S T A T E O F N E W Y O R K

1758

2009-2010 Regular Sessions

I N A S S E M B L Y

January 12, 2009

Introduced by M. of A. MORELLE, HOYT -- Multi-Sponsored by -- M. of A. KOON -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing the crime of unlawful dissemination of spyware

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The penal law is amended by adding a new section 156.40 to read as follows:

S 156.40 UNLAWFUL DISSEMINATION OF SPYWARE.

1. A PERSON IS GUILTY OF UNLAWFUL DISSEMINATION OF SPYWARE WHEN HAVING NO RIGHT TO DO SO, HE OR SHE INSTALLS AN EXECUTABLE COMPUTER PROGRAM, INCLUDING BUT NOT LIMITED TO A KEYLOGGING PROGRAM, THAT EMPLOYS A COMPUTER USER'S INTERNET CONNECTION WITHOUT THE COMPUTER USER'S KNOWLEDGE OR EXPLICIT AUTHORIZATION AND SUCH COMPUTER PROGRAM GATHERS AND TRANSMITS PERSONAL INFORMATION OR DATA OF A COMPUTER USER.

2. AUTHORIZATION SHALL ONLY BE GRANTED BY THE OWNER OF A COMPUTER, LESSOR OF A COMPUTER, OR, IF THE OWNER OR LESSOR OF A COMPUTER IS LESS THAN EIGHTEEN YEARS OF AGE, BY THE PARENT OR GUARDIAN OF SUCH PERSON. AUTHORIZATION MAY ALSO BE GRANTED BY AN END USER AGREEMENT THAT A PERSON ESTABLISHED AS AN AUTHORIZED USER PURSUANT TO THIS SUBDIVISION HAS AGREED TO UPON INSTALLATION OF A COMPUTER PROGRAM.

3. FOR PURPOSES OF THIS SECTION:

(A) "PERSONAL INFORMATION OR DATA" SHALL MEAN DATA THAT IDENTIFIES A SPECIFIC PERSON, INCLUDING BUT NOT LIMITED TO FINANCIAL INFORMATION INCLUDING BANKING AND CREDIT CARD ACCOUNT NUMBERS AND ANY INFORMATION CONCERNING A PERSON WHICH, BECAUSE OF NAME, NUMBER, SYMBOL, MARK OR OTHER IDENTIFIER CAN IDENTIFY SUCH PERSON; AND

(B) "KEYLOGGING COMPUTER PROGRAMS" MEANS COMPUTER PROGRAMS, INSTALLED WITHOUT THE KNOWLEDGE OF THE COMPUTER USER, THAT SEND ELECTRONIC COMMUNICATIONS, THAT THE COMPUTER USER IS UNAWARE OF, FROM THE COMPUTER TO AN

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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UNAUTHORIZED USER. SUCH COMMUNICATIONS ARE COMPUTER FILES THAT DISPLAY ALL OF THE KEY STROKES THAT A COMPUTER USER MAKES.

UNLAWFUL DISSEMINATION OF SPYWARE IS A CLASS A MISDEMEANOR, PROVIDED, HOWEVER, THAT UNLAWFUL DISSEMINATION OF SPYWARE BY A PERSON WHO HAS BEEN PREVIOUSLY CONVICTED WITHIN THE LAST FIVE YEARS OF HAVING VIOLATED THIS SECTION IS A CLASS E FELONY.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.