and has been a national leader in developing and managing commercial properties, residential and senior living communities, and health care facilities since the 1970s. Sage is actually an acronym for Sidney Albert Goodman Enterprises; John B. Goodman Limited Partnership, a development and design company; Sage Travel, a full-service travel agency.

Sidney started this organization from a single real estate holding which he acquired in 1952. At that time, he had a Hamms beer distributorship, which was very successful. However, when Hamms was purchased in 1970, he preferred to run his own business. So, like any good entrepreneur, he sold it back to them and focused on developing his real estate business, Sage Company.

Through his business dealings, Sidney has been a mentor to hundreds of people over the years. He attentively listens to their challenges and offers guidance based on knowledge that can only be gained through experience. He does more than simply ask people to carry out an action; he explains why, based on wisdom that can only be attained from decades as a successful businessman.

Sidney is generous with his knowledge, the most valuable asset anyone can have, because he genuinely cares about people. Whether they are an assistant or a company president, he sincerely wants to know about their life, their hopes, and dreams. He loves to give people the opportunity to challenge themselves and expand their horizons. And when they think they can't succeed, he is there to tell them they can. And they do.

While Sidney is undoubtedly a very successful businessman, it is this concern for every individual that makes him an exceptional human being.

I am proud to be Sidney Goodman's friend and I wish him a happy and blessed birthday celebration.●

MESSAGE FROM THE HOUSE

At 3:33 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its clerks, announced that it has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 3. An act to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

The message also announced that pursuant to 22 U.S.C. 1928a, the order of the House of January 4, 2005, and clause 10 of rule 1, the Speaker appoints the following Members of the House of Representatives to the United States Group of the North Atlantic Assembly: Mr. TANNER of Tennessee, Mr. ROSS of Arkansas, Mr. CHANDLER of Kentucky, and Mrs. TAUSCHER of California.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1332. An act to amend title 28, United States Code, to provide for the removal to Federal court of certain State court cases involving the rights of incapacitated persons, and for other purposes; to the Committee on the Judiciary.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. FRIST (for himself, Mr. MARTINEZ, and Mr. SANTORUM):

S. 686. A bill to provide for the relief of the parents of Theresa Marie Schiavo; considered and passed.

By Mr. BURNS (for himself, Mr. WYDEN, Mrs. BOXER, and Mr. NELSON of Florida):

S. 687. A bill to regulate the unauthorized installation of computer software, to require clear disclosure to computer users of certain computer software features that may pose a threat to user privacy, and for other purposes; to the Committee on Commerce, Science, and Transportation.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. CORNYN:

S. Res. 92. A resolution expressing the sense of the Senate that judicial determinations regarding the meaning of the Constitution of the United States should not be based on judgments, laws, or pronouncements of foreign institutions unless such foreign judgments, laws, or pronouncements inform an understanding of the original meaning of the Constitution of the United States; to the Committee on the Judiciary.

By Mr. FRIST (for himself and Mr. REID):

S. Con. Res. 23. A concurrent resolution providing for a conditional adjournment or recess of the Senate, and a conditional adjournment of the House of Representatives; considered and agreed to.

By Mr. GRAHAM (for himself, Mr. ALLEN, Mr. JOHNSON , Mr. CHAMBLISS, Mr. KYL, Mr. BOND, Mr. INHOFE, Mr. COBURN, Mr. DORGAN, and Mr. SCHUMER):

S. Con. Res. 24. A concurrent resolution expressing the grave concern of Congress regarding the recent passage of the anti-secession law by the National People's Congress of the People's Republic of China; to the Committee on Foreign Relations.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FRIST (for himself, Mr. MARTINEZ, and Mr. SANTORUM):

S. 686. A bill to provide for the relief of the parents of Theresa Marie Schiavo; considered and passed.

Mr. FRIST. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 686

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. RELIEF OF THE PARENTS OF THERESA MARIE SCHIAVO

The United States District Court for the Middle District of Florida shall have jurisdiction to hear, determine, and render judgment on a suit or claim by or on behalf of Theresa Marie Schiavo for the alleged violation of any right of Theresa Marie Schiavo under the Constitution or laws of the United States relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life.

SEC. 2. PROCEDURE.

Any parent of Theresa Marie Schiavo shall have standing to bring a suit under this Act. The suit may be brought against any other person who was a party to State court proceedings relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain the life of Theresa Marie Schiavo, or who may act pursuant to a State court order authorizing or directing the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life. In such a suit, the District Court shall determine de novo any claim of a violation of any right to Theresa Marie Schiavo within the scope of this Act, notwithstanding any prior State court determination and regardless of whether such a claim has previously been raised, considered, or decided in State court proceedings. The District Court shall entertain and determine the suit without any delay or abstention in favor of State court proceedings, and regardless of whether remedies available in the State courts have been exhausted.

SEC. 3. RELIEF.

After a determination of the merits of a suit brought under this Act, the District Court shall issue such declaratory and injunctive relief as may be necessary to protect the rights of Theresa Marie Schiavo under the Constitution and laws of the United States relating to the withholding or withdrawal of foods, fluids, or medical treatment necessary to sustain her life.

SEC. 4. TIME FOR FILING.

Notwithstanding any other time limitation, any suit or claim under this Act shall be timely if filed within 30 days after the date of enactment of this Act.

SEC. 5. NO CHANGE OF SUBSTANTIVE RIGHTS.

Nothing in this Act shall be construed to create substantive rights not otherwise secured by the Constitution and laws of the United States or of the several States.

SEC. 6. NO EFFECT ON ASSISTING SUICIDE.

Nothing in this Act shall be construed to confer additional jurisdiction on any court to consider any claim related—

(1) to assisting suicide, or

(2) a State law regarding assisting suicide.

SEC. 7. NO PRECEDENT FOR FUTURE LEGISLATION.

Nothing in this Act shall constitute a precedent with respect to future legislation, including the provision of private relief bills.

SEC. 8. NO EFFECT ON THE PATIENT SELF-DETERMINATION ACT OF 1990.

Nothing in this Act shall affect the rights of any person under the Patient Self-Determination Act of 1990.

SEC. 9. SENSE OF THE CONGRESS.

It is the Sense of Congress that the 109th Congress should consider policies regarding the status and legal rights of incapacitated individuals who are incapable of making decisions concerning the provision, withholding, or withdrawal of foods, fluid, or medical care.

By Mr. BURNS (for himself, Mr. WYDEN, Mrs. BOXER, and Mr. NELSON of Florida):

S. 687. A bill to regulate the unauthorized installation of computer software, to require clear disclosure to

computer users of certain computer software features that may pose a threat to user privacy, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. BURNS. Mr. President, I rise today to introduce the SPYBLOCK bill, along with my good friend Senator WYDEN of Oregon.

The SPYBLOCK bill will help reduce one of the most damaging practices in the online world today—spyware, or computer software downloaded onto a computer without the user's permission or awareness—that then is often used to illicitly gather personal information, assist in identity theft, track a user's keystrokes or monitor browsing behavior.

It is hard to overstate the potential damage that Spyware can do in cyberspace if it is allowed to grow unchecked. It could cripple e-commerce, because consumers would be afraid to make their financial or other personal data available on-line. It could damage the activities of businesses large and small, by making their data or computer systems vulnerable to attack and abuse. It could fuel the growth of whole new categories of cybercriminals. The recent data theft incidents at ChoicePoint, Bank of America, and others only underscore the need for a much more proactive policing of cyberspace.

The SPYBLOCK bill will give Federal enforcement authorities additional tools to curb spyware. It also bans adware programs that conceal their operation or purpose from users, because every consumer should have a reasonable opportunity to consent to the installation of software that generates pop-up ads on his or her computer.

We have worked hard on this bill, and consulted extensively with industry and consumer groups to ensure all perspectives on this growing problem were heard. The issues are not new to the members of the Commerce Committee either, as this bill is very similiar to one we marked up toward the end of the last Congress.

I look forward to working with my colleagues in the Commerce Committee and the full Senate to ensure prompt passage of this important measure. I thank my colleague Senator WYDEN again for his work on this bill, and I yield back the balance of my time.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 687

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Software Principles Yielding Better Levels of Consumer Knowledge Act'' or the ''SPY BLOCK Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. PROHIBITED PRACTICES RELATED TO SOFTWARE INSTALLATION IN GENERAL.

(a) SURREPTITIOUS INSTALLATION.—

(1) IN GENERAL.—It is unlawful for a person who is not an authorized user of a protected computer to cause the installation of software on the computer in a manner that—

(A) conceals from the user of the computer the fact that the software is being installed; or

(B) prevents the user of the computer from having an opportunity to knowingly grant or withhold consent to the installation.

(2) EXCEPTION.—This subsection does not apply to—

(A) the installation of software that falls within the scope of a previous grant of authorization by an authorized user;

(B) the installation of an upgrade to a software program that has already been installed on the computer with the authorization of an authorized user;

(C) the installation of software before the first retail sale and delivery of the computer; or

(D) the installation of software that ceases to operate when the user of the computer exits the software or service through which the user accesses the Internet, if the software so installed does not begin to operate again when the user accesses the Internet via that computer in the future.

(b) MISLEADING INDUCEMENTS TO INSTALL.—It is unlawful for a person who is not an authorized user of a protected computer to induce an authorized user of the computer to consent to the installation of software on the computer by means of a materially false or misleading representation concerning—

(1) the identity of an operator of an Internet website or online service at which the software is made available for download from the Internet;

(2) the identity of the author, publisher, or authorized distributor of the software;

(3) the nature or function of the software; or

(4) the consequences of not installing the software.

(c) PREVENTING REASONABLE EFFORTS TO UNINSTALL.—

(1) IN GENERAL.—It is unlawful for a person who is not an authorized user of a protected computer to cause the installation of software on the computer if the software cannot subsequently be uninstalled or disabled by an authorized user through a program removal function that is usual and customary with the user's operating system, or otherwise as clearly and conspicuously disclosed to the user.

(2) LIMITATIONS.—

(A) AUTHORITY TO UNINSTALL.—Software that enables an authorized user of a computer, such as a parent, employer, or system administrator, to choose to prevent another user of the same computer from uninstalling or disabling the software shall not be considered to prevent reasonable efforts to uninstall or disable the software within the meaning of this subsection if at least 1 authorized user retains the ability to uninstall or disable the software.

(B) CONSTRUCTION.—This subsection shall not be construed to require individual features or functions of a software program, upgrades to a previously installed software program, or software programs that were installed on a bundled basis with other software or with hardware to be capable of being uninstalled or disabled separately from such software or hardware.

SEC. 3. INSTALLING SURREPTITIOUS INFORMATION COLLECTION FEATURES ON A USER'S COMPUTER.

(a) IN GENERAL.—It is unlawful for a person who is not an authorized user of a protected computer to—

(1) cause the installation on that computer of software that includes a surreptitious information collection feature; or

(2) use software installed in violation of paragraph (1) to collect information about a user of the computer or the use of a protected computer by that user.

(b) AUTHORIZATION STATUS.—This section shall not be interpreted to prohibit a person from causing the installation of software that collects and transmits only information that is reasonably needed to determine whether or not the user of a protected computer is licensed or authorized to use the software.

(c) SURREPTITIOUS INFORMATION COLLECTION FEATURE DEFINED.—For purposes of this section, the term ''surreptitious information collection feature'' means a feature of software that—

(1) collects information about a user of a protected computer or the use of a protected computer by that user, and transmits such information to any other person or computer—

(A) on an automatic basis or at the direction of person other than an authorized user of the computer, such that no authorized user knowingly triggers or controls the collection and transmission;

(B) in a manner that is not transparent to an authorized user at or near the time of the collection and transmission, such that no authorized user is likely to be aware of it when information collection and transmission are occurring; and

(C) for purposes other than—

(i) facilitating the proper technical functioning of a capability, function, or service that an authorized user of the computer has knowingly used, executed, or enabled; or

(ii) enabling the provider of an online service knowingly used or subscribed to by an authorized user of the computer to monitor or record the user's usage of the service, or to customize or otherwise affect the provision of the service to the user based on such usage; and

(2) begins to collect and transmit such information without prior notification that—

(A) clearly and conspicuously discloses to an authorized user of the computer the type of information the software will collect and the types of ways the information may be used and distributed; and

(B) is provided at a time and in a manner such that an authorized user of the computer has an opportunity, after reviewing the information contained in the notice, to prevent either—

(i) the installation of the software; or

(ii) the beginning of the operation of the information collection and transmission capability described in paragraph (1).

SEC. 4. ADWARE THAT CONCEALS ITS OPERATION.

(a) IN GENERAL.—It is unlawful for a person who is not an authorized user of a protected computer to cause the installation on that computer of software that causes advertisements to be displayed to the user without a label or other reasonable means of identifying to the user of the computer, each time such an advertisement is displayed, which software caused the advertisement's delivery.

(b) EXCEPTION.—Software that causes advertisements to be displayed without a label or other reasonable means of identification shall not give rise to liability under subsection (a) if those advertisements are displayed to a user of the computer—

(1) only when a user is accessing an Internet website or online service—

(A) operated by the publisher of the software; or

(B) the operator of which has provided express consent to the display of such advertisements to users of the website or service; or

(2) only in a manner or at a time such that a reasonable user would understand which software caused the delivery of the advertisements.

SEC. 5. OTHER PRACTICES THAT THWART USER CONTROL OF COMPUTER.

It is unlawful for a person who is not an authorized user of a protected computer to engage in an unfair or deceptive act or practice that involves—

(1) utilizing the computer to send unsolicited information or material from the user's computer to other computers;

(2) diverting an authorized user's Internet browser away from the Internet website the user intended to view to 1 or more other websites, unless such diversion has been authorized by the website the user intended to view;

(3) displaying an advertisement, series of advertisements, or other content on the computer through windows in an Internet browser, in such a manner that the user of the computer cannot end the display of such advertisements or content without turning off the computer or terminating all sessions of the Internet browser (except that this paragraph shall not apply to the display of content related to the functionality or identity of the Internet browser);

(4) modifying settings relating to the use of the computer or to the computer's access to or use of the Internet, including—

(A) altering the default Web page that initially appears when a user of the computer launches an Internet browser;

(B) altering the default provider or Web proxy used to access or search the Internet;

(C) altering bookmarks used to store favorite Internet website addresses; or

(D) altering settings relating to security measures that protect the computer and the information stored on the computer against unauthorized access or use; or

(5) removing, disabling, or rendering inoperative a security or privacy protection technology installed on the computer.

SEC. 6. LIMITATIONS ON LIABILITY.

(a) PASSIVE TRANSMISSION, HOSTING, OR LINKING.—A person shall not be deemed to have violated any provision of this Act solely because the person provided—

(1) the Internet connection, telephone connection, or other transmission or routing function through which software was delivered to a protected computer for installation;

(2) the storage or hosting of software or of an Internet website through which software was made available for installation to a protected computer; or

(3) an information location tool, such as a directory, index, reference, pointer, or hypertext link, through which a user of a protected computer located software available for installation.

(b) NETWORK SECURITY.—It is not a violation of section 2, 3, or 5 for a provider of a network or online service used by an authorized user of a protected computer, or to which any authorized user of a protected computer subscribes, to monitor, interact with, or install software for the purpose of—

(1) protecting the security of the network, service, or computer;

(2) facilitating diagnostics, technical support, maintenance, network management, or repair; or

(3) preventing or detecting unauthorized, fraudulent, or otherwise unlawful uses of the network or service.

(c) MANUFACTURER'S LIABILITY FOR THIRD-PARTY SOFTWARE.—A manufacturer or retailer of a protected computer shall not be liable under any provision of this Act for causing the installation on the computer, prior to the first retail sale and delivery of the computer, of third-party branded software, unless the manufacturer or retailer—

(1) uses a surreptitious information collection feature included in the software to collect information about a user of the computer or the use of a protected computer by that user; or

(2) knows that the software will cause advertisements for the manufacturer or retailer to be displayed to a user of the computer.

(d) INVESTIGATIONAL EXCEPTION.—Nothing in this Act prohibits any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or of an intelligence agency of the United States.

(e) SERVICES PROVIDED OVER MVPD SYSTEMS.—It is not a violation of this Act for a multichannel video programming distributor (as defined in section 602(13) of the Communications Act of 1934 (47 U.S.C. 522(13)) to utilize a navigation device, or interact with such a device, or to install or use software on such a device, in connection with the provision of multichannel video programming or other services offered over a multichannel video programming system or the collection or disclosure of subscriber information, if the provision of such service or the collection or disclosure of such information is subject to section 338(i) or section 631 of the Communications Act of 1934 (47 U.S.C. 338(i) or 551).

SEC. 7. FTC RULEMAKING AUTHORITY.

(a) IN GENERAL.—Subject to the limitations of subsection (b), the Commission may issue such rules in accordance with section 553 of title 5, United States Code, as may be necessary to implement or clarify the provisions of this Act.

(b) SAFE HARBORS.—

(1) IN GENERAL.—The Commission may issue regulations establishing specific wordings or formats for—

(A) notification that is sufficient under section 3(c)(2) to prevent a software feature from being a surreptitious information collection feature (as defined in section 3(c)); or

(B) labels or other means of identification that are sufficient to avoid violation of section 4(a).

(2) FUNCTION OF COMMISSION'S SUGGESTED WORDINGS OR FORMATS.—

(A) USAGE IS VOLUNTARY.—The Commission may not require the use of any specific wording or format prescribed under paragraph (1) to meet the requirements of section 3 or 4.

(B) OTHER MEANS OF COMPLIANCE.—The use of a specific wording or format prescribed under paragraph (1) shall not be the exclusive means of providing notification, labels, or other identification that meet the requirements of sections 3 and 4.

(c) LIMITATIONS ON LIABILITY.—In addition to the limitations on liability specified in section 6, the Commission may by regulation establish additional limitations or exceptions upon a finding that such limitations or exceptions are reasonably necessary to promote the public interest and are consistent with the purposes of this Act. No such additional limitation of liability may be made contingent upon the adoption of any specific wording or format specified in regulations under subsection (b)(1).

SEC. 8. ADMINISTRATION AND ENFORCEMENT.

(a) IN GENERAL.—Except as provided in subsection (b), this Act shall be enforced by the Commission as if a violation of this Act or of any regulation promulgated by the Commission under this Act were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) ENFORCEMENT BY CERTAIN OTHER AGENCIES.—Compliance with this Act shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 and 611), by the Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(3) the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the National Credit Union Administration Board with respect to any Federal credit union;

(4) part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

(5) the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act; and

(6) the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of this Act is deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

(d) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any entity that violates any provision of that section is subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of that section.

SEC. 9. ACTIONS BY STATES.

(a) IN GENERAL.—

(1) CIVIL ACTIONS.—In any case in which the attorney general 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 the engagement of any person in a practice that this Act prohibits, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction—

(A) to enjoin that practice;

(B) to enforce compliance with the rule;

(C) to obtain damage, restitution, or other compensation on behalf of residents of the State; or

(D) to obtain such other relief as the court may consider to be appropriate.

(2) NOTICE.—

(A) IN GENERAL.—Before filing an action under paragraph (1), the attorney general of the State involved shall provide to the Commission—

(i) written notice of that action; and

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

(B) EXEMPTION.—

(i) IN GENERAL.—Subparagraph (A) shall not apply with respect to the filing of an action by an attorney general of a State under this subsection, if the attorney general determines that it is not feasible to provide the notice described in that subparagraph before the filing of the action.

(ii) NOTIFICATION.—In an action described in clause (i), the attorney general of a State shall provide notice and a copy of the complaint to the Commission at the same time as the attorney general files the action.

(b) INTERVENTION.—

(1) IN GENERAL.—On receiving notice under subsection (a)(2), the Commission shall have the right to intervene in the action that is the subject of the notice.

(2) EFFECT OF INTERVENTION.—If the Commission intervenes in an action under subsection (a), it shall have the right—

(A) to be heard with respect to any matter that arises in that action; and

(B) to file a petition for appeal.

(c) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this subtitle shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(1) conduct investigations;

(2) administer oaths or affirmations; or

(3) compel the attendance of witnesses or the production of documentary and other evidence.

(d) ACTIONS BY THE COMMISSION.—In any case in which an action is instituted by or on behalf of the Commission for violation of this Act, no State may, during the pendency of that action, institute an action under subsection (a) against any defendant named in the complaint in that action for violation of that section.

(e) VENUE; SERVICE OF PROCESS.—

(1) VENUE.—Any action brought under subsection (a) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(2) SERVICE OF PROCESS.—In an action brought under subsection (a), process may be served in any district in which the defendant—

(A) is an inhabitant; or

(B) may be found.

SEC. 10. EFFECT ON OTHER LAWS.

(a) FEDERAL LAW.—Nothing in this Act shall be construed to limit or affect in any way the Commission's authority to bring enforcement actions or take any other measures under the Federal Trade Commission Act or any other provision of law.

(b) STATE LAW.—

(1) STATE LAW CONCERNING INFORMATION COLLECTION SOFTWARE OR ADWARE.—This Act supersedes any statute, regulation, or rule of a State or political subdivision of a State that expressly limits or restricts the installation or use of software on a protected computer to—

(A) collect information about the user of the computer or the user's Internet browsing behavior or other use of the computer; or

(B) cause advertisements to be delivered to the user of the computer,

except to the extent that any such statute, regulation, or rule prohibits deception in connection with the installation or use of such software.

(2) STATE LAW CONCERNING NOTICE OF SOFTWARE INSTALLATION.—This Act supersedes any statute, regulation, or rule of a State or political subdivision of a State that prescribes specific methods for providing notification before the installation of software on a computer.

(3) STATE LAW NOT SPECIFIC TO SOFTWARE.—This Act shall not be construed to preempt the applicability of State criminal, trespass, contract, tort, or anti-fraud law.

SEC. 11. LIABILITY PROTECTIONS FOR ANTI-SPYWARE SOFTWARE OR SERVICES.

No provider of computer software or of an interactive computer service may be held liable under this Act or any other provision of law for identifying, naming, removing, disabling, or otherwise affecting the operation or potential operation on a computer of computer software published by a third party, if—

(1) the provider's software or interactive computer service is intended to identify, prevent the installation or execution of, remove, or disable computer software that is or was installed in violation of section 2, 3, or 4 of this Act or used to violate section 5 of this Act;

(2) an authorized user of the computer has consented to the use of the provider's computer software or interactive computer service on the computer;

(3) the provider believes in good faith that the installation or operation of the third-party computer software involved or involves a violation of section 2, 3, 4, or 5 of this Act; and

(4) the provider either notifies and obtains the consent of an authorized user of the computer before taking any action to remove, disable, or otherwise affect the operation or potential operation of the third-party software on the computer, or has obtained prior authorization from an authorized user to take such action without providing such notice and consent.

SEC. 12. PENALTIES FOR CERTAIN UNAUTHORIZED ACTIVITIES RELATING TO COMPUTERS.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1030 the following:

"§ 1030A. Illicit indirect use of protected computers

''(a) Whoever intentionally accesses a protected computer without authorization, or exceeds authorized access to a protected computer, by causing a computer program or code to be copied onto the protected computer, and intentionally uses that program or code in furtherance of another Federal criminal offense shall be fined under this title or imprisoned 5 years, or both.

''(b) Whoever intentionally accesses a protected computer without authorization, or exceeds authorized access to a protected computer, by causing a computer program or code to be copied onto the protected computer, and by means of that program or code intentionally impairs the security protection of the protected computer shall be fined under this title or imprisoned not more than 2 years, or both.

''(c) A person shall not violate this section who solely provides—

''(1) an Internet connection, telephone connection, or other transmission or routing function through which software is delivered to a protected computer for installation;

''(2) the storage or hosting of software, or of an Internet website, through which software is made available for installation to a protected computer; or

''(3) an information location tool, such as a directory, index, reference, pointer, or hypertext link, through which a user of a protected computer locates software available for installation.

''(d) A provider of a network or online service that an authorized user of a protected computer uses or subscribes to shall not violate this section by any monitoring of, interaction with, or installation of software for the purpose of—

''(1) protecting the security of the network, service, or computer;

''(2) facilitating diagnostics, technical support, maintenance, network management, or repair; or

''(3) preventing or detecting unauthorized, fraudulent, or otherwise unlawful uses of the network or service.

''(e) No person may bring a civil action under the law of any State if such action is premised in whole or in part upon the defendant's violating this section. For the purposes of this subsection, the term 'State' includes the District of Columbia, Puerto Rico, and any other territory or possession of the United States.''.

(b) CONFORMING AMENDMENT.—The table of sections at the beginning of chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1030 the following new item:

''1030A. Illicit indirect use of protected computers''

SEC. 13. DEFINITIONS.

In this Act:

(1) AUTHORIZED USER.—The term ''authorized user'', when used with respect to a computer, means the owner or lessee of a computer, or someone using or accessing a computer with the actual or apparent authorization of the owner or lessee.

(2) CAUSE THE INSTALLATION.—The term ''cause the installation'' when used with respect to particular software, means to knowingly provide the technical means by which the software is installed, or to knowingly pay or provide other consideration to, or to knowingly induce or authorize, another person to do so.

(3) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(4) COOKIE.—The term ''cookie'' means a text file—

(A) that is placed on a computer by, or on behalf of, an Internet service provider, interactive computer service, or Internet website; and

(B) the sole function of which is to record information that can be read or recognized when the user of the computer subsequently accesses particular websites or online locations or services.

(5) FIRST RETAIL SALE AND DELIVERY.—The term ''first retail sale and delivery'' means the first sale, for a purpose other than resale, of a protected computer and the delivery of that computer to the purchaser or a recipient designated by the purchaser at the time of such first sale. For purposes of this paragraph, the lease of a computer shall be considered a sale of the computer for a purpose other than resale.

(6) INSTALL.—

(A) IN GENERAL.—The term ''install'' means—

(i) to write computer software to a computer's persistent storage medium, such as the computer's hard disk, in such a way that the computer software is retained on the computer after the computer is turned off and subsequently restarted; or

(ii) to write computer software to a computer's temporary memory, such as random access memory, in such a way that the software is retained and continues to operate after the user of the computer turns off or exits the Internet service, interactive computer service, or Internet website from which the computer software was obtained.

(B) EXCEPTION FOR TEMPORARY CACHE.—The term ''install'' does not include the writing of software to an area of the persistent storage medium that is expressly reserved for the temporary retention of recently accessed or input data or information if the software retained in that area remains inoperative unless a user of the computer chooses to access that temporary retention area.

(7) PERSON.—The term ''person'' has the meaning given that term in section 3(32) of the Communications Act of 1934 (47 U.S.C. 153(32)).

(8) PROTECTED COMPUTER.—The term ''protected computer'' has the meaning given that term in section 1030(e)(2)(B) of title 18, United States Code.

(9) SOFTWARE.—The term ''software'' means any program designed to cause a computer to perform a desired function or functions. Such term does not include any cookie.

(10) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—The term ''unfair or deceptive act or practice'' has the same meaning as when used in section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(11) UPGRADE.—The term ''upgrade'', when used with respect to a previously installed software program, means additional software that is issued by, or with the authorization of, the publisher or any successor to the publisher of the software program to improve, correct, repair, enhance, supplement, or otherwise modify the software program.

SEC. 14. EFFECTIVE DATE.

This Act shall take effect 180 days after the date of enactment of this Act.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 92—EXPRESSING THE SENSE OF THE SENATE THAT JUDICIAL DETERMINATIONS REGARDING THE MEANING OF THE CONSTITUTION OF THE UNITED STATES SHOULD NOT BE BASED ON JUDGMENTS, LAWS, OR PRONOUNCEMENTS OF FOREIGN INSTITUTIONS UNLESS SUCH FOREIGN JUDGMENTS, LAWS, OR PRONOUNCEMENTS INFORM AN UNDERSTANDING OF THE ORIGINAL MEANING OF THE CONSTITUTION OF THE UNITED STATES

Mr. CORNYN submitted the following resolution; which was referred to the Committee on the Judiciary.

S. RES. 92

Whereas the Declaration of Independence announced that one of the chief causes of the American Revolution was that King George had ''combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws'';

Whereas the Supreme court has recently relied on the judgments, laws, or pronouncements of foreign institutions to support its interpretations of the laws of the United States, most recently in Atkins v. Virginia, 536 U.S. 304, 316 n.21 (2002), Lawrence v. Texas, 539 U.S. 558, 573 (2003), and Roper v. Simmons, 125 S. Ct. 1183, 1198–99 (2005);

Whereas the Supreme Court has stated previously in Printz v. United States, 521 U.S. 898, 921 n.11 (1997), that ''We think such comparative analysis inappropriate to the task of interpreting a constitution . . .'';

Whereas the ability of Americans to live their lives within clear legal boundaries is the foundation of the rule of law, and essential to freedom;

Whereas it is the appropriate judicial role to faithfully interpret the expression of the popular will through the Constitution and laws enacted by duly elected representatives of the American people and under our system of checks and balances;

Whereas Americans should not have to look for guidance on how to live their lives from the often contradictory decisions of any of hundreds of other foreign organizations; and

Whereas inappropriate judicial reliance on foreign judgments, laws, or pronouncements threatens the sovereignty of the United States, the separation of powers, and the President's and the Senate's treaty-making authority: Now, therefore, be it

Resolved, That it is the sense of the Senate that judicial interpretations regarding the meaning of the Constitution of the United States should not be based in whole or in part on judgments, laws, or pronouncements of foreign institutions unless such foreign judgments, laws, or pronouncements inform an understanding of the original meaning of the Constitution of the United States.

Mr. CORNYN. Mr. President, I rise to express concern over a trend that some legal scholars and observers say may be developing in our courts—a trend regarding the potential influence of foreign governments and foreign courts in the application and enforcement of U.S. law.

If this trend is real, then I fear that, bit by bit, case by case, the American people may be slowly losing control over the meaning of our laws and of our Constitution. If this trend continues, foreign governments may even begin to dictate what our laws and our Constitution mean, and what our policies in America should be.

In a series of cases over the past few years, our courts have begun to tell us that our criminal laws and criminal policies are informed, not only by our Constitution and by the policy preferences and legislative enactments of the American people through their elected representatives, but also by the rulings of foreign courts.

It is hard to believe—but in a series of recent cases, the U.S. Supreme Court has actually rejected its own prior precedents, in part because of a foreign government or court has expressed its disagreement with those precedents.

With your indulgence, I will offer just a few of the most recent examples.

Until recently, the U.S. Supreme Court had long held that the death penalty may be imposed on individuals regardless of their I.Q. The Court had traditionally left that issue untouched, as a question for the American people, in each of their States, to decide. That was what the Court said in a case called Penry v. Lynaugh (1989). Yet because some foreign governments have frowned upon that ruling, the U.S. Supreme Court has now seen fit to take that issue away from the American people. In 2002, in a case called Atkins v. Virginia, the U.S. Supreme Court held that the Commonwealth of Virginia could no longer apply its criminal justice system and its death penalty to an individual who had been duly convicted of abduction, armed robbery, and capital murder, because of testimony that the defendant was ''mildly mentally retarded.'' The reason given for the complete reversal in the Court's position? In part because the Court was concerned about ''the world community'' and the views of the European Union.

Take another example. The U.S. Supreme Court has long held that the American people, in each of their States, have the discretion to decide whether certain kinds of conduct that has been considered immoral under our longstanding legal traditions should or should not remain illegal. In Bowers v. Hardwick (1986), the Court held that it is up the American people to decide whether criminal laws against sodomy should be continued or abandoned. Yet once again, because some foreign governments have frowned upon that ruling, the U.S. Supreme Court has seen fit to take that issue away from the American people. In 2003, in a case called Lawrence v. Texas, the U.S. Supreme Court held that the State of Texas could no longer decide whether its criminal justice system may fully reflect the moral values of the people of Texas. The reason given for the complete reversal? This time, the Court explained, it was in part because it was concerned about the European Court of Human Rights and the European Convention on Human Rights.