

An hourglass-shaped graphic with a globe in the top bulb and another globe in the bottom bulb. The hourglass is light blue and has a dark blue cap at the top. The globe in the top bulb is dark blue, while the globe in the bottom bulb is light blue. The hourglass is centered on the page.

WikiLeaks Document Release

<http://wikileaks.org/wiki/CRS-RS21229>

February 2, 2009

Congressional Research Service

Report RS21229

*Remedies for the Improper Disclosure of Personal
Information*

Alison M. Smith, American Law Division

Updated July 8, 2002

Abstract. This report provides an overview of the available remedies in selected federal privacy laws.

WikiLeaks

CRS Report for Congress

Received through the CRS Web

Remedies for the Improper Disclosure of Personal Information

Alison M. Smith
Legislative Attorney
American Law Division

Summary

This report provides an overview of the available remedies in selected federal privacy laws. This report will be updated as events warrant.

Applicable federal statutes provide a wide array of remedies for improper disclosure of certain personal information. Some provide criminal penalties including fines ranging from \$5,000 to \$250,000 and/or imprisonment from 6 months to 10 years depending on whether the violation was committed under false pretenses or for commercial advantage, personal gain or malicious harm. Other statutes provide private rights of action for aggrieved individuals and award actual damages, compensatory damages and punitive damages for willful, intentional or knowing violations. Other statutes provide that State attorneys general may bring civil actions on behalf of the residents of a state. A few of the privacy statutes do not provide for private or state rights of action. Instead, other agencies, such as the Federal Trade Commission (FTC) are charged with enforcement. In these instances, the FTC is authorized to bring enforcement actions and impose civil penalties for violations as unfair and deceptive trade acts or practices under the Federal Trade Commission Act.¹

¹ 15 U.S.C. §§ 41 *et seq.*

Title	Applies To	Records Covered	Private Right of Action	Civil Penalty	Criminal Penalty
Fair Credit Reporting Act of 1970 - 15 U.S.C. §§ 1681 <i>et seq.</i>	Consumer reporting agencies.	Consumer credit reports.	An aggrieved consumer may file suit within two years from the date on which liability arises for impermissible disclosure, use or receipt of a consumer credit report. ²	Actual damages of not less than \$100 and not more than \$1,000, punitive damages for willful noncompliance, litigation costs and attorney fees. For negligent noncompliance, actual damages and litigation costs and attorney fees. Under false pretenses, defendant shall be liable to the consumer reporting agency for the greater of actual damages or \$1,000.	Under false pretenses, a defendant is subject to a fine, imprisonment for not more than 2 years, or both.
Video Privacy Protection Act of 1988 - 18 U.S.C. § 2710.	Videotape service providers.	Video rental records.	An aggrieved person may bring suit within two years from the discovery of the alleged violations for impermissible disclosure of personally identifiable information.	Actual damages (not less than \$2,500), punitive damages, litigation costs and attorney fees.	None.
Right to Financial Privacy Act of 1978 - 12 U.S.C. §§ 3401 <i>et seq.</i>	Financial Institutions.	Financial records.	An aggrieved customer may bring suit within three years after discovery of impermissible disclosure to a government authority.	Actual damages, punitive damages for willful or intentional disclosure, litigation costs and attorney fees.	None.
Telephone Consumer Protection Act - 47 U.S.C. § 227.	Tele-marketers.	Unsolicited telephone calls.	An aggrieved person or entity may bring suit. State attorneys general may bring civil action.	The greater of actual damages or \$500 for each violation. For willful or knowing violations, the court may award up to treble damages.	None.

² See *TRW v. Andrews*, 122 S. Ct. 441 (2001) (holding that the statute of limitations begins to run when inaccurate disclosures occur, and not when the victim learns of the disclosures).

Title	Applies To	Records Covered	Private Right of Action	Civil Penalty	Criminal Penalty
Privacy Act of 1974- 5 U.S.C. § 552a.	Federal agencies.	Individually identifiable federal agency records.	An aggrieved individual must bring suit within two years after discovery of impermissible disclosure.	Actual damages (not less than \$1,000), litigation costs and attorney fees.	For willful disclosure, misdemeanor offense and fine of not more than \$5,000.
Family Educational Rights and Privacy Act - 20 U.S.C. § 1232g.	Educational institutions receiving federal funds.	Student records.	No. ³	None. An institution with a policy or practice of improper disclosure shall lose federal funds.	None.
Health Insurance Portability & Accountability Act - 42 U.S.C. §§ 1320d <i>et seq.</i>	Health plans, health care providers and clearinghouses. <small>http://www.gale.com/docview/21229</small>	Individually identifiable health information.	No. Individuals have the right to file a formal complaint with a covered provider or health plan, or with the Department of Health and Human Services.	None.	For simple violations, fine up to \$50,000 and/or imprisonment of up to one year. For violations committed under false pretenses, fine up to \$100,000 and/or imprisonment up to 5 years. For offenses committed for commercial advantage, personal gain, or malicious harm, fine up to \$250,000 and/or imprisonment up to 10 years.
Cable Communication Policy Act of 1984 - 47 U.S.C. § 551.	Cable television service providers.	Cable television subscriber records.	Any person aggrieved may bring a civil action for improper disclosure of personally identifiable information.	Actual damages (but not less than liquidated damages computed at the rate of \$100 a day or \$1,000, whichever is higher), punitive damages, litigation costs and attorney fees.	None.

³ In *Gonzaga v. Doe*, the United States Supreme Court held that FERPA provisions create no personal rights to enforce under 42 U.S.C. § 1983. No. 01-679, slip op. at 3-15 (June 20, 2002).

Title	Applies To	Records Covered	Private Right of Action	Civil Penalty	Criminal Penalty
Telecommunications Act of 1996 - 47 U.S.C. § 222.	Telecommunications carriers.	Consumer proprietary network information.	No express private right of action. ⁴	FTC authorized to bring enforcement actions and impose civil penalties for violations as unfair and deceptive trade acts or practices under the Federal Trade Commission Act.	None.
Electronic Communications Privacy Act of 1986 - 18 U.S.C. §§ 2510-2522.	Providers of electronic communications services.	Telecommunications, e-mails and stored computer data.	An aggrieved individual may bring a civil action within two years of discovery of improper interception or disclosure of wire, oral, or electronic communications.	Actual damages (not less than \$1,000), punitive damages for knowing or intentional noncompliance, litigation costs and attorney fees.	Fine up to \$250,000 for individuals and \$500,000 for organizations, imprisonment of not more than five years or both.
Computer Fraud and Abuse Act - 18 U.S.C. § 1030	Anyone. http://wikileaks.org/wiki/CRS-229	Computers in which there is a federal interest.	An aggrieved person may bring suit within two years after violation occurs or discovery of the damage.	Compensatory damages and injunctive relief. Damages are limited to economic damages.	For simple violations , imprisonment up to one year and/or fine. For violations for gain or involving more than \$5,000, imprisonment up to five years and/or fine. For repeat offenders, imprisonment up to 10 years and/or fine.
Gramm-Leach-Bliley Act - 15 U.S.C. §§ 6801-6809.	Financial institutions	Non-public personal financial records.	No. Consumers can complain to one of the seven federal agencies that have jurisdiction and enforcement authority over financial institutions. ⁵	FTC authorized to bring enforcement actions and impose civil penalties for violations as unfair and deceptive trade acts or practices under the Federal Trade Commission Act.	Fine, imprisonment for not more than 5 years, or both. Enhanced penalties for aggravated cases.

⁴ See, *Conboy v. AT&T Corp.*, 241 F.3d 242,251 (2d Cir. 2001)(finding that Section 222 of the Act did not provide for the recovery of presumed , or “statutory,” damages).

⁵ The seven federal agencies which enforce the privacy provisions are: (1) the Federal Deposit Insurance Corporation; (2) the Federal Reserve; (3) the Office of Thrift Supervision; (4) the Office of the Comptroller of the Currency; (5) the National Credit Union Administration; (6) the Securities and Exchange Commission; and (7) the Federal Trade Commission.

Title	Applies To	Records Covered	Private Right of Action	Civil Penalty	Criminal Penalty
Driver's Privacy Protection Act - 18 U.S.C. § 2721.	State department of motor vehicles	Department of motor vehicle records.	An aggrieved person may bring a civil action for improper use, disclosure or receipt of personal information.	Actual damages (not less than \$2,500), punitive damages for willful or reckless disregard of the law, and reasonable attorneys' fees and other litigation costs. The Attorney General may impose a civil penalty of not more than \$5,000 a day for substantial noncompliance.	Fine for a person who knowingly violates the law.
Federal Trade Commission Act - 15 U.S.C. §§ 41 <i>et seq.</i>	Persons, partnerships, and corporations.	Deceptive practices and unfair methods.	No.	If the FTC finds that a practice violates the Act it may issue a cease and desist order. Judicial review available. Injunctive relief or penalty up to \$10,000 for each violation.	None.
Children's Online Privacy Protection Act - 15 U.S.C. §§ 6501 <i>et seq.</i>	Commercial websites or online services targeted at children.	Personally identifiable information of minors.	No - State attorneys general may bring civil action on behalf of the residents to: - enjoin practice - enforce compliance - obtain damage, restitution, or other compensation.	The FTC is authorized to bring enforcement actions and impose civil penalties for violations as unfair and deceptive trade acts or practices under the Federal Trade Commission Act.	None.
Stored Wire and Electronic Communications and Transactional Records Access Act - 18 U.S.C. § 2701 <i>et seq.</i>	Anyone.	Stored electronic communications.	An aggrieved person may bring suit.	Damages equal to the loss and gain associated with the offense but not less than \$1,000	For violations committed for malicious and mercenary purposes, imprisonment up to one year and/or fine up to \$250,000. For lesser offenses, imprisonment of not more than six months and/or fine of not more than \$5,000.