

## ***Communications Privacy and Consumer Empowerment Act (Introduced in House)***

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HR 1964 IH

105th CONGRESS

1st Session

H. R. 1964

To protect consumer privacy, empower parents, enhance the telecommunications infrastructure for efficient electronic commerce, and safeguard data security.

IN THE HOUSE OF REPRESENTATIVES

June 19, 1997

Mr. MARKEY introduced the following bill; which was referred to the Committee on Commerce

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A BILL

To protect consumer privacy, empower parents, enhance the telecommunications

infrastructure for efficient electronic commerce, and safeguard data security.

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 `Communications Privacy and Consumer Empowerment Act'.

## **SEC. 2. FINDINGS.** ➡

The Congress finds the following:

(1) As our Nation's communications networks continue to grow and become ever more sophisticated, more individuals and industries will be using such networks to conduct commercial transactions.

(2) It is important to establish personal privacy rights and industry obligations now so that consumers have confidence that their personal privacy is fully protected in our Nation's telecommunications networks.

(3) The Nation's telecommunications infrastructure must be safe and secure so that economic growth is not threatened due to consumer concern over the electronic ethics of certain cyberspace marketers.

(4) The Telecommunications Act of 1996 (Public Law 104-104) contains expanded privacy protections for consumers by requiring that telecommunications carriers under the jurisdiction of the Federal Communications Commission obtain consumer approval prior to reusing or selling certain personal information.

(5) It is becoming increasingly apparent that the existing privacy protections accorded consumers with respect to information gathered by telecommunications carriers are not alone sufficient to protect consumer privacy rights and that further protections are needed to ensure that such rights are retained and respected by other entities doing business in cyberspace.

(6) In addition to the growing number of businesses and adults getting online, some 5,000,000 young Americans currently use the Internet and this number is expected to grow to more than 15,000,000 by the year 2000.

(7) Recent media reports indicate that online marketers are gathering personal information from children, in some cases in a deceptive manner.

(8) Child advocacy groups have also charged that liquor, beer, and tobacco companies are utilizing Web sites to entice children to visit and that such sites' cartoon characters, glitzy features, games, music clips, and other characteristics promote their products and foster underage drinking and smoking.

(9) In addition to the work performed by the Federal Communications Commission in regulating our Nation's telecommunications networks, the Federal Trade Commission

continues to have the task of ensuring that online marketers and businesses do not engage in deceptive or fraudulent practices. The Commission's privacy workshop in June 1997 has developed a needed record of industry privacy practices that can serve as the basis for Commission action, if needed.

(10) The ease of gathering and compiling personal information in cyberspace, both overtly and surreptitiously, is becoming increasingly efficient and almost effortless due to advances in digital telecommunications technology. As a result, information gatherers are able to compile highly detailed personal histories of both children and adults who are network users.

(11) Regardless of the technology that consumers use, their privacy rights and expectations remain a constant. Consumers must have knowledge that personal information is being collected about them; consumers must be given conspicuous notice if the recipient of that information intends to reuse it for other purposes, or disclose, or sell it; and consumers must have the ability to control the extent to which personal information is collected about them and the right to prohibit or curtail any unauthorized use, reuse, disclosure, or sale of their personal information.

(12) Our Nation's communications networks, including the Internet, have developed extremely rapidly over recent years, and changes in standards,

protocols, and digital technologies have enabled consumers to make decisions about access to information and services, such as the types of content on the Internet.

(13) New innovative technology may empower consumers and parents to better control dissemination of personal information by restoring decisionmaking power to the consumer or parent. Technological tools may also help parents block access to Web sites containing inappropriate material for their children.

(14) Industry efforts, with Government encouragement and oversight, to assist consumers through the development of standards, protocols, and practices for the collection and dissemination of personal information is critical to help parents and consumers better control dissemination of their personal information.

(15) Adoption of strong, fair information policies, standards, and practices, along with the widespread implementation and utilization of consumer empowerment tools, may limit the need for Government regulation of personal information collection and dissemination practices on the Internet or other telecommunications media.

## **TITLE I--CONSUMER PRIVACY AND PARENTAL EMPOWERMENT ➡**

### **SEC. 101. FEDERAL TRADE COMMISSION EXAMINATION. ➡**

(a) PROCEEDING REQUIRED- Within 6 months after the date of enactment of this Act, the Federal Trade Commission shall commence a proceeding--

(1) to determine whether consumers are able, and, if not, the methods by which consumers may be enabled--

(A) to have knowledge that consumer information is being collected about them through their utilization of various telecommunications services and systems;

(B) to receive conspicuous notice that such information could be used, or is intended to be used, without authorization by the entity collecting the data for reasons unrelated to the original communications, or that such information could be sold (or is intended to be sold) to other companies or entities; and

(C) to exercise control over the collection of personal information and to stop the unauthorized use, reuse, disclosure, or sale of that information;

(2) to determine whether, in the case of consumers who are children, the abilities described in subparagraphs (A), (B), and (C) of paragraph (1) are or can be exercised by their parents;

(3) to propose changes in the Commission's regulations as necessary to correct any defects identified pursuant to this section in the privacy rights and remedies of parents and consumers generally;

(4) to solicit and review comment from the public and the National Telecommunication and Information Administration on the changes proposed pursuant to paragraph (3);

(5) to prepare recommendations to the Congress for any legislative changes required to correct such defects; and

(6) to determine--

(A) whether parents are able, and if not, the methods by which parents may be enabled, to block access to content accessible via the Internet, or other computer networks, that promotes alcoholic products or tobacco products; and

(B) whether alcohol and tobacco companies maintain Internet sites that promote, glamorize, and market alcohol and tobacco products in a manner that is directed at children.

(b) SCHEDULE FOR FEDERAL TRADE COMMISSION RESPONSES- The Federal Trade Commission shall, within 1 year after the date of enactment of this Act--

(1) complete any rulemaking required to revise Commission regulations to correct any defects in such regulations identified pursuant to subsection (a); and

(2) submit to Congress a report containing the recommendations required by subsection (a)(5).

## **SEC. 102. FEDERAL COMMUNICATIONS COMMISSION EXAMINATION.**



(a) PROCEEDING REQUIRED- Within 6 months after the date of enactment of this Act, the Federal Communications Commission shall commence a proceeding--

(1) to examine the impact of interconnected communications networks of telephone, cable, satellite, wireless devices, and other technologies on the privacy rights and remedies of the consumers of those technologies, as described in paragraphs (1) and (2) of section 101(a);

(2) to determine whether consumers are able, and, if not, the methods by which consumers may be enabled to exercise such rights and remedies;

(3) to determine whether common carriers have taken adequate steps to secure the communications infrastructure and its components against unauthorized interception of communications and other personal information;

(4) to propose changes in the Commission's regulations to ensure that the effect on consumer privacy rights is considered in the introduction of new telecommunications services and that the protection of such privacy rights and network security is incorporated as necessary in the design of such services or the rules regulating such services;

(5) to propose changes in the Commission's regulations as necessary to correct any defects identified pursuant to this section in such rights, remedies, and security;

(6) to solicit and review comment from the public and the National Telecommunication and Information Administration on the changes proposed pursuant to paragraph (5); and

(7) to prepare recommendations to the Congress for any legislative changes required to correct such defects.

(b) SCHEDULE FOR FEDERAL COMMUNICATIONS COMMISSION RESPONSES- The Federal Communications Commission shall, within 1 year after the date of enactment of this Act--

(1) complete any rulemaking required to revise Commission regulations to correct defects in such regulations identified pursuant to subsection (a); and

(2) submit to the Congress a report containing the recommendations required by subsection (a)(6).

### **SEC. 103. PARENTAL EMPOWERMENT THROUGH MARKETPLACE SOLUTIONS. ➡**

(a) SOFTWARE TO PROTECT CHILDREN- Section 230 of the Communications Act of 1934 (47 U.S.C. 230) is amended--

(1) by redesignating subsections (d) and (e) as subsections (e) and (f), respectively;

(2) by inserting after subsection (c) the following new subsection:

`(d) TECHNOLOGICAL TOOLS TO BLOCK ACCESS- An Internet access provider shall, at the time of entering an agreement with a customer for the provision of Internet access services, or at any subsequent time upon request, offer such customer screening software that is designed to permit the customer to limit access to material that is inappropriate for children. Such software shall be provided either at no charge or for a fee that does not exceed the cost of such software to such provider.'; and

(3) by adding at the end of subsection (f) (as redesignated by paragraph (1) of this subsection) the following new paragraphs:

`(5) INTERNET ACCESS PROVIDER- The term 'Internet access provider' means a person engaged in the business of providing a computer and communications facility through which a customer may obtain access to the Internet, but does not include a common carrier to the extent that it provides only transmission and routing services.

`(6) INTERNET ACCESS SERVICES- The term `Internet access services' means the provision of computer and communications services through which a customer using a computer and a modem or other communications device may obtain access to the Internet, but does not include transmission and routing services provided by a common carrier.'.

(b) CONFORMING AMENDMENT- Section 223(h)(2) of the Communications Act of 1934 (47 U.S.C. 223(h)(2)) is amended by striking `230(e)(2)' and inserting `230(f)(2)'.

## ***SEC. 104. EXTENSION OF SCANNER EQUIPMENT MANUFACTURE PROHIBITIONS TO DIGITAL MOBILE RADIO SERVICES. ➡***

(a) AMENDMENT- Section 302(d) of the Communications Act of 1934 (47 U.S.C. 302(d)) is amended--

(1) in paragraph (1), by striking `(1) Within 180 days after the date of enactment of this subsection, the Commission' and inserting `The Commission';

(2) in paragraph (1)(A), by striking `the domestic cellular radio telecommunications service' and inserting `a commercial mobile service (as such term is defined in section 332(d))';

(3) in paragraph (1)(C), by striking `digital cellular transmissions' and inserting `digital commercial mobiles service transmissions';

(4) by striking paragraph (2); and

(5) by redesignating subparagraphs (A), (B), and (C) of paragraph (1) as paragraphs (1), (2), and (3), respectively.

(b) EFFECTIVE DATE OF PROHIBITIONS ON REGULATION AMENDMENTS- The prohibitions contained in section 302(b) of the Communications Act of 1934 shall apply with respect to the changes made by the Federal Communications Commission in its regulations to implement the amendments made by subsection (a) of this section beginning 1 year after the effective date of such changes.

## ***TITLE II--INTERNET INFRASTRUCTURE ADVANCEMENT ➡***

### ***SEC. 201. ACCESS AND INTERCONNECTION FOR INFORMATION SERVICE PROVIDERS. ➡***

(a) INTERCONNECTION OBLIGATIONS OF INCUMBENT LOCAL EXCHANGE CARRIERS- Section 251(c) of the Communications Act of 1934 (47 U.S.C. 251(c)) is amended--

(1) in paragraph (2)--

(A) by inserting `or any requesting information service provider' after `requesting telecommunications carrier'; and

(B) by inserting before the semicolon at the end of subparagraph (A) the following: `, or for the transmission of information services';

(2) in paragraph (3)--

(A) by inserting after 'for the provision of a telecommunications service' the following: 'or to any information service provider for the provision of information services';

(B) by inserting 'and requesting information service providers' after 'requesting carriers'; and

(C) by inserting before the period at the end the following: 'or information service'; and

(3) in paragraph (6), by inserting 'to any requesting carrier or any requesting information service provider' after 'the duty to provide'.

(b) PROCEDURES FOR ADOPTION OF AGREEMENTS- Section 252 of the Communications Act of 1934 (47 U.S.C. 252) is amended by adding at the end the following new subsection:

'(k) TREATMENT OF INFORMATION SERVICE PROVIDERS AS REQUESTING CARRIERS- Any information service provider requesting interconnection or unbundled access pursuant to paragraph (2) or (3), respectively, or section 251(c) shall be treated as a requesting carrier for the purposes of negotiation, mediation, arbitration, and approval of agreements under this section.'

## ***SEC. 202. CONSIDERATION OF INFORMATION SERVICES IN COORDINATED NETWORK PLANNING. ➡***

(a) AMENDMENT- Section 256 of the Communications Act of 1934 (47 U.S.C. 256) is amended--

(1) in subsection (a)--

(A) by striking 'and' at the end of paragraph (1);

(B) by striking the period at the end of paragraph (2) and inserting '; and'; and

(C) by adding at the end the following new paragraph:

'(3) to promote commerce by facilitating the development and adoption of technologies and methods for the secure conduct of commercial transactions by use of telecommunications facilities, the Internet, or other interactive computer systems.'; and

(2) in subsection (b)--

(A) by striking 'and' at the end of paragraph (1);

(B) by striking the period at the end of paragraph (2) and inserting '; and'; and

(C) by adding at the end the following new paragraph:

'(3) shall establish procedures for Commission oversight to ensure that the needs of information service providers and their customers, and users of the Internet and interactive computer services (as such terms are defined in section 230), are considered during the

coordinated network planning under paragraph (1), including consideration of measures that will ensure--

`(A) efficient and effective interconnection for packet-switched data networks, including the Internet; and

`(B) efficient and effective access by such networks by their users.'.

(b) DEADLINE FOR COMMISSION IMPLEMENTATION- The Federal Communications Commission shall prescribe procedures for purposes of section 256(b)(3) of the Communications Act of 1934, as amended by subsection (a) of this section, within one year after the date of enactment of this Act.

### **SEC. 203. REMOVAL OF IMPEDIMENTS TO DEPLOYMENT OF IMPROVEMENTS IN NETWORK AND DATA SECURITY. ➡**

(a) NTIA STUDY OF NETWORK AND DATA SECURITY ISSUES- Part C of the National Telecommunications and Information Administration Organization Act is amended by inserting after section 155 the following new section:

`SEC. 156. STUDY OF NETWORK AND DATA SECURITY ISSUES.

`(a) STUDY REQUIRED- The NTIA shall conduct an examination of the extent to which network reliability and data security issues impair the conduct of transactions in interstate commerce through the medium of the

telecommunications networks, the Internet, or other interactive computer systems.

`(b) IDENTIFICATION OF GENERALLY AVAILABLE TECHNOLOGIES FOR THE IMPROVEMENT OF DATA SECURITY- In conducting the examination required by subsection (a), the NTIA shall identify generally available technologies for the improvement of data security for the conduct of the transactions described in such subsection.

`(c) REPORT ON EXAMINATION- Within one year after the date of enactment of this section, the NTIA shall submit to the Congress and the President a report on the examination required by this section. Annually thereafter, the NTIA shall submit to the Congress and the President an update on such report. Such report and each such update shall include--

`(1) a description of any generally available technologies for the improvement of data security; and

`(2) any privacy or data security limitations identified with respect to any such generally available technologies that serve to limit or prevent the effective and efficient conduct of transactions in interstate commerce, except that the report or update may restrict to a confidential appendix any discussion of such limitations which would itself present or create a privacy or data security limitation.

`(d) PREEMPTION OF DOMESTIC RESTRICTIONS ON ENCRYPTION AND OTHER DATA SECURITY TECHNOLOGIES- No officer of the Federal or any State government shall--

`(1) restrict or regulate the sale in interstate commerce of any encryption or other product

for the improvement of data security, regardless of encryption method chosen, length of encryption key, or implementation technique or medium used;

`(2) condition the issuance of certificates of authentication or certificates of authority upon any escrowing or other sharing of private encryption keys, whether with private agents or government entities; or

`(3) establish a licensing, labeling, or other regulatory scheme that requires key escrow as a condition of licensing or regulatory approval.

`(e) DEFINITIONS- For purposes of this section:

`(1) The term `generally available technology for the improvement of data security' means any computer hardware, encryption formula, code, or algorithm (without regard to key length, implementation technique, or medium), or other device or technique used to protect data from unauthorized penetration or disclosure that is generally available.

`(2) The term `generally available' means, in the case of computer software (including software with encryption capabilities), computer software that--

`(A) is distributed via the Internet or that is widely offered for sale, license, or transfer (without regard to whether it is offered for consideration), including over-the-counter retail sales, mail order transactions, telephone order transactions, electronic distribution, or sale on approval; or

`(B) is preloaded on computer hardware that is widely available.

`(3) The terms `Internet' and `interactive computer systems' have the meanings provided by section 230(e) of the Communications Act of 1934 (47 U.S.C. 230(e)).'.

(b) TRANSFER OF AUTHORITY- Section 105(b) of the National Telecommunications and Information Administration Organization Act (47 U.S.C. 902(b)) is amended by adding at the end the following new paragraph:

`(4) LICENSING OF COMMUNICATIONS TRANSACTION TECHNOLOGIES- There are transferred to the NTIA the functions of the Secretary under Public Law 96-72, as amended, with respect to generally available technologies for the improvement of data security, as identified pursuant to section 156 of this Act.'.