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(Original Signature of Member)

108TH CONGRESS
1ST SESSION

H. R. _____

To protect users of the Internet from unknowing transmission of their personally identifiable information through spyware programs, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mrs. BONO introduced the following bill; which was referred to the Committee on _____

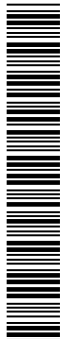
A BILL

To protect users of the Internet from unknowing transmission of their personally identifiable information through spyware programs, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Safeguard Against Pri-
5 vacy Invasions Act".



1 **SEC. 2. FTC AUTHORITY TO REGULATE TRANSMISSION OF**
2 **SPYWARE PROGRAMS.**

3 (a) PROHIBITION OF TRANSMISSION WITHOUT CON-
4 SENT.—The Federal Trade Commission shall, by regula-
5 tion, prohibit the transmission of a spyware program to
6 a covered computer by means of the Internet, unless the
7 user of the covered computer expressly consents to such
8 transmission in response to a clear and conspicuous re-
9 quest for such consent or through an affirmative request
10 for such transmission.

11 (b) TRANSMISSION PURSUANT TO LICENSE AGREE-
12 MENTS.—The Federal Trade Commission shall, by regula-
13 tion, establish requirements for the transmission of a
14 spyware program to a covered computer, by means of the
15 Internet, in any case in which the transmission of the
16 spyware program, or any information, program, or com-
17 munication together or in connection with which the
18 spyware program is transmitted, requires any affirmative
19 action on the part of the user of the covered computer
20 to agree to a license, contract, or other agreement which
21 is made available on the World Wide Web, as follows:

22 (1) LOCATION OF LICENSE AGREEMENT.—The
23 terms of such license, contract, or agreement shall
24 be set forth on a World Wide Web page and the
25 mechanism by which the user of the covered com-



1 puter agrees to such license, contract, or agreement
2 shall be included on the same page.

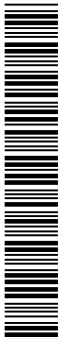
3 (2) NOTICE.—The terms of the license, con-
4 tract, or other agreement shall—

5 (A) include provisions, that are clearly
6 stated and prominently displayed, which specify
7 that agreement to such license, contract, or
8 other agreement constitutes consent to trans-
9 mission of the spyware for purposes of sub-
10 section (a); and

11 (B) clearly explain the purpose of including
12 the spyware.

13 (3) IDENTIFICATION.—The name of the person
14 or entity transmitting the spyware, a valid physical
15 street address of such person or entity, and a func-
16 tioning return electronic mail address for such per-
17 son or entity shall be included on the World Wide
18 Web page referred to in paragraph (1).

19 (c) NOTICE OF COLLECTION OF PERSONALLY IDEN-
20 TIFIABLE INFORMATION.—The Federal Trade Commis-
21 sion shall, by regulation, prohibit the use of any spyware
22 program that is transmitted to a covered computer by
23 means of the Internet for collecting any personally identi-
24 fiable information from the covered computer, unless no-



1 tice that the program will be used for such collection is
2 provided—

3 (1) in any license, contract, or other agreement
4 covering the spyware program or the information,
5 program, or communication together with which, or
6 in connection with which, the spyware program is
7 transmitted; and

8 (2) in another prominent location, as the Com-
9 mission shall provide.

10 **SEC. 3. ENFORCEMENT.**

11 (a) ENFORCEMENT THROUGH FTC ACT.—

12 (1) UNFAIR OR DECEPTIVE ACT OR PRAC-
13 TICE.—A violation of any provision of this Act or
14 any regulation issued under this Act is an unfair or
15 deceptive act or practice unlawful under section
16 5(a)(1) of the Federal Trade Commission Act (15
17 U.S.C. 45(a)(1)).

18 (2) GUIDELINES AND OPINIONS.—In order to
19 assist in compliance with this Act, the Federal
20 Trade Commission may issue generally applicable
21 guidelines and, upon request, advisory opinions with
22 respect to specific types of acts or practices that
23 would, or would not, comply with this Act.

24 (b) CRIMINAL PENALTIES.—Whoever—



1 (1) violates section 2(e) or the regulations
2 issued under such section, or

3 (2) knowingly violates any other provision of
4 this Act or any regulation issued under this Act,
5 shall be fined under title 18, United States Code, or im-
6 prisoned for not more than 1 year, or both.

7 **SEC. 4. DEFINITIONS.**

8 For purposes of this Act:

9 (1) **COMPUTER; COVERED COMPUTER.**—The
10 terms “computer” and “covered computer” have the
11 meanings given such terms in section 1030(e) of
12 title 18, United States Code.

13 (2) **INTERNET.**—The term “Internet” means
14 collectively the myriad of computer and tele-
15 communications facilities, including equipment and
16 operating software, which comprise the inter-
17 connected world-wide network of networks that em-
18 ploy the Transmission Control Protocol/Internet
19 Protocol, or any predecessor or successor protocols
20 to such protocol, to communicate information of all
21 kinds by wire or radio.

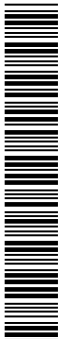
22 (3) **SPYWARE PROGRAM.**—The term “spyware
23 program” means any computer program or software
24 that can be used to transmit from a computer, or
25 that has the capability of so transmitting, by means



1 of the Internet and without any action on the part
2 of the user of the computer to initiate such trans-
3 mission, information regarding the user of the com-
4 puter, regarding the use of the computer, or that is
5 stored on the computer. In issuing regulations to
6 carry out this paragraph, the Commission shall dis-
7 tinguish spyware programs from other commonly
8 used computer programs used to share information
9 among computers in an organized network of com-
10 puters.

11 (4) PAGE.—The term “page” means, with re-
12 spect to the World Wide Web, a location that has a
13 single Uniform Resource Locator or other single lo-
14 cation with respect to the Internet, as the Commis-
15 sion may prescribe.

16 (5) PERSONALLY IDENTIFIABLE INFORMA-
17 TION.—The term “personally identifiable informa-
18 tion” does not include any record of aggregate data
19 that does not identify particular persons, particular
20 computers, particular users of computers, or par-
21 ticular email addresses or other locations of com-
22 puters with respect to the Internet.



1 **SEC. 5. REGULATIONS.**

2 The Commission shall issue regulations necessary to
3 carry out this Act not later than 90 days after the date
4 of the enactment of this Act.

