

# STATE OF NEW YORK

5603--A

2017-2018 Regular Sessions

## IN SENATE

April 19, 2017

Introduced by Sens. CARLUCCI, ALCANTARA, HAMILTON, KAMINSKY, PERALTA, RANZENHOFER, SAVINO -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommended to said committee

AN ACT to amend the general business law, in relation to prohibiting the disclosure of personally identifiable information by an internet service provider without the express written approval of the consumer

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The general business law is amended by adding a new section 399-k to read as follows:

§ 399-k. Disclosure of personally identifiable information by an internet service provider; prohibited. 1. For the purposes of this section the following terms shall have the following meanings:

(a) "Consumer" means a person who agrees to pay a fee to an internet service provider for access to the internet for personal, family, or household purposes, and who does not resell access.

(b) "Internet service provider" (ISP) means a business entity or individual who provides consumers authenticated access to, or presence on, the internet by means of a switched or dedicated telecommunications channel upon which the provider provides transit routing of internet protocol packets for and on behalf of the consumer. Internet service provider does not include the offering, on a common carrier basis, of telecommunications facilities or of telecommunications by means of these facilities.

(c) "Personally identifiable information" means information that identifies:

(i) a consumer by physical or electronic address or telephone number;

(ii) a consumer's internet search history or internet usage history;

or

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

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1 (iii) any of the contents of a consumer's data-storage devices.

2 2. Except as provided in subdivisions three and four of this section,  
3 an ISP shall not knowingly disclose personally identifiable information  
4 resulting from the consumer's use of the telecommunications or ISP with-  
5 out express written approval from the consumer.

6 (a) A telecommunications or ISP that has entered into a franchise  
7 agreement, right-of-way agreement, or other contract with the state of  
8 New York or any political subdivision thereof, or that uses facilities  
9 that are subject to such agreements, even if it is not a party to the  
10 agreement, shall not collect nor disclose personal information from a  
11 consumer resulting from the consumer's use of the telecommunications or  
12 ISP without express written approval from the consumer; and

13 (b) No such telecommunication or ISP shall refuse to provide its  
14 services to a consumer on the grounds that the consumer has not approved  
15 the collection or disclosure of the consumer's personal information.

16 3. An ISP may disclose personally identifiable information concerning  
17 a consumer:

18 (a) pursuant to a grand jury subpoena;

19 (b) to an investigative or law enforcement officer while acting as  
20 authorized by law;

21 (c) pursuant to a court order in a civil proceeding upon a showing of  
22 compelling need for the information that cannot be accommodated by other  
23 means;

24 (d) to a court in a civil action for conversion commenced by the ISP  
25 or in a civil action to enforce collection of unpaid subscription fees  
26 or purchase amounts, and then only to the extent necessary to establish  
27 the fact of the subscription delinquency or purchase agreement, and with  
28 appropriate safeguards against unauthorized disclosure;

29 (e) to the consumer who is the subject of the information, upon writ-  
30 ten or electronic request and upon payment of a fee not to exceed the  
31 actual cost of retrieving the information;

32 (f) pursuant to subpoena, including an administrative subpoena, issued  
33 under authority of a law of this state or another state or the United  
34 States;

35 (g) another ISP for purposes of reporting or preventing violations of  
36 the publish acceptable use policy or consumer service agreement of the  
37 ISP; except that the recipient may further disclose the personally iden-  
38 tifiable information only as provided by this chapter;

39 (h) any person with the authorization of the consumer; or

40 (i) as required by this subdivision.

41 4. (a) The ISP shall obtain the consumer's authorization of the  
42 disclosure of personally identifiable information in writing or by elec-  
43 tronic means.

44 (b) The request for authorization must reasonably describe the types  
45 of persons to whom personally identifiable information may be disclosed  
46 and the anticipated uses of the information.

47 (c) In order for an authorization to be effective, a contract between  
48 an ISP and the consumer must state that the authorization will be  
49 obtained by an affirmative act of the consumer.

50 (d) The provision in the contract must be conspicuous.

51 (e) Authorization shall be obtained in a manner consistent with guide-  
52 lines issued by representatives of the ISP or online industries, or in  
53 any other manner reasonably designed to comply with this section.

54 5. The ISP shall take all reasonable and necessary steps to maintain  
55 the security and privacy of a consumer's personally identifiable infor-  
56 mation.

1     6. A consumer who prevails or substantially prevails in an action  
2 brought under this section is entitled to the greater of five hundred  
3 dollars or actual damages. Costs, disbursements, and reasonable attorney  
4 fees may be awarded to a party awarded damages for a violation of this  
5 section. The damages available under this section are exempted from any  
6 mandatory arbitration clauses that may exist in the contract between the  
7 ISP and the consumer. In an action under this section, it is a defense  
8 that the defendant has established and implemented reasonable practices  
9 and procedures to prevent violations of this section.

10    7. This section does not limit any greater protection of the privacy  
11 of information under other law, except that:

12     (a) nothing in this section shall be deemed to limit the authority  
13 under other state or federal law of law enforcement to obtain informa-  
14 tion; and

15     (b) if federal law is enacted that regulates the release of personally  
16 identifiable information by ISPs but does not preempt state law on the  
17 subject, state law prevails.

18     § 2. This act shall take effect on the ninetieth day after it shall  
19 have become a law.