

108TH CONGRESS
1ST SESSION

H. R. 3631

To prohibit the collection, by interactive video-related service providers, of personally identifiable information regarding the viewing choices of subscribers to such services.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 21, 2003

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

A BILL

To prohibit the collection, by interactive video-related service providers, of personally identifiable information regarding the viewing choices of subscribers to such services.

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 “Television Viewer Pri-
5 vacy Act of 2003”.

6 **SEC. 2. PROTECTION OF PRIVACY OF USERS OF INTER-**
7 **ACTIVE VIDEO-RELATED SERVICES.**

8 (a) IN GENERAL.—An interactive video-related serv-
9 ice provider may not collect, maintain, or disclose any per-

1 sonal viewing information regarding a subscriber to the
2 service that is personally identifiable, without the prior
3 written or electronic consent of such subscriber, except—

4 (1) to render, or conduct a legitimate business
5 activity related to, the service provided to the sub-
6 scriber by such provider, including billing for such
7 service; or

8 (2) as provided in subsection (c) or (d).

9 (b) REQUIREMENTS FOR CONSENT.—Consent shall
10 not be considered to be made by a subscriber, for purposes
11 of this subsection, unless prior to the writing or electronic
12 communication granting the consent, the subscriber is
13 provided a separate statement that clearly and conspicu-
14 ously informs the subscriber of—

15 (1) the nature of personally identifiable infor-
16 mation collected or to be collected with respect to
17 the subscriber and the nature and use of such infor-
18 mation;

19 (2) the nature, frequency, and purpose of any
20 disclosure that may be made of such information, in-
21 cluding an identification of the types of persons to
22 whom the disclosure may be made;

23 (3) the period during which such information
24 will be maintained by the interactive video-related
25 service provider;

1 (4) the limitations provided by this section with
2 respect to the collection, maintenance, and disclosure
3 of information by an interactive video-related service
4 provider and the methods under subsections (f) and
5 (g) by which such limitations may be enforced.

6 If, after a statement referred to in the preceding sentence
7 is provided to a subscriber, there is any change with re-
8 spect to any of the information described in paragraphs
9 (1) through (5), such statement shall not be sufficient for
10 purposes of this subsection.

11 (c) DISCLOSURE PURSUANT TO COURT ORDER.—An
12 interactive video-related service provider may disclose such
13 personally identifiable personal viewing information, to the
14 extent necessary to comply with a court order authorizing
15 such disclosure to a governmental entity, but only if—

16 (1) the subscriber is notified of such order by
17 the person to whom the order is directed; and

18 (2) in the proceeding relevant to such court
19 order—

20 (A) such entity offers clear and convincing
21 evidence that the subject of the information is
22 reasonably suspected of engaging in criminal
23 activity and that the information disclosed
24 would be material evidence in the case; and

1 (B) the subject of the information is af-
2 forded the opportunity to appear and contest
3 such entity's claim.

4 (d) RIGHT OF SUBSCRIBER TO ACCESS INFORMA-
5 TION.—If personally identifiable viewing information re-
6 garding a subscriber to a service provided by an interactive
7 video-related service provider is collected, the subscriber
8 shall have access to such information for as long as such
9 information is maintained.

10 (e) DESTRUCTION OF INFORMATION.—An interactive
11 video-related service provider shall destroy any personally
12 identifiable personal viewing information that is collected
13 by the service as soon as such information is no longer
14 necessary for the purpose for which it was collected or
15 maintained pursuant to subsection (a) and there are no
16 pending requests or orders for access to such information
17 under subsection (d) or pursuant to a court order.

18 (f) FTC ENFORCEMENT.—

19 (1) UNFAIR OR DECEPTIVE ACT.—This section
20 shall be enforced by the Federal Trade Commission
21 as if the violation of this section were an unfair or
22 deceptive act or practice proscribed under section
23 18(a)(1)(B) of the Federal Trade Commission Act
24 (15 U.S.C. 57a(a)(1)(B)).

1 (2) ACTIONS BY FTC.—The Federal Trade
2 Commission shall prevent any person from violating
3 this section in the same manner, by the same means,
4 and with the same jurisdiction, powers, and duties
5 as though all applicable terms and provisions of the
6 Federal Trade Commission Act (15 U.S.C. 41 et
7 seq.) were incorporated into and made a part of this
8 section. Any entity that violates any provision of this
9 section is subject to the penalties and entitled to the
10 privileges and immunities provided in the Federal
11 Trade Commission Act in the same manner, by the
12 same means, and with the same jurisdiction, power,
13 and duties as though all applicable terms and provi-
14 sions of the Federal Trade Commission Act were in-
15 corporated into and made a part of this section.

16 (3) JURISDICTION.—Notwithstanding section
17 5(a)(2) of the Federal Trade Commission Act (15
18 U.S.C. 45(a)(2)), communications common carriers
19 shall be subject to the jurisdiction of the Federal
20 Trade Commission for purposes of this section.

21 (g) ENFORCEMENT BY STATES.—

22 (1) IN GENERAL.—In any case in which the at-
23 torney general of a State has reason to believe that
24 an interest of the residents of that State has been
25 or is threatened or adversely affected by any inter-

1 active video-related service provider who violates this
2 section, the State may bring a civil action in a
3 United States district court—

4 (A) to enjoin further violation of this sec-
5 tion by the defendant; or

6 (B) to obtain damages on behalf of resi-
7 dents of the State, as provided in paragraph
8 (2).

9 (2) DAMAGES, FEES, AND COSTS.—In an action
10 under paragraph (1)(B), the court may award—

11 (A) actual damages, but not less than liq-
12 uidated damages computed at the rate of \$100
13 a day for each day of violation or \$1,000,
14 whichever is higher;

15 (B) punitive damages; and

16 (C) reasonable attorneys' fees and other
17 litigation costs reasonably incurred.

18 (h) OTHER REMEDIES.—The remedies provided by
19 this Act shall be in addition to any other lawful remedy
20 available to a subscriber to an interactive video-related
21 service.

22 (i) DEFINITIONS.—For purposes of this section, the
23 following definitions shall apply:

24 (1) INTERACTIVE VIDEO-RELATED SERVICES
25 PROVIDER.—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (B), the term “interactive video-
3 related services provider” means any person
4 who has access to personal viewing information
5 through—

6 (i) the provision of video programming
7 (as such term is defined in section 602 of
8 the Communications Act of 1934 (47
9 U.S.C. 522);

10 (ii) services for recording of video pro-
11 gramming;

12 (iii) navigation devices, computer soft-
13 ware, or information;

14 (iv) converter boxes;

15 (v) interactive communications equip-
16 ment; or

17 (vi) other equipment that is used by
18 consumers to access multichannel video
19 programming or other services offered
20 through a service providing multichannel
21 video programming.

22 (B) EXCEPTION.—Such term shall not in-
23 clude any cable operator (as such term is de-
24 fined in section 602 of the Communications Act
25 of 1934.

1 (2) LEGITIMATE BUSINESS ACTIVITY.—The
2 term “legitimate business activity” means, with re-
3 spect to an interactive video-related service provider,
4 any interaction between a consumer and the provider
5 that is necessary to maintain the providing of a good
6 or service requested by the consumer, including ap-
7 proving, guaranteeing, processing, administering,
8 completing, enforcing, providing, or marketing a
9 product, service, account, benefit, transaction, or
10 payment method that is requested or approved by
11 the consumer.

12 (3) PERSONAL VIEWING INFORMATION.—The
13 term “personal viewing information” means, with re-
14 spect to multichannel video programming provided
15 to a person, information regarding the video pro-
16 gramming that the person views, displays, or
17 records.

18 (4) PERSONALLY IDENTIFIABLE INFORMA-
19 TION.—The term “personally identifiable informa-
20 tion” does not include any record of aggregate data
21 that does not identify particular persons.

22 (5) VIDEO PROGRAMMING.—The term “video
23 programming” has the meaning given such term in
24 section 602 of the Communications Act of 1934.

1 (j) PREEMPTION OF STATE LAWS.—This section
2 supercedes any statute, regulation, or rule of a State or
3 political subdivision of a State that expressly regulates the
4 collection, maintenance, or disclosure of personal viewing
5 information, regarding multichannel video programming,
6 that is personally identifiable.

