

Comments on the Federal Trade Commission's Spyware Workshop

**Submitted by
The National Network to End Domestic Violence**



Introduction and Summary

In an effort to assist the Federal Trade Commission (“FTC”) with its careful evaluation of the issues surrounding the proliferation of spyware software and technology, The National Network to End Domestic Violence (“NNEDV”) submits these comments emphasizing the dangers to victims of domestic violence that result from the use of spyware software.

NNEDV is a not-for-profit organization incorporated in the District of Columbia since 1995. NNEDV is a network of state domestic violence coalitions, representing over 2,000 member organizations nationally. NNEDV serves as the national voice of battered women and their children and those who provide direct services to them. From testifying before Congress on domestic violence issues to assisting state coalitions in better serving the needs of the victim community, NNEDV is a national leader in efforts to assist battered women in protecting themselves and their children.

Domestic violence is a terrifying reality for women and children across the United States.¹ Millions of women are physically abused by their husbands or partners each year.² The effects of domestic violence are severe and devastating, and the physical injuries such as broken bones, bruises, and burns are only the visible consequences. Victims of domestic violence also miss work due to their injuries and can ultimately lose their jobs as a result of the violence against them. Battered women often have trouble establishing independent lives due to poor credit, rental, and employment histories resulting from their abuse.³

¹ Because the vast majority of victims of domestic violence and sexual assault are women, NNEDV will use only female nouns and pronouns throughout these comments. See Callie Marie Rennison & Sarah Welchans, U.S. Department of Justice, Intimate Partner Violence, at 1 (2000) (estimating that 85% of reported assaults on partners or ex-partners are committed by men against women). NNEDV acknowledges that men are also victims of domestic violence, especially in same-sex relationships.

² See Patricia Tjaden & Nancy Thoennes, Nat’l. Inst. of Justice, Prevalence, Incidence and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey, at 2, 7 (1998). In fact, the National Institute of Justice reported that 5.9 million assaults are perpetrated against women annually. See *id.* at 11. See also United States v. Morrison, 529 U.S. 598, 632 (2000) (Souter, J., dissenting) (citing estimate of four million women assault victims every year).

³ See Susan A. Reif & Lisa J. Krisher, Subsidized Housing and the Unique Needs of Domestic Violence Victims, Clearinghouse Rev. 20 (May-June 2000). In addition to the personal toll, the cost of domestic violence to society is also substantial. The cost of intimate partner violence annually exceeds \$5.8 billion, including \$4.1 billion in direct health care expenses, \$900 million in lost productivity, and \$900 million in lifetime earnings. See National Center for Injury Prevention and Control, Costs of Intimate Partner

Unfortunately for victims of domestic violence, there are no easy escapes. Battered women often face increased violence when they attempt to flee their abusers.⁴ The severity of this “separation violence” often compels women to stay in abusive relationships rather than risk greater injury to themselves or their children. Many of those who succeed in leaving their abuser live in constant fear of being found. This constant fear of being found is only exasperated by the potential for a victim’s abuser to use spyware software to gain access to information that makes being found significantly easier.

Spyware software provides abusers with yet another tool to control and instill constant fear in the minds of victims of domestic violence. Spyware software gives abusers the ability to monitor all the electronic communications of their victims, including Internet activity, passwords, and private e-mail communications. By using spyware software, abusers can easily gain access to information from their victim’s computer that will provide them with enough information to locate a victim who may have escaped from her abuser, discover a victim’s intentions to leave in the near future, or prevent a victim from establishing or attempting to establish her life outside of the abusive relationship. Spyware software is an especially insidious and devastating tool because it attacks the ability of victims to use the Internet, an important source of accessible and anonymous information for victims of abuse.

As the proliferation of spyware software continues and access to such technology becomes easier for batterers to obtain, the danger to victims of domestic violence increases exponentially. The threat to victims caused by the use of spyware software is real, regardless of whether or not the victim has managed to flee from her abuser. An abuser needs only to gain access to a victim’s computer one time to secretly install a spyware program to compromise a victim’s personal information and put a victim in severe danger. As an example, in September 2001, a Michigan man was charged with installing a commercially available spy software program on the computer of his estranged wife at her separate residence. Without her knowledge, the program sent him regular emails reporting all of her computer activity, including all emails sent and received; all instant messages sent and received; and all Internet sites visited.

Violence Against Women in the United States, Atlanta, Ga.: Centers for Disease Control and Prevention, 2003. When the costs of direct property loss, ambulance services, police response, pain and suffering and the criminal justice process are considered, the total annual cost of intimate partner violence grows to \$67 billion dollars. See Ted R. Miller et al., Victim Costs and Consequences: A New Look, National Institute of Justice Research Report (1996).

⁴ The desire to reclaim the family or retaliate can lead to sharp increases in child and spousal abuse at the time of separation. Bowker, L.H., Arbitell, M. and McFerron, J.R., On the Relationship Between Wife Beating and Child Abuse, Yllo, K. and Bograd, M. eds., Perspectives on Wife Abuse, Newbury Park, CA, 1986). Women are at an increased risk of harm after separation from an abusive partner. Separated women are 3 times more likely than divorced women and 25 times more likely than married women to be victims of violence at the hands of an intimate partner. See Ronnet Bachman and Linda Salzman, Bureau of Justice Statistics, Violence Against Women: Estimates From the Redesigned Survey 1 (January 2000).

It was only thanks to a string of serendipity that the estranged wife, Patricia Brown, was able to realize that her husband was spying on her. It started when the estranged husband began calling and taunting Ms. Brown with information she was convinced he could only get by monitoring her email and computer use. Ms. Brown began researching spyware programs and fortuitously called SpectorSoft, the maker of the program that her husband had surreptitiously installed on her computer. SpectorSoft informed her that the eBlaster spyware program is essentially impossible to discover because it cloaks itself on the installed PC and looks like a Microsoft Windows system file. It was only when she asked if they had sold a copy of the program to her husband and the representative became evasive that she realized that he had installed the eBlaster program on her computer.

Even more alarming is the ability of an abuser to install a spyware program on a victim's computer without ever physically touching the computer. As an example of this new technology, a company called "LoveSpy" sells a service that sends an electronic greeting, the equivalent of a "thinking-of-you" card, that doubles as a bugging device. Upon viewing the card, the program automatically downloads a spyware program to the recipient's computer that monitors all computer activity, including keystrokes, email messages, instant messages and Internet sites. An especially sinister aspect of this program is that the information is sent back to a central server, such that the spying party can anonymously retrieve it without leaving any electronic "trail" for law enforcement to follow. An identical product called "Realtime Spy" is offered by CyberWire, LLC, together with related products called "Spy Agent/Spy Anywhere" that allows someone to remotely take complete control of a computer.

NNEDV encourages the FTC to fully consider the harmful effects that the continued proliferation of spyware software is having on the safety of victims of domestic violence. While existing state and Federal laws prohibit unauthorized wiretapping and the installation of computer programs without the user's consent, these laws apply only to the spyware user. In the case of domestic violence, these users have already demonstrated a disregard for the law and the rights of their abused spouses.

The result of the FTC's examination must be nothing less than a comprehensive set of regulations or laws that prohibit the abuse of spyware technology. The FTC must implement regulations on the manufacturers of spyware software that require the programs themselves to contain the highest possible level of transparency, notice and consent to assure that spyware technologies are not used to endanger the lives of victims of domestic violence. For legitimate uses of spyware, these requirements should actually promote the surveillance objectives of the users. The power of spyware to control and discourage inappropriate Internet usage of small children or undesirable computer usage by employees is enhanced if those users are aware that their actions are being monitored.

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