

From: Michael Erskine
Posted At: Friday, April 16, 2004 11:07 AM
Posted To: spywareworkshop2004
Conversation: Spyware Workshop - Comment, P044509
Subject: Spyware Workshop - Comment, P044509

Comissioners;

Summary:

Why are you considering legitimizing a practice widely frowned upon in the industry? Indeed these practices may well be illegal already. The courts have not spoken in these matters.

Detail:

Regarding any software installed upon a system of mine:

- 1) I purchased the hardware.
- 2) I purchased the software.
- 3) I purchased the bandwidth and lease the medium it is carried over.
- 4) The system is housed on property I lease or own.
- 5) The system is powered by power I purchase.

Given these truths, there can be no reasonable argument for anyone being allowed to install anything upon my system without my expressed consent. Allowing that will set a very dangerous precedent. I will leave the logical exercise of seeing where such a precedent could lead to you.

There can be no reasonable argument for anyone being allowed to execute even a trivial program on my system without my expressed consent. Allowing that will set a very dangerous precedent. Again I leave the logical exercise of where that could lead to you.

Let us presume for a moment that I downloaded a free piece of software, which software contains some other program that serves a purpose other than the purpose of the software I downloaded. Even in the case of freeware, there can be no reasonable argument for anyone installing a "trojan horse" on my system without my expressed consent. A "trojan horse" is a piece of software which ostensibly serves one function but surreptitiously performs a second. It isn't a complicated definition. Allowing that to happen, making that legal, in any form, will set a very dangerous precedent. How will you distinguish between "spyware", "adware", and a hacker's trojan horse? How complex will that legal language become? Spyware and adware are trojan horses. Don't allow anyone to try to convince you otherwise just because they can make money with them. Hackers make money with their own "trojan horses" by stealing private information, neither instance should be legalized.

The definition of "spyware" is quite simple. Spyware is software or the exploitation of software to collect information about a user's activity

without that user's expressed permission. Spyware need not report collected data to anyone, that it collects data without the expressed permission of the subject generating the data is sufficient proof that the system "spys". That it also uses or exploits software to accomplish that task is sufficient to define it as "ware", hence the term "spyware". Cookies would be an example of exploiting existing software to accomplish the task of "spying" upon a user.

These activities should be, indeed probably already are illegal. I am shocked that members of government are actually discussing this topic at all. That is troubling. Spyware is simple enough to understand. You don't need a conference to define it.

Michael Erskine
Computer Scientist
Virginia