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NetChoice Finds State and Federal Initiatives Add Cost and Complexity to the Internet

Updated iAWFUL Ranks Top Threats to Online Commerce

(Washington, D.C.) NetChoice's Fall 2011 iAWFUL list identifies a massive new Internet tax regime, overreaching social network restrictions and federal data retention requirements as potentially devastating for the Internet's continued success.

Since 2009, the Internet Advocates' Watchlist for Ugly Laws (iAWFUL) has identified state and federal legislation that poses the greatest threat to the Internet and e-commerce. In its second update for 2011, iAWFUL once again puts an early and urgent spotlight on legislative efforts that threaten the Internet's entrepreneurial growth.

"With the national focus on job growth you'd think politicians would try to encourage Internet commerce, not stamp it out," said Steve DelBianco, executive director of NetChoice. "Yet once again, the iAWFUL list chronicles legislation that has the potential to grind online innovation to a halt."

Topping the iAWFUL list is the Durbin-Conyers "[Main Street Fairness Act \(PDF\)](#)," federal mandate that all online retailers collect and remit sales taxes to multiple states – even where the retailer had no physical presence.

The stated purpose of the Main Street Fairness Act is to "level the playing field" between online and traditional brick-and-mortar retailers by requiring online sellers to collect sales taxes on all purchases, not just those to home-state customers. In practice, the bill would impose disproportionate collection burdens on exactly the sort of small businesses that lawmakers say are vital to the economic recovery.

According to the proponent's own [study \(PDF\)](#), small businesses spend 17 cents of their own money to collect and file every dollar of sales tax they send to their home states. The Durbin-Conyers bill will greatly expand that burden by forcing small online retailers to collect for dozens of states, requiring expensive software updates, inviting exposure to an army of auditors, and cutting into resources they'd rather spend on building businesses and creating jobs.

At the state level, Puerto Rico leads the charge for meddling in social networks with proposed legislation that requires parental consent before users under the age of 18

can share their interests and activities with friends. The legislation is severely shortsighted in a world where social networks provide a wealth of information on education, health, and social issues.

Not limited to email addresses or sensitive information, HB 3526 applies to *any* information about users under 18 that identifies an individual and requires social networks to remove upon request any user information within 72 hours or face fines of \$10,000 for each violation.

In addition, social networks are precluded from posting any information about the user other than name or town without parental consent. So if a 17 year-old wanted to share their favorite websites or photos with their friends, they would need parental consent.

Worst of all, this law would apply if the social network has no actual knowledge of the age of a user. So even if a social network banned users under 18, if a minor lied about their age to gain access the social network could be hit with a \$10,000 fine.

Rounding out the top three iAWFUL proposals is a federal data grab of shocking proportions. This federal data retention mandate (HR 1981) would require Internet Service Providers to keep the IP addresses of all Internet users for 18 months.

Providing federal investigators with a way to track the Internet use of Americans who have committed no crimes will have both a chilling effect on free speech and open up the door to the abuse of personal information. Even worse, the federal snooping bill would fail to catch targeted criminals who use free wireless networks or peer-to-peer services.

iAWFUL Victories

The iAWFUL list, created in 2009, identifies America's 10 worst legislative and regulatory proposals targeted at the Internet. The iAWFUL [web site](#) urges Internet users to join the fight to fix bills that threaten the future of e-commerce and online services. The list is regularly updated to reflect the most immediate dangers, based on regulatory severity and likelihood of passage.

The top two offenders from the spring 2011 iAWFUL list identified problems and raised awareness that helped to ultimately defeat or forestall both initiatives.

A proposal by Rep. Jackie Speier (D-CA) would have let the Federal Trade Commission dramatically reduce the use of tracking data that drives Internet advertising by enforcing an opt-in regime. This high-handed attempt to legislate the Internet was pushed aside by several other privacy bills with less dangerous implications for online advertising.

A similar attempt at micro-managing social networks by California State Senator Corbett (S.B. 242) would have mandated specific settings and techniques for one of the most innovative economic developments in decades. Following an early alert in

the iAWFUL list, a broad coalition of technology leaders and free speech advocates publically opposed and helped to defeat the legislation.

“Simple and efficient is being replaced by expensive and complex in too many areas,” said DelBianco. “Politicians who think they can legislate the Internet’s future are doing far more harm than good.”

The full iAWFUL list, complete with bill descriptions, is available at www.iAWFUL.com. Twitter users can follow iAWFUL developments on the NetChoice feed (@NetChoice) and via the hashtag #iAWFUL. Expanded information is also available on the NetChoice blog at <http://blog.netchoice.org>

The entire 2011 iAWFUL includes:

- 1. Durbin-Conyers Main Street Fairness Act**
What's so iAWFUL? A national requirement for SSTP collection imposes unfair and disproportionate collection burdens on small businesses with no mandated small seller exception.
- 2. Puerto Rico Social Network Restriction Bill (HB 3526)**
What's so iAWFUL? Mandating potentially impossible requirements on social networks, requiring parental consent for 17-year-olds to get access to essential information on colleges and careers.
- 3. Federal Data Retention Requirement (HR 1981)**
What's so iAWFUL? HR 1981 forces ISPs to create and retain an evidentiary trail for all Americans who pay to access the Internet so that government can investigate users online activities – often without a warrant or court ordered subpoena. This raises serious privacy concerns for customers of paid Internet services.
- 4. State Affiliate Nexus Laws**
What's so iAWFUL? States across the country are mistakenly turning to advertising nexus taxes to force out-of-state retailers to collect sales tax from in-state consumers. These laws present all pain and no gain to states; they don't increase revenue and they damage in-state businesses. This is exactly what has happened in the states that have passed such laws.
- 5. Federal Do Not Track Online (3 bills)**
What's so iAWFUL? A Do Not Track list could result in more ads on websites, less content and services, and the erection of pay walls for content that users get for free today.
- 6. Indiana Online Minors Registry Bill**
What's so iAWFUL? HB 1418 broadly applies to unintended items such as supermarket flyers and ads for cars, costs companies up to \$72,000/year to comply, and has a \$1,000 private right of action even if no harm occurs.
- 7. Missouri Teacher-Student Social Networking Law**
What's so iAWFUL? Teachers and students are both using the Internet to create better educational environments, but the Amy Hestir Student Protection Act can scare good

teachers away from this new teaching tool for fear of termination, while not stopping the real bad conduct.

8. Tennessee Emotional Distress Law (Code Title 39, Chapter 17, Part 3)

What's so iAWFUL? The law makes sending or posting an image online that a person "reasonably should know" would "cause emotional distress" result in jail time and fines. Even worse, the law is violated if the "victim" merely stumbles across the image as opposed to the defendant sending the victim the image.

9. Massachusetts Anti-Staffing Bill (HB 1393)

What's so iAWFUL? HB 1393 imposes hefty restrictions and lofty costs on employment agencies that could possibly deter these agencies from helping Americans find jobs

10. Digital Goods Taxes

What's so iAWFUL? Digital goods taxes drive e-retailers away from states that enact the taxes, oppose existing environmental "green" programs, impose additional taxes on state residents, and place enacting states at business development disadvantages.

NetChoice is a public policy advocacy organization that promotes Internet innovation and communication and fights threats to online commerce at state, federal and international levels. The Washington, DC-based group protects Internet commerce-driven competition and battles rules that hinder consumer choice and hurt small businesses. For more information, see www.netchoice.org.

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