

108TH CONGRESS
1ST SESSION

H. R. 2929

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

IN THE HOUSE OF REPRESENTATIVES

JULY 25, 2003

Mrs. BONO (for herself and Mr. TOWNS) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Safeguard Against Pri-
5 vacy Invasions Act”.

6 **SEC. 2. FTC AUTHORITY TO REGULATE TRANSMISSION OF**
7 **SPYWARE PROGRAMS.**

8 (a) PROHIBITION OF TRANSMISSION WITHOUT CON-
9 SENT.—The Federal Trade Commission shall, by regula-

1 tion, prohibit the transmission of a spyware program to
2 a covered computer by means of the Internet, unless the
3 user of the covered computer expressly consents to such
4 transmission in response to a clear and conspicuous re-
5 quest for such consent or through an affirmative request
6 for such transmission.

7 (b) TRANSMISSION PURSUANT TO LICENSE AGREE-
8 MENTS.—The Federal Trade Commission shall, by regula-
9 tion, establish requirements for the transmission of a
10 spyware program to a covered computer, by means of the
11 Internet, in any case in which the transmission of the
12 spyware program, or any information, program, or com-
13 munication together or in connection with which the
14 spyware program is transmitted, requires any affirmative
15 action on the part of the user of the covered computer
16 to agree to a license, contract, or other agreement which
17 is made available on the World Wide Web, as follows:

18 (1) LOCATION OF LICENSE AGREEMENT.—The
19 terms of such license, contract, or agreement shall
20 be set forth on a World Wide Web page and the
21 mechanism by which the user of the covered com-
22 puter agrees to such license, contract, or agreement
23 shall be included on the same page.

24 (2) NOTICE.—The terms of the license, con-
25 tract, or other agreement shall—

1 (A) include provisions, that are clearly
2 stated and prominently displayed, which specify
3 that agreement to such license, contract, or
4 other agreement constitutes consent to trans-
5 mission of the spyware for purposes of sub-
6 section (a); and

7 (B) clearly explain the purpose of including
8 the spyware.

9 (3) IDENTIFICATION.—The name of the person
10 or entity transmitting the spyware, a valid physical
11 street address of such person or entity, and a func-
12 tioning return electronic mail address for such per-
13 son or entity shall be included on the World Wide
14 Web page referred to in paragraph (1).

15 (c) NOTICE OF COLLECTION OF PERSONALLY IDEN-
16 TIFIABLE INFORMATION.—The Federal Trade Commis-
17 sion shall, by regulation, prohibit the use of any spyware
18 program that is transmitted to a covered computer by
19 means of the Internet for collecting any personally identi-
20 fiable information from the covered computer, unless no-
21 tice that the program will be used for such collection is
22 provided—

23 (1) in any license, contract, or other agreement
24 covering the spyware program or the information,
25 program, or communication together with which, or

1 in connection with which, the spyware program is
2 transmitted; and

3 (2) in another prominent location, as the Com-
4 mission shall provide.

5 **SEC. 3. ENFORCEMENT.**

6 (a) **ENFORCEMENT THROUGH FTC ACT.—**

7 (1) **UNFAIR OR DECEPTIVE ACT OR PRAC-**
8 **TICE.—**A violation of any provision of this Act or
9 any regulation issued under this Act is an unfair or
10 deceptive act or practice unlawful under section
11 5(a)(1) of the Federal Trade Commission Act (15
12 U.S.C. 45(a)(1)).

13 (2) **GUIDELINES AND OPINIONS.—**In order to
14 assist in compliance with this Act, the Federal
15 Trade Commission may issue generally applicable
16 guidelines and, upon request, advisory opinions with
17 respect to specific types of acts or practices that
18 would, or would not, comply with this Act.

19 (b) **CRIMINAL PENALTIES.—**Whoever—

20 (1) violates section 2(c) or the regulations
21 issued under such section, or

22 (2) knowingly violates any other provision of
23 this Act or any regulation issued under this Act,
24 shall be fined under title 18, United States Code, or im-
25 prisoned for not more than 1 year, or both.

1 **SEC. 4. DEFINITIONS.**

2 For purposes of this Act:

3 (1) **COMPUTER; COVERED COMPUTER.**—The
4 terms “computer” and “covered computer” have the
5 meanings given such terms in section 1030(e) of
6 title 18, United States Code.

7 (2) **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 (3) **SPYWARE PROGRAM.**—The term “spyware
17 program” means any computer program or software
18 that can be used to transmit from a computer, or
19 that has the capability of so transmitting, by means
20 of the Internet and without any action on the part
21 of the user of the computer to initiate such trans-
22 mission, information regarding the user of the com-
23 puter, regarding the use of the computer, or that is
24 stored on the computer. In issuing regulations to
25 carry out this paragraph, the Commission shall dis-
26 tinguish spyware programs from other commonly

1 used computer programs used to share information
2 among computers in an organized network of com-
3 puters.

4 (4) PAGE.—The term “page” means, with re-
5 spect to the World Wide Web, a location that has a
6 single Uniform Resource Locator or other single lo-
7 cation with respect to the Internet, as the Commis-
8 sion may prescribe.

9 (5) PERSONALLY IDENTIFIABLE INFORMA-
10 TION.—The term “personally identifiable informa-
11 tion” does not include any record of aggregate data
12 that does not identify particular persons, particular
13 computers, particular users of computers, or par-
14 ticular email addresses or other locations of com-
15 puters with respect to the Internet.

16 **SEC. 5. REGULATIONS.**

17 The Commission shall issue regulations necessary to
18 carry out this Act not later than 90 days after the date
19 of the enactment of this Act.

○