

112TH CONGRESS
1ST SESSION

S. 913

To require the Federal Trade Commission to prescribe regulations regarding the collection and use of personal information obtained by tracking the online activity of an individual, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 9, 2011

Mr. ROCKEFELLER introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require the Federal Trade Commission to prescribe regulations regarding the collection and use of personal information obtained by tracking the online activity of an individual, 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 “Do-Not-Track Online
5 Act of 2011”.

1 **SEC. 2. REGULATIONS RELATING TO “DO-NOT-TRACK”**
2 **MECHANISMS.**

3 (a) IN GENERAL.—Not later than 1 year after the
4 date of the enactment of this Act, the Federal Trade Com-
5 mission shall promulgate—

6 (1) regulations that establish standards for the
7 implementation of a mechanism by which an indi-
8 vidual can simply and easily indicate whether the in-
9 dividual prefers to have personal information col-
10 lected by providers of online services, including by
11 providers of mobile applications and services; and

12 (2) rules that prohibit, except as provided in
13 subsection (b), such providers from collecting per-
14 sonal information on individuals who have expressed,
15 via a mechanism that meets the standards promul-
16 gated under paragraph (1), a preference not to have
17 such information collected.

18 (b) EXCEPTION.—The rules promulgated under para-
19 graph (2) of subsection (a) shall allow for the collection
20 and use of personal information on an individual described
21 in such paragraph, notwithstanding the expressed pref-
22 erence of the individual via a mechanism that meets the
23 standards promulgated under paragraph (1) of such sub-
24 section, to the extent—

25 (1) necessary to provide a service requested by
26 the individual, including with respect to such service,

1 basic functionality and effectiveness, so long as such
2 information is anonymized or deleted upon the provi-
3 sion of such service; or

4 (2) the individual—

5 (A) receives clear, conspicuous, and accu-
6 rate notice on the collection and use of such in-
7 formation; and

8 (B) affirmatively consents to such collec-
9 tion and use.

10 (c) FACTORS.—In promulgating standards and rules
11 under subsection (a), the Federal Trade Commission shall
12 consider and take into account the following:

13 (1) The appropriate scope of such standards
14 and rules, including the conduct to which such rules
15 shall apply and the persons required to comply with
16 such rules.

17 (2) The technical feasibility and costs of—

18 (A) implementing mechanisms that would
19 meet such standards; and

20 (B) complying with such rules.

21 (3) Mechanisms that—

22 (A) have been developed or used before the
23 date of the enactment of this Act; and

24 (B) are for individuals to indicate simply
25 and easily whether the individuals prefer to

1 have personal information collected by providers
2 of online services, including by providers of mo-
3 bile applications and services.

4 (4) How mechanisms that meet such standards
5 should be publicized and offered to individuals.

6 (5) Whether and how information can be col-
7 lected and used on an anonymous basis so that the
8 information—

9 (A) cannot be reasonably linked or identi-
10 fied with a person or device, both on its own
11 and in combination with other information; and

12 (B) does not qualify as personal informa-
13 tion subject to the rules promulgated under
14 subsection (a)(2).

15 (6) The standards under which personal infor-
16 mation may be collected and used, subject to the
17 anonymization or deletion requirements of sub-
18 section (b)(1)—

19 (A) to fulfill the basic functionality and ef-
20 fectiveness of an online service, including a mo-
21 bile application or service;

22 (B) to provide the content or services re-
23 quested by individuals who have otherwise ex-
24 pressed, via a mechanism that meets the stand-
25 ards promulgated under subsection (a)(1), a

1 preference not to have personal information col-
2 lected; and

3 (C) for such other purposes as the Com-
4 mission determines substantially facilitates the
5 functionality and effectiveness of the online
6 service, or mobile application or service, in a
7 manner that does not undermine an individual's
8 preference, expressed via such mechanism, not
9 to collect such information.

10 (d) RULEMAKING.—The Federal Trade Commission
11 shall promulgate the standards and rules required by sub-
12 section (a) in accordance with section 553 of title 5,
13 United States Code.

14 **SEC. 3. ENFORCEMENT OF “DO-NOT-TRACK” MECHANISMS.**

15 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
16 SION.—

17 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
18 TICES.—A violation of a rule promulgated under sec-
19 tion 2(a)(2) shall be treated as an unfair and decep-
20 tive act or practice in violation of a regulation under
21 section 18(a)(1)(B) of the Federal Trade Commis-
22 sion Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair
23 or deceptive acts or practices.

24 (2) POWERS OF COMMISSION.—

1 (A) IN GENERAL.—Except as provided in
2 subparagraph (C), the Federal Trade Commis-
3 sion shall enforce this Act in the same manner,
4 by the same means, and with the same jurisdic-
5 tion, powers, and duties as though all applicable
6 terms and provisions of the Federal Trade
7 Commission Act (15 U.S.C. 41 et seq.) were in-
8 corporated into and made a part of this Act.

9 (B) PRIVILEGES AND IMMUNITIES.—Ex-
10 cept as provided in subparagraph (C), any per-
11 son who violates this Act shall be subject to the
12 penalties and entitled to the privileges and im-
13 munities provided in the Federal Trade Com-
14 mission Act (15 U.S.C. 41 et seq.).

15 (C) NONPROFIT ORGANIZATIONS.—The
16 Federal Trade Commission shall enforce this
17 Act with respect to an organization that is not
18 organized to carry on business for its own profit
19 or that of its members as if such organization
20 were a person over which the Commission has
21 authority pursuant to section 5(a)(2) of the
22 Federal Trade Commission Act (15 U.S.C.
23 45(a)(2)).

24 (b) ENFORCEMENT BY STATES.—

1 (1) IN GENERAL.—In any case in which the at-
2 torney general of a State has reason to believe that
3 an interest of the residents of the State has been or
4 is threatened or adversely affected by the engage-
5 ment of any person subject to a rule promulgated
6 under section 2(a)(2) in a practice that violates the
7 rule, the attorney general of the State may, as
8 *parens patriae*, bring a civil action on behalf of the
9 residents of the State in an appropriate district
10 court of the United States—

11 (A) to enjoin further violation of such rule
12 by such person;

13 (B) to compel compliance with such rule;

14 (C) to obtain damages, restitution, or other
15 compensation on behalf of such residents;

16 (D) to obtain such other relief as the court
17 considers appropriate; or

18 (E) to obtain civil penalties in the amount
19 determined under paragraph (2).

20 (2) CIVIL PENALTIES.—

21 (A) CALCULATION.—Subject to subpara-
22 graph (B), for purposes of imposing a civil pen-
23 alty under paragraph (1)(E) with respect to a
24 person that violates a rule promulgated under
25 section 2(a)(2), the amount determined under

1 this paragraph is the amount calculated by mul-
2 tiplying the number of days that the person is
3 not in compliance with the rule by an amount
4 not greater than \$16,000.

5 (B) MAXIMUM TOTAL LIABILITY.—The
6 total amount of civil penalties that may be im-
7 posed with respect to a person that violates a
8 rule promulgated under section 2(a)(2) shall
9 not exceed \$15,000,000 for all civil actions
10 brought against such person under paragraph
11 (1) for such violation.

12 (C) ADJUSTMENT FOR INFLATION.—Be-
13 ginning on the date on which the Bureau of
14 Labor Statistics first publishes the Consumer
15 Price Index after the date that is 1 year after
16 the date of the enactment of this Act, and an-
17 nually thereafter, the amounts specified in sub-
18 paragraphs (A) and (B) shall be increased by
19 the percentage increase in the Consumer Price
20 Index published on that date from the Con-
21 sumer Price Index published the previous year.

22 (3) RIGHTS OF FEDERAL TRADE COMMIS-
23 SION.—

24 (A) NOTICE TO FEDERAL TRADE COMMIS-
25 SION.—

1 (i) IN GENERAL.—Except as provided
2 in clause (iii), the attorney general of a
3 State shall notify the Federal Trade Com-
4 mission in writing that the attorney gen-
5 eral intends to bring a civil action under
6 paragraph (1) before initiating the civil ac-
7 tion.

8 (ii) CONTENTS.—The notification re-
9 quired by clause (i) with respect to a civil
10 action shall include a copy of the complaint
11 to be filed to initiate the civil action.

12 (iii) EXCEPTION.—If it is not feasible
13 for the attorney general of a State to pro-
14 vide the notification required by clause (i)
15 before initiating a civil action under para-
16 graph (1), the attorney general shall notify
17 the Federal Trade Commission imme-
18 diately upon instituting the civil action.

19 (B) INTERVENTION BY FEDERAL TRADE
20 COMMISSION.—The Federal Trade Commission
21 may—

22 (i) intervene in any civil action
23 brought by the attorney general of a State
24 under paragraph (1); and

25 (ii) upon intervening—

1 (I) be heard on all matters arising in the civil action; and

2
3 (II) file petitions for appeal of a
4 decision in the civil action.

5 (4) INVESTIGATORY POWERS.—Nothing in this
6 subsection may be construed to prevent the attorney
7 general of a State from exercising the powers conferred on the attorney general by the laws of the
8 State to conduct investigations, to administer oaths
9 or affirmations, or to compel the attendance of witnesses or the production of documentary or other
10 evidence.
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13 (5) PREEMPTIVE ACTION BY FEDERAL TRADE
14 COMMISSION.—If the Federal Trade Commission institutes a civil action or an administrative action
15 with respect to a violation of a rule promulgated
16 under section 2(a)(2), the attorney general of a
17 State may not, during the pendency of such action,
18 bring a civil action under paragraph (1) against any
19 defendant named in the complaint of the Commission for the violation with respect to which the Commission instituted such action.
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23 (6) VENUE; SERVICE OF PROCESS.—

24 (A) VENUE.—Any action brought under
25 paragraph (1) may be brought in—

1 (i) the district court of the United
2 States that meets applicable requirements
3 relating to venue under section 1391 of
4 title 28, United States Code; or

5 (ii) another court of competent juris-
6 diction.

7 (B) SERVICE OF PROCESS.—In an action
8 brought under paragraph (1), process may be
9 served in any district in which the defendant—

10 (i) is an inhabitant; or

11 (ii) may be found.

12 (7) ACTIONS BY OTHER STATE OFFICIALS.—

13 (A) IN GENERAL.—In addition to civil ac-
14 tions brought by attorneys general under para-
15 graph (1), any other officer of a State who is
16 authorized by the State to do so may bring a
17 civil action under paragraph (1), subject to the
18 same requirements and limitations that apply
19 under this subsection to civil actions brought by
20 attorneys general.

21 (B) SAVINGS PROVISION.—Nothing in this
22 subsection may be construed to prohibit an au-
23 thorized official of a State from initiating or
24 continuing any proceeding in a court of the

1 State for a violation of any civil or criminal law
2 of the State.

3 **SEC. 4. BIENNIAL REVIEW AND ASSESSMENT.**

4 Not later than 2 years after the effective date of the
5 regulations initially promulgated under section 2, the Fed-
6 eral Trade Commission shall—

7 (1) review the implementation of this Act;

8 (2) assess the effectiveness of such regulations,
9 including how such regulations define or interpret
10 the term “personal information” as such term is
11 used in section 2;

12 (3) assess the effect of such regulations on on-
13 line commerce; and

14 (4) submit to Congress a report on the results
15 of the review and assessments required by this sec-
16 tion.

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