section 338(i) or
18 section 631 of the Communications Act of 1934.

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

20 (a) PREEMPTION OF STATE LAW.—

21 (1) PREEMPTION OF SPYWARE LAWS.—This
22 Act supersedes any provision of a statute, regula-
23 tion, or rule of a State or political subdivision of a
24 State that expressly regulates—

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

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

7 (C) the use of computer software that dis-
8 plays advertising content based on the Web
9 pages accessed using a computer.

10 (2) ADDITIONAL PREEMPTION.—

11 (A) IN GENERAL.—No person other than
12 the Attorney General of a State may bring a
13 civil action under the law of any State if such
14 action is premised in whole or in part upon the
15 defendant violating any provision of this Act.

16 (B) PROTECTION OF CONSUMER PROTEC-
17 TION LAWS.—This paragraph shall not be con-
18 strued to limit the enforcement of any State
19 consumer protection law by an Attorney Gen-
20 eral of a State.

21 (3) PROTECTION OF CERTAIN STATE LAWS.—

22 This Act shall not be construed to preempt the ap-
23 plicability of—

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

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

3 (4) EFFECTIVE DATE.—The preemption pro-
4 vided for under this subsection shall take effect, with
5 respect to specific provisions of this Act, on the ef-
6 fective date for such provisions.

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

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

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

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

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

5 The report shall examine and describe the methods by
6 which cookies and the Web sites that place them on com-
7 puters function separately and together, and shall com-
8 pare the use of cookies with the use of information collec-
9 tion programs (as such term is defined in section 3) to
10 determine the extent to which such uses are similar or dif-
11 ferent. The report may include such recommendations as
12 the Commission considers necessary and appropriate, in-
13 cluding treatment of cookies under this Act or other laws.

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

16 (c) 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-

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 11(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) EXCEPTIONS.—Such term does not in-
11 clude—

12 (i) computer software that is placed
13 on the computer system of a user by an
14 Internet service provider, interactive com-
15 puter service, or Internet Web site solely to
16 enable the user subsequently to use such
17 provider or service or to access such Web
18 site;

19 (ii) a cookie; or

20 (iii) any other type of text or data file
21 that solely may be read or transferred by
22 a computer.

23 (5) COMMISSION.—The term “Commission”
24 means the Federal Trade Commission.

1 (6) DAMAGE.—The term “damage” has the
2 meaning given such term in section 1030(e) of title
3 18, United States Code.

4 (7) UNFAIR OR DECEPTIVE ACTS OR PRAC-
5 TICES.—The term “unfair or deceptive acts or prac-
6 tices” has the meaning applicable to such term for
7 purposes of section 5 of the Federal Trade Commis-
8 sion Act (15 U.S.C. 45).

9 (8) DISABLE.—The term “disable” means, with
10 respect to an information collection program, to per-
11 manently prevent such program from executing any
12 of the functions described in section 3(b)(1) that
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.

Passed the House of Representatives June 6, 2007.

Attest:

Clerk.

110TH CONGRESS
1ST SESSION

H. R. 964

AN ACT

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