

Data Privacy Act of 1997 (Introduced in House)

• SECTION 1. SHORT TITLE.	2
• SEC. 2. ESTABLISHMENT OF VOLUNTARY GUIDELINES REGARDING COMMERCIAL MARKETING THROUGH INTERACTIVE COMPUTER SERVICES AND UNSOLICITED COMMERCIAL ELECTRONIC MAIL.	2
• SEC. 3. VOLUNTARY GUIDELINES FOR COLLECTION OF PERSONAL INFORMATION FOR COMMERCIAL MARKETING PURPOSES AND PERSONAL INFORMATION FROM CHILDREN.	2
• SEC. 4. VOLUNTARY GUIDELINES FOR TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL.	4
• SEC. 5. APPLICABILITY OF VOLUNTARY GUIDELINES AND NEGOTIATION AND ARBITRATION OF COMPLAINTS.	5
• SEC. 6. PROHIBITION AGAINST DISCLOSURE AND USE OF CERTAIN GOVERNMENT INFORMATION.	6
• SEC. 7. PROHIBITION AGAINST COMMERCIAL MARKETING USE OF MEDICAL INFORMATION.	7
• SEC. 8. DEFINITIONS.	8

FECHA July 31, 1997

HR 2368 IH

105th CONGRESS

1st Session

H.R. 2368

To promote the privacy of interactive computer service users through self-regulation by the providers of such services, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

July 31, 1997

Mr. TAUZIN (for himself and Mr. GILLMOR) introduced the following bill; which was referred to the Committee on Commerce

A BILL

To promote the privacy of interactive computer service users through self-regulation by the providers of such services, and for other purposes.

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 `Data Privacy Act of 1997'.

SEC. 2. ESTABLISHMENT OF VOLUNTARY GUIDELINES REGARDING COMMERCIAL MARKETING THROUGH INTERACTIVE COMPUTER SERVICES AND UNSOLICITED COMMERCIAL ELECTRONIC MAIL. ➡

(a) ESTABLISHMENT- Not later than 180 days after the date of the enactment of this Act, the industry working group (as such term is defined in section 8) shall establish the following guidelines:

(1) Guidelines in accordance with section 3, which limit the collection and use, for commercial marketing purposes, of personally identifiable information obtained from individuals through any interactive computer service.

(2) Guidelines in accordance with section 4, relating to the distribution of unsolicited commercial electronic mail.

(b) VOLUNTARY NATURE- The guidelines established under subsection (a) shall apply to providers of interactive computer services and persons transmitting unsolicited commercial electronic mail (as appropriate), but only if, and to the extent that, such a provider or person voluntarily agrees to such applicability by registration pursuant to section 5.

SEC. 3. VOLUNTARY GUIDELINES FOR COLLECTION OF PERSONAL INFORMATION FOR COMMERCIAL MARKETING PURPOSES AND PERSONAL INFORMATION FROM CHILDREN. ➡

(a) GUIDELINES REGARDING COLLECTION AND ACCESS TO INFORMATION- The guidelines established in accordance with this section shall contain the following requirements:

(1) NOTICE OF COLLECTION OF INFORMATION- A provider of an interactive computer service that collects personally identifiable information from a user of the service through use of such service for commercial marketing purposes shall notify the user--

(A) that such information is being collected;

(B) of the nature of the information being collected with respect to the individual user; and

(C) of the user's option under subsection (c) to prohibit disclosure of such information.

The notice shall be provided contemporaneously with or (if technically feasible) before the collection of the information, be prominently displayed, and be phrased in a manner that is easy to read and understand.

(2) NOTICE OF DISCLOSURE OF INFORMATION- Upon the request of a user of an interactive computer service, the provider of the service shall provide to the user a description of the types of recipients of the personally identifiable information collected with respect to that user and the purpose for the disclosure to the third parties.

(3) ACCESS TO INFORMATION- Upon the request of a user of an interactive computer service, the provider of the service shall--

(A) provide to the user, free of charge, the user's personally identifiable information collected and retained by the service to date; and

(B) permit the user to verify the information collected by the service and to correct any error in such information.

(b) GUIDELINES REGARDING INFORMATION OBTAINED FROM CHILDREN- The guidelines established in accordance with this section shall contain the following requirements:

(1) NOTICE TO OBTAIN CONSENT OF PARENT- No provider of an interactive computer service may, through the use of such service by a child, collect any personal information regarding the child or disclose or use any such information so collected, without notifying the child (in advance of the collection or use) that the child should not provide any information without the consent of his or her parent.

(2) PROHIBITION ON SOLICITATION OF CHILDREN TO PROVIDE INFORMATION ABOUT PARENTS- No person may use an interactive computer service to solicit or collect from children any information regarding a parent of the child.

(3) NOTICE OF DISCLOSURE OF INFORMATION- Upon the request of the parent of a child user of an interactive computer service, the provider of the service shall provide to the parent a description of the types of recipients of the personally identifiable information collected with respect to that child user and the purpose for the disclosure to the third parties.

(4) ACCESS TO AND DELETION OF INFORMATION- Upon the request of the parent of a child user of an interactive computer service, the provider of the service shall--

(A) provide to the parent, free of charge, the child user's personally identifiable information collected and retained by the service to date; and

(B) provide for--

(i) the parent to verify such information collected by the service to date and to correct any error in such information; or

(ii) the permanent deletion of any such information collected and retained by the service to date.

(c) CONSUMER OPT-OUT- The guidelines established in accordance with this section shall provide a method by which an individual may choose to prohibit the disclosure (including the renting, selling, or exchanging), at any time and for any purpose, of any personally identifiable information, not necessary to be disclosed in connection with the particular transaction, with respect to such individual that is obtained through the use of an

interactive computer service. The method established--

(1) shall clearly and accurately inform users of such services of their ability to prohibit disclosure of such information and of the various options for communicating a choice to prohibit disclosure, which shall each be clearly described in the notice under subsection (a)(1);

(2) shall be easy to use and free of cost to the user, which may include electronic mail notification;

(3) shall provide for the implementation of any choice to prohibit disclosure in a timely manner; and

(4) may include, once commercially available, software that enables a user to encode their privacy preferences, or enables a parent of a child user to encode the parent's privacy preferences for the child, into their browsers.

SEC. 4. VOLUNTARY GUIDELINES FOR TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL. ➡

(a) GUIDELINES REGARDING IDENTIFICATION OF ORIGINATOR- The guidelines established in accordance with this section shall provide that any person who transmits unsolicited commercial electronic mail shall cause to appear in an electronic mail message transmitted as part of such transmission the following information in the following locations:

(1) NOTICE OF ORIGINATOR- The business or trade name of person who initiates transmission of the message shall appear as the first word or words of the subject line of the electronic mail message without any prior text or symbol.

(2) INFORMATION REGARDING ORIGINATOR- The business or trade name, physical address, electronic mail address, and telephone number of the person who initiates transmission of the message shall each appear prominently in the body of the message.

(3) INFORMATION REGARDING OPT-OUT- Notice of the recipient's option under subsection (c) to prohibit delivery of unsolicited commercial electronic mail shall appear prominently in the body of the message.

(b) GUIDELINES REGARDING MISIDENTIFICATION OF ORIGINATOR- The guidelines established in accordance with this section shall contain the following requirements:

(1) PROHIBITION ON PREVENTING REPLIES- No person may initiate the transmission of unsolicited commercial electronic mail from an unregistered or fictitious Internet domain, or an unregistered or fictitious electronic mail address, for the purpose of--

(A) preventing replies to such message through use of a standard reply mechanism in the recipient's electronic mail system; or

(B) preventing receipt of standard notices of non-delivery.

(2) PROHIBITION ON BLOCKING FILTERING- No person may disguise the source of any unsolicited commercial electronic mail message for the purpose of preventing recipients, or

recipient interactive computer services, from implementing a mail filtering tool to block the messages from reaching the intended recipients.

(c) OPT-OUT FOR MAIL RECIPIENTS- The guidelines established in accordance with this section shall provide a method by which an individual may choose to prohibit the delivery to such individual, at any time and for any purpose, of any unsolicited commercial electronic mail. The method established shall--

(1) clearly and accurately inform electronic mail users of their ability to prohibit delivery of such mail and of the various options for communicating a choice to prohibit delivery, which shall each be clearly described as provided in subsection (a)(3);

(2) be easy to use and free of cost to the recipient of unsolicited commercial electronic mail, which may include procedures to automatically return such mail; and

(3) provide for the implementation of any choice to prohibit delivery in a timely manner.

SEC. 5. APPLICABILITY OF VOLUNTARY GUIDELINES AND NEGOTIATION AND ARBITRATION OF COMPLAINTS. ➔

(a) REGISTRATION SYSTEM- For purposes of facilitating compliance with the voluntary guidelines established pursuant to sections 2, 3, and 4, the industry working group shall develop and promote a registration system by which providers of interactive computer services and persons transmitting commercial electronic mail may, by registering, agree to comply with such guidelines. The industry working group shall provide for monitoring compliance of registered entities with such guidelines to ensure the integrity of the registration system.

(b) INCENTIVES FOR VOLUNTARY APPLICABILITY-

(1) IN GENERAL- The industry working group shall develop and make available incentives to encourage compliance with such voluntary guidelines and registration under subsection (a).

(2) ICON IDENTIFYING COMPLIANCE- The incentives under paragraph (1) shall include developing a icon or logo that--

(A) is made available for use only by--

(i) providers of interactive computer services who agree to comply with all of the guidelines established pursuant to sections 2(a)(1) and 3 through registration under subsection (a); and

(ii) persons transmitting commercial electronic mail who agree to comply with

all of the guidelines established pursuant to sections 2(a)(2) and 4; and

(B) identifies the user of the icon or logo as a provider or person that complies with all such guidelines.

(c) RESOLUTION OF CONSUMER COMPLAINTS- The system for registration established

under subsection (a) shall provide that, by registering, a provider of interactive computer services or person who transmits commercial electronic mail agrees that, if such provider or person is contacted by a user of the service or recipient of such mail regarding an alleged failure on the part of that provider or person to comply with the applicable voluntary guidelines, the complaint shall be resolved in the following manner:

(1) CONSUMER REDRESS- The provider of the service or transmitter of the mail shall, during the 60-day period beginning upon receipt of the complaint, attempt to resolve or remedy the complaint.

(2) ARBITRATION- If, upon the expiration of the period under paragraph (1), a mutually satisfactory resolution or remedy has not been reached the issue may, at the request of either party involved, be referred for settlement by arbitration, which shall be binding on the parties. The arbitrator shall be selected by the user from a list of arbitrators independent to either party involved in the arbitration, which shall be established by the industry working group.

(d) SAFE HARBOR-

(1) IN GENERAL- Any activity described in paragraph (2) engaged in by any person who has registered under the system established under subsection (a) which is not in violation of the voluntary guidelines established under sections 2, 3, and 4 of this Act shall not be considered to an unfair or deceptive trade practice under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(2) PROTECTED ACTIVITIES- Activity described in this paragraph is activity consisting of--

(A) the collection and use, for commercial marketing purposes, of personally identifiable information obtained from individuals through an interactive computer service;

(B) the solicitation or collection from a child, through an interactive computer service, of personal information regarding the child or information regarding the parent of the child; or

(C) the transmission of unsolicited commercial electronic mail.

(3) DETERMINATION OF COMPLIANCE- In determining, for purposes of paragraph (1), whether a person complies with the voluntary guidelines established under sections 2, 3, and 4 (as applicable), the Federal Trade Commission shall not make any final determination without obtaining from the entity responsible for monitoring compliance with the guidelines a determination by such entity regarding compliance by such person. In making a final determination for purposes of paragraph (1), the Commission shall give substantial weight to the determination by such entity.

SEC. 6. PROHIBITION AGAINST DISCLOSURE AND USE OF CERTAIN GOVERNMENT INFORMATION. ➡

(a) RESTRICTION ON COMMERCIAL MARKETING USE WITHOUT CONSENT OF INDIVIDUAL-

(1) IN GENERAL- No person may use for commercial marketing purposes any personal information regarding an individual that is described in paragraph (2) and is obtained through the use of any interactive computer service, without the prior consent of the

individual.

(2) **PERSONAL INFORMATION-** The personal information described in this paragraph is, with respect to an individual, any personally identifiable or other information regarding the individual that is submitted to or maintained by any agency of the Federal Government in a confidential manner or subject to any law, regulation, agreement, or assurance protecting the confidentiality of such information.

(b) **LIMITATION ON DISPLAY OF SOCIAL SECURITY NUMBERS-** No person may, through the use of an interactive computer service, display the social security number of any individual to a third party, except--

(1) when the social security number is displayed as part of a public record on file with an agency of the Federal Government or a State or local government, which record is available to the general public;

(2) to a law enforcement agency or licensed private investigator; or

(3) when the person has agreed in writing to follow industry guidelines, on file with the Federal Trade Commission, that limit the display of social security numbers.

This subsection may not be construed to limit the use of the social security number of an individual, provided by a user of an interactive computer service, to retrieve other information regarding the individual by entering the social security number in an interactive computer service, if the user has a prior business relationship or a valid contract with the provider of the interactive computer service.

SEC. 7. PROHIBITION AGAINST COMMERCIAL MARKETING USE OF MEDICAL INFORMATION. ➡

(a) **PROHIBITION OF USE-** No person may use, for commercial marketing purposes, any personal health or medical information obtained through an interactive computer service unless--

(1) the person has obtained the prior consent of the individual to whom such information relates for such use; or

(2) such use is otherwise authorized by law.

(b) **ENFORCEMENT AND RELIEF-**

(1) **UNFAIR TRADE PRACTICES-** Any violation of subsection (a) is unlawful and is an unfair method of competition, and an unfair and deceptive act or practice, in commerce under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(2) **AUTHORITY OF FTC-** Except as otherwise specifically provided in this subsection, subsection (a) shall be enforced by the Federal Trade Commission under rules, regulations, and procedures provided for in the Federal Trade Commission Act. The Commission may prevent any person from violating the provisions of subsection (a) 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 were incorporated into and made a part of this section.

(3) PRIVILEGES AND IMMUNITIES- Any person violating the provisions of subsection (a) shall be 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, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this section.

SEC. 8. DEFINITIONS. ➡

For purposes of this Act, the following definitions shall apply:

(1) CHILD- The term `child' means a person who has not attained the age of 13 years.

(2) COMMERCIAL ELECTRONIC MAIL- The term `commercial electronic mail' means any electronic mail that--

(A) advertises a product or service;

(B) contains a solicitation for the use of a toll-free telephone number or a telephone number with a 900 prefix the use of which connects the user to a person or service that advertises the sale of or sells a product or service; or

(C) contains a list of one or more Internet sites that contain an advertisement or a solicitation referred to in subparagraph (B).

(3) COMMERCIAL MARKETING- The term `commercial marketing' includes practices that--

(A) promote, sell, or deliver goods or services through direct sales marketing, campaigns to increase brand awareness, and other similar marketing strategies;

(B) perform market research; or

(C) foster the promotion, sale, or delivery of goods and services through the sale, rental, compilation, or exchange of lists.

(4) INDUSTRY WORKING GROUP- The term `industry working group' means an entity formed by the members of the interactive computer services industry, whose members shall consist of representatives of participants in the industry and interested organizations serving the industry, such as--

(A) the Direct Marketing Association;

(B) the Interactive Services Association;

(C) the Internet Privacy Working Group;

(D) the various members of TRUSTe;

(E) the Commercial Internet eXchange Association;

(F) the American Association of Advertisers;

(G) the Association of National Advertisers; and

(H) the Individual Reference Services.

(5) **INTERACTIVE COMPUTER SERVICE**- The term 'interactive computer service' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically--

(A) a service or system that provides access to the Internet; and

(B) an on-line information service.

(6) **INTERACTIVE COMPUTER SERVICES INDUSTRY**- The term 'interactive computer services industry' includes providers of interactive computer services, providers of on-line direct marketing services, advisory and trade organizations for such services, and providers of hardware and software for such services.

(7) **INTERNET**- The term 'Internet' means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(8) **ON-LINE INFORMATION SERVICE**- The term 'on-line information service' means any person operating a worldwide web site for commercial or noncommercial purposes, including any person offering products or services for sale.

(9) **PARENT**- The term 'parent' includes a legal guardian.

(10) **PERSONAL HEALTH OR MEDICAL INFORMATION**- The term 'personal health or medical information' means any information, in any form or medium, that relates to the past, present, or future physical or mental health, predisposition, or condition of an individual or the provision of health care to an individual.

(11) **PERSONALLY IDENTIFIABLE INFORMATION**- The term 'personally identifiable information' means information about an individual that would facilitate or enable the physical locating and contacting of that individual, including an individual's name, street or electronic mail address, telephone number, social security number, physical description, credit card number, checking account number, or debit account number. The term does not include any record of aggregate data which does not identify particular persons.

(12) **SOCIAL SECURITY ACCOUNT NUMBER**- The term 'Social Security account number' means, with respect to an individual, the number assigned to the individual under section 205(c)(2)(B) of the Social Security Act (and any derivative of such number).