H. R. 654

To direct the Federal Trade Commission to prescribe regulations regarding the collection and use of information obtained by tracking the Internet activity of an individual, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 2011

Ms. Speier (for herself, Mr. Hastings of Florida, and Mr. Filner) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To direct the Federal Trade Commission to prescribe regulations regarding the collection and use of information obtained by tracking the Internet activity of an individual, 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 “Do Not Track Me On-
5 line Act”.
6 SEC. 2. DEFINITIONS.
7 In this Act:
(1) **Commission.**—The term “Commission” means the Federal Trade Commission.

(2) **Covered Entity.**—The term “covered entity” means a person engaged in interstate commerce that collects or stores online data containing covered information. Such term does not include—

(A) the Federal Government or any instrumentality of the Federal Government, nor the government of any State or political subdivision of a State; or

(B) any person that can demonstrate that such person—

(i) stores covered information from or about fewer than 15,000 individuals;

(ii) collects covered information from or about fewer than 10,000 individuals during any 12-month period;

(iii) does not collect or store sensitive information; and

(iv) does not use covered information to study, monitor, or analyze the behavior of individuals as the person’s primary business.

(3) **Covered Information.**—
(A) IN GENERAL.—The term “covered information” means, with respect to an individual, any of the following that is transmitted online:

(i) The online activity of the individual, including—

(I) the web sites and content from such web sites accessed;

(II) the date and hour of online access;

(III) the computer and geolocation from which online information was accessed; and

(IV) the means by which online information was accessed, such as a device, browser, or application.

(ii) Any unique or substantially unique identifier, such as a customer number or Internet protocol address.

(iii) Personal information such as—

(I) the name;

(II) a postal address or other location;

(III) an email address or other user name;
(IV) a telephone or fax number;

(V) a government-issued identification number, such as a tax identification number, a passport number, or a driver’s license number; or

(VI) a financial account number, or credit card or debit card number, or any required security code, access code, or password that is necessary to permit access to an individual’s financial account.

(B) EXCLUSION.—Such term shall not include—

(i) the title, business address, business email address, business telephone number, or business fax number associated with an individual’s status as an employee of an organization, or an individual’s name when collected, stored, used, or disclosed in connection with such employment status; or

(ii) any information collected from or about an employee by an employer, prospective employer, or former employer that directly relates to the employee-employer relationship.
(4) SENSITIVE INFORMATION.—

(A) DEFINITION.—The term “sensitive information” means—

(i) any information that is associated with covered information of an individual and relates directly to that individual’s—

(I) medical history, physical or mental health, or the provision of health care to the individual;

(II) race or ethnicity;

(III) religious beliefs and affiliation;

(IV) sexual orientation or sexual behavior;

(V) income, assets, liabilities, or financial records, and other financial information associated with a financial account, including balances and other financial information, except when financial account information is provided by the individual and is used only to process an authorized credit or debit to the account; or

(VI) precise geolocation information and any information about the
individual’s activities and relationships associated with such geolocation; or

(ii) an individual’s—

(I) unique biometric data, including a fingerprint or retina scan; or

(II) Social Security number.

(B) MODIFIED DEFINITION BY RULE-MAKING.—The Commission may, by regulations promulgated under section 553 of title 5, United States Code, modify the scope or application of the definition of “sensitive information” for purposes of this Act. In promulgating such regulations, the Commission shall consider—

(i) the purposes of the collection of the information and the context of the use of the information;

(ii) how easily the information can be used to identify a specific individual;

(iii) the nature and extent of authorized access to the information;

(iv) an individual’s reasonable expectations under the circumstances; and
(v) adverse effects that may be experienced by an individual if the information is disclosed to an unauthorized person.

SEC. 3. REGULATIONS REQUIRING “DO-NOT-TRACK” MECHANISM.

(a) FTC RULEMAKING.—Not later than 18 months after the date of enactment of this Act, the Commission shall promulgate regulations under section 553 of title 5, United States Code, that establish standards for the required use of an online opt-out mechanism to allow a consumer to effectively and easily prohibit the collection or use of any covered information and to require a covered entity to respect the choice of such consumer to opt-out of such collection or use. Regulations prescribed pursuant to this subsection shall be treated as regulations defining unfair and deceptive acts or practices affecting commerce prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) REQUIREMENTS TO BE INCLUDED IN REGULATIONS.—The regulations prescribed under subsection (a)—

(1) shall include a requirement for a covered entity to disclose, in a manner that is easily accessible to a consumer, information on the collection of information practices of such entity, how such entity
uses or discloses such information, and the names of
the persons to whom such entity would disclose such
information; and

(2) shall prohibit the collection or use of cov-
ered information by a covered entity for which a
consumer has opted-out of such collection or use,
unless the consumer changes their opt-out pref-
erence to allow the collection or use of such informa-
tion.

(c) ADDITIONAL REGULATORY AUTHORITY.—The
regulations prescribed under subsection (a)—

(1) may include a requirement that a covered
entity provide a consumer with a means to access
the covered information of such consumer and the
data retention and security policies of the covered
entity in a format that is clear and easy to under-
stand; and

(2) may include a requirement that some or all
of the regulations apply with regard to the collection
and use of covered information, regardless of the
source.

(d) EXEMPTIVE AUTHORITY.—The Commission may
exempt from some or all of the regulations required by
this section certain commonly accepted commercial prac-
tices, including the following:
(1) Providing, operating, or improving a product or service used, requested, or authorized by an individual, including the ongoing provision of customer service and support.

(2) Analyzing data related to use of the product or service for purposes of improving the products, services, or operations.

(3) Basic business functions such as accounting, inventory and supply chain management, quality assurance, and internal auditing.

(4) Protecting or defending rights or property, including intellectual property, against actual or potential security threats, fraud, theft, unauthorized transactions, or other illegal activities.

(5) Preventing imminent danger to the personal safety of an individual or group of individuals.

(6) Complying with a Federal, State, or local law, rule, or other applicable legal requirement, including disclosures pursuant to a court order, subpoena, summons, or other properly executed compulsory process.

(7) Any other category of operational use specified by the Commission by regulation that is consistent with the purposes of this Act.
SEC. 4. ADDITIONAL FTC AUTHORITY.

In implementing and enforcing the regulations prescribed under section 3, the Commission shall—

(1) have the authority to prescribe such regulations as may be necessary to carry out the purposes of this Act in accordance with section 553 of title 5, United States Code;

(2) monitor for risks to consumers in the provision of products and services, including the development of new hardware or software designed to limit, restrict, or circumvent the ability of a consumer to control the collection and use of the covered information of such consumer, as set forth in the regulations prescribed under section 3;

(3) perform random audits of covered entities, including Internet browsing for investigative purposes, to ensure compliance with the regulations issued under section 3;

(4) assess consumers’ understanding of the risks posed by the tracking of a consumer’s Internet activity and the collection and use of covered information relating to a consumer; and

(5) make available to the public at least 1 report of significant findings of the monitoring required by this section in each calendar year after the
date on which final regulations are issued pursuant to section 3(a).

SEC. 5. ENFORCEMENT BY STATE ATTORNEYS GENERAL.

(a) CIVIL ACTION.—In any case in which the Attorney General of a State, or an official or agency of a State, has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person who violates the regulations prescribed under section 3, the attorney general, official, or agency of the State, as parens patriae, may bring a civil action on behalf of the residents of the State in an appropriate district court of the United States—

(1) to enjoin further violation of the regulations prescribed under section 3 by the defendant;

(2) to compel compliance with the regulations prescribed under section 3; or

(3) to obtain civil penalties for violations of the regulations prescribed under section 3 in the amount determined under subsection (b).

(b) CIVIL PENALTIES.—

(1) CALCULATION.—For purposes of calculating the civil penalties that may be obtained under subsection (a)(3), the amount determined under this paragraph is the amount calculated by multiplying the number of days that a covered entity is not in
compliance with the regulations prescribed under section 3 by an amount not to exceed $11,000.

(2) ADJUSTMENT FOR INFLATION.—Beginning on the date that the Consumer Price Index for All Urban Consumers is first published by the Bureau of Labor Statistics that is after 1 year after the date of enactment of this Act, and each year thereafter, the amount specified in paragraph (1) shall be increased by the percentage increase in the Consumer Price Index published on that date from the Consumer Price Index published the previous year.

(3) MAXIMUM TOTAL LIABILITY.—Notwithstanding the number of actions which may be brought against a person under this section the maximum civil penalty for which any person may be liable under this section shall not exceed $5,000,000 for any related series of violations of the regulations prescribed under section 3.

(c) INTERVENTION BY THE FTC.—

(1) NOTICE AND INTERVENTION.—The State shall provide prior written notice of any action under subsection (a) to the Commission and provide the Commission with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice im-
mediately upon instituting such action. The Commis-

sion shall have the right—

(A) to intervene in the action;

(B) upon so intervening, to be heard on all

matters arising therein; and

(C) to file petitions of appeal.

(2) LIMITATION ON STATE ACTION WHILE FED-

ERAL ACTION IS PENDING.—If the Commission has

instituted a civil action for violation of the regula-
tions prescribed under section 3, no attorney general

of a State, or official, or agency of a State, may

bring an action under this section during the pend-

cency of that action against any defendant named in

the complaint of the Commission for any violation of

the regulations issued under this Act alleged in the

complaint.

SEC. 6. EFFECT ON OTHER LAWS.

(a) OTHER AUTHORITY OF FEDERAL TRADE COM-

MISSION.—Nothing in this Act shall be construed to limit

or affect in any way the Commission’s authority to bring

effortment actions or take any other measure under the

Federal Trade Commission Act (15 U.S.C. 41 et seq.) or

any other provision of law.

(b) STATE LAW.—The regulations prescribed under

section 3 shall not annul, alter, affect, or exempt any per-
son subject to the provisions of such regulations from com-
plying with the law of any State except to the extent that
such law is inconsistent with any provision of such regula-
tions, and then only to the extent of the inconsistency.
For purposes of this subsection, a State statute, regula-
tion, order, or interpretation is not inconsistent with the
provisions of the regulations prescribed under section 3
if the protection such statute, regulation, order, or inter-
pretation affords any person is greater than the protection
provided under the regulations prescribed under section
3.