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Citation: 5 Bernard D. Reams Jr. Law of E-SIGN A Legislative  
of the Electronic Signatures in Global and National  
Act Public Law No. 106-229 2000 1 2002

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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.

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## 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.

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 “Communications Pri-  
5       vacy and Consumer Empowerment Act”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds the following:

8               (1) As our Nation’s communications networks  
9       continue to grow and become ever more sophisti-

1 cated, more individuals and industries will be using  
2 such networks to conduct commercial transactions.

3 (2) It is important to establish personal privacy  
4 rights and industry obligations now so that consum-  
5 ers have confidence that their personal privacy is  
6 fully protected in our Nation's telecommunications  
7 networks.

8 (3) The Nation's telecommunications infra-  
9 structure must be safe and secure so that economic  
10 growth is not threatened due to consumer concern  
11 over the electronic ethics of certain cyberspace mar-  
12 keters.

13 (4) The Telecommunications Act of 1996 (Pub-  
14 lic Law 104-104) contains expanded privacy protec-  
15 tions for consumers by requiring that telecommuni-  
16 cations carriers under the jurisdiction of the Federal  
17 Communications Commission obtain consumer ap-  
18 proval prior to reusing or selling certain personal in-  
19 formation.

20 (5) It is becoming increasingly apparent that  
21 the existing privacy protections accorded consumers  
22 with respect to information gathered by tele-  
23 communications carriers are not alone sufficient to  
24 protect consumer privacy rights and that further  
25 protections are needed to ensure that such rights are

1 retained and respected by other entities doing busi-  
2 ness in cyberspace.

3 (6) In addition to the growing number of busi-  
4 nesses and adults getting online, some 5,000,000  
5 young Americans currently use the Internet and this  
6 number is expected to grow to more than  
7 15,000,000 by the year 2000.

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

11 (8) Child advocacy groups have also charged  
12 that liquor, beer, and tobacco companies are utiliz-  
13 ing Web sites to entice children to visit and that  
14 such sites' cartoon characters, glitzy features,  
15 games, music clips, and other characteristics pro-  
16 mote their products and foster underage drinking  
17 and smoking.

18 (9) In addition to the work performed by the  
19 Federal Communications Commission in regulating  
20 our Nation's telecommunications networks, the Fed-  
21 eral Trade Commission continues to have the task of  
22 ensuring that online marketers and businesses do  
23 not engage in deceptive or fraudulent practices. The  
24 Commission's privacy workshop in June 1997 has  
25 developed a needed record of industry privacy prac-

1 tices that can serve as the basis for Commission ac-  
2 tion, if needed.

3 (10) The ease of gathering and compiling per-  
4 sonal information in cyberspace, both overtly and  
5 surreptitiously, is becoming increasingly efficient  
6 and almost effortless due to advances in digital tele-  
7 communications technology. As a result, information  
8 gatherers are able to compile highly detailed per-  
9 sonal histories of both children and adults who are  
10 network users.

11 (11) Regardless of the technology that consum-  
12 ers use, their privacy rights and expectations remain  
13 a constant. Consumers must have knowledge that  
14 personal information is being collected about them;  
15 consumers must be given conspicuous notice if the  
16 recipient of that information intends to reuse it for  
17 other purposes, or disclose, or sell it; and consumers  
18 must have the ability to control the extent to which  
19 personal information is collected about them and the  
20 right to prohibit or curtail any unauthorized use,  
21 reuse, disclosure, or sale of their personal informa-  
22 tion.

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

1 protocols, and digital technologies have enabled con-  
2 sumers to make decisions about access to informa-  
3 tion and services, such as the types of content on  
4 the Internet.

5 (13) New innovative technology may empower  
6 consumers and parents to better control dissemina-  
7 tion of personal information by restoring decision-  
8 making power to the consumer or parent. Techno-  
9 logical tools may also help parents block access to  
10 Web sites containing inappropriate material for their  
11 children.

12 (14) Industry efforts, with Government encour-  
13 agement and oversight, to assist consumers through  
14 the development of standards, protocols, and prac-  
15 tices for the collection and dissemination of personal  
16 information is critical to help parents and consumers  
17 better control dissemination of their personal infor-  
18 mation.

19 (15) Adoption of strong, fair information poli-  
20 cies, standards, and practices, along with the wide-  
21 spread implementation and utilization of consumer  
22 empowerment tools, may limit the need for Govern-  
23 ment regulation of personal information collection  
24 and dissemination practices on the Internet or other  
25 telecommunications media.

1     **TITLE I—CONSUMER PRIVACY**  
2     **AND PARENTAL EMPOWERMENT**

3     **SEC. 101. FEDERAL TRADE COMMISSION EXAMINATION.**

4           (a) **PROCEEDING REQUIRED.**—Within 6 months after  
5 the date of enactment of this Act, the Federal Trade Com-  
6 mission shall commence a proceeding—

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

10                   (A) to have knowledge that consumer in-  
11                   formation is being collected about them through  
12                   their utilization of various telecommunications  
13                   services and systems;

14                   (B) to receive conspicuous notice that such  
15                   information could be used, or is intended to be  
16                   used, without authorization by the entity col-  
17                   lecting the data for reasons unrelated to the  
18                   original communications, or that such informa-  
19                   tion could be sold (or is intended to be sold) to  
20                   other companies or entities; and

21                   (C) to exercise control over the collection  
22                   of personal information and to stop the unau-  
23                   thorized use, reuse, disclosure, or sale of that  
24                   information;

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

5           (3) to propose changes in the Commission's reg-  
6           ulations as necessary to correct any defects identi-  
7           fied pursuant to this section in the privacy rights  
8           and remedies of parents and consumers generally;

9           (4) to solicit and review comment from the pub-  
10          lic and the National Telecommunication and Infor-  
11          mation Administration on the changes proposed pur-  
12          suant to paragraph (3);

13          (5) to prepare recommendations to the Con-  
14          gress for any legislative changes required to correct  
15          such defects; and

16          (6) to determine—

17                (A) whether parents are able, and if not,  
18                the methods by which parents may be enabled,  
19                to block access to content accessible via the  
20                Internet, or other computer networks, that pro-  
21                motes alcoholic products or tobacco products;  
22                and

23                (B) whether alcohol and tobacco companies  
24                maintain Internet sites that promote, glamorize,

1           and market alcohol and tobacco products in a  
2           manner that is directed at children.

3           (b) SCHEDULE FOR FEDERAL TRADE COMMISSION  
4 RESPONSES.—The Federal Trade Commission shall, with-  
5 in 1 year after the date of enactment of this Act—

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

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

12 **SEC. 102. FEDERAL COMMUNICATIONS COMMISSION EXAM-**  
13 **INATION.**

14          (a) PROCEEDING REQUIRED.—Within 6 months after  
15 the date of enactment of this Act, the Federal Commu-  
16 nications Commission shall commence a proceeding—

17          (1) to examine the impact of interconnected  
18 communications networks of telephone, cable, sat-  
19 ellite, wireless devices, and other technologies on the  
20 privacy rights and remedies of the consumers of  
21 those technologies, as described in paragraphs (1)  
22 and (2) of section 101(a);

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

1           (3) to determine whether common carriers have  
2 taken adequate steps to secure the communications  
3 infrastructure and its components against unauthor-  
4 ized interception of communications and other per-  
5 sonal information;

6           (4) to propose changes in the Commission's reg-  
7 ulations to ensure that the effect on consumer pri-  
8 vacy rights is considered in the introduction of new  
9 telecommunications services and that the protection  
10 of such privacy rights and network security is incor-  
11 porated as necessary in the design of such services  
12 or the rules regulating such services;

13           (5) to propose changes in the Commission's reg-  
14 ulations as necessary to correct any defects identi-  
15 fied pursuant to this section in such rights, rem-  
16 edies, and security;

17           (6) to solicit and review comment from the pub-  
18 lic and the National Telecommunication and Infor-  
19 mation Administration on the changes proposed pur-  
20 suant to paragraph (5); and

21           (7) to prepare recommendations to the Con-  
22 gress for any legislative changes required to correct  
23 such defects.

24           (b) SCHEDULE FOR FEDERAL COMMUNICATIONS  
25 COMMISSION RESPONSES.—The Federal Communications

1 Commission shall, within 1 year after the date of enact-  
2 ment of this Act—

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

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

9 **SEC. 103. PARENTAL EMPOWERMENT THROUGH MARKET-  
10 PLACE SOLUTIONS.**

11 (a) **SOFTWARE TO PROTECT CHILDREN.**—Section  
12 230 of the Communications Act of 1934 (47 U.S.C. 230)  
13 is amended—

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

16 (2) by inserting after subsection (e) the follow-  
17 ing new subsection:

18 “(d) **TECHNOLOGICAL TOOLS TO BLOCK ACCESS.**—  
19 An Internet access provider shall, at the time of entering  
20 an agreement with a customer for the provision of Internet  
21 access services, or at any subsequent time upon request,  
22 offer such customer screening software that is designed  
23 to permit the customer to limit access to material that  
24 is inappropriate for children. Such software shall be pro-

1 vided either at no charge or for a fee that does not exceed  
2 the cost of such software to such provider.”; and

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

6 “(5) INTERNET ACCESS PROVIDER.—The term  
7 ‘Internet access provider’ means a person engaged in  
8 the business of providing a computer and commu-  
9 nications facility through which a customer may ob-  
10 tain access to the Internet, but does not include a  
11 common carrier to the extent that it provides only  
12 transmission and routing services.

13 “(6) INTERNET ACCESS SERVICES.—The term  
14 ‘Internet access services’ means the provision of  
15 computer and communications services through  
16 which a customer using a computer and a modem or  
17 other communications device may obtain access to  
18 the Internet, but does not include transmission and  
19 routing services provided by a common carrier.”.

20 (b) CONFORMING AMENDMENT.—Section 223(h)(2)  
21 of the Communications Act of 1934 (47 U.S.C. 223(h)(2))  
22 is amended by striking “230(e)(2)” and inserting  
23 “230(f)(2)”.

1 **SEC. 104. EXTENSION OF SCANNER EQUIPMENT MANUFAC-**  
2 **TURE PROHIBITIONS TO DIGITAL MOBILE**  
3 **RADIO SERVICES.**

4 (a) **AMENDMENT.**—Section 302(d) of the Commu-  
5 nications Act of 1934 (47 U.S.C. 302(d)) is amended—

6 (1) in paragraph (1), by striking “(1) Within  
7 180 days after the date of enactment of this sub-  
8 section, the Commission” and inserting “The Com-  
9 mission”;

10 (2) in paragraph (1)(A), by striking “the do-  
11 mestic cellular radio telecommunications service”  
12 and inserting “a commercial mobile service (as such  
13 term is defined in section 332(d))”;

14 (3) in paragraph (1)(C), by striking “digital  
15 cellular transmissions” and inserting “digital com-  
16 mercial mobiles service transmissions”;

17 (4) by striking paragraph (2); and

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

21 (b) **EFFECTIVE DATE OF PROHIBITIONS ON REGU-**  
22 **LATION AMENDMENTS.**—The prohibitions contained in  
23 section 302(b) of the Communications Act of 1934 shall  
24 apply with respect to the changes made by the Federal  
25 Communications Commission in its regulations to imple-  
26 ment the amendments made by subsection (a) of this sec-

1 tion beginning 1 year after the effective date of such  
2 changes.

3 **TITLE II—INTERNET INFRA-**  
4 **STRUCTURE ADVANCEMENT**

5 **SEC. 201. ACCESS AND INTERCONNECTION FOR INFORMA-**  
6 **TION SERVICE PROVIDERS.**

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

11 (1) in paragraph (2)—

12 (A) by inserting “or any requesting infor-  
13 mation service provider” after “requesting tele-  
14 communications carrier”; and

15 (B) by inserting before the semicolon at  
16 the end of subparagraph (A) the following: “, or  
17 for the transmission of information services”;

18 (2) in paragraph (3)—

19 (A) by inserting after “for the provision of  
20 a telecommunications service” the following: “or  
21 to any information service provider for the pro-  
22 vision of information services”;

23 (B) by inserting “and requesting informa-  
24 tion service providers” after “requesting car-  
25 riers”; and

1 (C) by inserting before the period at the  
 2 end the following: “or information service”; and  
 3 (3) in paragraph (6), by inserting “to any re-  
 4 questing carrier or any requesting information serv-  
 5 ice provider” after “the duty to provide”.

6 (b) PROCEDURES FOR ADOPTION OF AGREE-  
 7 MENTS.—Section 252 of the Communications Act of 1934  
 8 (47 U.S.C. 252) is amended by adding at the end the fol-  
 9 lowing new subsection:

10 “(k) TREATMENT OF INFORMATION SERVICE PRO-  
 11 VIDERS AS REQUESTING CARRIERS.—Any information  
 12 service provider requesting interconnection or unbundled  
 13 access pursuant to paragraph (2) or (3), respectively, or  
 14 section 251(c) shall be treated as a requesting carrier for  
 15 the purposes of negotiation, mediation, arbitration, and  
 16 approval of agreements under this section.”.

17 **SEC. 202. CONSIDERATION OF INFORMATION SERVICES IN**  
 18 **COORDINATED NETWORK PLANNING.**

19 (a) AMENDMENT.—Section 256 of the Communica-  
 20 tions Act of 1934 (47 U.S.C. 256) is amended—

21 (1) in subsection (a)—

22 (A) by striking “and” at the end of para-  
 23 graph (1);

24 (B) by striking the period at the end of  
 25 paragraph (2) and inserting “; and”; and

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

3 “(3) to promote commerce by facilitating the  
4 development and adoption of technologies and meth-  
5 ods for the secure conduct of commercial trans-  
6 actions by use of telecommunications facilities, the  
7 Internet, or other interactive computer systems.”;  
8 and

9 (2) in subsection (b)—

10 (A) by striking “and” at the end of para-  
11 graph (1);

12 (B) by striking the period at the end of  
13 paragraph (2) and inserting “; and”; and

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

16 “(3) shall establish procedures for Commission  
17 oversight to ensure that the needs of information  
18 service providers and their customers, and users of  
19 the Internet and interactive computer services (as  
20 such terms are defined in section 230), are consid-  
21 ered during the coordinated network planning under  
22 paragraph (1), including consideration of measures  
23 that will ensure—

1           “(A) efficient and effective interconnection  
2           for packet-switched data networks, including  
3           the Internet; and

4           “(B) efficient and effective access by such  
5           networks by their users.”.

6           (b) **DEADLINE FOR COMMISSION IMPLEMENTA-**  
7 **TION.**—The Federal Communications Commission shall  
8 prescribe procedures for purposes of section 256(b)(3) of  
9 the Communications Act of 1934, as amended by sub-  
10 section (a) of this section, within one year after the date  
11 of enactment of this Act.

12 **SEC. 203. REMOVAL OF IMPEDIMENTS TO DEPLOYMENT OF**  
13 **IMPROVEMENTS IN NETWORK AND DATA SE-**  
14 **CURITY.**

15           (a) **NTIA STUDY OF NETWORK AND DATA SECURITY**  
16 **ISSUES.**—Part C of the National Telecommunications and  
17 Information Administration Organization Act is amended  
18 by inserting after section 155 the following new section:  
19 **“SEC. 156. STUDY OF NETWORK AND DATA SECURITY IS-**  
20 **SUES.**

21           “(a) **STUDY REQUIRED.**—The NTIA shall conduct an  
22 examination of the extent to which network reliability and  
23 data security issues impair the conduct of transactions in  
24 interstate commerce through the medium of the tele-

1 communications networks, the Internet, or other inter-  
2 active computer systems.

3       “(b) IDENTIFICATION OF GENERALLY AVAILABLE  
4 TECHNOLOGIES FOR THE IMPROVEMENT OF DATA SEC-  
5 RITY.—In conducting the examination required by sub-  
6 section (a), the NTIA shall identify generally available  
7 technologies for the improvement of data security for the  
8 conduct of the transactions described in such subsection.

9       “(c) REPORT ON EXAMINATION.—Within one year  
10 after the date of enactment of this section, the NTIA shall  
11 submit to the Congress and the President a report on the  
12 examination required by this section. Annually thereafter,  
13 the NTIA shall submit to the Congress and the President  
14 an update on such report. Such report and each such up-  
15 date shall include—

16           “(1) a description of any generally available  
17 technologies for the improvement of data security;  
18 and

19           “(2) any privacy or data security limitations  
20 identified with respect to any such generally avail-  
21 able technologies that serve to limit or prevent the  
22 effective and efficient conduct of transactions in  
23 interstate commerce, except that the report or up-  
24 date may restrict to a confidential appendix any dis-

1 cussion of such limitations which would itself present  
2 or create a privacy or data security limitation.

3 “(d) PREEMPTION OF DOMESTIC RESTRICTIONS ON  
4 ENCRYPTION AND OTHER DATA SECURITY TECH-  
5 NOLOGIES.—No officer of the Federal or any State gov-  
6 ernment shall—

7 “(1) restrict or regulate the sale in interstate  
8 commerce of any encryption or other product for the  
9 improvement of data security, regardless of  
10 encryption method chosen, length of encryption key,  
11 or implementation technique or medium used;

12 “(2) condition the issuance of certificates of au-  
13 thentication or certificates of authority upon any  
14 escrowing or other sharing of private encryption  
15 keys, whether with private agents or government en-  
16 tities; or

17 “(3) establish a licensing, labeling, or other reg-  
18 ulatory scheme that requires key escrow as a condi-  
19 tion of licensing or regulatory approval.

20 “(e) DEFINITIONS.—For purposes of this section:

21 “(1) The term ‘generally available technology  
22 for the improvement of data security’ means any  
23 computer hardware, encryption formula, code, or al-  
24 gorithm (without regard to key length, implementa-  
25 tion technique, or medium), or other device or tech-

1       nique used to protect data from unauthorized pene-  
2       tration or disclosure that is generally available.

3           “(2) The term ‘generally available’ means, in  
4       the case of computer software (including software  
5       with encryption capabilities), computer software  
6       that—

7           “(A) is distributed via the Internet or that  
8       is widely offered for sale, license, or transfer  
9       (without regard to whether it is offered for con-  
10      sideration), including over-the-counter retail  
11      sales, mail order transactions, telephone order  
12      transactions, electronic distribution, or sale on  
13      approval; or

14          “(B) is preloaded on computer hardware  
15      that is widely available.

16          “(3) The terms ‘Internet’ and ‘interactive com-  
17      puter systems’ have the meanings provided by sec-  
18      tion 230(e) of the Communications Act of 1934 (47  
19      U.S.C. 230(e)).”.

20      (b) TRANSFER OF AUTHORITY.—Section 105(b) of  
21      the National Telecommunications and Information Ad-  
22      ministration Organization Act (47 U.S.C. 902(b)) is  
23      amended by adding at the end the following new para-  
24      graph:

1           “(4) LICENSING OF COMMUNICATIONS TRANS-  
2           ACTION TECHNOLOGIES.—There are transferred to  
3           the NTLA the functions of the Secretary under Pub-  
4           lic Law 96–72, as amended, with respect to gen-  
5           erally available technologies for the improvement of  
6           data security, as identified pursuant to section 156  
7           of this Act.”.

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## **Document No. 127**

