

[STAFF WORKING DRAFT]

June 17, 2003

Purpose: To add additional and new findings, definitions, and other substantive modifications to the text of the bill as introduced.

**IN THE COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION—108TH Cong., 1ST Sess.**

S. 877, 108TH Congress, 1ST Session

JUNE 19, 2003

INTENDED to be proposed by Mr. _____

Viz: Strike out all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Controlling the Assault
3 of Non-Solicited Pornography and Marketing Act of
4 2003”, or the “CAN-SPAM Act of 2003”.

5 **SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.**

6 (a) FINDINGS.—The Congress finds the following:

7 (1) Electronic mail has become an extremely
8 important and popular means of communication, re-
9 lied on by millions of Americans on a daily basis for
10 personal and commercial purposes. Its low cost and
11 global reach make it extremely convenient and effi-
12 cient, and offer unique opportunities for the develop-
13 ment and growth of frictionless commerce.

1 (2) The convenience and efficiency of electronic
2 mail are threatened by the extremely rapid growth
3 in the volume of unsolicited commercial electronic
4 mail. Unsolicited commercial electronic mail is cur-
5 rently estimated to account for over 45 percent of all
6 electronic mail traffic, up from an estimated 7 per-
7 cent in 2001, and the volume continues to rise. Most
8 of these unsolicited commercial electronic mail mes-
9 sages are fraudulent or deceptive in one or more re-
10 spects.

11 (3) The receipt of unsolicited commercial elec-
12 tronic mail may result in costs to recipients who
13 cannot refuse to accept such mail and who incur
14 costs for the storage of such mail, or for the time
15 spent accessing, reviewing, and discarding such mail,
16 or for both.

17 (4) The receipt of a large number of unsolicited
18 messages also decreases the convenience of electronic
19 mail and creates a risk that wanted electronic mail
20 messages, both commercial and noncommercial, will
21 be lost, overlooked, or discarded amidst the larger
22 volume of unwanted messages, thus reducing the re-
23 liability and usefulness of electronic mail to the re-
24 cipient.

1 (5) Some unsolicited commercial electronic mail
2 contains material that many recipients may consider
3 vulgar or pornographic in nature.

4 (6) The growth in unsolicited commercial elec-
5 tronic mail imposes significant monetary costs on
6 providers of Internet access services, businesses, and
7 educational and nonprofit institutions that carry and
8 receive such mail, as there is a finite volume of mail
9 that such providers, businesses, and institutions can
10 handle without further investment in infrastructure.

11 (7) Many senders of unsolicited commercial
12 electronic mail purposefully disguise the source of
13 such mail.

14 (8) Many senders of unsolicited commercial
15 electronic mail purposefully include misleading infor-
16 mation in the message's subject lines in order to in-
17 duce the recipients to view the messages.

18 (9) While some senders of unsolicited commer-
19 cial electronic mail messages provide simple and reli-
20 able ways for recipients to reject (or "opt-out" of)
21 receipt of unsolicited commercial electronic mail
22 from such senders in the future, other senders pro-
23 vide no such "opt-out" mechanism, or refuse to
24 honor the requests of recipients not to receive elec-
25 tronic mail from such senders in the future, or both.

1 (10) Many senders of bulk unsolicited commer-
2 cial electronic mail use computer programs to gather
3 large numbers of electronic mail addresses on an
4 automated basis from Internet websites or online
5 services where users must post their addresses in
6 order to make full use of the website or service.

7 (11) Many States have enacted legislation in-
8 tended to regulate or reduce unsolicited commercial
9 electronic mail, but these statutes impose different
10 standards and requirements. As a result, they do not
11 appear to have been successful in addressing the
12 problems associated with unsolicited commercial
13 electronic mail, in part because, since an electronic
14 mail address does not specify a geographic location,
15 it can be extremely difficult for law-abiding busi-
16 nesses to know with which of these disparate stat-
17 utes they are required to comply.

18 (12) The problems associated with the rapid
19 growth and abuse of unsolicited commercial elec-
20 tronic mail cannot be solved by Federal legislation
21 alone. The development and adoption of techno-
22 logical approaches and the pursuit of cooperative ef-
23 forts with other countries will be necessary as well.

1 (b) CONGRESSIONAL DETERMINATION OF PUBLIC
2 POLICY.—On the basis of the findings in subsection (a),
3 the Congress determines that—

4 (1) there is a substantial government interest in
5 regulation of unsolicited commercial electronic mail
6 on a nationwide basis;

7 (2) senders of unsolicited commercial electronic
8 mail should not mislead recipients as to the source
9 or content of such mail; and

10 (3) recipients of unsolicited commercial elec-
11 tronic mail have a right to decline to receive addi-
12 tional unsolicited commercial electronic mail from
13 the same source.

14 **SEC. 3. DEFINITIONS.**

15 In this Act:

16 (1) **AFFIRMATIVE CONSENT.**—The term “af-
17 firmative consent”, when used with respect to a
18 commercial electronic mail message, means that—

19 (A) the recipient expressly consented to re-
20 ceive the message, either in response to a clear
21 and conspicuous request for such consent or at
22 the recipient’s own initiative; and

23 (B) if the message is from a party other
24 than the party to which the recipient commu-
25 nicated such consent, the recipient was given

1 clear and conspicuous notice at the time the
2 consent was communicated that the recipient's
3 electronic mail address could be transferred to
4 such other party for the purpose of initiating
5 commercial electronic mail messages.

6 (2) COMMERCIAL ELECTRONIC MAIL MES-
7 SAGE.—

8 (A) IN GENERAL.—The term “commercial
9 electronic mail message” means any electronic
10 mail message the primary purpose of which is
11 the commercial advertisement or promotion of a
12 commercial product or service (including con-
13 tent on an Internet website operated for a com-
14 mercial purpose).

15 (B) REFERENCE TO COMPANY OR
16 WEBSITE.—The inclusion of a reference to a
17 commercial entity or a link to the website of a
18 commercial entity in an electronic mail message
19 does not, by itself, cause such message to be
20 treated as a commercial electronic mail message
21 for purposes of this Act if the contents or cir-
22 cumstances of the message indicate a primary
23 purpose other than commercial advertisement
24 or promotion of a commercial product or serv-
25 ice.

1 (3) COMMISSION.—The term “Commission”
2 means the Federal Trade Commission.

3 (4) DOMAIN NAME.—The term “domain name”
4 means any alphanumeric designation which is reg-
5 istered with or assigned by any domain name reg-
6 istrar, domain name registry, or other domain name
7 registration authority as part of an electronic ad-
8 dress on the Internet.

9 (5) ELECTRONIC MAIL ADDRESS.—The term
10 “electronic mail address” means a destination, com-
11 monly expressed as a string of characters, consisting
12 of a unique user name or mailbox (commonly re-
13 ferred to as the “local part”) and a reference to an
14 Internet domain (commonly referred to as the “do-
15 main part”), to which an electronic mail message
16 can be sent or delivered.

17 (6) ELECTRONIC MAIL MESSAGE.—The term
18 “electronic mail message” means a message sent to
19 a unique electronic mail address.

20 (7) FTC ACT.—The term “FTC Act” means
21 the Federal Trade Commission Act (15 U.S.C. 41 et
22 seq.).

23 (8) HEADER INFORMATION.—The term “header
24 information” means the source, destination, and
25 routing information attached to an electronic mail

1 message, including the originating domain name and
2 originating electronic mail address, and any other
3 information that appears in the line identifying, or
4 purporting to identify, a person initiating the mes-
5 sage.

6 (9) IMPLIED CONSENT.—

7 (A) IN GENERAL.—The term “implied con-
8 sent”, when used with respect to a commercial
9 electronic mail message, means that—

10 (i) within the 3-year period ending
11 upon receipt of such message, there has
12 been a business transaction between the
13 sender and the recipient (including a
14 transaction involving the provision, free of
15 charge, of information, goods, or services
16 requested by the recipient); and

17 (ii) the recipient was, at the time of
18 such transaction or thereafter in the first
19 electronic mail message received from the
20 sender after the effective date of this Act,
21 provided a clear and conspicuous notice of
22 an opportunity not to receive unsolicited
23 commercial electronic mail messages from
24 the sender and has not exercised such op-
25 portunity.

1 (B) MERE VISITATION.—A visit by a re-
2 recipient to a publicly available website shall not
3 be treated as a transaction for purposes of sub-
4 paragraph (A)(i) if the recipient did not know-
5 ingly submit the recipient’s electronic mail ad-
6 dress to the operator of the website.

7 (C) SEPARATE LINES OF BUSINESS OR DI-
8 VISIONS.—If a sender operates through sepa-
9 rate lines of business or divisions and holds
10 itself out to the recipient, both at the time of
11 the transaction described in subparagraph
12 (A)(i) and at the time the notice under sub-
13 paragraph (A)(ii) was provided to the recipient,
14 as that particular line of business or division
15 rather than as the entity of which such line of
16 business or division is a part, then the line of
17 business or the division shall be treated as the
18 sender for purposes of this paragraph.

19 (10) INITIATE.—The term “initiate”, when
20 used with respect to a commercial electronic mail
21 message, means to originate or transmit such mes-
22 sage or to procure the origination or transmission of
23 such message, but shall not include actions that con-
24 stitute routine conveyance of such message. For pur-

1 poses of this paragraph, more than 1 person may be
2 considered to have initiated a message.

3 (11) INTERNET.—The term “Internet” has the
4 meaning given that term in the Internet Tax Free-
5 dom Act (47 U.S.C. 151 nt).

6 (12) INTERNET ACCESS SERVICE.—The term
7 “Internet access service” has the meaning given that
8 term in section 231(e)(4) of the Communications
9 Act of 1934 (47 U.S.C. 231(e)(4)).

10 (13) PROCURE.—The term “procure”, when
11 used with respect to the initiation of a commercial
12 electronic mail message, means intentionally to pay
13 or provide other consideration to, or induce, another
14 person to initiate such a message on one’s behalf,
15 knowing, or consciously avoiding knowing, the extent
16 to which that person intends to comply with the re-
17 quirements of this Act.

18 (14) PROTECTED COMPUTER.—The term “pro-
19 tected computer” has the meaning given that term
20 in section 1030(e)(2)(B) of title 18, United States
21 Code.

22 (15) RECIPIENT.—The term “recipient”, when
23 used with respect to a commercial electronic mail
24 message, means an authorized user of the electronic
25 mail address to which the message was sent or deliv-

1 ered. If a recipient of a commercial electronic mail
2 message has 1 or more electronic mail addresses in
3 addition to the address to which the message was
4 sent or delivered, the recipient shall be treated as a
5 separate recipient with respect to each such address.
6 If an electronic mail address is reassigned to a new
7 user, the new user shall not be treated as a recipient
8 of any commercial electronic mail message sent or
9 delivered to that address before it was reassigned.

10 (16) ROUTINE CONVEYANCE.—The term “rou-
11 tine conveyance” means the transmission, routing,
12 relaying, handling, or storing, through an automatic
13 technical process, of an electronic mail message for
14 which another person has identified the recipients or
15 provided the recipient addresses.

16 (17) SENDER.—The term “sender”, when used
17 with respect to a commercial electronic mail mes-
18 sage, means a person who initiates such a message
19 and whose product, service, or Internet web site is
20 advertised or promoted by the message.

21 (18) TRANSACTIONAL OR RELATIONSHIP MES-
22 SAGE.—The term “transactional or relationship mes-
23 sage” means an electronic mail message the primary
24 purpose of which is—

1 (A) to facilitate, complete, or confirm a
2 commercial transaction that the recipient has
3 previously agreed to enter into with the sender;

4 (B) to provide warranty information, prod-
5 uct recall information, or safety or security in-
6 formation with respect to a commercial product
7 or service used or purchased by the recipient;

8 (C) to provide—

9 (i) notification concerning a change in
10 the terms or features of;

11 (ii) notification of a change in the re-
12 cipient's standing or status with respect to;

13 or

14 (iii) at regular periodic intervals, ac-
15 count balance information or other type of
16 account statement with respect to,

17 a subscription, membership, account, loan, or
18 comparable ongoing commercial relationship in-
19 volving the ongoing purchase or use by the re-
20 cipient of products or services offered by the
21 sender;

22 (D) to provide information directly related
23 to an employment relationship or related benefit
24 plan in which the recipient is currently involved,
25 participating, or enrolled; or

1 (E) to deliver goods or services, including
2 product updates or upgrades, that the recipient
3 is entitled to receive under the terms of a trans-
4 action that the recipient has previously agreed
5 to enter into with the sender.

6 (19) UNSOLICITED COMMERCIAL ELECTRONIC
7 MAIL MESSAGE.—The term “unsolicited commercial
8 electronic mail message” means any commercial
9 electronic mail message that—

10 (A) is not a transactional or relationship
11 message; and

12 (B) is sent to a recipient without the re-
13 cipient’s prior affirmative or implied consent.

14 **SEC. 4. CRIMINAL PENALTY FOR COMMERCIAL ELEC-**
15 **TRONIC MAIL CONTAINING FRAUDULENT**
16 **ROUTING INFORMATION.**

17 (a) IN GENERAL.—Chapter 63 of title 18, United
18 States Code, is amended by adding at the end the fol-
19 lowing:

20 **“§ 1351. Commercial electronic mail containing**
21 **fraudulent transmission information**

22 “(a) IN GENERAL.—Any person who initiates the
23 transmission, to a protected computer in the United
24 States, of a commercial electronic mail message, with
25 knowledge and intent that the message contains or is ac-

1 information that is false or misleading. For purposes
2 of this paragraph—

3 (A) header information that is technically
4 accurate but includes an originating electronic
5 mail address the access to which for purposes
6 of initiating the message was obtained by
7 means of false or fraudulent pretenses or rep-
8 resentations shall be considered misleading; and

9 (B) a “from” line that accurately identifies
10 any person who initiated the message shall not
11 be considered false or misleading.

12 (2) PROHIBITION OF DECEPTIVE SUBJECT
13 HEADINGS.—It is unlawful for any person to initiate
14 the transmission to a protected computer of a com-
15 mercial electronic mail message with a subject head-
16 ing that such person knows would be likely to mis-
17 lead a recipient, acting reasonably under the cir-
18 cumstances, about a material fact regarding the con-
19 tents or subject matter of the message.

20 (3) INCLUSION OF RETURN ADDRESS OR COM-
21 PARABLE MECHANISM IN COMMERCIAL ELECTRONIC
22 MAIL.—

23 (A) IN GENERAL.—It is unlawful for any
24 person to initiate the transmission to a pro-
25 tected computer of a commercial electronic mail

1 message that does not contain a functioning re-
2 turn electronic mail address or other Internet-
3 based mechanism, clearly and conspicuously dis-
4 played, that—

5 (i) a recipient may use to submit, in
6 a manner specified in the message, a reply
7 electronic mail message or other form of
8 Internet-based communication requesting
9 not to receive future commercial electronic
10 mail messages from that sender at the
11 electronic mail address where the message
12 was received; and

13 (ii) remains capable of receiving such
14 messages or communications for no less
15 than 30 days after the transmission of the
16 original message.

17 (B) MORE DETAILED OPTIONS POS-
18 SIBLE.—The person initiating a commercial
19 electronic mail message may comply with sub-
20 paragraph (A)(i) by providing the recipient a
21 list or menu from which the recipient may
22 choose the specific types of commercial elec-
23 tronic mail messages the recipient wants to re-
24 ceive or does not want to receive from the send-
25 er, if the list or menu includes an option under

1 which the recipient may choose not to receive
2 any unsolicited commercial electronic mail mes-
3 sages from the sender.

4 (C) TEMPORARY INABILITY TO RECEIVE
5 MESSAGES OR PROCESS REQUESTS.—A return
6 electronic mail address or other mechanism
7 does not fail to satisfy the requirements of sub-
8 paragraph (A) if it is unexpectedly and tempo-
9 rarily unable to receive messages or process re-
10 quests due to technical or capacity problems, if
11 the technical or capacity problems were not rea-
12 sonably foreseeable in light of the potential vol-
13 ume of response messages or requests, and if
14 the problem with receiving messages or proc-
15 essing requests is corrected within a reasonable
16 time period.

17 (D) EXCEPTION.—The requirements of
18 this paragraph shall not apply to a message
19 that is a transactional or relationship message.

20 (4) PROHIBITION OF TRANSMISSION OF UNSO-
21 LICITED COMMERCIAL ELECTRONIC MAIL AFTER OB-
22 JECTION.—If a recipient makes a request using a
23 mechanism provided pursuant to paragraph (3) not
24 to receive some or any unsolicited commercial elec-

1 tronic mail messages from such sender, then it is
2 unlawful—

3 (A) for the sender to initiate the trans-
4 mission to the recipient, more than 10 business
5 days after the receipt of such request, of an un-
6 solicited commercial electronic mail message
7 that falls within the scope of the request;

8 (B) for any person acting on behalf of the
9 sender to initiate the transmission to the recipi-
10 ent, more than 10 business days after the re-
11 ceipt of such request, of an unsolicited commer-
12 cial electronic mail message that such person
13 knows or consciously avoids knowing falls with-
14 in the scope of the request;

15 (C) for any person acting on behalf of the
16 sender to assist in initiating the transmission to
17 the recipient, through the provision or selection
18 of addresses to which the message will be sent,
19 of an unsolicited commercial electronic mail
20 message that the person knows, or consciously
21 avoids knowing, would violate subparagraph (A)
22 or (B); or

23 (D) for the sender, or any other person
24 who knows that the recipient has made such a
25 request, to sell, lease, exchange, or otherwise

1 transfer or release the electronic mail address
2 of the recipient (including through any trans-
3 action or other transfer involving mailing lists
4 bearing the electronic mail address of the re-
5 cipient) for any purpose other than compliance
6 with this Act or other provision of law.

7 (5) INCLUSION OF IDENTIFIER, OPT-OUT, AND
8 PHYSICAL ADDRESS IN UNSOLICITED COMMERCIAL
9 ELECTRONIC MAIL.—It is unlawful for any person to
10 initiate the transmission of any unsolicited commer-
11 cial electronic mail message to a protected computer
12 unless the message provides—

13 (A) clear and conspicuous identification
14 that the message is an advertisement or solici-
15 tation;

16 (B) clear and conspicuous notice of the op-
17 portunity under paragraph (3) to decline to re-
18 ceive further unsolicited commercial electronic
19 mail messages from the sender; and

20 (C) a valid physical postal address of the
21 sender.

22 (b) AGGRAVATED VIOLATIONS RELATING TO UNSO-
23 LICITED COMMERCIAL ELECTRONIC MAIL.—

24 (1) ADDRESS HARVESTING AND DICTIONARY
25 ATTACKS.—

1 (A) IN GENERAL.—It is unlawful for any
2 person to initiate the transmission, to a pro-
3 tected computer, of an unsolicited commercial
4 electronic mail message that is unlawful under
5 subsection (a), or to assist in the origination of
6 such message through the provision or selection
7 of addresses to which the message will be trans-
8 mitted, if such person knows, should have
9 known, or consciously avoids knowing that—

10 (i) the electronic mail address of the
11 recipient was obtained using an automated
12 means from an Internet website or propri-
13 etary online service operated by another
14 person, and such website or online service
15 included, at the time the address was ob-
16 tained, a notice stating that the operator
17 of such website or online service will not
18 give, sell, or otherwise transfer addresses
19 maintained by such website or online serv-
20 ice to any other party for the purposes of
21 initiating, or enabling others to initiate,
22 unsolicited electronic mail messages; or

23 (ii) the electronic mail address of the
24 recipient was obtained using an automated
25 means that generates possible electronic

1 mail addresses by combining names, let-
2 ters, or numbers into numerous permuta-
3 tions.

4 (B) DISCLAIMER.—Nothing in this para-
5 graph creates an ownership or proprietary in-
6 terest in such electronic mail addresses.

7 (2) AUTOMATED CREATION OF MULTIPLE
8 ELECTRONIC MAIL ACCOUNTS.—It is be unlawful for
9 any person to use scripts or other automated means
10 to establish multiple electronic mail accounts or on-
11 line user accounts from which to transmit to a pro-
12 tected computer, or enable another person to trans-
13 mit to a protected computer, an unsolicited commer-
14 cial electronic mail message that is unlawful under
15 subsection (a).

16 (3) RELAY OR RETRANSMISSION THROUGH UN-
17 AUTHORIZED ACCESS.—It is unlawful for any person
18 knowingly to relay or retransmit an unsolicited com-
19 mercial electronic mail message that is unlawful
20 under subsection (a) from a protected computer or
21 computer network that such person has accessed
22 without authorization.

23 (c) COMPLIANCE PROCEDURES.—An action for viola-
24 tion of paragraph (2), (3), (4), or (5) of subsection (a)

1 may not proceed if the person against whom the action
2 is brought demonstrates that —

3 (1) the person has established and imple-
4 mented, with due care, reasonable practices and
5 procedures to effectively prevent violations of
6 such paragraph; and

7 (2) the violation occurred despite good
8 faith efforts to maintain compliance with such
9 practices and procedures.

10 **SEC. 6. ENFORCEMENT BY FEDERAL TRADE COMMISSION.**

11 (a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR
12 PRACTICE.—Except as provided in subsection (b), this Act
13 shall be enforced by the Commission as if the violation
14 of this Act were an unfair or deceptive act or practice pro-
15 scribed under section 18(a)(1)(B) of the Federal Trade
16 Commission Act (15 U.S.C. 57a(a)(1)(B)).

17 (b) ENFORCEMENT BY CERTAIN OTHER AGEN-
18 CIES.—Compliance with this Act shall be enforced—

19 (1) under section 8 of the Federal Deposit In-
20 surance Act (12 U.S.C. 1818), in the case of—

21 (A) national banks, and Federal branches
22 and Federal agencies of foreign banks, and any
23 subsidiaries of such entities (except brokers,
24 dealers, persons providing insurance, invest-

1 ment companies, and investment advisers), by
2 the Office of the Comptroller of the Currency;

3 (B) member banks of the Federal Reserve
4 System (other than national banks), branches
5 and agencies of foreign banks (other than Fed-
6 eral branches, Federal agencies, and insured
7 State branches of foreign banks), commercial
8 lending companies owned or controlled by for-
9 eign banks, organizations operating under sec-
10 tion 25 or 25A of the Federal Reserve Act (12
11 U.S.C. 601 and 611), and bank holding compa-
12 nies and their nonbank subsidiaries or affiliates
13 (except brokers, dealers, persons providing in-
14 surance, investment companies, and investment
15 advisers), by the Board;

16 (C) banks insured by the Federal Deposit
17 Insurance Corporation (other than members of
18 the Federal Reserve System) insured State
19 branches of foreign banks, and any subsidiaries
20 of such entities (except brokers, dealers, per-
21 sons providing insurance, investment compa-
22 nies, and investment advisers), by the Board of
23 Directors of the Federal Deposit Insurance Cor-
24 poration; and

1 (D) savings associations the deposits of
2 which are insured by the Federal Deposit In-
3 surance Corporation, and any subsidiaries of
4 such savings associations (except brokers, deal-
5 ers, persons providing insurance, investment
6 companies, and investment advisers), by the Di-
7 rector of the Office of Thrift Supervision;

8 (2) under the Federal Credit Union Act (12
9 U.S.C. 1751 et seq.) by the Board of the National
10 Credit Union Administration with respect to any
11 Federally insured credit union, and any subsidiaries
12 of such a credit union;

13 (3) under the Securities Exchange Act of 1934
14 (15 U.S.C. 78a et seq.) by the Securities and Ex-
15 change Commission with respect to any broker or
16 dealer;

17 (4) under the Investment Company Act of 1940
18 (15 U.S.C. 80a-1 et seq.) by the Securities and Ex-
19 change Commission with respect to investment com-
20 panies;

21 (5) under the Investment Advisers Act of 1940
22 (15 U.S.C. 80b-1 et seq.) by the Securities and Ex-
23 change Commission with respect to investment ad-
24 visers registered under that Act;

1 (6) under State insurance law in the case of
2 any person engaged in providing insurance, by the
3 applicable State insurance authority of the State in
4 which the person is domiciled, subject to section 104
5 of the Gramm-Bliley-Leach Act (15 U.S.C. 6701);

6 (7) under part A of subtitle VII of title 49,
7 United States Code, by the Secretary of Transpor-
8 tation with respect to any air carrier or foreign air
9 carrier subject to that part;

10 (8) under the Packers and Stockyards Act,
11 1921 (7 U.S.C. 181 et seq.) (except as provided in
12 section 406 of that Act (7 U.S.C. 226, 227)), by the
13 Secretary of Agriculture with respect to any activi-
14 ties subject to that Act;

15 (9) under the Farm Credit Act of 1971 (12
16 U.S.C. 2001 et seq.) by the Farm Credit Adminis-
17 tration with respect to any Federal land bank, Fed-
18 eral land bank association, Federal intermediate
19 credit bank, or production credit association; and

20 (10) under the Communications Act of 1934
21 (47 U.S.C. 151 et seq.) by the Federal Communica-
22 tions Commission with respect to any person subject
23 to the provisions of that Act.

24 (c) EXERCISE OF CERTAIN POWERS.—For the pur-
25 pose of the exercise by any agency referred to in sub-

1 section (b) of its powers under any Act referred to in that
2 subsection, a violation of this Act is deemed to be a viola-
3 tion of a Federal Trade Commission trade regulation rule.
4 In addition to its powers under any provision of law spe-
5 cifically referred to in subsection (b), each of the agencies
6 referred to in that subsection may exercise, for the pur-
7 pose of enforcing compliance with any requirement im-
8 posed under this Act, any other authority conferred on it
9 by law.

10 (d) ACTIONS BY THE COMMISSION.—The Commis-
11 sion shall prevent any person from violating this Act in
12 the same manner, by the same means, and with the same
13 jurisdiction, powers, and duties as though all applicable
14 terms and provisions of the Federal Trade Commission
15 Act (15 U.S.C. 41 et seq.) were incorporated into and
16 made a part of this Act. Any entity that violates any provi-
17 sion of that subtitle is subject to the penalties and entitled
18 to the privileges and immunities provided in the Federal
19 Trade Commission Act in the same manner, by the same
20 means, and with the same jurisdiction, power, and duties
21 as though all applicable terms and provisions of the Fed-
22 eral Trade Commission Act were incorporated into and
23 made a part of that subtitle.

24 (e) ENFORCEMENT BY STATES.—

1 (1) CIVIL ACTION.—In any case in which the
2 attorney general of a State has reason to believe
3 that an interest of the residents of that State has
4 been or is threatened or adversely affected by any
5 person engaging in a practice that violates section 5
6 of this Act, the State, as *parens patriae*, may bring
7 a civil action on behalf of the residents of the State
8 in a district court of the United States of appro-
9 priate jurisdiction or in any other court of com-
10 petent jurisdiction—

11 (A) to enjoin further violation of section 5
12 of this Act by the defendant; or

13 (B) to obtain damages on behalf of resi-
14 dents of the State, in an amount equal to the
15 greater of—

16 (i) the actual monetary loss suffered
17 by such residents; or

18 (ii) the amount determined under
19 paragraph (2).

20 (2) STATUTORY DAMAGES.—

21 (A) IN GENERAL.—For purposes of para-
22 graph (1)(B)(ii), the amount determined under
23 this paragraph is the amount calculated by mul-
24 tiplying the number of violations (with each
25 separately addressed unlawful message received

1 by or addressed to such residents treated as a
2 separate violation) by—

3 (i) up to \$100, in the case of a viola-
4 tion of section 5(a)(1); or

5 (ii) \$25, in the case of any other vio-
6 lation of section 5.

7 (B) LIMITATION.—For any violation of
8 section 5 (other than section 5(a)(1)), the
9 amount determined under subparagraph (A)
10 may not exceed \$1,000,000.

11 (C) AGGRAVATED DAMAGES.—The court
12 may increase a damage award to an amount
13 equal to not more than three times the amount
14 otherwise available under this paragraph if—

15 (i) the court determines that the de-
16 fendant committed the violation willfully
17 and knowingly; or

18 (ii) the defendant's unlawful activity
19 included one or more of the aggravating
20 violations set forth in section 5(b).

21 (3) ATTORNEY FEES.—In the case of any suc-
22 cessful action under paragraph (1), the State shall
23 be awarded the costs of the action and reasonable
24 attorney fees as determined by the court.

1 (4) RIGHTS OF FEDERAL REGULATORS.—The
2 State shall serve prior written notice of any action
3 under paragraph (1) upon the Federal Trade Com-
4 mission or the appropriate Federal regulator deter-
5 mined under subsection (b) and provide the Commis-
6 sion or appropriate Federal regulator with a copy of
7 its complaint, except in any case in which such prior
8 notice is not feasible, in which case the State shall
9 serve such notice immediately upon instituting such
10 action. The Federal Trade Commission or appro-
11 priate Federal regulator shall have the right—

12 (A) to intervene in the action;

13 (B) upon so intervening, to be heard on all
14 matters arising therein;

15 (C) to remove the action to the appropriate
16 United States district court; and

17 (D) to file petitions for appeal.

18 (5) CONSTRUCTION.—For purposes of bringing
19 any civil action under paragraph (1), nothing in this
20 Act shall be construed to prevent an attorney gen-
21 eral of a State from exercising the powers conferred
22 on the attorney general by the laws of that State
23 to—

24 (A) conduct investigations;

25 (B) administer oaths or affirmations; or

1 (C) compel the attendance of witnesses or
2 the production of documentary and other evi-
3 dence.

4 (6) VENUE; SERVICE OF PROCESS.—

5 (A) VENUE.—Any action brought under
6 paragraph (1) may be brought in the district
7 court of the United States that meets applicable
8 requirements relating to venue under section
9 1391 of title 28, United States Code.

10 (B) SERVICE OF PROCESS.—In an action
11 brought under paragraph (1), process may be
12 served in any district in which the defendant—

13 (i) is an inhabitant; or

14 (ii) maintains a physical place of busi-
15 ness.

16 (7) LIMITATION ON STATE ACTION WHILE FED-
17 ERAL ACTION IS PENDING.—If the Commission or
18 other appropriate Federal agency under subsection
19 (b) has instituted a civil action or an administrative
20 action for violation of this Act, no State attorney
21 general may bring an action under this subsection
22 during the pendency of that action against any de-
23 fendant named in the complaint of the Commission
24 or the other agency for any violation of this Act al-
25 leged in the complaint.

1 (f) ACTION BY PROVIDER OF INTERNET ACCESS
2 SERVICE.—

3 (1) ACTION AUTHORIZED.—A provider of Inter-
4 net access service adversely affected by a violation of
5 section 5 may bring a civil action in any district
6 court of the United States with jurisdiction over the
7 defendant, or in any other court of competent juris-
8 diction, to—

9 (A) enjoin further violation by the defend-
10 ant; or

11 (B) recover damages in an amount equal
12 to the greater of—

13 (i) actual monetary loss incurred by
14 the provider of Internet access service as a
15 result of such violation; or

16 (ii) the amount determined under
17 paragraph (2).

18 (2) STATUTORY DAMAGES.—

19 (A) IN GENERAL.—For purposes of para-
20 graph (1)(B)(ii), the amount determined under
21 this paragraph is the amount calculated by mul-
22 tiplying the number of violations (with each
23 separately addressed unlawful message that is
24 transmitted or attempted to be transmitted over
25 the facilities of the provider of Internet access

1 service, or that is transmitted or attempted to
2 be transmitted to an electronic mail address ob-
3 tained from the provider of Internet access
4 service in violation of section 5(b)(1)(A)(i),
5 treated as a separate violation) by—

6 (i) up to \$100, in the case of a viola-
7 tion of section 5(a)(1); or

8 (ii) \$25, in the case of any other vio-
9 lation of section 5.

10 (B) LIMITATION.—For any violation of
11 section 5 (other than section 5(a)(1)), the
12 amount determined under subparagraph (A)
13 may not exceed \$1,000,000.

14 (C) AGGRAVATED DAMAGES.—The court
15 may increase a damage award to an amount
16 equal to not more than three times the amount
17 otherwise available under this paragraph if—

18 (i) the court determines that the de-
19 fendant committed the violation willfully
20 and knowingly; or

21 (ii) the defendant's unlawful activity
22 included one or more of the aggravated
23 violations set forth in section 5(b).

24 (3) ATTORNEY FEES.—In any action brought
25 pursuant to paragraph (1), the court may, in its dis-

1 cretion, require an undertaking for the payment of
2 the costs of such action, and assess reasonable costs,
3 including reasonable attorneys' fees, against any
4 party.

5 **SEC. 7. EFFECT ON OTHER LAWS.**

6 (a) FEDERAL LAW.—

7 (1) Nothing in this Act shall be construed to
8 impair the enforcement of section 223 or 231 of the
9 Communications Act of 1934 (47 U.S.C. 223 or
10 231, respectively), chapter 71 (relating to obscenity)
11 or 110 (relating to sexual exploitation of children) of
12 title 18, United States Code, or any other Federal
13 criminal statute.

14 (2) Nothing in this Act shall be construed to af-
15 fect in any way the Commission's authority to bring
16 enforcement actions under FTC Act for materially
17 false or deceptive representations or unfair practices
18 in commercial electronic mail messages.

19 (b) STATE LAW.—

20 (1) IN GENERAL.—This Act supersedes any
21 statute, regulation, or rule of a State or political
22 subdivision of a State that expressly regulates the
23 use of electronic mail to send commercial messages,
24 except for any such statute, regulation, or rule that
25 prohibits falsity or deception in any portion of a

1 commercial electronic mail message or information
2 attached thereto.

3 (2) STATE LAW NOT SPECIFIC TO ELECTRONIC
4 MAIL.—This Act shall not be construed to preempt
5 the applicability of State laws that are not specific
6 to electronic mail, including State trespass, contract,
7 or tort law, and State laws relating to acts of fraud
8 or computer crime.

9 (c) NO EFFECT ON POLICIES OF PROVIDERS OF
10 INTERNET ACCESS SERVICE.—Nothing in this Act shall
11 be construed to have any effect on the lawfulness or un-
12 lawfulness, under any other provision of law, of the adop-
13 tion, implementation, or enforcement by a provider of
14 Internet access service of a policy of declining to transmit,
15 route, relay, handle, or store certain types of electronic
16 mail messages.

17 **SEC. 8. RECOMMENDATIONS CONCERNING DO-NOT-EMAIL**
18 **REGISTRY.**

19 Not later than 6 months after the Federal Trade
20 Commission has completed implementation of its national
21 telemarketing Do-Not-Call list, the Commission shall
22 transmit to the Congress recommendations for a workable
23 plan and timetable for creating a nationwide marketing
24 Do-Not-Email list modeled on the Do-Not-Call list, or an
25 explanation of any practical, technical, security, or pri-

1 vacy-related issues that cause the Commission to rec-
2 ommend against creating such a list.

3 **SEC. 9. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL**
4 **ELECTRONIC MAIL.**

5 (a) IN GENERAL.—Not later than 24 months after
6 the date of the enactment of this Act, the Commission,
7 in consultation with the Department of Justice and other
8 appropriate agencies, shall submit a report to the Con-
9 gress that provides a detailed analysis of the effectiveness
10 and enforcement of the provisions of this Act and the need
11 (if any) for the Congress to modify such provisions.

12 (b) REQUIRED ANALYSIS.—The Commission shall in-
13 clude in the report required by subsection (a)—

14 (1) an analysis of the extent to which techno-
15 logical and marketplace developments, including
16 changes in the nature of the devices through which
17 consumers access their electronic mail messages,
18 may affect the practicality and effectiveness of the
19 provisions of this Act;

20 (2) analysis and recommendations concerning
21 how to address unsolicited commercial electronic
22 mail that originates in or is transmitted through or
23 to facilities or computers in other nations, including
24 initiatives or policy positions that the Federal gov-

1 ernment could pursue through international negotia-
2 tions, fora, organizations, or institutions; and

3 (3) analysis and recommendations concerning
4 options for protecting consumers, including children,
5 from the receipt and viewing of unsolicited commer-
6 cial electronic mail that is obscene or pornographic.

7 **SEC. 9 SEPARABILITY.**

8 If any provision of this Act or the application thereof
9 to any person or circumstance is held invalid, the remain-
10 der of this Act and the application of such provision to
11 other persons or circumstances shall not be affected.

12 **SEC. 10. EFFECTIVE DATE.**

13 The provisions of this Act shall take effect 120 days
14 after the date of the enactment of this Act.

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