

ABSTRACT

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Spyware Phones Home: Should the FTC Answer the Call for Regulation?

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Abstract by Nicolas A. Reyes

This article examines the potential threat that unregulated spyware proliferation poses to internet commerce and privacy. The author begins by discussing the parameters of a workable legal definition for spyware. After commenting that the Federal Trade Commission has hatched its own definition of spyware, the author focuses on technical elements of spyware functionality that could compose a legal definition of spyware. In the following section of the article, the author surveys state attempts at defining and regulating spyware proliferation. The article scrutinizes the difficulties that certain states have encountered when implementing spyware regulation.

In the final part of the article, the author argues that malicious spyware should be regulated by the Federal Trade Commission and provides a series of recommendations to give the regulation efficacy. Given the pervasive nature of spyware, the author finds that the broad power of the Federal Trade Commission Act is a more effective regulatory tool than a panoply of state regulations. In seeking alternative approaches, the author reasons that self-regulation is not a viable option after reviewing the self-regulatory experience of the broadcast and securities industries.