

108TH CONGRESS
2D SESSION

H. R. 4255

To prevent deceptive software transmission practices in order to safeguard computer privacy, maintain computer control, and protect Internet commerce.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 2004

Mr. INSLEE introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prevent deceptive software transmission practices in order to safeguard computer privacy, maintain computer control, and protect Internet commerce.

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 “Computer Software
5 Privacy and Control Act”.

6 **SEC. 2. DEFINITIONS.**

7 As used in this Act, the following definitions apply:

1 (1) The terms “computer” and “protected com-
2 puter” have the meanings given such terms in sec-
3 tion 1030(e) of title 18, United States Code.

4 (2) The term “computer software” means a se-
5 quence of instructions written in any programming
6 language that is stored or executed on a computer.
7 Such term shall not include computer software that
8 is a Web page, or data components of Web pages
9 that are not executable independently of the Web
10 page.

11 (3) The term “disable”, with regards to com-
12 puter software, or a component thereof, means to
13 permanently prevent such software or component
14 from executing any of the functions described in sec-
15 tion 3 that such software is otherwise capable of exe-
16 cuting, unless the owner or operator of a protected
17 computer takes a subsequent affirmative action to
18 enable the execution of such functions.

19 (4) The terms “execute”, “execution”, and
20 “executable”, when used with respect to computer
21 software, refer to the performance of the functions
22 or the carrying out of the instructions of the com-
23 puter software.

24 (5) The term “first retail sale” means the first
25 sale of a computer, for a purpose other than resale,

1 after the manufacture, production, or importation of
2 the computer. For purposes of this paragraph, the
3 lease of a computer shall be considered a sale of the
4 computer at retail.

5 (6) The term “Internet” has the meaning given
6 such term in section 1302(6) of the Children’s On-
7 line Privacy Protection Act of 1998 (15 U.S.C.
8 6501(6)).

9 (7) The term “owner or operator”, with respect
10 to a protected computer, shall not include any per-
11 son who owns a computer prior to the first retail
12 sale of such computer.

13 (8) The term “person” has the meaning given
14 that term in section 1030(e)(12) of title 18, United
15 States Code.

16 (9) The term “personal information” means—

17 (A) a first and last name;

18 (B) a home or other physical address in-
19 cluding street name;

20 (C) an electronic mail address;

21 (D) a telephone number;

22 (E) a Social Security number;

23 (F) a credit card or bank account number
24 or any password or access code associated with
25 a credit card or bank account; and

1 (G) a birth certificate number.

2 (10) The term “removal utility” means a means
3 by which the owner or operator of a protected com-
4 puter can remove, delete, or disable computer soft-
5 ware, or a component thereof.

6 (11) The term “transmit” means to transfer,
7 send, or make available computer software, or any
8 component thereof, via the Internet or any other me-
9 dium, including local area networks of computers,
10 other non-wire transmission, and disc or other data
11 storage device, for the purpose of or resulting in an
12 economic benefit to the person transferring, sending,
13 or making available such computer software, or com-
14 ponent thereof, derived from the transmission or
15 execution of such software, or component thereof.
16 Such term shall not include any action by a person
17 providing—

18 (A) the Internet connection, telephone con-
19 nection, or other means of transmission capa-
20 bility such as a compact disk or digital video
21 disk through which the software was made
22 available;

23 (B) the storage or hosting of the software
24 program or an Internet Web page through
25 which the software was made available; or

1 (C) an information location tool, such as a
2 directory, index, reference, pointer, or hypertext
3 link, through which the user of the computer lo-
4 cated the software,
5 unless such person receives a direct economic benefit
6 from the execution of such software on the protected
7 computer.

8 (12) The term “Web page” means a location
9 that has a single Uniform Resource Locator with re-
10 spect to the World Wide Web or other single location
11 with respect to the Internet.

12 **SEC. 3. UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN**
13 **THE TRANSMISSION OF COMPUTER SOFT-**
14 **WARE.**

15 (a) DECEPTIVE ACTS PROHIBITED.—It is unlawful
16 for any person knowingly to transmit to a protected com-
17 puter owned or operated by another person, or transmit
18 to a protected computer prior to the first retail sale of
19 such computer, any computer software, or any component
20 thereof, that—

21 (1) collects personal information about an
22 owner or operator of that protected computer and
23 transfers such information to any person other than
24 such owner or operator;

1 (2) monitors or analyzes the content of the
2 Internet web pages accessed by an owner or operator
3 of such computer and transfers information regard-
4 ing the accessing of such web pages to any person
5 other than such owner or operator; or

6 (3) modifies default computer settings or com-
7 puter settings previously selected by the owner or
8 operator of that computer that affect—

9 (A) the Web page that is first displayed by
10 computer software used to access and navigate
11 the Internet, such as an Internet browser;

12 (B) Internet connection settings, the modi-
13 fication of which can result in financial charges
14 to the owner or operator without the owner or
15 operator's knowledge; or

16 (C) the actions or operations of any service
17 offered by a provider of a service used to search
18 the Internet, or files and data stored on the
19 protected computer,

20 unless, before the execution of the functions described in
21 paragraphs (1) through (3), notice of such functions is
22 provided to, and consent to such execution is obtained
23 from, such owner or operator, and such software, or com-
24 ponent thereof, includes a removal utility.

1 (b) REQUIREMENTS FOR ADVERTISING SOFT-
2 WARE.—

3 (1) NOTICE AND CONSENT.—It is unlawful for
4 any person knowingly to transmit to a protected
5 computer owned or operated by another person, or
6 transmit to a protected computer prior to the first
7 retail sale of such computer, any computer software,
8 or any component thereof, that includes a function
9 to deliver or display advertisements, unless, before
10 the execution of such function, notice of such func-
11 tion is provided to, and the consent to such execu-
12 tion is obtained from, such owner or operator, and
13 such software, or component thereof, includes a re-
14 moval utility.

15 (2) SOFTWARE DISPLAYED AS A WEB PAGE.—
16 The requirements of paragraph (1) shall apply to
17 computer software containing a function to deliver
18 advertisements displayed as a Web page or by other
19 means, but shall not include software that is a Web
20 page or a component of a Web page.

21 (c) KNOWLEDGE REQUIREMENT.—For purposes of
22 this section, the term “knowingly”, used with respect to
23 transmitting computer software, or a component thereof,
24 means that the person transmitting has actual knowledge
25 that the software or component transmitted has the capac-

1 ity to execute any of the functions described in this sec-
2 tion.

3 (d) NOTICE AND CONSENT REQUIREMENTS.—

4 (1) NOTICE.—The notice required under sub-
5 sections (a) and (b)—

6 (A) shall not be materially false or mis-
7 leading; and

8 (B) shall include a description of and di-
9 rections for the removal utility, or instructions
10 for the removal, deletion, or disabling of the
11 software, or component thereof.

12 (2) CONSENT.—The consent required under
13 subsections (a) and (b) shall be contiguous to the
14 notice required under such subsections, such that
15 the owner or operator of the protected computer
16 may reasonably understand the function or functions
17 to which such consent is granted.

18 (3) DEFINITION.—For purposes of this sub-
19 section, the term “materially false or misleading no-
20 tice” includes—

21 (A) a failure to describe any of the func-
22 tions requiring notice; and

23 (B) an unauthorized material modification
24 to or obstruction of a notice, description, or
25 warning provided by computer software pre-

1 viously stored or executed on the protected com-
2 puter.

3 **SEC. 4. ENFORCEMENT.**

4 (a) FEDERAL TRADE COMMISSION.—

5 (1) UNFAIR OR DECEPTIVE ACT OR PRAC-
6 TICE.—A violation of this Act shall be treated as a
7 violation of a rule defining an unfair or deceptive act
8 or practice prescribed under section 18(a) of the
9 Federal Trade Commission Act (15 U.S.C. 57a(a)).

10 (2) ACTIONS BY THE COMMISSION.—The Fed-
11 eral Trade Commission shall enforce this Act in the
12 same manner, by the same means, and with the
13 same jurisdiction, powers, and duties as though all
14 applicable terms and provisions of the Federal Trade
15 Commission Act (15 U.S.C. 41 et seq.) were incor-
16 porated into and made a part of this Act.

17 (b) CRIMINAL PENALTIES.—

18 (1) IN GENERAL.—Section 1030(a) of title 18,
19 United States Code, is amended—

20 (A) by inserting “or” at the end of para-
21 graph (7); and

22 (B) by adding at the end the following:

23 “(8) knowingly causes the transmission of a
24 program, information, code, or command with the
25 intent to obtain access without authorization or ex-

ceeding authorized access to a protected computer
by means of a knowingly and materially false or mis-
leading notice or description of function, effect, or
origin of such computer software;”.

(2) DEFINITIONS.—Section 1030(e) of title 18,
United States Code, is amended—

(A) in paragraph (6)—

(i) by inserting “, or to obtain further
access to or control over the computer”
after “in the computer”; and

(ii) by striking “or alter” and insert-
ing “, alter, access, or control”; and

(B) by adding at the end the following:

“(13) The term ‘knowingly and materially false
or misleading notice or description’ includes a know-
ing and material omission regarding function of pro-
gram, information, code, or command that provides
access to or control over a protected computer.”.

(3) PENALTIES.—Section 1030(c)(3) of title 18,
United States Code is amended—

(A) in subparagraph (A), by striking “or
(a)(7)” and inserting “(a)(7), or (a)(8)”; and

(B) in subparagraph (B), by striking “or
(a)(7)” and inserting “(a)(7), or (a)(8)”.

(c) STATE ACTION.—

1 (1) IN GENERAL.—In any case in which the at-
2 torney general of a State has reason to believe that
3 an interest of the residents of that State has been
4 or is threatened or adversely affected by a violation
5 of section 3 of this Act, the State may bring a civil
6 action on behalf of the residents of the State in a
7 district court of the United States of appropriate ju-
8 risdiction to—

9 (A) enjoin that practice;

10 (B) enforce compliance with this Act; or

11 (C) obtain damages, restitution, or other
12 compensation on behalf of residents of the
13 State.

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 Federal
18 Trade Commission—

19 (i) written notice of that action; and

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

22 (B) EXEMPTION.—Subparagraph (A) shall
23 not apply with respect to the filing of an action
24 by an attorney general of a State under this
25 subsection, if the attorney general determines

1 that it is not feasible to provide the notice de-
2 scribed in that subparagraph before filing of the
3 action. In such case, the attorney general of a
4 State shall provide notice and a copy of the
5 complaint to the Federal Trade Commission at
6 the same time as the attorney general files the
7 action.

8 (3) INTERVENTION BY FEDERAL TRADE COM-
9 MISSION.—

10 (A) IN GENERAL.—On receiving notice
11 under paragraph (2), the Federal Trade Com-
12 mission shall have the right to intervene in the
13 action that is the subject of the notice.

14 (B) EFFECT OF INTERVENTION.—If the
15 Federal Trade Commission intervenes in an ac-
16 tion under subparagraph (A), it shall have the
17 right—

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

20 (ii) to file a petition for appeal.

21 (4) CONSTRUCTION.—For purposes of bringing
22 any civil action under paragraph (1), nothing in this
23 Act shall be construed to prevent an attorney gen-
24 eral of a State from exercising the powers conferred

1 on the attorney general by the laws of that State
2 to—

3 (A) conduct investigations;

4 (B) administer oaths or affirmations; or

5 (C) compel the attendance of witnesses or
6 the production of documentary and other evi-
7 dence.

8 (5) PREEMPTION.—In any case in which an ac-
9 tion is instituted by or on behalf of the Commission
10 for a violation of section 3, no State may, during the
11 pendency of that action, institute an action under
12 paragraph (1) against any defendant named in the
13 complaint in that action.

14 (6) SERVICE OF PROCESS.—In an action
15 brought under paragraph (1), process may be served
16 in any district in which the defendant—

17 (A) is an inhabitant; or

18 (B) may be found.

19 **SEC. 5. EFFECT ON OTHER LAWS.**

20 This Act supersedes any statute, regulation, or rule
21 of a State or political subdivision of a State that expressly
22 regulates the transmission of computer software similar
23 to that described in section 3.

1 **SEC. 6. LAW ENFORCEMENT REPORTING REQUIREMENTS.**

2 (a) SEMIANNUAL REPORTS TO CONGRESS ON TRANS-
3 MISSION OF COMPUTER SOFTWARE FOR SURVEILLANCE
4 ACTIVITIES.—Not later than 1 year after the date of en-
5 actment of this Act, and every 6 months thereafter, the
6 Attorney General shall transmit to the Committees on the
7 Judiciary of the Senate and of the House of Representa-
8 tives a report concerning any warrant, order, or extension
9 of an order applied for by law enforcement agencies of
10 the Department of Justice, whose implementation involved
11 the transmission or execution of computer software on a
12 protected computer to record computer activity or inter-
13 cept any wire, oral, or electronic communications. Such
14 reports shall include information concerning—

15 (1) the type of warrant, order, or extension of
16 an order applied for;

17 (2) the information sought by the warrant, pe-
18 riod of interceptions authorized by the order, and
19 the number and duration of any extensions of the
20 warrant or order;

21 (3) the offense specified in the application, war-
22 rant, order, or extension of an order;

23 (4) the identity of the applying investigative or
24 law enforcement officer and agency making the ap-
25 plication and the person authorizing the application;

1 (5) the nature of the facilities from which or
2 place where activities were to be recorded or commu-
3 nications were to be intercepted;

4 (6) a general description of the recordings or
5 interceptions made under such order or extension,
6 including—

7 (A) the approximate nature and frequency
8 of incriminating activities recorded or commu-
9 nications intercepted;

10 (B) the approximate nature and frequency
11 of other activities recorded or communications
12 intercepted;

13 (C) the approximate number of persons
14 whose activities were recorded or communica-
15 tions were intercepted;

16 (D) the number of warrants or orders in
17 which encryption was encountered and whether
18 such encryption prevented law enforcement
19 from obtaining access to any information pursu-
20 ant to such warrant or the plain text of commu-
21 nications intercepted pursuant to such order;
22 and

23 (E) the approximate nature, amount, and
24 cost of the manpower and other resources used
25 in the recordings or interceptions;

1 (7) the number of arrests resulting from record-
2 ings or interceptions made under such warrant,
3 order, or extension of an order, and the offenses for
4 which arrests were made;

5 (8) the number of trials resulting from such re-
6 cordings or interceptions;

7 (9) the number of motions to suppress made
8 with respect to such recordings or interceptions, and
9 the number of such motions granted or denied;

10 (10) the number of convictions resulting from
11 such recordings or interceptions and the offenses for
12 which the convictions were obtained, and a general
13 assessment of the importance of the recordings or
14 interceptions; and

15 (11) the specific persons authorizing the use of
16 such computer software in the implementation of
17 such warrant, order, or extension of an order.

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