

105TH CONGRESS
1ST SESSION

H.R. 2368

To promote the privacy of interactive computer service users through self-regulation by the providers of such services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 31, 1997

Mr. TAUZIN (for himself and Mr. GILLMOR) introduced the following bill;
which was referred to the Committee on Commerce

A BILL

To promote the privacy of interactive computer service users
through self-regulation by the providers of such 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Data Privacy Act of
5 1997”.

1 **SEC. 2. ESTABLISHMENT OF VOLUNTARY GUIDELINES RE-**
2 **GARDING COMMERCIAL MARKETING**
3 **THROUGH INTERACTIVE COMPUTER SERV-**
4 **ICES AND UNSOLICITED COMMERCIAL ELEC-**
5 **TRONIC MAIL.**

6 (a) **ESTABLISHMENT.**—Not later than 180 days after
7 the date of the enactment of this Act, the industry work-
8 ing group (as such term is defined in section 8) shall es-
9 tablish the following guidelines:

10 (1) Guidelines in accordance with section 3,
11 which limit the collection and use, for commercial
12 marketing purposes, of personally identifiable infor-
13 mation obtained from individuals through any inter-
14 active computer service.

15 (2) Guidelines in accordance with section 4, re-
16 lating to the distribution of unsolicited commercial
17 electronic mail.

18 (b) **VOLUNTARY NATURE.**—The guidelines estab-
19 lished under subsection (a) shall apply to providers of
20 interactive computer services and persons transmitting un-
21 solicited commercial electronic mail (as appropriate), but
22 only if, and to the extent that, such a provider or person
23 voluntarily agrees to such applicability by registration pur-
24 suant to section 5.

1 **SEC. 3. VOLUNTARY GUIDELINES FOR COLLECTION OF**
2 **PERSONAL INFORMATION FOR COMMERCIAL**
3 **MARKETING PURPOSES AND PERSONAL IN-**
4 **FORMATION FROM CHILDREN.**

5 (a) GUIDELINES REGARDING COLLECTION AND AC-
6 CESS TO INFORMATION.—The guidelines established in ac-
7 cordance with this section shall contain the following re-
8 quirements:

9 (1) NOTICE OF COLLECTION OF INFORMA-
10 TION.—A provider of an interactive computer service
11 that collects personally identifiable information from
12 a user of the service through use of such service for
13 commercial marketing purposes shall notify the
14 user—

15 (A) that such information is being col-
16 lected;

17 (B) of the nature of the information being
18 collected with respect to the individual user;
19 and

20 (C) of the user's option under subsection
21 (c) to prohibit disclosure of such information.

22 The notice shall be provided contemporaneously with
23 or (if technically feasible) before the collection of the
24 information, be prominently displayed, and be
25 phrased in a manner that is easy to read and under-
26 stand.

1 (2) NOTICE OF DISCLOSURE OF INFORMA-
2 TION.—Upon the request of a user of an interactive
3 computer service, the provider of the service shall
4 provide to the user a description of the types of re-
5 cipients of the personally identifiable information
6 collected with respect to that user and the purpose
7 for the disclosure to the third parties.

8 (3) ACCESS TO INFORMATION.—Upon the re-
9 quest of a user of an interactive computer service,
10 the provider of the service shall—

11 (A) provide to the user, free of charge, the
12 user's personally identifiable information col-
13 lected and retained by the service to date; and

14 (B) permit the user to verify the informa-
15 tion collected by the service and to correct any
16 error in such information.

17 (b) GUIDELINES REGARDING INFORMATION OB-
18 TAINED FROM CHILDREN.—The guidelines established in
19 accordance with this section shall contain the following re-
20 quirements:

21 (1) NOTICE TO OBTAIN CONSENT OF PAR-
22 ENT.—No provider of an interactive computer serv-
23 ice may, through the use of such service by a child,
24 collect any personal information regarding the child
25 or disclose or use any such information so collected,

1 without notifying the child (in advance of the collec-
2 tion or use) that the child should not provide any in-
3 formation without the consent of his or her parent.

4 (2) PROHIBITION ON SOLICITATION OF CHIL-
5 DREN TO PROVIDE INFORMATION ABOUT PAR-
6 ENTS.—No person may use an interactive computer
7 service to solicit or collect from children any infor-
8 mation regarding a parent of the child.

9 (3) NOTICE OF DISCLOSURE OF INFORMA-
10 TION.—Upon the request of the parent of a child
11 user of an interactive computer service, the provider
12 of the service shall provide to the parent a descrip-
13 tion of the types of recipients of the personally iden-
14 tifiable information collected with respect to that
15 child user and the purpose for the disclosure to the
16 third parties.

17 (4) ACCESS TO AND DELETION OF INFORMA-
18 TION.—Upon the request of the parent of a child
19 user of an interactive computer service, the provider
20 of the service shall—

21 (A) provide to the parent, free of charge,
22 the child user’s personally identifiable informa-
23 tion collected and retained by the service to
24 date; and

25 (B) provide for—

- 1 (i) the parent to verify such informa-
2 tion collected by the service to date and to
3 correct any error in such information; or
4 (ii) the permanent deletion of any
5 such information collected and retained by
6 the service to date.

7 (c) CONSUMER OPT-OUT.—The guidelines estab-
8 lished in accordance with this section shall provide a meth-
9 od by which an individual may choose to prohibit the dis-
10 closure (including the renting, selling, or exchanging), at
11 any time and for any purpose, of any personally identifi-
12 able information, not necessary to be disclosed in connec-
13 tion with the particular transaction, with respect to such
14 individual that is obtained through the use of an inter-
15 active computer service. The method established—

16 (1) shall clearly and accurately inform users of
17 such services of their ability to prohibit disclosure of
18 such information and of the various options for com-
19 municating a choice to prohibit disclosure, which
20 shall each be clearly described in the notice under
21 subsection (a)(1);

22 (2) shall be easy to use and free of cost to the
23 user, which may include electronic mail notification;

24 (3) shall provide for the implementation of any
25 choice to prohibit disclosure in a timely manner; and

1 (4) may include, once commercially available,
2 software that enables a user to encode their privacy
3 preferences, or enables a parent of a child user to
4 encode the parent's privacy preferences for the child,
5 into their browsers.

6 **SEC. 4. VOLUNTARY GUIDELINES FOR TRANSMISSION OF**
7 **UNSOLICITED COMMERCIAL ELECTRONIC**
8 **MAIL.**

9 (a) GUIDELINES REGARDING IDENTIFICATION OF
10 ORIGINATOR.—The guidelines established in accordance
11 with this section shall provide that any person who trans-
12 mits unsolicited commercial electronic mail shall cause to
13 appear in an electronic mail message transmitted as part
14 of such transmission the following information in the fol-
15 lowing locations:

16 (1) NOTICE OF ORIGINATOR.—The business or
17 trade name of person who initiates transmission of
18 the message shall appear as the first word or words
19 of the subject line of the electronic mail message
20 without any prior text or symbol.

21 (2) INFORMATION REGARDING ORIGINATOR.—
22 The business or trade name, physical address, elec-
23 tronic mail address, and telephone number of the
24 person who initiates transmission of the message

1 shall each appear prominently in the body of the
2 message.

3 (3) INFORMATION REGARDING OPT-OUT.—No-
4 tice of the recipient’s option under subsection (c) to
5 prohibit delivery of unsolicited commercial electronic
6 mail shall appear prominently in the body of the
7 message.

8 (b) GUIDELINES REGARDING MISIDENTIFICATION OF
9 ORIGINATOR.—The guidelines established in accordance
10 with this section shall contain the following requirements:

11 (1) PROHIBITION ON PREVENTING REPLIES.—
12 No person may initiate the transmission of unsolic-
13 ited commercial electronic mail from an unregistered
14 or fictitious Internet domain, or an unregistered or
15 fictitious electronic mail address, for the purpose
16 of—

17 (A) preventing replies to such message
18 through use of a standard reply mechanism in
19 the recipient’s electronic mail system; or

20 (B) preventing receipt of standard notices
21 of non-delivery.

22 (2) PROHIBITION ON BLOCKING FILTERING.—
23 No person may disguise the source of any unsolicited
24 commercial electronic mail message for the purpose
25 of preventing recipients, or recipient interactive com-

1 puter services, from implementing a mail filtering
2 tool to block the messages from reaching the in-
3 tended recipients.

4 (c) OPT-OUT FOR MAIL RECIPIENTS.—The guide-
5 lines established in accordance with this section shall pro-
6 vide a method by which an individual may choose to pro-
7 hibit the delivery to such individual, at any time and for
8 any purpose, of any unsolicited commercial electronic mail.
9 The method established shall—

10 (1) clearly and accurately inform electronic mail
11 users of their ability to prohibit delivery of such mail
12 and of the various options for communicating a
13 choice to prohibit delivery, which shall each be clear-
14 ly described as provided in subsection (a)(3);

15 (2) be easy to use and free of cost to the recipi-
16 ent of unsolicited commercial electronic mail, which
17 may include procedures to automatically return such
18 mail; and

19 (3) provide for the implementation of any
20 choice to prohibit delivery in a timely manner.

21 **SEC. 5. APPLICABILITY OF VOLUNTARY GUIDELINES AND**
22 **NEGOTIATION AND ARBITRATION OF COM-**
23 **PLAINTS.**

24 (a) REGISTRATION SYSTEM.—For purposes of facili-
25 tating compliance with the voluntary guidelines estab-

1 lished pursuant to sections 2, 3, and 4, the industry work-
2 ing group shall develop and promote a registration system
3 by which providers of interactive computer services and
4 persons transmitting commercial electronic mail may, by
5 registering, agree to comply with such guidelines. The in-
6 dustry working group shall provide for monitoring compli-
7 ance of registered entities with such guidelines to ensure
8 the integrity of the registration system.

9 (b) INCENTIVES FOR VOLUNTARY APPLICABILITY.—

10 (1) IN GENERAL.—The industry working group
11 shall develop and make available incentives to en-
12 courage compliance with such voluntary guidelines
13 and registration under subsection (a).

14 (2) ICON IDENTIFYING COMPLIANCE.—The in-
15 centives under paragraph (1) shall include develop-
16 ing a icon or logo that—

17 (A) is made available for use only by—

18 (i) providers of interactive computer
19 services who agree to comply with all of
20 the guidelines established pursuant to sec-
21 tions 2(a)(1) and 3 through registration
22 under subsection (a); and

23 (ii) persons transmitting commercial
24 electronic mail who agree to comply with

1 all of the guidelines established pursuant
2 to sections 2(a)(2) and 4; and
3 (B) identifies the user of the icon or logo
4 as a provider or person that complies with all
5 such guidelines.

6 (c) RESOLUTION OF CONSUMER COMPLAINTS.—The
7 system for registration established under subsection (a)
8 shall provide that, by registering, a provider of interactive
9 computer services or person who transmits commercial
10 electronic mail agrees that, if such provider or person is
11 contacted by a user of the service or recipient of such mail
12 regarding an alleged failure on the part of that provider
13 or person to comply with the applicable voluntary guide-
14 lines, the complaint shall be resolved in the following man-
15 ner:

16 (1) CONSUMER REDRESS.—The provider of the
17 service or transmitter of the mail shall, during the
18 60-day period beginning upon receipt of the com-
19 plaint, attempt to resolve or remedy the complaint.

20 (2) ARBITRATION.—If, upon the expiration of
21 the period under paragraph (1), a mutually satisfac-
22 tory resolution or remedy has not been reached the
23 issue may, at the request of either party involved, be
24 referred for settlement by arbitration, which shall be
25 binding on the parties. The arbitrator shall be se-

1 lected by the user from a list of arbitrators inde-
2 pendent to either party involved in the arbitration,
3 which shall be established by the industry working
4 group.

5 (d) SAFE HARBOR.—

6 (1) IN GENERAL.—Any activity described in
7 paragraph (2) engaged in by any person who has
8 registered under the system established under sub-
9 section (a) which is not in violation of the voluntary
10 guidelines established under sections 2, 3, and 4 of
11 this Act shall not be considered to an unfair or de-
12 ceptive trade practice under section 5 of the Federal
13 Trade Commission Act (15 U.S.C. 45).

14 (2) PROTECTED ACTIVITIES.—Activity de-
15 scribed in this paragraph is activity consisting of—

16 (A) the collection and use, for commercial
17 marketing purposes, of personally identifiable
18 information obtained from individuals through
19 an interactive computer service;

20 (B) the solicitation or collection from a
21 child, through an interactive computer service,
22 of personal information regarding the child or
23 information regarding the parent of the child;
24 or

1 (C) the transmission of unsolicited com-
2 mercial electronic mail.

3 (3) DETERMINATION OF COMPLIANCE.—In de-
4 termining, for purposes of paragraph (1), whether a
5 person complies with the voluntary guidelines estab-
6 lished under sections 2, 3, and 4 (as applicable), the
7 Federal Trade Commission shall not make any final
8 determination without obtaining from the entity re-
9 sponsible for monitoring compliance with the guide-
10 lines a determination by such entity regarding com-
11 pliance by such person. In making a final determina-
12 tion for purposes of paragraph (1), the Commission
13 shall give substantial weight to the determination by
14 such entity.

15 **SEC. 6. PROHIBITION AGAINST DISCLOSURE AND USE OF**
16 **CERTAIN GOVERNMENT INFORMATION.**

17 (a) RESTRICTION ON COMMERCIAL MARKETING USE
18 WITHOUT CONSENT OF INDIVIDUAL.—

19 (1) IN GENERAL.—No person may use for com-
20 mercial marketing purposes any personal informa-
21 tion regarding an individual that is described in
22 paragraph (2) and is obtained through the use of
23 any interactive computer service, without the prior
24 consent of the individual.

1 (2) PERSONAL INFORMATION.—The personal
2 information described in this paragraph is, with re-
3 spect to an individual, any personally identifiable or
4 other information regarding the individual that is
5 submitted to or maintained by any agency of the
6 Federal Government in a confidential manner or
7 subject to any law, regulation, agreement, or assur-
8 ance protecting the confidentiality of such informa-
9 tion.

10 (b) LIMITATION ON DISPLAY OF SOCIAL SECURITY
11 NUMBERS.—No person may, through the use of an inter-
12 active computer service, display the social security number
13 of any individual to a third party, except—

14 (1) when the social security number is displayed
15 as part of a public record on file with an agency of
16 the Federal Government or a State or local govern-
17 ment, which record is available to the general public;

18 (2) to a law enforcement agency or licensed pri-
19 vate investigator; or

20 (3) when the person has agreed in writing to
21 follow industry guidelines, on file with the Federal
22 Trade Commission, that limit the display of social
23 security numbers.

24 This subsection may not be construed to limit the use of
25 the social security number of an individual, provided by

1 a user of an interactive computer service, to retrieve other
2 information regarding the individual by entering the social
3 security number in an interactive computer service, if the
4 user has a prior business relationship or a valid contract
5 with the provider of the interactive computer service.

6 **SEC. 7. PROHIBITION AGAINST COMMERCIAL MARKETING**
7 **USE OF MEDICAL INFORMATION.**

8 (a) PROHIBITION OF USE.—No person may use, for
9 commercial marketing purposes, any personal health or
10 medical information obtained through an interactive com-
11 puter service unless—

12 (1) the person has obtained the prior consent of
13 the individual to whom such information relates for
14 such use; or

15 (2) such use is otherwise authorized by law.

16 (b) ENFORCEMENT AND RELIEF.—

17 (1) UNFAIR TRADE PRACTICES.—Any violation
18 of subsection (a) is unlawful and is an unfair meth-
19 od of competition, and an unfair and deceptive act
20 or practice, in commerce under section 5 of the Fed-
21 eral Trade Commission Act (15 U.S.C. 45).

22 (2) AUTHORITY OF FTC.—Except as otherwise
23 specifically provided in this subsection, subsection
24 (a) shall be enforced by the Federal Trade Commis-
25 sion under rules, regulations, and procedures pro-

1 vided for in the Federal Trade Commission Act. The
2 Commission may prevent any person from violating
3 the provisions of subsection (a) in the same manner,
4 by the same means, and with the same jurisdiction,
5 powers, and duties as though all applicable terms
6 and provisions of the Federal Trade Commission Act
7 were incorporated into and made a part of this sec-
8 tion.

9 (3) PRIVILEGES AND IMMUNITIES.—Any person
10 violating the provisions of subsection (a) shall be
11 subject to the penalties and entitled to the privileges
12 and immunities provided in the Federal Trade Com-
13 mission Act, in the same manner, by the same
14 means, and with the same jurisdiction, powers, and
15 duties as though all applicable terms and provisions
16 of the Federal Trade Commission Act were incor-
17 porated into and made a part of this section.

18 **SEC. 8. DEFINITIONS.**

19 For purposes of this Act, the following definitions
20 shall apply:

21 (1) CHILD.—The term ‘child’ means a person
22 who has not attained the age of 13 years.

23 (2) COMMERCIAL ELECTRONIC MAIL.—The
24 term “commercial electronic mail” means any elec-
25 tronic mail that—

1 (A) advertises a product or service;

2 (B) contains a solicitation for the use of a
3 toll-free telephone number or a telephone num-
4 ber with a 900 prefix the use of which connects
5 the user to a person or service that advertises
6 the sale of or sells a product or service; or

7 (C) contains a list of one or more Internet
8 sites that contain an advertisement or a solici-
9 tation referred to in subparagraph (B).

10 (3) COMMERCIAL MARKETING.—The term
11 “commercial marketing” includes practices that—

12 (A) promote, sell, or deliver goods or serv-
13 ices through direct sales marketing, campaigns
14 to increase brand awareness, and other similar
15 marketing strategies;

16 (B) perform market research; or

17 (C) foster the promotion, sale, or delivery
18 of goods and services through the sale, rental,
19 compilation, or exchange of lists.

20 (4) INDUSTRY WORKING GROUP.—The term
21 “industry working group” means an entity formed
22 by the members of the interactive computer services
23 industry, whose members shall consist of representa-
24 tives of participants in the industry and interested
25 organizations serving the industry, such as—

- 1 (A) the Direct Marketing Association;
- 2 (B) the Interactive Services Association;
- 3 (C) the Internet Privacy Working Group;
- 4 (D) the various members of TRUSTe;
- 5 (E) the Commercial Internet eXchange As-
- 6 sociation;
- 7 (F) the American Association of Advertis-
- 8 ers;
- 9 (G) the Association of National Advertis-
- 10 ers; and
- 11 (H) the Individual Reference Services.

12 (5) INTERACTIVE COMPUTER SERVICE.—The
 13 term “interactive computer service” means any in-
 14 formation service, system, or access software pro-
 15 vider that provides or enables computer access by
 16 multiple users to a computer server, including spe-
 17 cifically—

- 18 (A) a service or system that provides ac-
- 19 cess to the Internet; and
- 20 (B) an on-line information service.

21 (6) INTERACTIVE COMPUTER SERVICES INDUS-

22 TRY.—The term “interactive computer services in-

23 dustry” includes providers of interactive computer

24 services, providers of on-line direct marketing serv-

25 ices, advisory and trade organizations for such serv-

1 ices, and providers of hardware and software for
2 such services.

3 (7) INTERNET.—The term “Internet” means
4 the international computer network of both Federal
5 and non-Federal interoperable packet switched data
6 networks.

7 (8) ON-LINE INFORMATION SERVICE.—The
8 term “on-line information service” means any person
9 operating a worldwide web site for commercial or
10 noncommercial purposes, including any person offer-
11 ing products or services for sale.

12 (9) PARENT.—The term ‘parent’ includes a
13 legal guardian.

14 (10) PERSONAL HEALTH OR MEDICAL INFOR-
15 MATION.—The term “personal health or medical in-
16 formation” means any information, in any form or
17 medium, that relates to the past, present, or future
18 physical or mental health, predisposition, or condi-
19 tion of an individual or the provision of health care
20 to an individual.

21 (11) PERSONALLY IDENTIFIABLE INFORMA-
22 TION.—The term “personally identifiable informa-
23 tion” means information about an individual that
24 would facilitate or enable the physical locating and
25 contacting of that individual, including an individ-

1 ual’s name, street or electronic mail address, tele-
2 phone number, social security number, physical de-
3 scription, credit card number, checking account
4 number, or debit account number. The term does
5 not include any record of aggregate data which does
6 not identify particular persons.

7 (12) SOCIAL SECURITY ACCOUNT NUMBER.—
8 The term “Social Security account number” means,
9 with respect to an individual, the number assigned
10 to the individual under section 205(c)(2)(B) of the
11 Social Security Act (and any derivative of such num-
12 ber).

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