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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 (1) COMMISSION.—The term “Commission”
2 means the Federal Trade Commission.

3 (2) COVERED ENTITY.—The term “covered en-
4 tity” means a person engaged in interstate com-
5 merce that collects or stores online data containing
6 covered information. Such term does not include—

7 (A) the Federal Government or any instru-
8 mentality of the Federal Government, nor the
9 government of any State or political subdivision
10 of a State; or

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

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

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

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

20 (iv) does not use covered information
21 to study, monitor, or analyze the behavior
22 of individuals as the person’s primary busi-
23 ness.

24 (3) COVERED INFORMATION.—

1 (A) IN GENERAL.—The term “covered in-
2 formation” means, with respect to an indi-
3 vidual, any of the following that is transmitted
4 online:

5 (i) The online activity of the indi-
6 vidual, including—

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

9 (II) the date and hour of online
10 access;

11 (III) the computer and
12 geolocation from which online infor-
13 mation was accessed; and

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

17 (ii) Any unique or substantially
18 unique identifier, such as a customer num-
19 ber or Internet protocol address.

20 (iii) Personal information such as—

21 (I) the name;

22 (II) a postal address or other lo-
23 cation;

24 (III) an email address or other
25 user name;

1 (IV) a telephone or fax number;

2 (V) a government-issued identi-
3 fication number, such as a tax identi-
4 fication number, a passport number,
5 or a driver's license number; or

6 (VI) a financial account number,
7 or credit card or debit card number,
8 or any required security code, access
9 code, or password that is necessary to
10 permit access to an individual's finan-
11 cial account.

12 (B) EXCLUSION.—Such term shall not in-
13 clude—

14 (i) the title, business address, business
15 email address, business telephone number,
16 or business fax number associated with an
17 individual's status as an employee of an or-
18 ganization, or an individual's name when
19 collected, stored, used, or disclosed in con-
20 nection with such employment status; or

21 (ii) any information collected from or
22 about an employee by an employer, pro-
23 spective employer, or former employer that
24 directly relates to the employee-employer
25 relationship.

1 (4) SENSITIVE INFORMATION.—

2 (A) DEFINITION.—The term “sensitive in-
3 formation” means—

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

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

10 (II) race or ethnicity;

11 (III) religious beliefs and affili-
12 ation;

13 (IV) sexual orientation or sexual
14 behavior;

15 (V) income, assets, liabilities, or
16 financial records, and other financial
17 information associated with a finan-
18 cial account, including balances and
19 other financial information, except
20 when financial account information is
21 provided by the individual and is used
22 only to process an authorized credit or
23 debit to the account; or

24 (VI) precise geolocation informa-
25 tion and any information about the

1 individual's activities and relationships
2 associated with such geolocation; or

3 (ii) an individual's—

4 (I) unique biometric data, includ-
5 ing a fingerprint or retina scan; or

6 (II) Social Security number.

7 (B) MODIFIED DEFINITION BY RULE-
8 MAKING.—The Commission may, by regulations
9 promulgated under section 553 of title 5,
10 United States Code, modify the scope or appli-
11 cation of the definition of “sensitive informa-
12 tion” for purposes of this Act. In promulgating
13 such regulations, the Commission shall con-
14 sider—

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

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

20 (iii) the nature and extent of author-
21 ized access to the information;

22 (iv) an individual's reasonable expect-
23 tations under the circumstances; and

1 (v) adverse effects that may be experi-
2 enced by an individual if the information is
3 disclosed to an unauthorized person.

4 **SEC. 3. REGULATIONS REQUIRING “DO-NOT-TRACK” MECH-**
5 **ANISM.**

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

19 (b) REQUIREMENTS TO BE INCLUDED IN REGULA-
20 TIONS.—The regulations prescribed under subsection
21 (a)—

22 (1) shall include a requirement for a covered
23 entity to disclose, in a manner that is easily acces-
24 sible to a consumer, information on the collection of
25 information practices of such entity, how such entity

1 uses or discloses such information, and the names of
2 the persons to whom such entity would disclose such
3 information; and

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

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

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

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

22 (d) EXEMPTIVE AUTHORITY.—The Commission may
23 exempt from some or all of the regulations required by
24 this section certain commonly accepted commercial prac-
25 tices, including the following:

1 (1) Providing, operating, or improving a prod-
2 uct or service used, requested, or authorized by an
3 individual, including the ongoing provision of cus-
4 tomer service and support.

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

8 (3) Basic business functions such as account-
9 ing, inventory and supply chain management, quality
10 assurance, and internal auditing.

11 (4) Protecting or defending rights or property,
12 including intellectual property, against actual or po-
13 tential security threats, fraud, theft, unauthorized
14 transactions, or other illegal activities.

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

17 (6) Complying with a Federal, State, or local
18 law, rule, or other applicable legal requirement, in-
19 cluding disclosures pursuant to a court order, sub-
20 poena, summons, or other properly executed compul-
21 sory process.

22 (7) Any other category of operational use speci-
23 fied by the Commission by regulation that is con-
24 sistent with the purposes of this Act.

1 **SEC. 4. ADDITIONAL FTC AUTHORITY.**

2 In implementing and enforcing the regulations pre-
3 scribed under section 3, the Commission shall—

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

8 (2) monitor for risks to consumers in the provi-
9 sion of products and services, including the develop-
10 ment of new hardware or software designed to limit,
11 restrict, or circumvent the ability of a consumer to
12 control the collection and use of the covered infor-
13 mation of such consumer, as set forth in the regula-
14 tions prescribed under section 3;

15 (3) perform random audits of covered entities,
16 including Internet browsing for investigative pur-
17 poses, to ensure compliance with the regulations
18 issued under section 3;

19 (4) assess consumers' understanding of the
20 risks posed by the tracking of a consumer's Internet
21 activity and the collection and use of covered infor-
22 mation relating to a consumer; and

23 (5) make available to the public at least 1 re-
24 port of significant findings of the monitoring re-
25 quired by this section in each calendar year after the

1 date on which final regulations are issued pursuant
2 to section 3(a).

3 **SEC. 5. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

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

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

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

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

20 (b) CIVIL PENALTIES.—

21 (1) CALCULATION.—For purposes of calculating
22 the civil penalties that may be obtained under sub-
23 section (a)(3), the amount determined under this
24 paragraph is the amount calculated by multiplying
25 the number of days that a covered entity is not in

1 compliance with the regulations prescribed under
2 section 3 by an amount not to exceed \$11,000.

3 (2) ADJUSTMENT FOR INFLATION.—Beginning
4 on the date that the Consumer Price Index for All
5 Urban Consumers is first published by the Bureau
6 of Labor Statistics that is after 1 year after the date
7 of enactment of this Act, and each year thereafter,
8 the amount specified in paragraph (1) shall be in-
9 creased by the percentage increase in the Consumer
10 Price Index published on that date from the Con-
11 sumer Price Index published the previous year.

12 (3) MAXIMUM TOTAL LIABILITY.—Notwith-
13 standing the number of actions which may be
14 brought against a person under this section the
15 maximum civil penalty for which any person may be
16 liable under this section shall not exceed \$5,000,000
17 for any related series of violations of the regulations
18 prescribed under section 3.

19 (c) INTERVENTION BY THE FTC.—

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

1 mediately upon instituting such action. The Commis-
2 sion shall have the right—

3 (A) to intervene in the action;

4 (B) upon so intervening, to be heard on all
5 matters arising therein; and

6 (C) to file petitions of appeal.

7 (2) LIMITATION ON STATE ACTION WHILE FED-
8 ERAL ACTION IS PENDING.—If the Commission has
9 instituted a civil action for violation of the regula-
10 tions prescribed under section 3, no attorney general
11 of a State, or official, or agency of a State, may
12 bring an action under this section during the pend-
13 ency of that action against any defendant named in
14 the complaint of the Commission for any violation of
15 the regulations issued under this Act alleged in the
16 complaint.

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

18 (a) OTHER AUTHORITY OF FEDERAL TRADE COM-
19 MISSION.—Nothing in this Act shall be construed to limit
20 or affect in any way the Commission’s authority to bring
21 enforcement actions or take any other measure under the
22 Federal Trade Commission Act (15 U.S.C. 41 et seq.) or
23 any other provision of law.

24 (b) STATE LAW.—The regulations prescribed under
25 section 3 shall not annul, alter, affect, or exempt any per-

1 son subject to the provisions of such regulations from com-
2 plying with the law of any State except to the extent that
3 such law is inconsistent with any provision of such regula-
4 tions, and then only to the extent of the inconsistency.
5 For purposes of this subsection, a State statute, regula-
6 tion, order, or interpretation is not inconsistent with the
7 provisions of the regulations prescribed under section 3
8 if the protection such statute, regulation, order, or inter-
9 pretation affords any person is greater than the protection
10 provided under the regulations prescribed under section
11 3.

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