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 OF THE PHILIPPINES )  
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8 FEB 15 2016

SENATE  
 S. No. 2053

RECEIVED BY: *[Signature]*

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

Computer users are increasingly finding software installed on their computers that they did not know was installed and that they cannot uninstall. Moreover, there is an increasing capacity and tendency for users of the Internet to have unauthorized software surreptitiously installed on their computers without their knowledge. There are reports that technology has now freely made available predatory and eavesdropping software which has the capacity to collect and transfer data from a user's computer to another computer without the knowledge of the user.

It is the responsibility of the State to protect its citizens from unscrupulous individuals who now use technology and the internet to take advantage of unknowing customers. This bill aims to protect computer users by providing them with the ability to make an informed decision with regards to matters affecting their use of their personal computers. It shall protect their privacy and the security of their personal information. It shall:

- (a) regulate the unauthorized or surreptitious installation of computer software;
- (b) require the clear disclosure to computer users of certain computer software features that may pose a threat to a user's privacy or the speed or operation of their computer;
- (c) give computer users the rights and capacity to:
  - (i) know what software is being installed on their computer;
  - (ii) refuse to have the software installed; and
  - (iii) be able to uninstall any software.

*Miriam Defensor Santiago*  
 MIRIAM DEFENSOR SANTIAGO

8 FEB 25 2008

SENATE  
S. No. 2053

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1 AN ACT  
2 TO REGULATE THE UNAUTHORIZED INSTALLATION  
3 OF COMPUTER SOFTWARE AND TO REQUIRE THE CLEAR DISCLOSURE  
4 TO COMPUTER USERS OF CERTAIN COMPUTER SOFTWARE FEATURES  
5 THAT MAY POSE A THREAT TO USER PRIVACY

6 *Be it enacted by the Senate and House of Representatives of the Philippines in*  
7 *Congress assembled:*

8 SECTION 1. *Short Title.* – This Act may be cited as the “Anti-Spyware Act  
9 2008.”

10 SECTION 2. *Definition of Terms.* – For purposes of this Act, the term:

- 11 1. “Advertisement” means a commercial promotion for a product or service, but  
12 does not include promotions for products or services that appear on computer  
13 software help or support pages that are displayed in response to a request by  
14 the user.
- 15 2. “Advertising feature” means a function of computer software that, when  
16 installed on a computer, delivers advertisements to the user of that computer.
- 17 3. “Adware” means software which causes advertisements to be displayed on a  
18 user’s computer.
- 19 4. “Affirmative consent” means consent expressed through action by the user of  
20 a computer other than default action specified by the installation sequence and  
21 independent from any other consent solicited from the user during the  
22 installation process.

- 1           5. “Authorized user”, when used with respect to a computer, means the owner or  
2           lessee of a computer, or someone using or accessing a computer with the  
3           actual or apparent authorization of the owner or lessee.
- 4           6. “Computer software” means any program designed to cause a computer to  
5           perform a desired function or functions and does not include any cookie.
- 6           7. “Cookie” means a text file:  
7           (a) that is placed on a computer by an Internet service provider, interactive  
8           computer service or Internet website; and  
9           (b) the sole function of which is to record information that can be read or  
10          recognized by an Internet service provider, interactive computer service or  
11          Internet website when the user of the computer uses or accesses such  
12          provider, service or website.
- 13          8. “Distributed computing feature” means a function of computer software that,  
14          when installed on a computer, transmits information or messages, other than  
15          personal or network information about the user of the computer, to any other  
16          computer without the knowledge or direction of the user and for purposes  
17          unrelated to the tasks or functions the user intentionally performs using the  
18          computer.
- 19          9. “First retail sale” means the first sale of a computer, for a purpose other than  
20          resale, after the manufacture, production or importation of the computer. For  
21          purposes of this definition, each subsequent lease of a computer is to be  
22          considered as a first retail sale.
- 23          10. “Information collection feature” means a function of computer software that,  
24          when installed on a computer, collects personal or network information about  
25          the user of the computer and transmits such information to any other party on  
26          an automatic basis or at the direction of a party other than the user of the  
27          computer.
- 28          11. “Install” means:

1 (a) to write computer software to a computer's persistent storage medium,  
2 such as the computer's hard disk, in such a way that the computer software  
3 is retained on the computer after the computer is turned off and  
4 subsequently restarted; or

5 (b) to write computer software to a computer's temporary memory, such as  
6 random access memory, in such a way that the software is retained and  
7 continues to operate after the user of the computer turns off or exits the  
8 Internet service, interactive computer service or Internet website from  
9 which the computer software was obtained.

10 12. "Network information" means:

11 (a) an Internet protocol address or domain name of a user's computer; or

12 (b) a *Uniform Resource Locator* or other information that identifies Internet  
13 web sites or other online resources accessed by a user of a computer.

14 13. "Personal information" means:

15 1. a first and last name, whether given at birth or adoption, assumed or  
16 legally changed;

17 2. a home or other physical address including street name, name of a city or  
18 town and postcode;

19 3. an electronic mail address or online username;

20 4. a telephone number;

21 5. any personal identification number;

22 6. a credit card number, any access code associated with the credit card or  
23 both;

24 7. a birth date, birth certificate number or place of birth; or

25 8. any password or access code.

26 14. "Settings modification feature" means a function of computer software that,  
27 when installed on a computer:

- 1           1. modifies an existing user setting, without direction from the user of the  
2           computer, with respect to another computer software application  
3           previously installed on that computer; or
- 4           2. enables a user setting with respect to another computer software  
5           application previously installed on that computer to be modified in the  
6           future without advance notification to and consent from the user of the  
7           computer.

8           15. “User of a computer” means a computer’s lawful owner or an individual who  
9           operates a computer with the authorization of the computer’s lawful owner.

10           SECTION 3. *Requirement of notice prior to installation of software.* – It is  
11           unlawful for any person who is not the user of a computer to install computer software on  
12           that computer, or to authorize, permit or cause the installation of computer software on  
13           that computer, unless:

- 14           1. the user of the computer has received notice that satisfies the requirements of  
15           section 4; and
- 16           2. the user of the computer has granted consent that satisfies the requirements of  
17           section 5; and
- 18           3. the computer software’s removal procedures satisfy the requirements of  
19           section 6.

20           SECTION 4. *Requirement of notice.* – For purposes of section 3, notice to the  
21           user of a computer must:

- 22           1. include a clear notification, displayed on the screen until the user either grants  
23           or denies consent to installation, of the name and general nature of the  
24           computer software that will be installed if the user grants consent; and
- 25           2. include a separate disclosure, with respect to each information collection,  
26           advertising, distributed computing and settings modification feature contained  
27           in the computer software, that remains displayed on the screen until the user  
28           either grants or denies consent to that feature; and

- 1           3. in the case of an information collection feature, provides a clear description  
2           of:
- 3           (a) the type of personal or network information to be collected and  
4           transmitted by the computer software; and
- 5           (b) the purpose for which the personal or network information is to be  
6           collected, transmitted and used; and
- 7           4. in the case of an advertising feature, provides:
- 8           (a) a representative example of the type of advertisement that may be  
9           delivered by the computer software; and
- 10          (b) a clear description of the estimated frequency with which each type of  
11          advertisement may be delivered or the factors on which the frequency will  
12          depend; and
- 13          (c) a clear description of how the user can distinguish each type of  
14          advertisement that the computer software delivers from advertisements  
15          generated by other software, Internet website operators or services; and
- 16          5. in the case of a distributed computing feature, provides a clear description of:
- 17          (a) the types of information or messages the computer software will cause the  
18          computer to transmit; and
- 19          (b) the estimated frequency with which the computer software will cause the  
20          computer to transmit such messages or information or the factors on which  
21          the frequency will depend; and
- 22          (c) the estimated volume of such information or messages, and the likely  
23          impact, if any, on the processing or communications capacity of the user's  
24          computer; and
- 25          (d) the nature, volume and likely impact on the computer's processing  
26          capacity of any computational or processing tasks the computer software  
27          will cause the computer to perform in order to generate the information or  
28          messages the computer software will cause the computer to transmit; and

1           6. in the case of a settings modification feature, provides a clear description of  
2           the nature of the modification, its function and any collateral effects the  
3           modification may produce, and procedures the user may follow to turn off  
4           such feature or uninstall the computer software.

5           SECTION 5. *Requirement of Consent.* – For purposes of section 3, consent  
6 means:

- 7           1. consent by the user of the computer to the installation of the computer  
8           software; and
- 9           2. separate affirmative consent by the user of the computer to each information  
10          collection feature, advertising feature, distributed computing feature and  
11          settings modification feature contained in the computer software.

12          SECTION 6. *Removal Procedures.* – For purposes of section 3, computer  
13 software must:

- 14          1. appear in the ‘Add/Remove Programs’ menu or any like feature, if any,  
15          provided by each operating system with which the computer software  
16          functions; and
- 17          2. be capable of being removed completely using the normal procedures for  
18          removing computer software provided by each operating system with which  
19          the computer software functions; and
- 20          3. in the case of computer software with an advertising feature, include an easily  
21          identifiable link clearly associated with each advertisement that the software  
22          causes to be displayed, such that selection of the link by the user of the  
23          computer generates an on-screen window that informs the user about how to  
24          turn off the advertising feature or uninstall the computer software.

25          SECTION 7. *Prohibited Acts.* – The following acts are hereby declared prohibited  
26 and unlawful:

1           1. Surreptitious installation of software. – It is unlawful for a person who is  
2           not an authorized user of a computer to cause the installation of software  
3           on the computer in a manner designed to:

4           (a) conceal from the user of the computer the fact that the software is  
5           being installed; or

6           (b) prevent the user of the computer from having an opportunity to  
7           knowingly grant or withhold consent to the installation.

8           (c) Exceptions:

9           i. the installation of software that falls within the scope of a previous  
10           grant of authorization by an authorized user; or

11           ii. the installation of an upgrade to a software program that has  
12           already been installed on the computer with the authorization of an  
13           authorized user; or

14           iii. the installation of software before the first retail sale of the  
15           computer.

16           2. Deceptive installation of software. – It is unlawful for any person who is  
17           not the user of a computer to install computer software on that computer,  
18           or to authorize, permit, or cause the installation of computer software on  
19           that computer, if the design or operation of the computer software is  
20           intended, or may reasonably be expected, to confuse or mislead the user of  
21           the computer concerning the identity of the person or service responsible  
22           for the functions performed or content displayed by such computer  
23           software.

24           3. Misleading inducements to install software. – It is unlawful for a person  
25           who is not an authorized user of a computer to induce an authorized user  
26           of the computer to consent to the installation of software on the computer  
27           by means of a materially false or misleading representation concerning:

- 1 (a) the identity of an operator of an Internet website or online service at  
2 which the software is made available for download from the Internet;  
3 or  
4 (b) the identity of the author or publisher of the software; or  
5 (c) the nature or function of the software; or  
6 (d) the consequences of not installing the software.

7 4. Preventing reasonable efforts to remove software. — It is unlawful for a  
8 person who is not an authorized user of a computer to authorize or cause  
9 the installation of software on the computer if the software is designed to  
10 prevent reasonable efforts by an authorized user of the computer to  
11 remove or disable the software once it has been installed.

12 5. Surreptitious information collection unlawful. — It is unlawful for a person  
13 who is not an authorized user of a computer to authorize or cause the  
14 *installation on that computer of software that collects information about*  
15 *the user of the computer or about the user's Internet browsing behavior or*  
16 *other use of the computer and transmits such information to any other*  
17 *person on an automatic basis or at the direction of a person other than an*  
18 *authorized user of the computer, if the software's collection and*  
19 *transmission of such information is not functionally related to or in*  
20 *support of a software capability or function that an authorized user of the*  
21 *computer has chosen or consented to execute or enable, and either:*

- 22 (a) there has been no notification, prior to the software beginning to  
23 collect and transmit such information, to an authorized user of the  
24 computer explaining the type of information the software will collect  
25 and transmit and the types of ways the information may be used and  
26 distributed; or  
27 (b) notification pursuant to paragraph (a) was not provided in a manner  
28 reasonably calculated to provide actual notice to an authorized user of  
29 the computer; or

1 (c) notification pursuant to paragraph (a) occurred at a time or in a manner  
2 that did not enable an authorized user of the computer to consider the  
3 information contained in the notification before choosing whether to  
4 permit the collection or transmission of information.

5 (d) Exception – This section must not be interpreted as prohibiting a  
6 person from authorizing or causing the installation of software that  
7 collects and transmits information that is reasonably needed to  
8 determine whether or not the user of a computer is licensed or  
9 authorized to use the software.

10 6. Intentional transmission of information by user. - Information must not be  
11 construed as having been collected and transmitted on an automatic basis  
12 or at the direction of a person other than a user of the computer, within the  
13 meaning of this Act, if the collection or transmission of the information is  
14 intentionally initiated by an authorized user for the purpose of allowing  
15 the direct or indirect access to the information by an intended recipient.

16 7. Adware that conceals its operation. – It is unlawful for a person who is not  
17 an authorized user of a computer to authorize or cause the installation on  
18 that computer of software if:

19 (a) the software causes advertisements to be displayed to the user:

20 (i) at a time when the user is not accessing an Internet website or  
21 online service operated by the publisher of the software; and

22 (ii) in a manner or at a time such that a reasonable user would not  
23 understand that the software is responsible for delivering the  
24 advertisements; and

25 (b) the advertisements referred to in paragraph (a) do not contain a label or  
26 other reasonable means of identifying to the user of the computer, each  
27 time such an advertisement is displayed, which software is responsible  
28 for the advertisement's delivery.

1 8. Other practices that thwart user control of computer. – It is unlawful for a  
2 person who is not an authorized user of a computer, knowingly and  
3 without the authorization of an authorized user of the computer:

4 (a) to utilize the computer to send unsolicited information or material  
5 from the user’s computer to other computers; or

6 (b) to divert an authorized user’s Internet browser away from the Internet  
7 website the user intended to view to one or more other websites, unless  
8 such diversion has been authorized by the website the user intended to  
9 view; or

10 (c) to display an advertisement, series of advertisements or other content  
11 on the computer through windows in an Internet browser, in such a  
12 manner that the user of the computer cannot end the display of such  
13 advertisements or content without turning off the computer or  
14 terminating all sessions of the Internet browser, provided that this  
15 paragraph does not apply to the display of content related to the  
16 functionality or identity of the Internet browser; or

17 (d) to covertly modify settings relating to the use of the computer or to the  
18 computer’s access to or use of the Internet, including:

19 (i) altering the default Web page that initially appears when a user of  
20 the computer launches an Internet browser; or

21 (ii) altering the default provider or Web proxy used to access or search  
22 the Internet; or

23 (iii) altering bookmarks used to store Internet website addresses; or

24 (iv) altering settings relating to security measures that protect the  
25 computer and the information stored on the computer against  
26 unauthorized access or use; and

27 (v) removing, disabling, or rendering inoperative security or privacy  
28 protection technology installed on the computer.

1           SECTION 8. *Limitation of ability to remove software.* – Software that enables an  
2 authorized user of a computer, such as a parent or system administrator, to choose to  
3 prevent another user of the same computer from uninstalling or disabling the software is  
4 not to be considered to prevent reasonable efforts to uninstall or disable the software  
5 within the meaning of this section, provided that at least one authorized user retains the  
6 ability to uninstall or disable the software.

7           SECTION 9. *Limitations on liability.* – A person does not commit an offence  
8 against any provision of this Act solely because the person provided:

- 9           1. the Internet connection, telephone connection or other transmission or routing  
10           function through which software was delivered to a computer for installation;
- 11           2. the storage or hosting of software or of an Internet website through which  
12           software was made available for installation to a computer; or
- 13           3. an information location tool, such as a directory, index, reference, pointer or  
14           hypertext link, through which an authorized user of a computer located  
15           software available for installation.

16           SECTION 10. *Network security.* – A provider of a network or online service that  
17 an authorized user of a computer uses or subscribes to has not committed an offence  
18 against this Act where the purpose of the provider’s action is to:

- 19           1. protect the security of the network, service or computer; or
- 20           2. facilitate diagnostics, technical support, maintenance, network management or  
21           repair; or
- 22           3. prevent or detect unauthorized, fraudulent or otherwise unlawful uses of the  
23           network or service.

24           SECTION 11. *Preinstalled software.* – Any provision to the contrary  
25 notwithstanding, the provisions of this Act shall not apply to a person who installs, or  
26 authorizes, permits or causes the installation of computer software on a computer before

1 the first retail sale of the computer is deemed to be in compliance with this Act if the  
2 authorized user of the computer receives notice that would satisfy the requirements of  
3 section 4 and grants consent that would satisfy the requirements of section 5 prior to:

- 4 1. the initial collection of personal or network information, in the case of any  
5 information collection feature contained in the computer software; and
- 6 2. the initial generation of an advertisement on the computer, in the case of any  
7 advertising feature contained in the computer software; and
- 8 3. the initial transmission of information or messages, in the case of any  
9 distributed computing feature contained in the computer software; and
- 10 4. the initial modification of user settings, in the case of any settings  
11 modification feature.

12 SECTION 12. *Penalties.* – A person who commits any of the prohibited acts  
13 enumerated above shall be punishable with a penalty of imprisonment for a period of not  
14 exceeding 6 months or a fine of not less than Fifty Thousand Pesos (P50,000.00) but not  
15 more than One Hundred Thousand Pesos (P100,000.00), or both, at the discretion of the  
16 court.

17 SECTION 13. *Separability Clause.* – If any provision, or part hereof, is declared  
18 invalid or unconstitutional, the remainder of the law not otherwise affected shall remain  
19 valid and subsisting.

20 SECTION 14. *Repealing Clause.* – Any law, presidential decree or issuance,  
21 executive order, letter of instruction, administrative order, rule or regulation contrary to  
22 or inconsistent with, the provisions of this Act, are hereby modified, repealed, or  
23 amended accordingly.

24 SECTION 15. *Effectivity Clause.* – This Act shall take effect fifteen (15) days  
25 after its publication in at least two (2) newspapers of general circulation.

Approved,