



AMERICANS FOR TAX REFORM

LEGISLATIVE ALERT

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ATR'S PRINCIPLES FOR "SPYWARE" LEGISLATION

There is no denying that "spyware" – software that can be installed on your computer without your knowledge or consent to track your activities -- is a legitimate problem that must be addressed by a cooperative effort between government policy and industry initiative, but we must also be careful in our zeal to solve this problem that government policy does not inadvertently create new problems and regulatory burdens on law-abiding companies while doing nothing to eliminate truly malevolent spyware. Therefore, ATR encourages legislation adhering to the following principles:

- 1) **Spyware must be narrowly and accurately defined.** Much like proposals to combat unsolicited commercial e-mail, or "spam," some have advocated overly broad definitions of spyware, thereby subjecting routine, legitimate Internet communication such as upgrades and enhancements to burdensome regulation, which would slow down and impair the ability of companies to convey routine information to their customers.
- 2) **Legislation must balance the need for disclosure with the need to avoid burdening users.** Some proposals would require endless notices from websites and software companies to users regarding every permutation of software downloads or information transmission. Many consumers don't bother to read current disclosures such as license agreements, and would be even less likely to read the significantly increased number of notices some would require. Meanwhile, others would be so confused by the massive volume of notices that they would not allow any installation, including that which they need to take advantage of a company's services. In either case, requiring a new notice at every turn would significantly slow use of the Internet.
- 3) **Spyware legislation must not disadvantage small and local business.** Since many small, regional businesses cannot afford to purchase advertisements distributed nationwide over the Internet, these business target advertisements based on location and other specific user characteristics. Overreaching pieces of legislation would impair the ability of these businesses to make full use of the Internet's marketing potential.
- 4) **Legislation must not outlaw routine Internet functions.** Some legislation would prevent the delivery of information that "partially or wholly covers" the content of an Internet site. This kind of provision could easily be applied to new mail notifications and appointment reminders – functions consumers rely on to improve their productivity.
- 5) **Spyware legislation must not encourage frivolous lawsuits.** Legislation without limits on damage awards and strict definitions of liability will encourage trial lawyers to bring lawsuits against law-abiding companies struggling to comply with spyware legislation that contains subjective standards for compliance, stifling the incentives for companies to develop innovative and consumer-friendly technologies.

Spyware is a very real problem that demands a solution, but hastily-crafted, sloppy legislation will not only fail to solve the problem, but will reduce the speed, convenience and innovation that have made the Internet such a dynamic medium. Together, we can find a solution that makes sense for both business and consumers.