

get their credit scores for free from Defendants when in fact receipt of the credit scores was contingent on the consumer signing up for a 7-day trial of Defendants' credit-monitoring service. At the end of the trial, consumers would be charged a monthly fee of \$29.95 until the consumer called Defendants to cancel the service.

1.2 The Plaintiff and Defendants have consented to entry of this Agreed Final Judgment and Permanent Injunction ("Judgment") by this Court. This Judgment settles only the State's claims alleged in its Original Petition against Defendants, and shall not act as a bar to any other claim by the State nor preclude the State from seeking remedy against other persons, corporations, or entities, including persons who may be subject to portions of this Judgment as persons acting in active concert or participation with Defendants.

NOW, THEREFORE, Plaintiff and Defendants having requested the Court to enter this Judgment, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

II. STIPULATIONS

The parties agree to the entry of this Judgment and stipulate that:

- 2.1 This Court has jurisdiction over the subject matter of this action;
- 2.2 This Court has jurisdiction over Defendants;
- 2.3 Venue is proper in Travis County, Texas;
- 2.4 Defendants do not admit any of the allegations in the Original Petition, except as specifically stated in this Judgment. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.
- 2.5 The activities of Defendants constitute trade and/or commerce as defined in section 17.45 of the DTPA;



- 2.6 Entry of this Judgment is in the public interest;
- 2.7 This Judgment is non-appealable;
- 2.8 This Judgment resolves any issues that the State of Texas has with Defendants concerning Defendants' deceptive trade practices that are alleged in its Petition;
- 2.9 Restitution and penalties are not dischargeable in bankruptcy; and
- 2.10 The court shall have continuing jurisdiction to enforce this Judgment.

III. DEFINITIONS

For purposes of this Judgment, the following definitions shall apply:

3.1 **"Advertisement"** shall mean a commercial message in any medium that directly or indirectly promotes a consumer transaction.

3.2 **"Affiliate Marketer"** means any third party with which Defendants have an agreement under which Defendants compensate that third party, directly or indirectly, in exchange for that third party's online advertising, promoting, offering or selling any of Defendants' goods or services containing, involving, or connected to any negative option feature.

3.3 **"Defendants"** means One Technologies, LP, One Technologies Management, LLC, One Technologies Capital, LLP, and their successors and assigns, individually, collectively, or in any combination.

3.4 **"Direct Proximity"** means disclosed immediately beneath, beside, or adjacent to an offer or term.

3.5 **"Charge"** or **"charging"** includes causing billing information to be submitted for payment, including against a consumer's credit card, debit card, bank account, phone bill, or other account, or otherwise attempting to collect money or other consideration.



3.6 **“Clear and conspicuous” or “clearly and conspicuously” means as follows:**

A. In print communications, the disclosure shall be presented in a manner that stands out from the accompanying text so that it is sufficiently prominent, because of its type size, contrast, location, or other characteristics, for an ordinary consumer to notice, read, and comprehend it;

B. In communications made through an electronic medium (such as television, video, radio, and interactive media such as the Internet, online services, and software), the disclosure shall be presented simultaneously in both the audio and visual portions of the communication. In any communication presented solely through visual or audio means, the disclosure shall be made through the same means through which the communication is presented. In any communication disseminated by means of an interactive electronic medium such as software, the Internet, or online services, the disclosure must be unavoidable. Any audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it. Any visual disclosure shall be presented in a manner that stands out in the context in which it is presented so that it is sufficiently prominent, due to its size and shade, contrast to the background against which it appears, the length of time it appears on the screen, and its location, for an ordinary consumer to notice, read, and comprehend it; and

C. Regardless of the medium used to disseminate it, the disclosure shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any communication.

3.7 **“Effective Date” means the date upon which this Judgment is filed with the Court.**



3.8 **“Material”** shall mean likely to affect a person’s choice of, or conduct regarding, goods or services.

3.9 **“Negative Option Feature”** means, in an offer or agreement to sell or provide any good or service, a provision under which the consumer’s silence or failure to take affirmative action to reject a good or service or to cancel the agreement is interpreted by the seller or provider as acceptance or continuing acceptance of the offer.

IV. REQUIRED DISCLOSURES

4.1 **IT IS ORDERED** that the Defendants, Defendants’ officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them, who receive actual notice of this Judgment, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, or sale of any good or service with a negative option feature, are permanently restrained and enjoined from:

- A. Before a customer consents to pay for such good or service, failing to clearly and conspicuously disclose the existence of the negative option feature;
- B. Before a customer consents to pay for such good or service, failing to disclose, clearly and conspicuously:
 1. The name of the seller or provider of the good or service or the name of the good or service as it appears in billing statements;
 2. A description of the good or service, including but not limited to its duration;
 3. The cost or price of the good or service;
 4. The length of any trial period; and



5. The mechanism to stop any recurring charges.

C. For any transaction involving a sale of a service with a negative option feature to a consumer, within 10 days after the date of the sale, failing to send the consumer written confirmation of the transaction, either by email or first class mail, clearly and conspicuously identified as such in the email subject line or on the outside of the envelope. Such written confirmation shall include clear and conspicuous disclosure of all the information required by Subsection B of this Section and of the procedures by which consumers can cancel or request a refund.

V. PROHIBITION ON MISREPRESENTATIONS

5.1 **IT IS FURTHER ORDERED** that the Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with them, who receive actual notice of this Judgment, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, or sale of any good or service with a negative option feature, are permanently enjoined, restrained, or prohibited from misrepresenting, expressly or by implication, any material fact, including but not limited to:

- A. The cost or price of a good or service;
- B. That a good or service is free, a bonus, a gift, without cost, or without obligation.
- C. That consumers can obtain a good or service for a minimal processing, service, or administrative fee with no further obligation;
- D. The purpose for which a consumer's payment information will be used;
- E. The timing or manner of any charge or bill (including but not limited to the



date of the charge and whether it will be a credit card charge or checking account debit);

- F. The length of any trial period before the consumer is charged or billed; or
- G. That a transaction has been authorized by a consumer.

VI. EXPRESS INFORMED CONSENT

6.1 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Judgment, whether acting directly or indirectly in connection with the advertising, marketing, promoting, or sale of any good or service with a negative option feature, are permanently restrained and enjoined from using billing information to obtain payment from a consumer, unless, prior to using such billing information to obtain payment, Defendants obtain the express informed consent of the consumer. Express informed consent shall consist of:

A. For all written offers (including over the Internet or other web-based applications or services): a check box, signature space or line, or another substantially similar method by which consumers must affirmatively select to accept the negative option feature. In direct proximity to an affirmative selection method, Defendants shall disclose the information identified in Subsection B of the Section entitled "Required Disclosures." This disclosure shall contain no additional information and shall be clear and conspicuous in relation to any other information provided on the page relating to costs, risks, or obligations associated with the negative option feature, including any terms referring to "free," "trial," and "processing fee."

B. For all oral offers: the consumer's express, informed agreement to the



negative option feature, as evidenced by:

1. The consumer's authorization of payment for the good or service described;
2. The consumer's name and the date of the authorization;
3. The consumer's understanding of what account will be charged; and
4. The consumer's receipt of the disclosures required by this Judgment in Subsection B of the Section entitled "Required Disclosures."

6.2 Defendants shall maintain for each such transaction a voice recording of the entire transaction, including the sales representations. Each recording must be retrievable by the consumer's name, telephone number, or billing information and must be provided upon request to the consumer, the consumer's bank, or any law enforcement entity.

VII. PROHIBITIONS CONCERNING REFUNDS & CANCELLATIONS

7.1 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Judgment, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, or sale of any good or service, are permanently restrained and enjoined from:

- A. Misrepresenting, expressly or by implication, any material term of any refund or cancellation policy or practice;
- B. Failing to disclose, clearly and conspicuously, before a consumer consents to pay for such good or service through a negative option feature, all material terms, limitations, and conditions of any cancellation or refund policy, including but not limited to prohibitions



against cancellations or refunds;

C. Failing to honor a cancellation or refund request that complies with the cancellation/refund policy in place at the time that the consumer was initially charged; and

D. Failing to provide and disclose, clearly and conspicuously, a simple mechanism for a consumer to immediately stop any recurring charge for such good or service. Such mechanism must not be difficult, costly, confusing, or time consuming, and it must be at least as simple as the mechanism the consumer used to initiate the recurring charge. For the purposes of this Subsection, a toll-free telephone call is a sufficiently simple cancellation mechanism so long as:

1. Defendants disclose, clearly and conspicuously, the toll-free telephone number on all websites and direct customer communications relating to the recurring charge and the underlying good or service;

2. Defendants include the toll-free telephone number in billing descriptors for the recurring charge;

3. Defendants maintain a call center that is open from 9:00 a.m. to 9:00 p.m. (Eastern Time) Monday through Friday, 9:00 a.m. to 6:00 p.m. (Eastern Time) Saturday, and 1:00 p.m. to 6:00 p.m. (Eastern Time) Sunday;

4. Defendants immediately accept a consumer's cancellation request, provided, however, that Defendant may then attempt to retain the consumer. If at any time during the retention efforts the consumer expresses a desire that Defendants cease their retention efforts, Defendants shall immediately cease their retention efforts; and



5. The mechanism is not otherwise difficult, costly, confusing, or time consuming.

**VIII. PROHIBITION ON VIOLATING THE
RESTORE ONLINE SHOPPERS' CONFIDENCE ACT**

8.1 **IT IS FURTHER ORDERED** that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Judgment by personal service or otherwise, whether acting directly or indirectly, in connection with the advertising, marketing, promoting, or sale of any good or service, are permanently restrained and enjoined from violating the Restore Online Shoppers' Confidence Act, 15 U.S.C. §§ 8401–05, a copy of which is attached.

IX. AFFILIATE MARKETERS

9.1 **IT IS FURTHER ORDERED** that Defendants shall require its affiliate marketers to comply with the provisions of this Judgment, including all disclosures required by this Judgment. If Defendants learn that any of its affiliate marketers are conducting any activities, directly or through another person, that violate the terms of this Judgment, Defendants shall take appropriate action against such affiliate marketers. Appropriate action shall be determined by the nature and circumstances of the violation, including, but not limited to, the pattern and/or severity of the conduct and any corrective action taken by the affiliate marketer, and shall consist, in Defendants' discretion, of one or more of the following remedies:

A. Training or re-educating the affiliate marketer on the terms of its agreement with Defendants, including Defendants' standard policies, the terms of the Judgment and the consequences of the affiliate marketer's failure to comply with the terms of the Judgment in



the future;

B. Requiring the affiliate marketer to impose appropriate guidelines on and provide adequate training for its sales and marketing employees to enforce the terms of the agreement between Defendants and the affiliate marketer, including Defendants' standard policies and the terms of the Judgment;

C. Withholding payments available under marketing cooperative programs and/or discretionary funding;

D. Placing the affiliate marketer on probation or other appropriate and reasonable discipline under the circumstances; and/or

E. Termination.

9.2 Defendants shall reasonably monitor advertising and sales activities of affiliate marketers in relation to Defendants' goods or services, and shall reasonably investigate written customer complaints related to its affiliate marketers' activities that it receives directly from the Better Business Bureau, any regulatory agencies, or law enforcement entities. For a period of three (3) years from the effective date of the Judgment, upon request by the Plaintiff, Defendants shall file a report – each of which will be treated as a supplemental Civil Investigative Demand response under DTPA section 17.61 – no more than semi-annually, with the Attorney General, with the following information:

A. if available, the name, address, and phone number of each consumer who made a written allegation or complaint to any Defendant through the Better Business Bureau, any regulatory agency, or law enforcement entity related to an affiliate marketer's activities;

B. a copy or description of each allegation or complaint;



C. if available, the name, address, and phone number of the affiliate marketer against whom each allegation or complaint was lodged; and

D. the specific action Defendants took regarding each complaint or allegation.

9.3 Defendants shall take reasonable steps to establish the identities of all affiliate marketers and the twenty subaffiliates that generate the highest number of sales over a period of 3 months that affiliate marketers use to advertise, promote, offer or sell any of Defendants' goods or services containing, involving, or connected to any negative option feature.

X. RESTITUTION

10.1 Plaintiff and Defendants recognize that, in addition to the payment provided under Paragraph 11.1 below, Defendants have agreed to contribute Twenty-two Million Dollars (\$22,000,000.00) to a consumer redress program administered by the Federal Trade Commission ("FTC") in consultation with the State, as set forth in Paragraphs VI and VII of the Stipulated Order for Permanent Injunction and Monetary Judgment entered by the United States District Court for the Northern District of California in *FTC et al. v. One Technologies, LP et al.*, Case No. 3:14-cv-05066.

XI. PAYMENT TO THE STATE AND ATTORNEY'S FEES

11.1 **IT IS ORDERED** that Defendant pay to the State Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) to be deposited into general revenue or the Supreme Court Judicial Fund, as appropriate, pursuant to Texas Government Code §402.007. All money paid to Plaintiff pursuant to this Judgment is compensatory and not punitive in nature. Such money is not intended as nor shall it be treated or construed as a penalty or fine of any kind.

11.2 **IT IS ORDERED** that Defendants pay One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00) to Plaintiff for attorney's fees and costs of investigation. Attorney's fees in



case were incurred on behalf of the Plaintiff and do not constitute an antecedent debt with respect to this litigation.

11.3 **IT IS ORDERED** that the total amount of the above attorney's fees and payment to the State are immediately due and payable and must be tendered by the Defendants in the form of a cashier's check or money order made payable to the Office of the Attorney General of Texas, bearing the Attorney General case number (#123319063) and be delivered to the Consumer Protection Division of the Office of the Texas Attorney General, 300 W. 15th St., 9th Floor, Austin, Texas 78701.

XII. COMPLIANCE REPORTING

12.1 **IT IS FURTHER ORDERED** that Defendants make timely submissions to the Plaintiff:

A. One year after entry of this Judgment, each Defendant must submit a compliance report, sworn under penalty of perjury. Each Defendant must:

1. Identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of any Plaintiff may use to communicate with the Defendant;
2. Identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses;
3. Describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant;



4. Describe in detail whether and how that Defendant is in compliance with each Section of this Judgment; and

5. Provide a written letter acknowledging receipt of this Judgment, unless previously submitted to Plaintiff.

B. For 20 years after entry of this Judgment, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Any designated point of contact; or

2. The structure of any Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Judgment, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Judgment.

12.2 Each Defendant must submit to the Plaintiff notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.

12.3 Any submission to the Plaintiff required by this Judgment to be sworn under penalty of perjury must be true and accurate and comply with Texas Civil Practices and Remedies Code section 132.001.

XIII. RECORD KEEPING

13.1 **IT IS FURTHER ORDERED** that Defendants must create certain records for 10 years after entry of the Judgment, and retain each such record for 5 years. Specifically, Defendants,



in connection with the sale of any good or service with a negative option feature, must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; address(es); telephone number(s); job title or position; dates of service; and (if applicable) the reason for termination;
- C. Records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response; and
- D. All records necessary to demonstrate full compliance with each provision of this Judgment, including all submissions to Plaintiff.

XIV. COMPLIANCE MONITORING

14.1 **IT IS FURTHER ORDERED THAT** the Consumer Protection Division of the Office of the Texas Attorney General is authorized to monitor compliance with this Judgment by all lawful means, including but not limited to posing as a customer in any communication with Defendants, Defendants' employees or agents, or any other entity managed or controlled in whole or in part by Defendants, without the necessity of identification or prior notice to Defendants or Defendants' counsel. The Defendants shall reimburse the Office of the Texas Attorney General for any purchases made from Defendants while engaging in compliance monitoring.

14.2 **IT IS ORDERED THAT** the Consumer Protection Division of the Office of the Texas Attorney General is also authorized to monitor compliance through the issuance of civil investigative demands to Defendants or outside parties, pursuant to section 17.61 of the Texas Business and Commerce Code.



XV. MISCELLANEOUS PROVISIONS

15.1 With respect to Defendants' practices alleged herein, nothing in this Judgment shall be construed as a waiver of any private rights, causes of action, or remedies of any person against Defendants. Nothing herein, however, shall permit any person to obtain a double recovery from Defendants.

15.2 Defendants must send by overnight courier all reports and notifications required by this Judgment to the Texas Attorney General's Office at the following address:

Division Chief
Consumer Protection Division
300 W. 15th Street, 9th Floor
Austin, Texas 78711-2548

Provided that, in lieu of overnight courier, Defendants may send such reports or notification by first-class mail, but only if they contemporaneously send an electronic version of such report or notification to the then current Division Chief.

15.3 If any clause, provision, or section of this Judgment shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Judgment, and this Judgment shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

15.4 To the extent that any provision of this Judgment conflicts with any local or federal law which now exists, or is later enacted or amended, such law and not this Judgment shall apply where such conflict exists. For the purposes of this Judgment, a conflict exists if conduct prohibited by this Judgment is required by such law, or if conduct required by this Judgment is prohibited by such law.



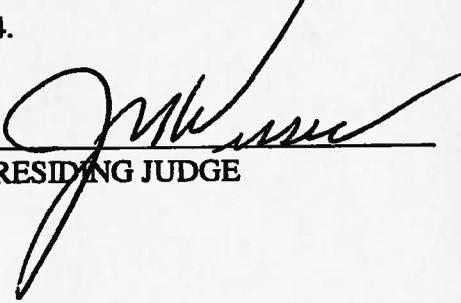
15.5 Defendants shall not represent to the public that this Judgment constitutes approval by Plaintiff or this Court of any of Defendants' business activities.

15.6 All costs of court expended or incurred in this case are adjudged against the Defendants.

15.7 After signing by the Court, this agreement constitutes final judgment.

15.8 All relief not expressly granted herein is denied.

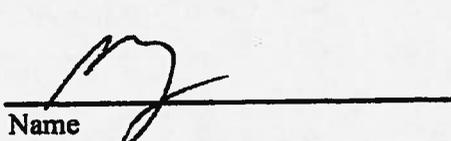
SIGNED this 19th day of November, 2014.


PRESIDING JUDGE



AGREED AS TO SUBSTANCE AND FORM AND ENTRY REQUESTED:**PLAINTIFF**

COREY D. KINTZER
State Bar Number 24046219
Assistant Attorney General
Consumer Protection Division
300 W. 15th Street, 9th Floor
Austin, Texas 78711-2548
Telephone 512-463-0286
ATTORNEY FOR PLAINTIFF

DEFENDANTS

Name
Authorized Representative of ONE
TECHNOLOGIES, LP, ONE
TECHNOLOGIES MANAGEMENT,
LLC, and ONE TECHNOLOGIES
CAPITAL, LLP



ATTACHMENT A



S. 3386

One Hundred Eleventh Congress
of the
United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,
the fifth day of January, two thousand and ten*

An Act

To protect consumers from certain aggressive sales tactics on the Internet.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the "Restore Online Shoppers' Confidence Act".

SEC. 2. FINDINGS; DECLARATION OF POLICY.

The Congress finds the following:

(1) The Internet has become an important channel of commerce in the United States, accounting for billions of dollars in retail sales every year. Over half of all American adults have now either made an online purchase or an online travel reservation.

(2) Consumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the Internet must provide consumers with clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers' business.

(3) An investigation by the Senate Committee on Commerce, Science, and Transportation found abundant evidence that the aggressive sales tactics many companies use against their online customers have undermined consumer confidence in the Internet and thereby harmed the American economy.

(4) The Committee showed that, in exchange for "bounties" and other payments, hundreds of reputable online retailers and websites shared their customers' billing information, including credit card and debit card numbers, with third party sellers through a process known as "data pass". These third party sellers in turn used aggressive, misleading sales tactics to charge millions of American consumers for membership clubs the consumers did not want.

(5) Third party sellers offered membership clubs to consumers as they were in the process of completing their initial transactions on hundreds of websites. These third party "post-transaction" offers were designed to make consumers think the offers were part of the initial purchase, rather than a new transaction with a new seller.

(6) Third party sellers charged millions of consumers for membership clubs without ever obtaining consumers' billing information, including their credit or debit card information, directly from the consumers. Because third party sellers



S. 3386—2

acquired consumers' billing information from the initial merchant through "data pass", millions of consumers were unaware they had been enrolled in membership clubs.

(7) The use of a "data pass" process defied consumers' expectations that they could only be charged for a good or a service if they submitted their billing information, including their complete credit or debit card numbers.

(8) Third party sellers used a free trial period to enroll members, after which they periodically charged consumers until consumers affirmatively canceled the memberships. This use of "free-to-pay conversion" and "negative option" sales took advantage of consumers' expectations that they would have an opportunity to accept or reject the membership club offer at the end of the trial period.

SEC. 3. PROHIBITIONS AGAINST CERTAIN UNFAIR AND DECEPTIVE INTERNET SALES PRACTICES.

(a) **REQUIREMENTS FOR CERTAIN INTERNET-BASED SALES.**—It shall be unlawful for any post-transaction third party seller to charge or attempt to charge any consumer's credit card, debit card, bank account, or other financial account for any good or service sold in a transaction effected on the Internet, unless—

(1) before obtaining the consumer's billing information, the post-transaction third party seller has clearly and conspicuously disclosed to the consumer all material terms of the transaction, including—

(A) a description of the goods or services being offered;
 (B) the fact that the post-transaction third party seller is not affiliated with the initial merchant, which may include disclosure of the name of the post-transaction third party in a manner that clearly differentiates the post-transaction third party seller from the initial merchant; and
 (C) the cost of such goods or services; and

(2) the post-transaction third party seller has received the express informed consent for the charge from the consumer whose credit card, debit card, bank account, or other financial account will be charged by—

(A) obtaining from the consumer—

(i) the full account number of the account to be charged; and

(ii) the consumer's name and address and a means to contact the consumer; and

(B) requiring the consumer to perform an additional affirmative action, such as clicking on a confirmation button or checking a box that indicates the consumer's consent to be charged the amount disclosed.

(b) **PROHIBITION ON DATA-PASS USED TO FACILITATE CERTAIN DECEPTIVE INTERNET SALES TRANSACTIONS.**—It shall be unlawful for an initial merchant to disclose a credit card, debit card, bank account, or other financial account number, or to disclose other billing information that is used to charge a customer of the initial merchant, to any post-transaction third party seller for use in an Internet-based sale of any goods or services from that post-transaction third party seller.



S. 3386—3

(c) **APPLICATION WITH OTHER LAW.**—Nothing in this Act shall be construed to supersede, modify, or otherwise affect the requirements of the Electronic Funds Transfer Act (15 U.S.C. 1693 et seq.) or any regulation promulgated thereunder.

(d) **DEFINITIONS.**—In this section:

(1) **INITIAL MERCHANT.**—The term “initial merchant” means a person that has obtained a consumer’s billing information directly from the consumer through an Internet transaction initiated by the consumer.

(2) **POST-TRANSACTION THIRD PARTY SELLER.**—The term “post-transaction third party seller” means a person that—

(A) sells, or offers for sale, any good or service on the Internet;

(B) solicits the purchase of such goods or services on the Internet through an initial merchant after the consumer has initiated a transaction with the initial merchant; and

(C) is not—

(i) the initial merchant;

(ii) a subsidiary or corporate affiliate of the initial merchant; or

(iii) a successor of an entity described in clause

(i) or (ii).

SEC. 4. NEGATIVE OPTION MARKETING ON THE INTERNET.

It shall be unlawful for any person to charge or attempt to charge any consumer for any goods or services sold in a transaction effected on the Internet through a negative option feature (as defined in the Federal Trade Commission’s Telemarketing Sales Rule in part 310 of title 16, Code of Federal Regulations), unless the person—

(1) provides text that clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer’s billing information;

(2) obtains a consumer’s express informed consent before charging the consumer’s credit card, debit card, bank account, or other financial account for products or services through such transaction; and

(3) provides simple mechanisms for a consumer to stop recurring charges from being placed on the consumer’s credit card, debit card, bank account, or other financial account.

SEC. 5. ENFORCEMENT BY FEDERAL TRADE COMMISSION.

(a) **IN GENERAL.**—Violation of this Act or any regulation prescribed under this Act shall be treated as a violation of a rule under section 18 of the Federal Trade Commission Act (15 U.S.C. 57a) regarding unfair or deceptive acts or practices. The Federal Trade Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

(b) **PENALTIES.**—Any person who violates this Act or any regulation prescribed under this Act shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made part of this Act.



S. 3386—4

(c) **AUTHORITY PRESERVED.**—Nothing in this section shall be construed to limit the authority of the Commission under any other provision of law.

SEC. 6. ENFORCEMENT BY STATE ATTORNEYS GENERAL.

(a) **RIGHT OF ACTION.**—Except as provided in subsection (e), the attorney general of a State, or other authorized State officer, alleging a violation of this Act or any regulation issued under this Act that affects or may affect such State or its residents may bring an action on behalf of the residents of the State in any United States district court for the district in which the defendant is found, resides, or transacts business, or wherever venue is proper under section 1391 of title 28, United States Code, to obtain appropriate injunctive relief.

(b) **NOTICE TO COMMISSION REQUIRED.**—A State shall provide prior written notice to the Federal Trade Commission of any civil action under subsection (a) together with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such action.

(c) **INTERVENTION BY THE COMMISSION.**—The Commission may intervene in such civil action and upon intervening—

(1) be heard on all matters arising in such civil action;

and

(2) file petitions for appeal of a decision in such civil action.

(d) **CONSTRUCTION.**—Nothing in this section shall be construed—

(1) to prevent the attorney general of a State, or other authorized State officer, from exercising the powers conferred on the attorney general, or other authorized State officer, by the laws of such State; or

(2) to prohibit the attorney general of a State, or other authorized State officer, from proceeding in State or Federal court on the basis of an alleged violation of any civil or criminal statute of that State.

(e) **LIMITATION.**—No separate suit shall be brought under this section if, at the time the suit is brought, the same alleged violation is the subject of a pending action by the Federal Trade Commission or the United States under this Act.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

