

109TH CONGRESS
1ST SESSION

H. R. 84

To require the Federal Trade Commission to prescribe regulations to protect the privacy of personal information collected from and about individuals who are not covered by the Children’s Online Privacy Protection Act of 1998 on the Internet, to provide greater individual control over the collection and use of that information, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 4, 2005

Mr. FRELINGHUYSEN introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To require the Federal Trade Commission to prescribe regulations to protect the privacy of personal information collected from and about individuals who are not covered by the Children’s Online Privacy Protection Act of 1998 on the Internet, to provide greater individual control over the collection and use of that information, 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 “Online Privacy Protec-
5 tion Act of 2005”.

1 **SEC. 2. REGULATION OF UNFAIR AND DECEPTIVE ACTS**
2 **AND PRACTICES IN CONNECTION WITH THE**
3 **COLLECTION, USE AND DISCLOSURE OF PER-**
4 **SONAL INFORMATION.**

5 (a) ACTS PROHIBITED.—

6 (1) IN GENERAL.—It is unlawful for an oper-
7 ator of a Web site or online service to collect, use
8 or disclose personal information in a manner that
9 violates the regulations prescribed under subsection

10 (b).

11 (2) DISCLOSURE.—Notwithstanding paragraph
12 (1), neither an operator of a Web site or online serv-
13 ice nor the operator’s agent shall be held to be liable
14 under this Act for any disclosure made in good faith
15 and following reasonable procedures in responding to
16 a request under subsection (b)(1)(B) by an indi-
17 vidual for disclosure of personal information per-
18 taining to such individual.

19 (b) REGULATIONS.—

20 (1) IN GENERAL.—Not later than 1 year after
21 the date of the enactment of this Act, the Commis-
22 sion shall promulgate under section 553 of title 5,
23 United States Code, regulations that—

24 (A) require the operator of any Web site or
25 online service—

1 (i) to provide notice on its Web site,
2 in a clear and conspicuous manner, of the
3 identity of the operator, what personal in-
4 formation is collected by the operator, how
5 the operator uses such information, and
6 what information may be shared with other
7 companies; and

8 (ii) to provide a meaningful and sim-
9 ple online process for individuals to con-
10 sent to or limit the disclosure of personal
11 information for purposes unrelated to
12 those for which such information was ob-
13 tained or described in the notice under
14 clause (i);

15 (B) require the operator to provide, upon
16 request of an individual under this subpara-
17 graph who has provided personal information to
18 that Web site or online service, upon proper
19 identification—

20 (i) a description of the specific types
21 of personal information collected by that
22 operator that was sold or transferred to an
23 external company; and

24 (ii) notwithstanding any other provi-
25 sion of law, a means that is reasonable

1 under the circumstances for the individual
2 to obtain the personal information de-
3 scribed in paragraph (i) from such indi-
4 vidual; and

5 (C) require the operator of such Web site
6 or online service to establish and maintain rea-
7 sonable procedures to protect the confiden-
8 tiality, security, and integrity of personal infor-
9 mation it collects or maintains.

10 (2) WHEN PURPOSE LIMITATION NOT RE-
11 QUIRED.—The regulations shall provide that the
12 purpose limitation required under paragraph
13 (1)(A)(ii) is not required for—

14 (A) transactional information where identi-
15 fiable information is not removed;

16 (B) personal information where it is used
17 to render or conduct a legitimate business activ-
18 ity related to the business of the operator (for
19 example, the use of an e-mail address to re-
20 spond to an e-mail communication); or

21 (C) the collection, use, or dissemination of
22 such information by the operator of such a Web
23 site or online service necessary to the extent
24 permitted under other provisions of law.

1 (3) WHEN ACCESS NOT REQUIRED.—The regu-
2 lations shall provide that access as required under
3 paragraph (1)(B)(ii) is not required—

4 (A) to transactional information where
5 identifiable information is not removed;

6 (B) to information that is commercially
7 confidential to the operator and is obtained
8 from sources outside of the individual’s contact
9 with the operator’s Web site;

10 (C) to information that is solely for inter-
11 nal company processes and is neither sold,
12 transferred, nor used for activities external to
13 the Web site’s operator;

14 (D) to information that is discarded upon
15 the conclusion of the process that generates it;
16 or

17 (E) to information that has no impact
18 upon an individual.

19 (4) TERMINATION OF SERVICE.—The regula-
20 tions shall permit the operator of a Web site or an
21 online service to terminate service provided to an in-
22 dividual who has refused, under the regulations pre-
23 scribed under paragraph (1)(B)(ii), to permit the op-
24 erator’s further use or maintenance in retrievable
25 form, or future collection, of personal information.

1 (c) ENFORCEMENT.—Subject to sections 3 and 5, a
2 violation of a regulation prescribed under subsection (a)
3 shall be treated as a violation of a rule defining an unfair
4 or deceptive act or practice prescribed under section
5 18(a)(1)(B) of the Federal Trade Commission Act (15
6 U.S.C. 57a(a)(1)(B)).

7 (d) NO REQUIREMENT TO COLLECT OR MAINTAIN
8 DATA.—Nothing in this Act shall be interpreted to require
9 an operator to collect or maintain any data that would
10 not otherwise be collected or maintained.

11 **SEC. 3. SAFE HARBORS.**

12 (a) GUIDELINES.—An operator may satisfy the re-
13 quirements of regulations issued under section 2(b) by fol-
14 lowing a set of self-regulatory guidelines, issued by rep-
15 resentatives of the marketing or online industries, or by
16 other persons, approved under subsection (b).

17 (b) INCENTIVES.—

18 (1) SELF-REGULATORY INCENTIVES.—In pre-
19 scribing regulations under section 2, the Commission
20 shall provide incentives for self-regulation by opera-
21 tors to implement the protections afforded under the
22 regulatory requirements described in subsection (b)
23 of that section.

24 (2) DEEMED COMPLIANCE.—Such incentives
25 shall include provisions for ensuring that a person

1 will be deemed to be in compliance with the require-
2 ments of the regulations under section 2 if that per-
3 son complies with guidelines that, after notice and
4 comment, are approved by the Commission upon
5 making a determination that the guidelines meet the
6 requirements of the regulations issued under section
7 2.

8 (3) EXPEDITED RESPONSE TO REQUESTS.—The
9 Commission shall act upon requests for safe harbor
10 treatment within 180 days of the filing of the re-
11 quest, and shall set forth in writing its conclusions
12 with regard to such requests.

13 (c) APPEALS.—Final action by the Commission on a
14 request for approval of guidelines, or the failure to act
15 within 180 days on a request for approval of guidelines,
16 submitted under subsection (b) may be appealed to a dis-
17 trict court of the United States of appropriate jurisdiction
18 as provided for in section 706 of title 5, United States
19 Code.

20 **SEC. 4. ACTIONS BY STATES.**

21 (a) IN GENERAL.—

22 (1) CIVIL ACTIONS.—In any case in which the
23 attorney general of a State has reason to believe
24 that an interest of the residents of that State has
25 been or is threatened or adversely affected by the

1 engagement of any person in a practice that violates
2 any regulation of the Commission prescribed under
3 section 2(b) of this Act, the State may bring a civil
4 action on behalf of the residents of the State in a
5 district court of the United States of appropriate ju-
6 risdiction to—

7 (A) enjoin that practice;

8 (B) enforce compliance with the regulation;

9 (C) obtain damage, restitution, or other
10 compensation on behalf of residents of the
11 State; or

12 (D) obtain such other relief as the court
13 may consider to be appropriate.

14 (2) NOTICE.—

15 (A) IN GENERAL.—Before filing an action
16 under paragraph (1), the attorney general of
17 the State involved shall provide to the Commis-
18 sion—

19 (i) written notice of that action; and

20 (ii) a copy of the complaint for that
21 action.

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 determines that it is not feasible to
3 provide the notice described in that sub-
4 paragraph before the filing of the action.

5 (ii) NOTIFICATION.—In an action de-
6 scribed in clause (i), the attorney general
7 of a State shall provide notice and a copy
8 of the complaint to the Commission at the
9 same time as the attorney general files the
10 action.

11 (b) INTERVENTION.—

12 (1) IN GENERAL.—On receiving notice under
13 subsection (a)(2), the Commission shall have the
14 right to intervene in the action that is the subject
15 of the notice.

16 (2) EFFECT OF INTERVENTION.—If the Com-
17 mission intervenes in an action under subsection (a),
18 it shall have the right—

19 (A) to be heard with respect to any matter
20 that arises in that action; and

21 (B) to file a petition for appeal.

22 (3) AMICUS CURIAE.—Upon application to the
23 court, a person whose self-regulatory guidelines have
24 been approved by the Commission and are relied
25 upon as a defense by any defendant to a proceeding

1 under this section may file amicus curiae in that
2 proceeding.

3 (c) CONSTRUCTION.—For purposes of bringing any
4 civil action under subsection (a), nothing in this Act shall
5 be construed to prevent an attorney general of a State
6 from exercising the powers conferred on the attorney gen-
7 eral by the laws of that State to—

8 (1) conduct investigations;

9 (2) administer oaths or affirmations; or

10 (3) compel the attendance of witnesses or the
11 production of documentary and other evidence.

12 (d) VENUE; SERVICE OF PROCESS.—

13 (1) VENUE.—Any action brought under sub-
14 section (a) may be brought in the district court of
15 the United States that meets applicable require-
16 ments relating to venue under section 1391 of title
17 28, United States Code.

18 (2) SERVICE OF PROCESS.—In an action
19 brought under subsection (a), process may be served
20 in any district in which the defendant—

21 (A) is an inhabitant; or

22 (B) may be found.

1 **SEC. 5. ADMINISTRATION AND APPLICABILITY OF ACT.**

2 (a) IN GENERAL.—Except as otherwise provided, this
3 Act shall be enforced by the Commission under the Fed-
4 eral Trade Commission Act (15 U.S.C. 41 et seq.).

5 (b) PROVISIONS.—Compliance with the requirements
6 imposed under this Act shall be enforced under—

7 (1) section 8 of the Federal Deposit Insurance
8 Act (12 U.S.C. 1818), in the case of—

9 (A) national banks, and Federal branches
10 and Federal agencies of foreign banks, by the
11 Office of the Comptroller of the Currency;

12 (B) member banks of the Federal Reserve
13 System (other than national banks), branches
14 and agencies of foreign banks (other than Fed-
15 eral branches, Federal agencies, and insured
16 State branches of foreign banks), commercial
17 lending companies owned or controlled by for-
18 eign banks, and organizations operating under
19 section 25 or 25(a) of the Federal Reserve Act
20 (12 U.S.C. 601 et seq. and 611 et seq.), by the
21 Board; and

22 (C) banks insured by the Federal Deposit
23 Insurance Corporation (other than members of
24 the Federal Reserve System) and insured State
25 branches of foreign banks, by the Board of Di-

1 rectors of the Federal Deposit Insurance Cor-
2 poration;

3 (2) section 8 of the Federal Deposit Insurance
4 Act (12 U.S.C. 1818), by the Director of the Office
5 of Thrift Supervision, in the case of a savings asso-
6 ciation the deposits of which are insured by the Fed-
7 eral Deposit Insurance Corporation;

8 (3) the Federal Credit Union Act (12 U.S.C.
9 1751 et seq.) by the National Credit Union Adminis-
10 tration Board with respect to any Federal credit
11 union;

12 (4) part A of subtitle VII of title 49, United
13 States Code, by the Secretary of Transportation
14 with respect to any air carrier or foreign air carrier
15 subject to that part;

16 (5) the Packers and Stockyards Act, 1921 (7
17 U.S.C. 181 et seq.) (except as provided in section
18 406 of that Act (7 U.S.C. 226, 227)), by the Sec-
19 retary of Agriculture with respect to any activities
20 subject to that Act; and

21 (6) the Farm Credit Act of 1971 (12 U.S.C.
22 2001 et seq.) by the Farm Credit Administration
23 with respect to any Federal land bank, Federal land
24 bank association, Federal intermediate credit bank,
25 or production credit association.

1 (c) EXERCISE OF CERTAIN POWERS.—For the pur-
2 pose of the exercise by any agency referred to in sub-
3 section (b) of its powers under any other Act referred to
4 in that subsection, a violation of any requirement imposed
5 under this Act shall be deemed to be a violation of a re-
6 quirement imposed under that other Act. In addition to
7 its powers under any provision of law specifically referred
8 to in subsection (b), each of the agencies referred to in
9 that subsection may exercise, for the purpose of enforcing
10 compliance with any requirement imposed under this Act,
11 any other authority conferred on such agency by law.

12 (d) ACTIONS BY THE COMMISSION.—The Commis-
13 sion shall prevent any person from violating a rule of the
14 Commission under section 2 in the same manner, by the
15 same means, and with the same jurisdiction, powers, and
16 duties as though all applicable terms and provisions of the
17 Federal Trade Commission Act (15 U.S.C. 41 et seq.)
18 were incorporated into and made a part of this title. Any
19 entity that violates such rule shall be subject to the pen-
20 alties and entitled to the privileges and immunities pro-
21 vided in the Federal Trade Commission Act in the same
22 manner, by the same means, and with the same jurisdic-
23 tion, power, and duties as though all applicable terms and
24 provisions of the Federal Trade Commission Act were in-
25 corporated into and made a part of this title.

1 (e) EFFECT ON OTHER LAWS.—Nothing contained in
2 this Act shall be construed to limit the authority of the
3 Commission under any other provisions of law.

4 (f) PREEMPTION.—Except as otherwise provided in
5 this Act, this Act supersedes State law to the extent that
6 it establishes a rule of law applicable to an online privacy
7 action that is inconsistent with State law. Nothing in this
8 Act supersedes State law with respect to prosecution of
9 fraud.

10 **SEC. 6. REVIEW.**

11 Not later than 5 years after the effective date of the
12 regulations initially issued under section 2, the Commis-
13 sion shall—

14 (1) review the implementation of this Act, in-
15 cluding the effect of the implementation of this title
16 on practices relating to the collection and disclosure
17 of information; and

18 (2) prepare and submit to Congress a report on
19 the results of the review under paragraph (1).

20 **SEC. 7. EFFECTIVE DATE.**

21 Sections 3(a), 5, and 6 of this Act shall take effect
22 on the later of—

23 (1) the date that is 18 months after the date
24 of enactment of this Act; or

1 (2) the date on which the Commission rules on
2 the first application filed for safe harbor treatment
3 under section 3 if the Commission does not rule on
4 the first such application within one year after the
5 date of enactment of this Act, but in no case later
6 than the date that is 30 months after the date of
7 enactment of this Act.

8 **SEC. 8. DEFINITIONS.**

9 In this Act:

10 (1) **INDIVIDUAL.**—The term “individual” means
11 a natural person of age 13 and above.

12 (2) **OPERATOR.**—The term “operator”—

13 (A) means any person who operates a Web
14 site located on the Internet or an online service
15 and who collects or maintains personal informa-
16 tion from or about the users of or visitors to
17 such Web site or online service, or on whose be-
18 half such information is collected or main-
19 tained, where such Web site or online service is
20 operated for commercial purposes, including
21 any person offering products or services for sale
22 through that Web site or online service, involv-
23 ing commerce—

24 (i) among the several States or with 1
25 or more foreign nations;

1 (ii) in any territory of the United
2 States or in the District of Columbia, or
3 between any such territory and—

4 (I) another such territory; or

5 (II) any State or foreign nation;

6 or

7 (iii) between the District of Columbia
8 and any State, territory, or foreign nation;

9 but

10 (B) does not include any nonprofit entity
11 that would otherwise be exempt from coverage
12 under section 5 of the Federal Trade Commis-
13 sion Act (15 U.S.C. 45).

14 (3) COMMISSION.—The term “Commission”
15 means the Federal Trade Commission.

16 (4) DISCLOSURE.—The term “disclosure”
17 means, with respect to personal information the re-
18 lease of personal information collected in identifiable
19 form by an operator for any purpose, except where
20 such information is provided to a person other than
21 the operator who provides support for the internal
22 operations of the Web site and does not disclose or
23 use that information for any other purpose.

1 (5) FEDERAL AGENCY.—The term “Federal
2 agency” means an agency, as that term is defined
3 in section 551(1) of title 5, United States Code.

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

13 (7) TRANSACTIONAL INFORMATION.—The term
14 “transactional information” means information gen-
15 erated in connection with the process of requesting,
16 accessing, or otherwise using the Internet.

17 (8) PERSONAL INFORMATION.—The term “per-
18 sonal information” means information collected on-
19 line from an individual that identifies that indi-
20 vidual, including—

21 (A) first and last name;

22 (B) home and other physical address;

23 (C) e-mail address;

24 (D) social security number;

25 (E) telephone number;

1 (F) any other identifier that the Commis-
2 sion determines identifies an individual; or

3 (G) information that is maintained with, or
4 can be searched or retrieved by means of, data
5 described in subparagraphs (A) through (F).

○