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I would like to submit the following news article for the public record.

Leading Internet Providers Oppose Passage of Spyware Control Act
By Ross Fadner
Staff Writer
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While the Internet community anxiously waits to see whether or not Utah Governor Olene S. Walker signs the controversial Spyware Control Act into state law, the MediaDailyNews has learned that several of the Web's leading content and technology providers have taken action to lobby against the proposed bill.

Web publishers and businesses including American Online, Amazon.com, Cnet, eBay, Google, Microsoft Corp., and Yahoo! signed a letter on March 1 to Utah Senate Majority Leader John Valentine and Representative Steven Urquhart, who sponsored the bill, warning that the bill--if signed into law--could create serious repercussions for the entire online community. According to reasons cited in the letter, the Spyware Control Act is structurally flawed because its definition of spyware is too broad. It states that several types of important and beneficial Internet communications software, and even routine network communications, fall under the bill's definition of spyware.

For example, the parties to the letter warned that the bill could interfere with computer security by preventing information technology and security companies from collecting data to analyze and prevent virus attacks, and would also impair the delivery of local, targeted ads. This, they said, would especially hurt smaller regional companies (such as the one that proposed the bill), which rely on data collection to purchase locally targeted ads. The bill also prevents the delivery of notices and message reminders that "partially or wholly cover" the content of another Web site.

Part of the problem with the bill's swift passage through state legislature is that spyware, as yet, has no concrete industry definition. In fact, the U.S. Federal Trade Commission declined to comment for this story because it doesn't have a policy statement on the issue. The FTC said it will hold a workshop later next month in order to work on a policy statement.

However, "spyware" and "adware" generally refer to software that tracks a consumer's online activities and uses the data it collects to serve pop-up advertisements and other promotional messages. This is legal, as long as it is clearly stated to users that they are getting free or reduced-price software in exchange for receiving marketing messages. Companies like Claria and WhenU, for example, are legal adware providers, although each has been involved in high-profile lawsuits over their software. Both companies still face pending legal action.

Certain types of programs are sometimes bundled with other software that affiliates or third parties administer to users' computers without their knowledge. This is illegal, and the difficulty arises in identifying whether all the affiliates are to blame for administering the illegal software. Another problem is locating them, as software-based marketing rings sometimes include scores of affiliates.

"WhenU would like nothing more than to see well-crafted anti-spyware legislation passed to clean up the software-based advertising marketplace," said Avi Naider, President-CEO of adware company WhenU.com. WhenU was not a party to the letter sent to Utah Senate Majority Leader John Valentine. The major Internet companies that signed the letter emphasized that they do not oppose the bill's intent to address the problem of "spyware," stating: "We want to emphasize that we do not oppose the bill's intent to address the very serious concerns about 'spyware.'"

Naider maintained: "The problem with the Utah bill is that it's a poorly written, broadly inflated piece of legislation that does nothing to protect users from nefarious software. On the other hand, it does everything to stop legitimate advertisers from reaching consumers," he said, adding: "The bill is very broad, and lacks a fundamental understanding of how Internet software and advertising work. It could potentially affect everything from the Google toolbar to Nielsen ratings software."

The Utah bill, which quickly passed through the Utah state House and Senate, originated after 1800contacts.com, a local online contact lens distributor, discovered that some of its customers received pop-up ads while visiting its Web site. These ads were served by software-based marketing programs installed on users' computers, and not by the company, which then decided to contact local legislature.

Under the bill, any software that reports its users' online actions, sends personal data to other companies, or serves pop-up ads without permission is prohibited. It does contain certain exceptions that some industry analysts have deemed "self-contradictory," such as "cookies" used for personalizing Web pages, and ads served by HTML or JavaScript.

Added Naider: "The Utah bill is disingenuous legislation crafted by 1800contacts.com and its lawyers to protect its business, and has absolutely nothing to do with protecting the consumer." He notes that software such as the kind provided by WhenU is controversial because companies like 1800contacts.com are threatened by programs that alert customers visiting their Web site to other alternatives where they could save money on the same product they offer.

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