

106TH CONGRESS
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H. R. 1685

To provide for the recognition of electronic signatures for the conduct of interstate and foreign commerce, to restrict the transmission of certain electronic mail advertisements, to authorize the Federal Trade Commission to prescribe rules to protect the privacy of users of commercial Internet websites, to promote the rapid deployment of broadband Internet services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 1999

Mr. BOUCHER (for himself and Mr. GOODLATTE) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for the recognition of electronic signatures for the conduct of interstate and foreign commerce, to restrict the transmission of certain electronic mail advertisements, to authorize the Federal Trade Commission to prescribe rules to protect the privacy of users of commercial Internet websites, to promote the rapid deployment of broadband Internet services, 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 “Internet Growth and
3 Development Act of 1999”.

4 **TITLE I—AUTHORIZATION OF**
5 **ELECTRONIC SIGNATURES IN**
6 **COMMERCE**

7 **SEC. 101. DEFINITIONS.**

8 For purposes of this title, the following definitions
9 shall apply:

10 (1) **ELECTRONIC COMMERCE.**—The term “elec-
11 tronic commerce” means the transaction or conduct
12 of any business that is in or that affects interstate
13 or foreign commerce and that is in whole or part
14 transacted or conducted by electronic means.

15 (2) **ELECTRONIC MEANS.**—The term “electronic
16 means” includes all forms of electronic communica-
17 tion mediated by computer, including telephonic
18 communications, facsimile, electronic mail, electronic
19 data exchanges, satellite, cable, and fiber optic com-
20 munications.

21 (3) **ELECTRONIC AUTHENTICATION.**—The term
22 “electronic authentication” means any methodology,
23 technology, or technique intended to—

24 (A) establish the identity of the maker,
25 sender, or originator of a document or commu-
26 nication in electronic commerce; and

1 (B) establish the fact that the document or
2 communication has not been altered.

3 (4) **ELECTRONIC SIGNATURE.**—The term “elec-
4 tronic signature” means any electronic symbol or se-
5 ries of symbols, created, or processed by a computer,
6 intended by the party using it (or authorizing its
7 use) to have the same legal force and effect as a
8 manual signature.

9 **SEC. 102. VALIDITY OF ELECTRONIC AUTHENTICATION.**

10 (a) **VALIDITY OF ELECTRONIC SIGNATURES.**—All
11 electronic signatures that have been authenticated through
12 the use of a means of electronic authentication that com-
13 plies with subsection (d) shall have standing equal to
14 paper-based, written signatures, so that—

15 (1) any rule of law which requires a record to
16 be in writing shall be deemed satisfied; and

17 (2) any rule of law which requires a signature
18 shall be deemed satisfied.

19 (b) **VALIDITY OF ELECTRONIC RECORDS.**—Elec-
20 tronic records shall not be denied legal effect, validity, or
21 enforceability solely because such records are in electronic
22 form.

23 (c) **VALIDITY OF STATE LAWS.**—Nothing in this sec-
24 tion shall be construed to preempt the law of a State that

1 enacts legislation governing electronic transactions that is
2 consistent with subsections (a) and (b).

3 (d) MEANS OF ELECTRONIC AUTHENTICATION.—

4 (1) IN GENERAL.—For purposes of this title, a
5 means of electronic authentication complies with the
6 requirements of this section if it—

7 (A) reliably establishes the identity of the
8 maker, sender, or originator of a document or
9 communication in electronic commerce; and

10 (B) reliably establishes the fact that the
11 document or communication has not been al-
12 tered.

13 (2) METHODS OF PROOF.—A person may dem-
14 onstrate compliance with the requirements of para-
15 graph (1) by demonstrating that a means of elec-
16 tronic authentication—

17 (A) uses an identification methodology that
18 is unique to the person making, sending, origi-
19 nating a document or communication;

20 (B) the identification methodology shall be
21 capable of verifying the identity of such person;
22 and

23 (C) the identification methodology is linked
24 to the data or communication transmitted in
25 such a manner that if such data or communica-

1 tion has been altered, the authentication be-
2 comes invalid.

3 **TITLE II—ELECTRONIC MAIL**
4 **ADVERTISEMENTS**

5 **SEC. 201. UNSOLICITED ELECTRONIC MAIL ADVERTISE-**
6 **MENTS.**

7 Title VII of the Communications Act of 1934 is
8 amended by adding at the end the following section:

9 **“SEC. 715. UNSOLICITED ELECTRONIC MAIL ADVERTISE-**
10 **MENTS.**

11 “(a) COMPLIANCE OF REGISTERED USERS WITH
12 PROVIDER POLICY REQUIRED.—No registered user of an
13 electronic mail service provider shall use or cause to be
14 used that electronic mail service provider’s equipment in
15 violation of that electronic mail service provider’s policy
16 prohibiting or restricting the use of its service or equip-
17 ment for the initiation of unsolicited electronic mail adver-
18 tisements.

19 “(b) COMPLIANCE BY SENDERS WITH PROVIDER
20 POLICY REQUIRED.—No person or other entity shall use
21 or cause to be used, by initiating an unsolicited electronic
22 mail advertisement, an electronic mail service provider’s
23 equipment in violation of that electronic mail service pro-
24 vider’s policy prohibiting or restricting the use of its equip-

1 ment to deliver unsolicited electronic mail advertisements
2 to its registered users.

3 “(c) PROVIDER POLICIES NOT REQUIRED.—An elec-
4 tronic mail service provider shall not be required to create
5 a policy prohibiting or restricting the use of its equipment
6 for the initiation or delivery of unsolicited electronic mail
7 advertisements.

8 “(d) CONTINUED PROTECTION FROM BEING TREAT-
9 ED AS PUBLISHER.—Nothing in this section shall be con-
10 strued to limit or restrict the rights of an electronic mail
11 service provider under section 230(e)(1) of this Act, or any
12 decision of an electronic mail service provider to permit
13 or to restrict access to or use of its system, or any exercise
14 of its editorial function.

15 “(e) REMEDIES.—

16 “(1) PRIVATE ACTIONS BY PROVIDERS.—In ad-
17 dition to any other remedy available under law, any
18 electronic mail service provider whose policy on un-
19 solicited electronic mail advertisements is violated as
20 provided in this section may bring a civil action to
21 recover the actual monetary loss suffered by that
22 provider by reason of that violation, or liquidated
23 damages of \$50 for each electronic mail message ini-
24 tiated or delivered in violation of this section, up to

1 a maximum of \$25,000 per day, whichever amount
2 is greater.

3 “(2) ATTORNEY FEES.—In any action brought
4 pursuant to paragraph (1), the court may award
5 reasonable attorney’s fees to a prevailing party.

6 “(3) NOTICE OF POLICY REQUIRED.—In any
7 action brought pursuant to paragraph (1), the elec-
8 tronic mail service provider shall be required to es-
9 tablish as an element of its cause of action that
10 prior to the alleged violation, the defendant had ac-
11 tual notice of both of the following:

12 “(A) The electronic mail service provider’s
13 policy on unsolicited electronic mail advertising
14 and

15 “(B) The fact that the defendant’s unsolic-
16 ited electronic mail advertisements would use or
17 cause to be used the electronic mail service pro-
18 vider’s equipment.

19 “(f) DEFINITIONS.—As used in this section:

20 “(1) ELECTRONIC MAIL ADVERTISEMENT.—The
21 term ‘electronic mail advertisement’ means any elec-
22 tronic mail message, the principal purpose of which
23 is to promote, directly or indirectly, the sale or other
24 commercial distribution of goods or services to the
25 recipient.

1 “(2) UNSOLICITED ELECTRONIC MAIL ADVER-
2 TISEMENT.—The term ‘unsolicited electronic mail
3 advertisement’ means any electronic mail advertise-
4 ment that meets both of the following requirements:

5 “(A) It is addressed to a recipient with
6 whom the initiator does not have an existing
7 business or personal relationship.

8 “(B) It is not sent at the request of or
9 with the express consent of the recipient.

10 “(3) ELECTRONIC MAIL SERVICE PROVIDER.—
11 The term ‘electronic mail service provider’ means
12 any person or other entity that provides registered
13 users the ability to send or receive electronic mail
14 and that is an intermediary in sending or receiving
15 electronic mail.

16 “(4) INITIATION.—The term ‘initiation’ of an
17 unsolicited electronic mail advertisement refers to
18 the action by the initial sender of the electronic mail
19 advertisement. It does not refer to the actions of any
20 intervening electronic mail service provider that may
21 handle or retransmit the electronic message.

22 “(5) REGISTERED USER.—The term ‘registered
23 user’ means any person or other entity that main-
24 tains an electronic mail address with an electronic
25 mail service provider.”.

1 **TITLE III—ONLINE PRIVACY**
2 **PROTECTION**

3 **SEC. 301. ONLINE PRIVACY PROTECTION.**

4 (a) INFORMATION COLLECTION REGULATIONS.—Any
5 person operating a commercial Internet website shall
6 clearly and conspicuously provide notice of its collection,
7 use, and disclosure policies with regard to personally iden-
8 tifiable information, including—

9 (1) the personally identifiable information that
10 the website operator collects from individuals visiting
11 the website; and

12 (2) the uses that the website operator makes of
13 the personally identifiable information, including
14 whether the operator makes the information avail-
15 able to any third parties.

16 (b) ENFORCEMENT.—Any knowing violation of the
17 requirements under subsection (a) shall be treated as an
18 unfair or deceptive act or practice under section 5 of the
19 Federal Trade Commission Act (15 U.S.C. 45).

20 **TITLE IV—BROADBAND**
21 **DEPLOYMENT**

22 **SEC. 401. ACCELERATED DEPLOYMENT OF INTERNET**
23 **BACKBONE.**

24 (a) INTERLATA INTERNET SERVICES.—Paragraph
25 (21) of section 3 of the Communications Act of 1934 (47

1 U.S.C. 153(21)), relating to the definition of interLATA
2 service, is amended by inserting before the period the fol-
3 lowing: “, except that such term shall not include services
4 that consist of or include the transmission of any data or
5 information, including any writing, signs, signals, pictures,
6 or sounds related to the transmission of such data or in-
7 formation, by means of the Internet or any other network
8 that employs Internet Protocol-based or other packet-
9 switched technology”.

10 (b) VOICE INTERLATA INTERNET SERVICES.—Nei-
11 ther a Bell operating company, nor any affiliate of a Bell
12 operating company, may provide, by means of the Internet
13 or any other network that employs Internet Protocol-based
14 or other packet-switched technology, two-way voice-only
15 interLATA telecommunications services originating in any
16 of its in-region States until such time as the Federal Com-
17 munications Commission approves the application of such
18 company for such State pursuant to section 271(d) of the
19 Communications Act of 1934. The terms in this sub-
20 section shall have the same respective meanings given such
21 terms in sections 3 and 271 of such Act.

1 **SEC. 402. ACCELERATED DEPLOYMENT OF BROADBAND**
2 **SERVICES.**

3 Title VII of the Communications Act of 1934 is fur-
4 ther amended by adding at the end thereof the following
5 new section:

6 **“SEC. 716. ACCELERATED DEPLOYMENT OF BROADBAND**
7 **SERVICES.**

8 “(a) BROADBAND SERVICES PLANS.—

9 “(1) PLAN REQUIRED.—Within 180 days after
10 the effective date of this section, each local exchange
11 carrier shall submit to the State commission in each
12 State in which such carrier does business a plan to
13 provide broadband telecommunications service in all
14 local exchange areas in which such carrier has tele-
15 phone exchange service customers as soon as such
16 broadband telecommunications service is economi-
17 cally reasonably and technically feasible. The plan
18 shall include all terms and conditions, including pric-
19 ing, under which the services shall be provided. The
20 test of economic reasonability and technical feasi-
21 bility shall be made separately by the local exchange
22 carrier for each local exchange, and the plan shall be
23 considered certified 45 days after submission unless
24 the State commission rejects the plan within such 45
25 days. Upon rejection of a plan, successive plans shall
26 be submitted until approval is obtained. The plan

1 shall be implemented within 180 days of the certifi-
2 cation of the plan in each local exchange in which
3 the provision of the service is both economically rea-
4 sonable and technically feasible. Upon certification
5 of its plan, the carrier shall be obligated by terms
6 of the plan (including any modifications that it re-
7 quests that are thereafter certified) but shall other-
8 wise provide such services free of Federal and State
9 price, rate, rate of return, and profit regulation.
10 Upon a determination by the State commission that
11 a local exchange is served by another provider of
12 broadband telecommunications services, or any
13 broadband Internet access transport provider, or
14 upon a determination by such State commission that
15 the local exchange carrier makes broadband tele-
16 communications services available to 70 percent of
17 the access lines in an exchange, a local exchange
18 carrier shall no longer be obligated by the terms of
19 any such plan in such local exchange.

20 “(2) STATE MODIFICATIONS PROHIBITED.—Ex-
21 cept upon request of the carrier, the State commis-
22 sion shall have no authority to modify any plan sub-
23 mitted pursuant to paragraph (1).

24 “(3) NO COMMISSION AUTHORITY.—The Com-
25 mission shall have no authority with respect to the

1 terms of any plan and shall have no authority with
2 respect to the approval or rejection of any such plan.

3 “(b) SUPERSESION OF OTHER REQUIREMENTS.—

4 An incumbent local exchange carrier’s provision of
5 broadband local telecommunications services shall not be
6 subject to the requirements of sections 251(c)(3) and
7 251(c)(4) of the Act in any State in which that carrier
8 certifies to the State commission that—

9 “(1) in central offices in which it provides local
10 loops that are conditioned for broadband services, it
11 provides such loops to other carriers at least as
12 quickly as it provides them for its own customers;

13 “(2) in central offices in which it does not cur-
14 rently provide local loops that are conditioned for
15 broadband services, but in which such service is eco-
16 nomically reasonable and technically feasible, it will
17 provide such loops within 120 days of a request for
18 such conditioning from another carrier; and

19 “(3) conditioned loops are provided upon such
20 prices and other terms and conditions as the parties
21 shall agree, or in any event of disagreements, as are
22 determined through commercial arbitration, in which
23 the commercial arbitrator shall establish the price
24 based upon the cost of the loops and the costs for

1 such conditioning that have been incurred by the
2 local exchange carrier plus a reasonable profit.”.

3 **TITLE V—ANTITRUST AND**
4 **CRIMINAL PROVISIONS**

5 **SEC. 501. PROHIBITION ON ANTICOMPETITIVE BEHAVIOR**
6 **BY INCUMBENT LOCAL EXCHANGE CAR-**
7 **RIERS.**

8 In any civil action based on a claim arising under
9 section 1, 2, or 3 of the Sherman Act (15 U.S.C. 1, 2,
10 3), evidence that an incumbent local exchange carrier that
11 has market power in the broadband service provider mar-
12 ket has willfully and knowingly failed to provide condi-
13 tioned unbundled local loops when economically reasonable
14 and technically feasible under section 716(a) of the Com-
15 munications Act of 1934, or restrains unreasonably the
16 ability of a carrier to compete in its provision of
17 broadband services over a local loop, shall be sufficient to
18 establish a presumption of a violation of such section 1,
19 2, or 3 of the Sherman Act.

20 **SEC. 502. PROHIBITION ON ANTICOMPETITIVE CONTRACTS**
21 **BY BROADBAND ACCESS TRANSPORT PRO-**
22 **VIDERS.**

23 In any civil action based on a claim arising under
24 section 1, 2, or 3 of the Sherman Act (15 U.S.C. 1, 2,
25 3), evidence that a broadband access transport provider

1 that has market power in the broadband service provider
2 market has offered access to a service provider on terms
3 and conditions, other than terms justified by demonstrable
4 cost differentials, that are less favorable than those offered
5 by such operator to itself, to an affiliated service provider,
6 or to another service provider, or restrains unreasonably
7 the ability of a service provider from competing in its pro-
8 vision of broadband services, shall be sufficient to establish
9 a presumption of a violation of such section.

10 **SEC. 503. PROHIBITION ON ANTICOMPETITIVE OR DIS-**
11 **CRIMINATORY BEHAVIOR BY BROADBAND**
12 **ACCESS TRANSPORT PROVIDERS.**

13 It shall be unlawful for a broadband access transport
14 provider to engage in unfair methods of competition or
15 unfair or deceptive acts or practices, the purpose or effect
16 of which is to discriminate in favor of a service provider
17 that is affiliated with a broadband access transport pro-
18 vider or to restrain unreasonably the ability of a service
19 provider that is not affiliated with a broadband access
20 transport provider from competing in its provision of any
21 of the services provided by a service provider as set forth
22 in section 505(3).

1 **SEC. 504. PROTECTION FROM FRAUDULENT UNSOLICITED**
2 **E-MAIL.**

3 Section 1030 of title 18, United States Code, is
4 amended—

5 (1) in subsection (a)(5)—

6 (A) by striking “or” at the end of subpara-
7 graph (B); and

8 (B) by inserting after subparagraph (C)
9 the following new subparagraphs:

10 “(D) intentionally and without authorization
11 initiates the transmission of a bulk unsolicited elec-
12 tronic mail message to a protected computer with
13 knowledge that such message falsifies an Internet
14 domain, header information, date or time stamp,
15 originating e-mail address or other identifier; or

16 “(E) intentionally sells or distributes any com-
17 puter program that—

18 “(i) is designed or produced primarily for
19 the purpose of concealing the source or routing
20 information of bulk unsolicited electronic mail
21 messages in a manner prohibited by subpara-
22 graph (D) of this paragraph;

23 “(ii) has only limited commercially signifi-
24 cant purpose or use other than to conceal such
25 source or routing information; or

1 “(iii) is marketed by the violator or an-
2 other person acting in concert with the violator
3 and with the violator’s knowledge for use in
4 concealing the source or routing information of
5 such messages;”;

6 (2) in subsection (c)(2)(A)—

7 (A) by inserting “(i)” after “in the case of
8 an offense”; and

9 (B) by inserting after “an offense punish-
10 able under this subparagraph;” the following: “;
11 or (ii) under subsection (a)(5)(D) or (a)(5)(E)
12 of this section which results in damage to a
13 protected computer”;

14 (3) in subsection (c)(2), by adding at the end
15 the following new subparagraph:

16 “(D) in the case of a violation of subsection
17 (a)(5)(D) or (E), actual monetary loss and statutory
18 damages of \$15,000 per violation or an amount of
19 up to \$10 per message per violation whichever is
20 greater; and”;

21 (4) in subsection (e)—

22 (A) by striking “and” at the end of para-
23 graph (8);

24 (B) by striking the period at the end of
25 paragraph (9); and

1 (C) by adding at the end the following new
2 paragraphs:

3 “(10) the term ‘initiates the transmission’
4 means, in the case of an electronic mail message, to
5 originate the electronic mail message, and excludes
6 the actions of any interactive computer service whose
7 facilities or services are used by another person to
8 transmit, relay, or otherwise handle such message;

9 “(11) the term ‘Internet domain’ means a spe-
10 cific computer system (commonly referred to as a
11 ‘host’) or collection of computer systems attached to
12 or able to be referenced from the Internet which are
13 assigned a specific reference point on the Internet
14 (commonly referred to as an ‘Internet domain
15 name’) and registered with an organization recog-
16 nized by the Internet industry as a registrant of
17 Internet domains;

18 “(12) the term ‘unsolicited electronic mail mes-
19 sage’ means any substantially identical electronic
20 mail message other than electronic mail initiated by
21 any purpose to others with whom such person has
22 a prior relationship, including prior business rela-
23 tionship, or electronic mail sent by a source to re-
24 cipients where such recipients, or their designees,

1 have at any time affirmatively requested to receive
2 communications from that source; and

3 “(13) the term ‘Internet’ means all computer
4 and telecommunications facilities, including equip-
5 ment and operating software, which comprise the
6 interconnected network of networks that employ the
7 Transmission Control Protocol/Internet Protocol, or
8 any predecessor or successor protocols to such pro-
9 tocol, to communicate information of all kinds by
10 wire or radio.”.

11 (5) in subsection (g), by inserting “and reason-
12 able attorneys’ fees and other litigation costs reason-
13 ably incurred in connection with civil action” after
14 “injunctive relief or other equitable relief”.

15 **SEC. 505. DEFINITIONS.**

16 For purposes of this title:

17 (1) BROADBAND.—The term “broadband” re-
18 fers to a transmission capability in excess of 200
19 kilobits per second in at least one direction.

20 (2) BROADBAND ACCESS TRANSPORT PRO-
21 VIDER.—The term “broadband access transport pro-
22 vider” means one who engages in the broadband
23 transmission of data between a user and his service
24 provider’s point of interconnection with the
25 broadband access transport provider’s facilities.

1 Such term shall also include a service provider who
2 provides to itself, over facilities owned by it or under
3 its control, the broadband transport of services be-
4 tween itself and its users.

5 (3) SERVICE PROVIDER.—The term “service
6 provider” means a person who provides a service
7 that enables users to access content, information,
8 electronic mail, or other services. The term may also
9 include access to proprietary content, information,
10 and other services as part of a package of services
11 offered to consumers.

12 (4) INTERNET.—The term “Internet” means all
13 computer and telecommunications facilities, includ-
14 ing equipment and operating software, which com-
15 prise the interconnected network of networks that
16 employ the Transmission Control Protocol/Internet
17 Protocol, or any predecessor or successor protocols
18 to such protocol, to communicate information of all
19 kinds by wire or radio.

20 (5) BROADBAND SERVICE PROVIDER MAR-
21 KET.—The term “broadband service provider mar-
22 ket” includes the provision of broadband services
23 over a single broadband access transport provider’s
24 facilities.

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