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Protecting Privacy on the Internet: A Summary of Legislative Proposals

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Summary

The explosive growth in the use of computer networks for personal, governmental, and commercial purposes has raised complex issues of personal privacy. In particular, the ease with which such technology can be used to gather personally identifiable information about users, both children and adults, with or without their knowledge or authorization, has raised congressional concerns. Several bills have been introduced in the 105th Congress to address the collection, sale, use, and disclosure of personally identifiable information in cyberspace. The bills are summarized by topic in this report (a list of the bills is provided at the end). However, the report does not cover legislation that addresses other computer-related issues such as protecting children from unsuitable material on the Internet, "junk e-mail," or medical records privacy.

Protection of Personally Identifiable Information

Generic Protection of Personal Information. H.R. 98 (Vento) prohibits disclosure of personally identifiable subscriber information by interactive computer services (any information service that provides computer access to multiple users via modem to the Internet) to third parties without the subscriber's prior informed written consent. It also prohibits disclosure of personally identifiable information the service or an employee of the service has knowingly falsified. Interactive computer services, at the subscriber's request, are required to provide subscribers access to their personally identifiable information and the identity of the third party recipients of their information, as well as permit subscribers to verify and correct such information.

H.R. 1964 (Markey) requires the Federal Trade Commission (FTC) to initiate a proceeding to determine whether consumers are able, or how they could be enabled, to know that consumer information is being collected about them and may be used without authorization, to exercise control over the collection of personal information, and to stop unauthorized use, reuse, disclosure or sale of that information. The FTC then is required to propose required regulatory or legislative changes.

H.R. 2368 (Tauzin) proposes the establishment by industry of voluntary guidelines for interactive computer services and persons transmitting unsolicited commercial electronic mail. Incentives for voluntary compliance with the guidelines are provided. Under the guidelines, such service providers or persons who collect personally identifiable information from a user would have to notify the user that personally identifiable information is being collected, its nature, and the user's option to prohibit its disclosure. If requested, the service or person must provide the user with a description of the information collected and the types of recipients of the information, and permit the user to verify and correct the information.

H.R. 2368 also prohibits commercial marketing of an individual's personally identifiable information submitted to or maintained by any federal agency in a confidential manner if it was obtained through use of an interactive computer service without the individual's prior consent, unless the use is authorized by law. This restriction also applies to personal health or medical information obtained through an interactive computer service unless the person has given prior consent or such use is otherwise authorized by law. Violation of the latter provision would be considered unlawful, an unfair method of competition, and an unfair and deceptive act or practice under the Federal Trade Commission Act.

Protection of Children's Personal Information. S. 504 (Feinstein) and H.R. 1972 (Franks of New Jersey) amend title 18 of the United States Code to prohibit any list broker from knowingly selling or purchasing personal information about children without parental consent, conditioning sales or services to a child or child's parent on the granting of such consent, or not complying with a parent's request to disclose the source of personal information about that parent's child, the information itself, and the identity of all persons to whom the information was sold or disclosed. Exempted is the sale of lists to the National Center for Missing and Exploited Children; local, state and federal law enforcement agencies; and institutions of higher education. A child is defined as a person under the age of 16. A list broker is person who, in the course of business, provides mailing lists, computerized or telephone reference services, or the like containing personal information of children.

Also in S. 504 and H.R. 1972, persons who directly contact a child or parent of that child to offer a commercial product or service to that child must comply with a parent's request to disclose the source of personal information about that parent's child, the information itself, and the identity of all persons to whom the information was sold or disclosed. Distributing or receiving personal information about a child, knowing or having reason to believe the information will be used to abuse or physically harm the child, is subject to a fine and/or imprisonment. H.R. 1972 further requires list brokers and others to comply with a parent's request to discontinue providing a child's personal information to third parties and sets up penalties for noncompliance.

In cases where the consumer is a child, H.R. 1964 (Markey) requires the Federal Trade Commission to determine as part of the proceeding required under the Act whether a child's parent is able to know that information is being collected and may be used without authorization, and to exercise control over it.

H.R. 2368 (Tauzin) proposes the establishment by industry of voluntary guidelines on the use and disclosure of personal information regarding children (persons under 13

years of age). Incentives for complying with the guidelines are provided. Interactive service providers that agree to comply with the guidelines would be prohibited from collecting any personal information regarding child users without first notifying the child that such information should not be provided without the consent of a parent. Nor could the service provider solicit or collect information from children about their parents. Upon request, the provider must give the parent a description of the types of recipients of the personally identifiable information and the child's personally identifiable information collected by the service, and permit the parent to verify, correct, delete, or prohibit disclosure of the information.

Protection of Social Security Number/Information. H.R. 1287 (Franks) prohibits an interactive computer service (an information service that provides computer access to multiple users via modem or other means of telecommunication to the Internet or any other on-line network) from disclosing to a third party a person's Social Security number or related personally identifiable information by means of the person's Social Security number without the person's prior informed written consent.

H.R. 1330 (Kanjorski) prohibits the release of Social Security account information, personal earnings and benefits information, a tax return, or tax return information by federal officers and employees through the Internet or through other means without written consent.

H.R. 1367 (Barrett) prohibits federal agencies from making available through the Internet any person's record (any item, collection, or grouping of a person's educational, financial transactions, medical history, or employment history information, which contains the person's name or an identifying number or symbol assigned to the person).

H.R. 2368 (Tauzin) prohibits the display of a person's Social Security number to a third party except if it is displayed as part of a public record, that third party is a law enforcement agency or licensed private investigator, or the third party has agreed in writing to follow industry guidelines on file with the Federal Trade Commission that limit the display of Social Security numbers.

S. 600 (Feinstein) and H.R. 1813 (Kleczka) amend the Social Security Act to prohibit the commercial acquisition, distribution, or use as personal identification of a person's Social Security number, or any derivative of the number, without the person's written consent, unless otherwise provided under the Privacy Act, the Social Security Act, or the Internal Revenue Code.

Identity Fraud/Theft. S. 512 (Kyl) amends Chapter 47 of title 18 of the United States Code to include provisions on punishment and sentencing of those involved in interstate or foreign commerce who knowingly and with the intent to deceive or defraud, obtain, possess, transfer, use, or attempt to obtain, transfer or use one or more means of identification not legally issued for use to that person. Means of identification include a personal identification card or an access device (any card, plate, code, account number, electronic serial number, personal identification number or telecommunications service, equipment, or instrument identifier that can be used to obtain money, goods, services or any thing of value or to initiate the transfer of funds).

S. 512 also requires the Secret Service to collect and maintain information and statistical data on any information provided to it by state and local law enforcement agencies and financial institutions on identity fraud, and any investigation of and the prosecution and conviction for identity fraud.

Enforcement and Relief

S. 504 (Feinstein) and H.R. 1972 (Franks) provide a child or a parent of the child the right to obtain appropriate relief in civil action for violation of the Act.

S. 600 (Feinstein) and H.R. 1813 (Kleczka) provide individuals the right to bring civil action for violation of the Act. If the Commissioner of Social Security also determines that a person has violated the Act, civil money penalties shall be imposed.

H.R. 98 (Vento) grants the Federal Trade Commission (FTC) the authority to examine and investigate interactive computer services to determine any violation of the Act. In the case of a violation, the FTC may issue a cease and desist order. Aggrieved subscribers may obtain relief through civil action.

H.R. 1287 (Franks) provides the FTC with authority to examine and investigate an interactive computer service to determine any violation of the Act. A service that has knowingly engaged in an act or practice prohibited by the Act shall be liable for civil penalties and a cease and desist order may be issued by the Commissioner.

H.R. 1367 (Barrett) provides individuals who have suffered harm as a result of an agency's disclosure of the person's record(s) through the Internet the right to bring a civil action against the agency. This applies retroactively to cases where records were released through the Internet prior to enactment of this Act.

H.R. 2368 (Tauzin) creates an industry working group to develop and facilitate compliance with the voluntary guidelines that would be established by industry in accordance with the Act. The working group would develop incentives to encourage compliance and establish a registration system for providers of interactive computer services and persons transmitting commercial e-mail to agree to comply with the guidelines by registering. If an interactive computer service provider or person who has agreed to comply with the guidelines subsequently fails to do so, a consumer can provide notification of the alleged failure to that service provider or person, who would be required to attempt to resolve or remedy the problem within 60 days. If not resolved by the end of the 60-day period, either party may request settlement by binding arbitration.

Panels/Commissions/Studies

H.R. 1330 (Kanjorski) establishes a "Commission on Privacy of Government Records" to investigate the protection and privacy provided by the federal government for tax information, Social Security information, and other personal and confidential information about persons contained in government records, and the procedures through which a person may get access to his information. The commission must submit a report to the President and the Congress no later than April 15, 1998.

H.R. 1331 (Kennelly) requires the Commissioner of Social Security to create an expert panel, the "Social Security Information Safeguards Panel," to assist in the development of mechanisms and safeguards that would ensure the accuracy, security, and confidentiality of personal Social Security records made accessible to the public through electronic means.

S. 512 (Kyl) requires the Secretary of the Treasury and the Chairman of the Federal Trade Commission to conduct a comprehensive study on the nature, extent, and causes of identity fraud and the threats it poses to financial institutions, payment systems, and consumer safety and privacy and submit recommendations to Congress to address the problem.

Legislation

H.R. 98 (Vento)
Consumer Internet Privacy Protection Act of 1997. A bill to regulate the use by interactive computer services of personally identifiable information provided by subscribers to such services. Introduced January 7, 1997; referred to the Committee on Commerce.

H.R. 1287 (Franks)
Social Security On-line Privacy Protection Act of 1997. A bill to regulate the use by interactive computer services of Social Security account numbers and related personally identifiable information. Introduced April 10, 1997; referred to the Committee on Commerce.

H.R. 1330 (Kanjorski)
American Family Privacy Act of 1997. A bill to prohibit federal officers and employees from providing access to Social Security account statement information, personal earnings and benefits estimate statement information, or tax return information of an individual through the Internet or without the written consent of the individual, and to establish a commission to investigate the protection and privacy afforded to certain Government records. Introduced April 15, 1997; referred to the Committee on Government Reform and Oversight.

H.R. 1331 (Kennelly)
Social Security Information Safeguards Act of 1997. A bill to require the Commissioner of Social Security to assemble a panel of experts to assist the Commissioner in developing appropriate mechanisms and safeguards to ensure confidentiality and integrity of personal Social Security records made accessible to the public. Introduced April 15, 1997; referred to Committee on Ways and Means.

H.R. 1367 (Barrett)
Federal Internet Privacy Protection Act of 1997. A bill to prohibit federal agencies from making available through the Internet certain confidential records with respect to individuals, and to provide for remedies in cases in which such records are made available through the Internet. Introduced April 17, 1997; referred to the Committee on Government Reform and Oversight.

H.R. 1813 (Kleczka)/S. 600 (Feinstein)
Personal Information Privacy Act of 1997. A bill to protect the privacy of the individual with respect to the Social Security number and other personal information, and for other purposes. H.R. 1813 introduced June 5, 1997; referred to the House Committee on Ways and Means, and in addition to the Committees on Banking and Financial Services, and the Judiciary. S. 600 introduced April 16, 1997; referred to the Senate Committee on Finance.

H.R. 1964 (Markey)
Communications Privacy and Consumer Empowerment Act of 1997. A bill to protect consumer privacy, empower parents, enhance the telecommunications infrastructure for efficient electronic commerce, and safeguard data security. Introduced June 19, 1997; referred to the Committee on Commerce.

H.R. 1972 (Franks)/S. 504 (Feinstein)
Children's Privacy Protection and Parental Empowerment Act of 1997. Amends title 18, United States Code, to prohibit the sale of personal information about children without their parents' consent, and for other purposes. H.R. 1972 introduced June 19, 1997; referred to the House Committee on Judiciary. S. 504 introduced March 20, 1997; referred to the Senate Committee on Judiciary.

H.R. 2368 (Tauzin)
Data Privacy Act of 1997. A bill to promote the privacy of interactive computer service users through self-regulation by the providers of such services, and for other purposes. Introduced July 31, 1997; referred to the Committee on Commerce.

S. 512 (Kyl)
Identity Theft and Assumption Deterrence Act of 1997. A bill to amend chapter 47 of title 18, United States Code, relating to identity fraud, and for other purposes. Introduced March 21, 1997; referred to Committee on Judiciary.