

There was no objection.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 3642, the Theft of Trade Secrets Clarification Act, will help ensure that American businesses can effectively protect their trade secrets. This legislation passed the Senate by unanimous consent last month, and we are proud to be passing it today.

S. 3642 responds to a recent Federal court decision that exposed a gap in Federal law. In April of this year, the Second Circuit Court of Appeals held that the Federal statute prohibiting the theft of trade secrets does not apply to computer source code in some circumstances.

In the Aleynikov case, the defendant, a computer programmer who worked for Goldman Sachs, electronically copied and remotely stored thousands of lines of source code from the company's internal, high-frequency trading system and then downloaded that code to his new employer's server after leaving Goldman Sachs.

The transfer of the source code would potentially save up to \$10 million and 2 years of programmers' time for the new employer and would eliminate some of the competitive advantage Goldman Sachs achieved by developing their own trading program.

Federal law prohibits the conversion of any trade secret that is related to or included in a product that is produced or placed in interstate or foreign commerce. Because the code that was stolen is a component of an internal computer system, the court found that it is not covered by the statute because it was not produced for, or placed in, a product in interstate or foreign commerce.

This bill will close the gap exposed in that case by clarifying that the statute applies to both products and services which are used in or intended for use in interstate or foreign commerce.

Congress needs to act quickly to enhance the ability of American businesses to safeguard the proprietary information they develop to gain a competitive advantage. This is particularly important as our country's economy is increasingly knowledge- and service-based.

We must ensure that our statutes designed to prohibit the theft of trade secrets appropriately cover the range of intellectual property generated and used by our businesses.

This bill is an important step to accomplish this goal, and I commend the senior Senator from Vermont, the chair of the Judiciary Committee in the Senate, Mr. LEAHY, for his leadership on the bill; and I urge my colleagues to support this legislation so it can be sent directly to the President's desk to be signed into law.

I yield back the balance of my time.

Mr. Speaker, S. 3642, the "Theft of Trade Secrets Clarification Act, will help ensure that American businesses can effectively protect

their trade secrets. This legislation passed the Senate by unanimous consent last month and I am proud to support it today.

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In April of this year, the Second Circuit Court of Appeals held that the federal statute prohibiting the theft of trade secrets does not apply to computer source code in some circumstances.

In the Aleynikov case, the defendant, a computer programmer who worked for Goldman Sachs, electronically copied and remotely stored thousands of lines of source code for the company's internal, high-frequency trading system and then downloaded that code to his new employer's server after leaving Goldman Sachs.

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Federal law prohibits the conversion of any trade secret that is related to or included in a product that is produced or placed in interstate or foreign commerce. Because the code that Mr. Aleynikov stole is a component of an internal computer system, the court found that it is not covered by the statute because it is not produced for, or placed in, a product in interstate or foreign commerce.

S. 3642 would close the gap exposed in the Aleynikov case by clarifying that the statute applies to both products and services which are used in or intended for use in interstate or foreign commerce.

Congress needs to act quickly to enhance the ability of American businesses to safeguard the proprietary information they develop to gain competitive advantage. This is particularly important as our country's economy is increasingly knowledge and service-based.

We must ensure that our statutes designed to prohibit the theft of trade secrets appropriately cover the range of intellectual property generated and used by our businesses.

This bill is an important step to accomplish this goal, and I commend the gentleman from Vermont, Senator LEAHY, I urge my colleagues to support this legislation today so that it can be sent to the President's desk to be signed into law.

Mr. SMITH of Texas. Mr. Speaker, I yield back the balance of my time as well.

Ms. JACKSON LEE of Texas. Mr. Speaker, I rise today in support of S. 3642, the "Theft of Trade Secrets Clarification Act of 2012," a bill that simply clarifies a provision of the Economic Espionage Act for the purpose of protecting American business and jobs.

More specifically, S. 3642 would broaden language in the Economic Espionage Act so that it protects businesses from trade secret theft to the extent that it was originally intended to rather than the narrow scope applied by a recent Second Circuit court opinion.

In *United States v. Aleynikov* (April 2012 decision), the Second Circuit overturned the conviction of a defendant who was found guilty of stealing computer code from his employer. The reason for this reversal was that the court determined that the theft of the trade secret did not meet the interstate commerce threshold delineated in the Economic Espionage Act.

Even though the Defendant copied stolen code from his New York office to a computer

server in Germany, downloaded the code in New Jersey, and then took the code with him to his new job in Illinois, the Second Circuit found that the stolen trade secret was not part of a product that was produced for or placed in interstate commerce and, therefore, was not the subject of this criminal provision of the Economic Espionage Act.

Effective protection of intellectual property rights, including trade secrets, is essential for fostering innovation. Innovation typically requires substantial investment in education, research and development, and labor to bring a new idea to the marketplace.

The fact that the stolen computer code, which was proprietary, was not produced to be placed in interstate commerce should not preclude a guilty verdict from being rendered.

Businesses often spent time and money to develop their own proprietary software to be used internally; if others can steal their idea, it undermines the creator's ability to recoup the cost of his or her innovative investment, and the incentive to innovate is reduced.

These innovations add value to the overall business, even if they are not commercial end-products themselves. The language contained in this bill will fix the problem so that trade secret thieves cannot take advantage of the loophole in the Economic Espionage Act.

For that reason, I urge my colleagues to support S. 3642, the "Theft of Trade Secrets Clarification Act of 2012."

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. SMITH) that the House suspend the rules and pass the bill, S. 3642.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds being in the affirmative, the yeas have it.

Mr. SCOTT of Virginia. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

#### VIDEO PRIVACY PROTECTION ACT AMENDMENTS ACT OF 2012

Mr. GOODLATTE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6671) to amend section 2710 of title 18, United States Code, to clarify that a video tape service provider may obtain a consumer's informed, written consent on an ongoing basis and that consent may be obtained through the Internet.

The Clerk read the title of the bill.

The text of the bill is as follows:

H.R. 6671

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

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Video Privacy Protection Act Amendments Act of 2012".

#### SEC. 2. VIDEO PRIVACY PROTECTION ACT AMENDMENT.

Section 2710(b)(2) of title 18, United States Code, is amended by striking subparagraph (B) and inserting the following:

“(B) to any person with the informed, written consent (including through an electronic

means using the Internet) of the consumer that—

“(i) is in a form distinct and separate from any form setting forth other legal or financial obligations of the consumer;

“(ii) at the election of the consumer—

“(I) is given at the time the disclosure is sought; or

“(II) is given in advance for a set period of time, not to exceed 2 years or until consent is withdrawn by the consumer, whichever is sooner; and

“(iii) the video tape service provider has provided an opportunity, in a clear and conspicuous manner, for the consumer to withdraw on a case-by-case basis or to withdraw from ongoing disclosures, at the consumer's election;”.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Virginia (Mr. GOODLATTE) and the gentleman from North Carolina (Mr. WATT) each will control 20 minutes.

The Chair recognizes the gentleman from Virginia.

#### GENERAL LEAVE

Mr. GOODLATTE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous materials on H.R. 6671, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Virginia?

There was no objection.

□ 1350

Mr. GOODLATTE. Mr. Speaker, I yield myself such time as I may consume.

Today I am pleased that we are considering a bipartisan bill to update the Video Privacy Protection Act of 1988. This bill will ensure that a law related to the handling of videotape rental information is updated to reflect the realities of the 21st century.

The VPPA was passed by Congress in the wake of Judge Robert Bork's 1987 Supreme Court nomination battle, during which a local Washington, D.C., newspaper obtained a list of videotapes the Bork family rented from its neighborhood videotape rental store. This disclosure caused bipartisan outrage, which resulted in the enactment of the Video Privacy Protection Act.

The commercial video distribution landscape has changed dramatically since 1988. Back then, the primary consumer consumption of commercial video content occurred through the sale or rental of prerecorded videocassette tapes. This required users to travel to their local video rental store to pick a movie. Afterward, consumers had to travel back to the store to return the rented movie. Movies that consumers rented and enjoyed were recommended to friends, primarily through face-to-face conversations. With today's technology, consumers can quickly and efficiently access video programming through a variety of platforms, including through Internet protocol-based video services, all without leaving their homes.

This bill is extremely similar to H.R. 2471, which passed the House over-

whelmingly a year ago. This newer version incorporates provisions suggested by the Senate that allows greater consumer flexibility in their video sharing habits. I support these enhancements to the bill.

This bill updates the Video Privacy Protection Act to allow videotape service providers to facilitate the sharing on social media networks of the movies watched or recommended by users. Specifically, it is narrowly crafted to preserve the VPPA's protections for consumers' privacy, while modernizing the law to empower consumers to do more with their video consumption preferences, including sharing names of new or favorite TV shows or movies on social media in a simpler way. However, it protects the consumer's control over the information by requiring consumer consent before any of this occurs, and it makes clear that a consumer can opt in to the ongoing sharing of his or her favorite movies or TV shows without having to provide consent each and every time a movie is rented.

It also makes clear that written affirmative consent can be provided through the Internet and can be withdrawn at any time. The bill we are considering today requires that the consent be distinct and separate from any other form setting forth other legal and financial obligations. Companies must provide consumers with the clear and conspicuous option to withdraw their consent to share at any time. Finally, a consumer's consent to share expires after 24 months unless the consumer chooses to opt in again.

This bill is truly pro-consumer and places the decision of whether or not to share video rentals with one's friends squarely in the hands of the consumer. In fact, the cochairs of the Future of Privacy Forum correctly pointed out, in an opinion piece in *Roll Call* on November 29, 2011, that “the antiquated law on the books is a hindrance to consumers.”

This legislation does not change the scope of who is covered by the VPPA or the definition of “personally identifiable information.” In addition, it preserves the requirement that the user provide affirmative, written consent.

It's time that Congress updates the VPPA to keep up with today's technology and the consumer marketplace. This bill does just that. I hope my colleagues will join me in supporting this important piece of legislation.

I reserve the balance of my time.

Mr. WATT. Mr. Speaker, I yield myself as much time as I may consume.

Mr. Speaker, I rise in support of H.R. 6671. Last year, I came to the floor to oppose the predecessor bill to this legislation, which we in the House passed and sent to the Senate. But today, I rise to support the amendments to the Video Privacy Protection Act contained in the bill because of important amendments to the bill that have been made in the Senate.

I said when we debated the bill before, and I say now, that while I sup-

port innovation on the Web, I do not support it at the expense of consumer privacy. I believe the Senate amendments make for a strong bill, with more robust consumer protections, and respond, in many respects, to the concerns I raised about the prior bill.

The Video Privacy Protection Act was passed in reaction to the unauthorized release of Judge Robert Bork's rental history during his contentious confirmation hearings to the Supreme Court and stands today as the gold standard for privacy protection.

The amendments made by this bill would allow a video service provider to obtain universal, ongoing electronic consent from consumers to share their viewing history across social media like Facebook. The consumer would have to affirmatively opt in, and the service must provide a clear and conspicuous opportunity to withdraw the consent to share video viewing information at any time. Finally, advance consent may be valid for no longer than 2 years.

Mr. Speaker, I'm satisfied that the amendments made in the Senate, before which I testified in opposition to the original bill, have adequately addressed the privacy-related concerns I expressed.

Opt-in consent is widely regarded by privacy advocates as a vigorous protection for consumers. The requirement that the consumer must revisit the decision to share his video history reinforces the protections provided in the initial consent.

And finally, the bill now allows what I suggested during the Judiciary Committee markup in the House, that the consumer be provided the option to give consent on a video-by-video basis, or in advance for all views until that consent is withdrawn, or until the expiration of 24 months.

Because of these important changes, I support the chairman in his effort to assist online companies to initiate creative options on behalf of their subscribers. While these are welcome improvements that allow me to support this bill, I remain concerned that the bill fails to provide needed updates to the Video Privacy Protection Act, in particular, and fails to consider implications for the ongoing national debate on privacy laws governing digital privacy.

I continue to believe that the underlying Video Privacy Protection Act must be updated to address destruction of records in the online environment. Also, the damages provision should be updated to ensure that consumers are adequately compensated when harmed and that online companies are not unfairly penalized because of the reach of their media.

Finally, I firmly believe that the provision in the Video Privacy Protection Act that requires a warrant for law enforcement to obtain consumer records must be preserved and that future debates on electronic consumer privacy reforms must not undercut those protections.

I understand that the incoming chair of the Judiciary, my good friend, Mr. GOODLATTE, agrees with most of these observations and will work with me to ensure that the Judiciary Committee, next year, tries to address some of these concerns.

So, Madam Speaker, my concerns are not so much about what's in this bill as much as they are concerns about what is not in the bill. So I'm agreeing not to allow the perfect to be the enemy of the good.

I, therefore, ask my colleagues to join me in supporting the bill, but I also ask them to join me, in the next term of Congress, to protect consumer privacy and to update the outdated provisions of the Video Privacy Protection Act.

I reserve the balance of my time.

Mr. GOODLATTE. Madam Speaker, I yield myself such time as I may consume to thank both the ranking member, the gentleman from Michigan (Mr. CONYERS), for his longtime support, as well as the gentlewoman from California (Ms. LOFGREN), who I'm sure will have a word to say about this as well, and also the work that the gentleman from North Carolina, the ranking member of the subcommittee that I chair—and he has done a good job as the ranking member on—for working with us to find ground here that we could reach agreement upon.

I will also say that I have a great interest in looking at the Electronic Communications Privacy Act and other privacy issues that need to be reviewed and modernized, and I hope that, in my new capacity as chairman of the Judiciary Committee in the next Congress, we'll have the opportunity to work together on issues of that nature.

I reserve the balance of my time.

□ 1400

Mr. WATT. Madam Speaker, I yield such time as he may consume to the ranking member of the Judiciary Committee, Mr. CONYERS.

Mr. CONYERS. I would like to let everyone know that the gentleman from North Carolina, who's worked on this and has pledged to continue to work on it, has my support for the new ideas. Well, they're not new. They're old ideas that just didn't get into this bill. And we're going to work on it together.

I congratulate, of course, the chairman-elect of the Judiciary Committee, Mr. GOODLATTE, for his long work and service on that committee and look forward to joining with him to continue the kind of bipartisanship that frequently is worked out in our committee.

I believe this amended version of H.R. 6671 is a distinct improvement over its predecessor and urge that we continue the kind of vigilance that the gentleman from North Carolina, MEL WATT, has demonstrated in his zeal to protecting consumer privacy. Technology is constantly evolving. Each new development presents new opportunities and challenges to improve our

lives. This bill is a good step toward addressing this technological development, and we must continue to monitor it to ensure consumer privacy continues to be protected.

The language added by the Senate, the other body, improved the bill for consumers, and so I, too, urge my colleagues to support its passage today.

Mr. GOODLATTE. I reserve the balance of my time.

Mr. WATT. I yield such time as she may consume to a valued member of our Intellectual Property Subcommittee and a valued member of the Judiciary Committee, the gentlelady from California (Ms. LOFGREN).

Ms. ZOE LOFGREN of California. I thank you, Mr. WATT and Mr. GOODLATTE. I am pleased that we've come together to support this good bill. This bill is going to allow consumers to share their video viewing habits as they see fit, and it will actually enhance consumer privacy without causing any significant detriment to providers of digital services.

I agree that the Senate amendments actually improve the bill, and I think, also, that passing this bill is going to support and enhance emerging online video companies to grow and expand their services. I think it's important that we come together to make sure that our laws actually work well in the Internet environment, which this bill now does.

I look forward to Congress working to do the same thing when it comes to the Electronic Privacy Act reforms we know that are necessary, even copyright reform, to make sure that the laws actually work with modern Internet services. The VPPA is a great start down this road. I look forward to voting in favor of it, and I commend all who worked on it.

Mr. WATT. Madam Speaker, I urge my colleagues to join us in supporting the bill and working with us next year to address the things that are not in the bill.

I yield back the balance of my time.

Mr. GOODLATTE. I thank my colleagues for coming together on this legislation. I believe that it is very good legislation that modernizes the use of the Internet and the use of information that people want to share with each other. It makes it feasible to do that now in ways that newer users of the Internet have become used to with music and other things they share, and now they'll be able to do that with video, television, and movies and other things like that.

So I urge my colleagues to support this legislation, and I yield back the balance of my time.

Mr. SMITH of Texas. Madam Speaker, H.R. 6671 makes a minor, overdue change to update the Video Privacy Protection Act. I thank the gentleman from Virginia, Mr. GOODLATTE, for sponsoring this commonsense, bipartisan legislation.

The Video Privacy Protection Act prohibits video stores from disclosing certain "personally identifiable information" of their customers.

In the event of an unauthorized disclosure, an individual can sue in civil court for damages. But the law has always allowed some personally identifiable information to be released in limited circumstances, such as in response to a court order or when the customer gives their prior, written consent.

However, the technologies of entertainment are changing. Today, consumers are just as likely to stream a movie from the Internet as they are to rent a movie from a video store. And when people view entertainment on the Internet, often they like to share their activities with friends through social media like Facebook and Twitter.

Under current law, the social media sites would have to obtain written consent each time someone wishes to share their video choices.

H.R. 6671 does not change the prohibition on disclosure of personal information or expand the exceptions when information can be disclosed. It does not change the requirement for informed, written consent by a consumer. It simply allows the consumer to consent once before using new social media programs to share their movie or TV show preferences.

An earlier version of this bill passed the House last year, by a vote of 303 to 116. In the Senate, two amendments were adopted to make the bill even more consumer friendly. This new version adopts these amendments to accommodate concerns about consumer choice and privacy.

H.R. 6671 adopts an amendment proffered in mark-up by Congressman NADLER, which requires the consumer consent agreement to be in a completely separate form apart from the other contract details.

In addition, H.R. 6671 adopts two Senate amendments that place limitations on how consent is obtained from consumers. The bill now limits the disclosure agreement to 2 years.

The bill also requires the video provider to give consumers easy options to end the sharing agreement. These changes will ensure that consumers are aware they are sharing information and are voluntarily taking part.

Rather than dramatically alter the Act's existing provisions, H.R. 6671 keeps the vast majority of the Act in place and simply modernizes the way in which consumers can give their informed consent. This bill brings the Video Privacy Protection Act into the 21st century. And the changes adopted made from the previous bill increase consumer protection from the beginning of the process to its end.

I again thank my colleague from Virginia, the Chairman-Elect of the Judiciary Committee, Mr. GOODLATTE, for his work on this important issue. I urge my colleagues to support this legislation.

The SPEAKER pro tempore (Ms. ROSELEHTINEN). The question is on the motion offered by the gentleman from Virginia (Mr. GOODLATTE) that the House suspend the rules and pass the bill, H.R. 6671.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair