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(Original Signature of Member)

108TH CONGRESS
1ST SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. BURR (for himself, Mr. SENSENBRENNER, Mr. TAUZIN, Mr. GOODLATTE, Mr. UPTON, Ms. HART, Mr. STEARNS, and Mr. CANNON) introduced the following bill; which was referred to the Committee on

A BILL

To prevent unsolicited commercial electronic mail.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Reduction in Distribution of Spam Act of 2003”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:



- Sec. 1. Short title and table of contents.
- Sec. 2. Findings and determination of policy.

TITLE I—PROTECTIONS AGAINST CERTAIN COMMERCIAL
ELECTRONIC MAIL

- Sec. 101. Restrictions on commercial electronic mail.
- Sec. 102. Private right of action for providers of internet access service.
- Sec. 103. Actions by States.
- Sec. 104. Prohibition of class actions; attorney’s fees.
- Sec. 105. Enforcement by Federal Trade Commission.
- Sec. 106. Restrictions on other unsolicited transmissions.
- Sec. 107. Exclusiveness of remedies.

TITLE II—AMENDMENTS TO TITLE 18, UNITED STATES CODE

- Sec. 201. Criminal penalties and related provisions.

TITLE III—GENERAL PROVISIONS

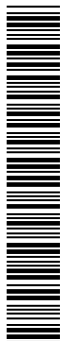
- Sec. 301. Regulations and report.
- Sec. 302. Effect on other laws.
- Sec. 303. Study of effects of Act.
- Sec. 304. Definitions.
- Sec. 305. Effective date.

1 SEC. 2. FINDINGS AND DETERMINATION OF POLICY.

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

3 (1) Electronic mail (email) has rapidly become
 4 an integral means of commercial and personal com-
 5 munication and presents unprecedented opportuni-
 6 ties for the development and growth of frictionless
 7 global commerce.

8 (2) With the increasingly accepted use of email
 9 has come the explosion of unsolicited commercial
 10 electronic mail (UCE), also known as spam, which
 11 is flooding the arteries of critical communications
 12 networks and servers and threatening the viability of
 13 email as a primary communications medium.



1 (3) Internet observers and experts are con-
2 cerned about the effect of the increasing abundance
3 of UCE on network bandwidth, network storage
4 costs, user productivity, and legal vulnerability to re-
5 duce functionality of global networks. UCE currently
6 comprises nearly 40 percent of all email activity, up
7 from 8 percent in 2001.

8 (4) UCE poses network security risks to busi-
9 nesses and governments because of the introduction
10 of viruses and malicious code delivered via UCE
11 messages.

12 (5) The increasing prevalence of UCE has led
13 to a decreased level of consumer trust for legitimate
14 email marketers and decreased willingness of end
15 users to test new advertising formats, thus affecting
16 potential for all forms of advertising in an already
17 depressed marketplace.

18 (6) For the Internet to maintain and build
19 upon its commercial growth, users must have con-
20 fidence in the security and usability of this electronic
21 medium. But “e-commerce” is still in its infancy and
22 any legislation or regulation regarding email must be
23 narrowly tailored to deal with real problems.

24 (7) While some senders of UCE provide simple
25 and reliable ways for recipients to reject (or “opt-

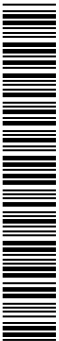


1 out” of) receipt of future UCE from such senders,
2 other senders provide no such “opt-out” mechanism,
3 or refuse to honor the repeated requests of recipients
4 not to receive UCE.

5 (8) UCE frequently contains fraudulent claims
6 or sexually explicit material. UCE with this type of
7 content merits additional restrictions and penalties.

8 (9) An increasing number of senders of UCE
9 purposefully include misleading information or dis-
10 guise the source of such email, which prevents re-
11 cipients from recognizing UCE and impedes ISPs’
12 ability to identify the source of disruption to their
13 communications networks. There is no legitimate
14 reason to falsify the header information accom-
15 panying commercial email and these actions in some
16 cases merit criminal penalties.

17 (10) Such intentionally misleading information
18 can also evade UCE filtering technology at both an
19 ISP level as well as at the end user level. Filtering
20 technology is one of the best methods to provide
21 comprehensive protection to ISPs’ communications
22 networks and to the end user. But in the absence of
23 alternative solutions, UCE filters attempting to
24 catch more spam are unwittingly blocking an in-



1 creasing amount of personal and commercial email
2 that end users actually want and need to receive.

3 (11) In making good faith efforts to protect
4 their citizens from the truly interstate phenomenon
5 of spam, some States have inadvertently set up mul-
6 tiple and conflicting regimes governing commercial
7 email that make it difficult for legitimate commer-
8 cial emailers to comply but do little to stop egregious
9 spammers.

10 (12) Federal Government action is necessary to
11 preserve the communications networks that sustain
12 the digital economy and protect consumers. But ulti-
13 mately, government action can only solve part of the
14 problem and must be combined with technological
15 solutions, customer awareness, and trusted sender
16 cooperative agreements between legitimate senders
17 and ISPs to effectively curb UCE.

18 (b) CONGRESSIONAL DETERMINATION OF PUBLIC
19 POLICY.—On the basis of the findings in subsection (a),
20 the Congress determines that—

21 (1) there is substantial government interest in
22 regulation of UCE;

23 (2) senders of UCE should not mislead recipi-
24 ents or disguise the electronic source of the elec-



1 tronic mail message, nor send sexually explicit
2 emails without appropriate warnings;

3 (3) recipients of UCE should be able to recog-
4 nize UCE and have an opportunity to decline to re-
5 ceive additional UCE from the same source; and

6 (4) ISPs, recipients of UCE, and others af-
7 fected by UCE also have a right to use technological
8 measures to protect their networks and computers
9 from receiving unwanted or harmful commercial
10 electronic mail.

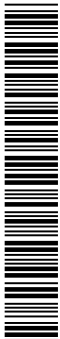
11 **TITLE I—PROTECTIONS AGAINST**
12 **CERTAIN COMMERCIAL ELEC-**
13 **TRONIC MAIL**

14 **SEC. 101. RESTRICTIONS ON COMMERCIAL ELECTRONIC**
15 **MAIL.**

16 (a) **REQUIRED INCLUSIONS IN ALL COMMERCIAL**
17 **ELECTRONIC MAIL.—**

18 (1) **IN GENERAL.—**No person may initiate in
19 interstate commerce the transmission, to a covered
20 computer, of any commercial electronic mail message
21 unless the message contains all of the following:

22 (A) **IDENTIFICATION.—**Clear and con-
23 spicuous identification that the message is an
24 advertisement or solicitation.



1 (B) NOTICE OF OPT-OUT OPPORTUNITY.—
2 Clear and conspicuous notice of the opportunity
3 under subparagraph (C) to decline to receive fu-
4 ture unsolicited commercial electronic mail mes-
5 sages from the sender.

6 (C) MECHANISM TO OPT-OUT.—A func-
7 tioning return electronic mail address or other
8 Internet-based mechanism, clearly and con-
9 spicuously displayed, that—

10 (i) a recipient may use to submit, in
11 a manner specified by the sender, a reply
12 electronic mail message or other form of
13 Internet-based communication requesting
14 not to receive any future unsolicited com-
15 mercial electronic mail messages from that
16 sender at the electronic mail address where
17 the message was received; and

18 (ii) remains capable of receiving such
19 messages or communications for not less
20 than 30 days after the transmission of the
21 original message.

22 (D) STREET ADDRESS.—A valid physical
23 street address of the sender.

24 (2) MORE DETAILED REQUESTS POSSIBLE.—In
25 a commercial electronic mail message complying



1 with the requirements of paragraph (1)(C), the
2 sender may also include, in the message, options for
3 the recipient to submit more detailed requests con-
4 cerning the types of commercial electronic mail mes-
5 sages that the recipient does or does not wish to re-
6 ceive in the future from the sender, based upon
7 products, services, divisions, organizations, compa-
8 nies, or other selections.

9 (3) TEMPORARY INABILITY TO RECEIVE MES-
10 SAGES.—A return electronic mail address or other
11 mechanism does not fail to comply with the require-
12 ments of paragraph (1)(C) if it is unexpectedly and
13 temporarily unable to receive messages due to tech-
14 nical or capacity problems, if the problem with re-
15 ceiving messages is corrected within a reasonable
16 time period.

17 (b) PROHIBITION OF TRANSMISSION OF UNSOLIC-
18 ITED COMMERCIAL ELECTRONIC MAIL AFTER OBJEC-
19 TION.—If a recipient makes a request to a sender, by
20 using a mechanism described in subsection (a)(1)(C), not
21 to receive some or any unsolicited commercial electronic
22 mail messages from such sender—

23 (1) the sender may not initiate the transmission
24 to the recipient, during the 3-year period beginning
25 10 business days after the receipt of such request,



1 of an unsolicited commercial electronic mail message
2 that falls within the scope of the request, except that
3 during the 6-month period beginning on the effective
4 date under section 305 such 3-year period shall
5 begin 20 business days after receipt of such request;

6 (2) no person acting on behalf of the sender
7 may initiate the transmission to the recipient, during
8 the 3-year period beginning 10 business days after
9 the receipt by such person of such request, of an un-
10 solicited commercial electronic mail message that
11 such person knows, should have known, or con-
12 sciously avoids knowing falls within the scope of the
13 request, except that during the 6-month period be-
14 ginning on the effective date under section 305 such
15 3-year period shall begin 20 business days after re-
16 ceipt of such request;

17 (3) no person acting on behalf of the sender
18 may assist in initiating the transmission to the re-
19 cipient, through the provision or selection of ad-
20 dresses to which the message will be transmitted, of
21 an unsolicited commercial electronic mail message
22 that such person knows, should have known, or con-
23 sciously avoids knowing would violate paragraph (1)
24 or (2); and



1 (4) the sender may not sell, lease, exchange, or
2 otherwise transfer or release the electronic mail ad-
3 dress of the recipient (including through any trans-
4 action or other transfer involving mailing lists bear-
5 ing the electronic mail address of the recipient) for
6 any purpose other than compliance with this Act or
7 any other provision of law.

8 (c) PROHIBITION OF TRANSMISSION OF COMMERCIAL
9 ELECTRONIC MAIL WITH FRAUDULENT HEADER INFOR-
10 MATION.—No person may initiate in interstate commerce
11 the transmission, to a covered computer, of a commercial
12 electronic mail message that contains or is accompanied
13 by header information that is false or misleading (includ-
14 ing header information that uses a third party's domain
15 name without the third party's permission). For purposes
16 of this subsection, header information that includes an
17 originating electronic mail address the use of which in con-
18 nection with the message was not authorized by a legiti-
19 mate holder of the address, or access to which was ob-
20 tained by means of false or fraudulent pretense or rep-
21 resentations, shall be considered misleading.

22 (d) PROHIBITION OF TRANSMISSION OF COMMER-
23 CIAL ELECTRONIC MAIL FROM ILLEGALLY HARVESTED
24 ELECTRONIC MAIL ADDRESSES.—



1 (1) IN GENERAL.—No person may initiate in
2 interstate commerce the transmission, to a covered
3 computer, of a commercial electronic mail message
4 that is prohibited under subsection (a), (b), or (c) or
5 assist in the origination of such a message through
6 the provision or selection of electronic mail addresses
7 to which the transmission of such message is initi-
8 ated, if such person knows, should have known, or
9 consciously avoids knowing, that—

10 (A) the electronic mail address of the re-
11 cipient was obtained, using an automated
12 means, from an Internet website or proprietary
13 online service operated by another person, with-
14 out the authorization of that person; and

15 (B) the website or proprietary online serv-
16 ice from which the address was obtained in-
17 cluded, at the time the address was obtained, a
18 notice stating that the operator of such a
19 website or proprietary online service will not
20 give, sell, or otherwise transfer addresses main-
21 tained by such site or service to any other party
22 for the purpose of initiating, or enabling others
23 to initiate, commercial electronic mail messages.



1 (2) **DISCLAIMER.**—Nothing in this subsection
2 creates an ownership or proprietary interest in such
3 electronic mail addresses.

4 (e) **SAVINGS PROVISION FOR GLBA.**—Subsection
5 (b)(4) of this section shall not apply to prohibit a disclo-
6 sure by a financial institution of nonpublic personal infor-
7 mation that is permissible under title V of the Gramm-
8 Leach-Bliley Act (15 U.S.C. 6801 et seq.) and the regula-
9 tions thereunder.

10 **SEC. 102. PRIVATE RIGHT OF ACTION FOR PROVIDERS OF**
11 **INTERNET ACCESS SERVICE.**

12 (a) **AUTHORIZATION.**—A provider of Internet access
13 service adversely affected by—

14 (1) a pattern or practice of violations of section
15 101(b) or the regulations prescribed under such sec-
16 tion, or

17 (2) a violation of subsection (c) or (d) of section
18 101 or the regulations prescribed under such sub-
19 section,

20 may bring, in an appropriate district court of the United
21 States, either or both of the civil actions under subsection
22 (b).

23 (b) **CIVIL ACTIONS.**—The civil actions under this
24 subsection are as follows:



1 (1) INJUNCTION.—An action to enjoin the de-
 2 fendant from further engaging in such pattern or
 3 practice or committing any further violation, as ap-
 4 propriate.

5 (2) MONETARY DAMAGES.—An action to obtain
 6 damages in an amount equal to the greater of—

7 (A) the actual monetary loss incurred by
 8 the provider of Internet access service as a re-
 9 sult of such violation; or

10 (B) the amount determined under sub-
 11 section (c).

12 (c) STATUTORY DAMAGES.—

13 (1) VIOLATIONS OF PROTECTION FOR RECIPI-
 14 ENTS.—In the case of a violation of section 101(b)
 15 or the regulations prescribed under such section:

16 (A) DAMAGES PER VIOLATION.—Except as
 17 provided in subparagraphs (B), (C), and (D),
 18 the amount determined under this subsection is
 19 \$10 for each separate electronic mail address to
 20 which is initiated, in violation of such sub-
 21 section, the transmission of a commercial elec-
 22 tronic mail message, over the facilities of the
 23 provider of Internet access service.

24 (B) LIMITATION.—Except as provided in
 25 subparagraphs (C) and (D), for each commer-



1 cial electronic mail message the transmission of
2 which is unlawfully initiated and that is ad-
3 dressed to multiple electronic mail addresses,
4 the amount determined under subparagraph (A)
5 may not exceed \$500,000.

6 (C) TREBLE DAMAGES FOR INTENTIONAL
7 VIOLATIONS.—If the court finds in an action
8 under this section that the defendant committed
9 the violation willfully or knowingly, the court
10 may, in its discretion, increase the amount of
11 the limitation under subparagraph (B) to an
12 amount equal to not more than three times the
13 amount otherwise available under such subpara-
14 graph, not to exceed \$1,500,000. In making a
15 determination with regard to the amount of an
16 increase under this subparagraph, the court
17 shall take into consideration whether violation
18 involved use of automated means to generate
19 electronic mail addresses based on permutations
20 of combining of names, letters, or numbers.

21 (D) REDUCTION.—

22 (i) IN GENERAL.—Subject to clause
23 (ii), the court shall reduce the amount
24 under subparagraph (A) for each violation
25 if the court determines that—



1 (I) the defendant established and
2 implemented, with due care, reason-
3 able practices and procedures in-
4 tended to prevent such violations; and

5 (II) such violations occurred de-
6 spite good faith efforts to maintain
7 compliance with such practices and
8 procedures.

9 (ii) LIMITATION.—If the amount oth-
10 erwise determined under this paragraph
11 exceeds \$75,000, the court may not reduce
12 the amount under subparagraph (A) for
13 each violation such that the amount deter-
14 mined under this paragraph is less than
15 \$75,000.

16 (2) VIOLATIONS OF PROTECTIONS FOR PRO-
17 VIDERS OF INTERNET ACCESS SERVICE.—In the case
18 of a violation of subsection (c) or (d) of section 101
19 or the regulations prescribed under such subsection,
20 the amount determined under this subsection is \$50
21 for each separate electronic mail address to which
22 the transmission of a commercial electronic mail
23 message is initiated in violation of such subsection.



1 **SEC. 103. ACTIONS BY STATES.**

2 (a) CIVIL ACTION.—Except as provided in subsection
3 (c), in any case in which the attorney general of a State,
4 or an official or agency of a State, has reason to believe
5 that any person has engaged or is engaging in a pattern
6 or practice of initiating transmissions to residents of that
7 State that violates subsection (c) or (d) of section 101 or
8 the regulations prescribed under such subsection, the at-
9 torney general, official, or agency of the State may bring
10 either or both of the following civil actions on behalf of
11 its residents:

12 (1) INJUNCTION.—An action to enjoin the de-
13 fendant from further engaging in such pattern or
14 practice.

15 (2) MONETARY DAMAGES.—An action to obtain
16 damages on behalf of residents of the State, in an
17 amount equal to the greater of—

18 (A) the actual monetary loss suffered by
19 such residents; or

20 (B) the amount determined under sub-
21 section (b).

22 (b) STATUTORY DAMAGES.—

23 (1) PER VIOLATION.—Except as provided in
24 paragraphs (2) and (3), for purposes of subsection
25 (a)(2)(B), the amount determined under this sub-
26 section is \$100 for each separate electronic mail ad-



1 dress to which the transmission of a commercial
2 electronic mail message is initiated in violation of
3 the subsections or regulations referred to in sub-
4 section (a).

5 (2) LIMITATION.—For each commercial elec-
6 tronic mail message the transmission of which is un-
7 lawfully initiated and that is addressed to multiple
8 electronic mail addresses, the amount determined
9 under paragraph (1) may not exceed—

10 (A) except as provided in subparagraph

11 (B), \$1,000,000; or

12 (B) in any case in which the court in-
13 creases the amount of the award pursuant to
14 paragraph (3), \$3,000,000.

15 (3) TREBLE DAMAGES.—Subject to paragraph
16 (2)(B), in an action under this section, the court
17 may, in its discretion, increase the amount of the
18 award to an amount equal to not more than three
19 times the amount otherwise available under para-
20 graph (1). In making a determination under this
21 paragraph, the court shall take into consideration
22 the nature, circumstances, extent, and gravity of the
23 violation involved, including the following factors:

24 (A) The volume of electronic mail involved
25 in the violation.



1 (B) The manner in which the violation was
2 perpetrated.

3 (C) Whether the violation involved a viola-
4 tion of any other provision of Federal law.

5 (D) The extent of economic gain resulting
6 from the violation.

7 (E) Any history of prior violations by the
8 violator.

9 (F) Whether violation involved use of auto-
10 mated means to generate electronic mail ad-
11 dresses based on permutations of combining of
12 names, letters, or numbers.

13 (G) Such other factors as justice may re-
14 quire.

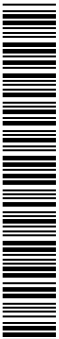
15 (e) LIMITATION IN CASES OF FEDERAL ACTION.—

16 If the Commission has commenced an administrative or
17 civil action for a violation of subsection (c) or (d) of sec-
18 tion 101 or the regulations prescribed under such sub-
19 section, with respect to any conduct, or for a violation of
20 section 622 of title 18, United States Code, with respect
21 to any conduct, or the Attorney General has commenced
22 a criminal proceeding or civil action for a violation of sec-
23 tion 622 of title 18, United States Code, with respect to
24 any conduct, no State may bring an action under this sec-
25 tion with respect to the same conduct.



1 (d) EXCLUSIVE JURISDICTION OF FEDERAL
2 COURTS.—The district courts of the United States, the
3 United States courts of any territory, and the District
4 Court of the United States for the District of Columbia
5 shall have exclusive jurisdiction over all civil actions
6 brought under this section. Upon proper application, such
7 courts shall also have jurisdiction to issue writs of man-
8 damus, or orders affording like relief, commanding the de-
9 fendant to comply with the provisions of subsection (c) or
10 (d) of section 101 or the regulations prescribed under such
11 section, including the requirement that the defendant take
12 such action as is necessary to remove the danger of such
13 violation. Upon a proper showing, a permanent or tem-
14 porary injunction or restraining order shall be granted
15 without bond.

16 (e) NOTICE TO COMMISSION OF STATE ACTION;
17 INTERVENTION.—The State shall serve prior written no-
18 tice of any civil action under this section upon the Com-
19 mission and provide the Commission with a copy of its
20 complaint, except in any case where such prior notice is
21 not feasible, in which case the State shall serve such notice
22 immediately upon instituting such action. The Commis-
23 sion shall have the right to intervene in the action, upon
24 so intervening, to be heard on all matters arising in the
25 action, and to file petitions for appeal.



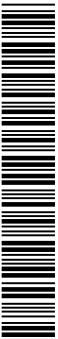
1 (f) VENUE AND SERVICE OF PROCESS.—Any civil ac-
2 tion brought under this section in a district court of the
3 United States may be brought in any district court of the
4 United States that meets applicable requirements relating
5 to venue under section 1391 of title 28, United States
6 Code.

7 (g) INVESTIGATORY POWERS.—For purposes of
8 bringing any civil action under this section, nothing in this
9 Act shall prevent the attorney general of a State, or an
10 official or agency of a State, from exercising the powers
11 conferred on the attorney general, official, or agency by
12 the laws of such State to conduct investigations or to ad-
13 minister oaths or affirmations or to compel the attendance
14 of witnesses or the production of documentary and other
15 evidence.

16 **SEC. 104. PROHIBITION OF CLASS ACTIONS; ATTORNEY'S**
17 **FEEES.**

18 (a) PROHIBITION OF CLASS ACTIONS.—A civil action
19 arising under section 102 or 103 may not be brought as
20 a plaintiff class action pursuant to the Federal Rules of
21 Civil Procedure.

22 (b) COSTS AND ATTORNEY'S FEES.—In any action
23 brought under section 102 or 103, the court may, in its
24 discretion, require an undertaking for the payment of
25 costs of such action, and assess reasonable costs, including



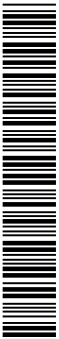
1 reasonable attorneys' fees, against any party found in the
2 action to have committed a violation on which the action
3 was based.

4 **SEC. 105. ENFORCEMENT BY FEDERAL TRADE COMMIS-**
5 **SION.**

6 The same powers and authorities by which the Fed-
7 eral Trade Commission and the Attorney General enforce
8 compliance, by persons subject to the jurisdiction of the
9 Commission under the Federal Trade Commission Act,
10 with the provisions of such Act and the regulations issued
11 thereunder by the Commission, shall be available to the
12 Commission and the Attorney General to enforce compli-
13 ance, by all persons, with the provisions of section 101
14 of this Act and the regulations issued under such section.
15 For purposes of exercising such powers and authorities to
16 enforce compliance with rules issued under section 101 of
17 this Act, such rules shall be treated as having been issued
18 under section 18 of the Federal Trade Commission Act
19 (notwithstanding issuance in accordance with section
20 301(a) of this Act).

21 **SEC. 106. RESTRICTIONS ON OTHER UNSOLICITED TRANS-**
22 **MISSIONS.**

23 (a) CLARIFICATION REGARDING LOCATION OF ORIGI-
24 NATOR.—Section 227(b)(1) of the Communications Act of
25 1934 (47 U.S.C. 227(b)(1)) is amended, in the matter



1 preceding subparagraph (A), by inserting “, or any person
 2 outside the United States if the recipient is within the
 3 United States” after “United States”.

4 (b) CLARIFICATION REGARDING PROHIBITION OF
 5 SENDING UNSOLICITED FAX ADVERTISEMENTS.—Section
 6 227(b)(1)(C) of the Communications Act of 1934 (47
 7 U.S.C. 227(b)(1)(C)) is amended by inserting “, or hire,
 8 employ, contract, or otherwise cause someone else to use,”
 9 after “to use”.

10 **SEC. 107. EXCLUSIVENESS OF REMEDIES.**

11 The remedies of this title are the exclusive civil rem-
 12 edies for violations of section 101.

13 **TITLE II—AMENDMENTS TO**
 14 **TITLE 18, UNITED STATES CODE**

15 **SEC. 201. CRIMINAL PENALTIES AND RELATED PROVI-**
 16 **SIONS.**

17 (a) IN GENERAL.—Part I of title 18, United States
 18 Code, is amended by inserting after chapter 29 the fol-
 19 lowing:

20 **“CHAPTER 30—ELECTRONIC MAIL**

“Sec.

“621. Definitions for chapter.

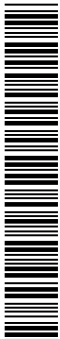
“622. Falsifying sender’s identity in commercial electronic mail.

“623. Failure to place warning labels on unsolicited commercial electronic mail
 containing sexually oriented material.

“624. Criminal penalties for violation of certain sections.

“625. Illicit harvesting of electronic mail addresses.

“626. Civil enforcement of chapter.



1 **“§ 621. Definitions for chapter**

2 “In this chapter, the following definitions apply:

3 “(1) COMMERCIAL ELECTRONIC MAIL MES-
4 SAGE.—

5 “(A) GENERALLY.—The term ‘commercial
6 electronic mail message’ means an electronic
7 mail message the primary purpose of which is
8 the commercial advertisement or promotion of a
9 product or service.

10 “(B) REFERENCE TO COMPANY OR
11 WEBSITE.— The inclusion of a reference to a
12 commercial entity or a link to the website of a
13 commercial entity in an electronic mail message
14 does not, by itself, indicate that the primary
15 purpose of the message is the commercial ad-
16 vertisement or promotion of a product or serv-
17 ice.

18 “(2) ELECTRONIC MAIL MESSAGE.—The term
19 ‘electronic mail message’ means a message as trans-
20 mitted to an electronic mail address.

21 “(3) CONSENT.—

22 “(A) IN GENERAL.—The term ‘consent’,
23 when used with respect to a commercial elec-
24 tronic mail message, means that—

25 “(i) the recipient has expressly con-
26 sented to receive the message, either in re-



1 sponse to a clear and conspicuous request
2 for such consent or through an affirmative
3 request to receive such message or mes-
4 sages; and

5 “(ii) the recipient has not subse-
6 quently made a request, by using a mecha-
7 nism described in section 101(a)(1)(C) of
8 the Reduction in Distribution of Spam Act
9 of 2003, not to receive such message or
10 not to receive messages of a scope within
11 which such message falls.

12 “(B) MESSAGES FROM THIRD PARTIES.—
13 Such term includes consent to receipt of a mes-
14 sage from a third party pursuant to transfer of
15 the recipient’s electronic mail address, but only
16 if the recipient was provided with clear and con-
17 spicuous notice that such transfer could occur.

18 “(C) MESSAGES TO PREVIOUS HOLDER OF
19 ELECTRONIC MAIL ADDRESS.—In the case of a
20 commercial electronic mail message transmitted
21 or delivered to a recipient at an electronic mail
22 address that has been reassigned to the recipi-
23 ent from a previous user, such recipient shall be
24 considered for purposes of this definition to
25 have consented to receipt of such messages at



1 such address to the same extent as the previous
2 authorized user or users of such address unless
3 the sender of the message has actual knowledge
4 that the address has been so reassigned or of
5 a request under subclause (A)(ii) by the recipi-
6 ent.

7 “(D) TIMING.—Consent shall be consid-
8 ered to be given, for purposes of this definition,
9 at the time such consent is received by the
10 sender.

11 “(4) HEADER INFORMATION.—The term ‘head-
12 er information’ means the source, destination, and
13 routing information attached to an electronic mail
14 message, including the originating domain name and
15 originating electronic mail address.

16 “(5) PROTECTED COMPUTER.—The term ‘pro-
17 tected computer’ means a computer described in sec-
18 tion 1030(e)(2)(B).

19 “(6) STATE.—The term ‘State’ includes the
20 District of Columbia, Puerto Rico, and any other
21 territory or possession of the United States.

22 “(7) UNSOLICITED COMMERCIAL ELECTRONIC
23 MAIL MESSAGE.—The term ‘unsolicited commercial
24 electronic mail message’ means any commercial elec-



1 tronic mail message that is transmitted to a recipi-
2 ent without the recipient's prior consent.

3 **“§ 622. Falsifying sender's identity in commercial**
4 **electronic mail.**

5 “(a) IN GENERAL.—Whoever intentionally sends to
6 a covered computer a commercial electronic mail message
7 that the sender knows falsifies the sender's identity shall
8 be punished as provided in section 624.

9 “(b) METHODS OF FALSIFYING IDENTITY.—For the
10 purposes of subsection (a), an identity may be falsified by
11 any means, and the following conduct shall be considered
12 to be a falsification of identity:

13 “(1) By accompanying the message with header
14 information that is false as to the identity of the
15 sender (including header information that uses a
16 third party's domain name without the third party's
17 permission) or as to the routing of the message.

18 “(2) By accessing a covered computer or com-
19 puter network without authorization or exceeding
20 authorized access and, by means of such conduct,
21 sending, from or through that computer or network,
22 the message that falsifies the identity of the sender.

23 “(3) Registering, using information that fal-
24 sifies the identity of the registrant, for multiple elec-
25 tronic mail accounts or domain names, and sending



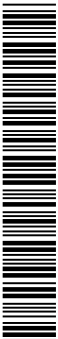
1 the message from those accounts, or from or adver-
2 tising those domain names, but failing to include in
3 a conspicuous form in the message the identity and
4 current contact information of the sender.

5 “(c) AFFIRMATIVE DEFENSE.—It is an affirmative
6 defense to a prosecution for an offense under subsection
7 (a), which the defendant must prove by a preponderance
8 of the evidence, that the defendant sent fewer than 100
9 messages of the type prohibited by that subsection during
10 any 30-day period.

11 **“§ 623. Failure to place warning labels on unsolicited**
12 **commercial electronic mail containing**
13 **sexually oriented material**

14 “(a) IN GENERAL.—Whoever knowingly sends an un-
15 solicited commercial electronic mail message that includes
16 sexually oriented material to a covered computer and
17 knowingly fails to include in or associated with that elec-
18 tronic mail message the marks or notices prescribed by
19 the Federal Trade Commission under this section shall be
20 punished as provided in section 624.

21 “(b) PRESCRIPTION OF MARKS AND NOTICES.—The
22 Federal Trade Commission shall prescribe marks or no-
23 tices to be included in or associated with unsolicited com-
24 mercial electronic mail that contains a sexually oriented



1 advertisement, in order to inform the recipient of that fact
2 and to facilitate filtering of such electronic mail.

3 “(c) DEFINITION.—In this section, the term ‘sexually
4 oriented material’ means any material that depicts sexu-
5 ally explicit conduct (as that term is defined in section
6 2256), unless the depiction constitutes a small and insig-
7 nificant part of the whole, the remainder of which is not
8 primarily devoted to sexual matters.

9 **“§ 624. Criminal penalties for violation of certain sec-**
10 **tions**

11 “(a) PUNISHMENT.—The punishment for an offense
12 under section 622 or 623 is—

13 “(1) for an offense—

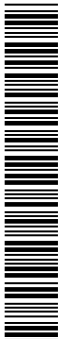
14 “(A) occurring after the defendant was
15 convicted for another offense under this chap-
16 ter; or

17 “(B) involving 10,000 or more electronic
18 mail messages sent within a 30-day period;

19 a fine under this title or imprisonment for not more than
20 2 years, or both; and

21 “(2) in any other case, a fine under this title
22 or imprisonment for not more than one year, or
23 both.

24 “(b) FACTORS TO BE CONSIDERED BY SENTENCING
25 COMMISSION.—In establishing sentencing guidelines for



1 offenses to which this section applies, the United States
2 Sentencing Commission shall consider the following fac-
3 tors:

4 “(1) The volume of commercial electronic mail
5 involved in the violation.

6 “(2) The manner in which the violation was
7 perpetrated.

8 “(3) Whether the violation involved a violation
9 of any other Federal law.

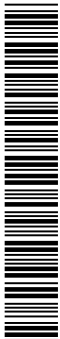
10 “(4) The extent of economic gain resulting from
11 the violation.

12 “(5) Any history of prior violations by the viola-
13 tor.

14 “(6) Such other factors as justice may require.

15 **“§ 625. Illicit harvesting of electronic mail addresses**

16 “Whoever knowingly and through the direct or indi-
17 rect use of a covered computer uses an automated means
18 to obtain electronic mail addresses from an Internet
19 website or proprietary online service operated by another
20 person, without the authorization of that person and uses
21 those addresses in another violation of this chapter, shall
22 be fined under this title or imprisoned not more than one
23 year, or both.



1 **“§ 626. Civil enforcement**

2 “(a) CIVIL ACTION BY PROVIDERS.—A provider of
3 Internet access service (as defined in section 231(e) of the
4 Communications Act of 1934 (47 U.S.C. 231(e)(4)) who
5 is adversely affected by illicit conduct described in this
6 chapter may, in a civil action, recover any appropriate re-
7 lief, including actual damages or, at the election of the
8 plaintiff, statutory damages of \$500 for each electronic
9 mail message involved in the illicit conduct. A class action
10 may not be brought for a claim under this subsection.

11 “(b) ADDITIONAL ENFORCEMENT TOOLS FOR THE
12 DEPARTMENT OF JUSTICE.—

13 “(1) CIVIL PENALTY.—The Attorney General
14 may, in a civil action against any person who en-
15 gages in illicit conduct described in this chapter, re-
16 cover a civil penalty of not to exceed \$500 for each
17 electronic mail message involved in the illicit con-
18 duct.

19 “(2) INTERVENTION.—The Justice Department
20 may also intervene in any civil action brought under
21 subsection (a) or subsection (d).

22 “(c) REMEDIES UNDER THE FEDERAL TRADE COM-
23 MISSION ACT.—The same powers and authorities by which
24 the Federal Trade Commission and the Attorney General
25 enforce compliance, by persons subject to the jurisdiction
26 of the Commission under the Federal Trade Commission



1 Act, with the provisions of such Act and the regulations
2 issued thereunder by the Commission, shall be available
3 to the Commission and the Attorney General, respectively,
4 for use against all persons who engage in illicit conduct
5 described in this chapter with respect to that conduct.

6 “(d) STATE ATTORNEYS GENERAL.—Unless the At-
7 torney General or the Federal Trade Commission has com-
8 menced a criminal prosecution or civil proceedings under
9 subsection (b) or (c) with respect to the same conduct,
10 the chief law enforcement officer of a State may, in a civil
11 action, obtain appropriate relief for illicit conduct de-
12 scribed in this chapter, including statutory damages of
13 \$500 for each electronic mail message sent to a covered
14 computer in that State involved in that conduct.

15 “(e) EXCLUSIVENESS OF REMEDIES.—The civil rem-
16 edies of this section are the exclusive civil remedies for
17 illicit conduct described in this chapter.

18 “(f) EXCLUSIVE ORIGINAL JURISDICTION IN FED-
19 ERAL COURTS.—The United States district courts shall
20 have exclusive original jurisdiction over any civil action
21 commenced under this section.

22 “(g) DEFINITION.—As used in this section, the term
23 ‘illicit conduct’ means a violation, without regard to the
24 affirmative defense provided in section 622(c)”.



1 (b) CLERICAL AMENDMENT.—The table of chapters
 2 at the beginning of part I of title 18, United States Code,
 3 is amended by inserting after the item relating to chapter
 4 29 the following new item:

“30. **Electronic mail** **621**”.

5 (c) EFFECTIVE DATE.—The amendments made by
 6 this title shall take effect 120 days after the date of the
 7 enactment of this title.

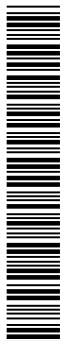
8 **TITLE III—GENERAL**
 9 **PROVISIONS**

10 **SEC. 301. REGULATIONS AND REPORT.**

11 (a) REGULATIONS.—

12 (1) IN GENERAL.—Not later than 12 months
 13 after the date of the enactment of this Act, the
 14 Commission shall issue regulations to implement sec-
 15 tions 101, 105, and 304. In issuing such regulations,
 16 the Commission shall consult with the Federal Com-
 17 munications Commission. Such regulations shall be
 18 issued in accordance with section 553 of title 5,
 19 United States Code.

20 (2) LIMITATION.—Paragraph (1) may not be
 21 construed to authorize the Commission to establish
 22 a requirement pursuant to section 101(a)(1)(A) to
 23 include any specific words, characters, marks, or la-
 24 bels in a commercial electronic mail message, or to
 25 include the identification required by section

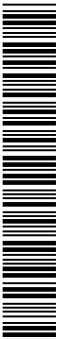


1 101(a)(1)(A) in any particular part of such a mail
2 message (such as the subject line or body).

3 (b) REPORT REGARDING PREVENTING UNWANTED
4 COMMERCIAL ELECTRONIC MAIL MESSAGES.—Within
5 240 days after the date of the enactment of this Act, the
6 Commission and the Federal Communications Commis-
7 sion shall jointly submit a report to the Congress regard-
8 ing the need to protect the rights of users of electronic
9 mail to avoid receiving unwanted commercial electronic
10 mail. The report shall—

11 (1) analyze the effectiveness and efficiency, for
12 preventing unwanted commercial electronic mail
13 messages, of requiring that each such message in-
14 clude specific words, characters, marks, or labels to
15 identify the message as a commercial electronic mail
16 message;

17 (2) compare and evaluate alternative methods
18 and procedures (individually or in combination with
19 each other and the method described in paragraph
20 (1)) for their effectiveness in protecting such rights
21 and in terms of their cost and other advantages and
22 disadvantages, including the extent to which such
23 methods and procedures can facilitate screening and
24 removal of unwanted commercial electronic mail
25 messages;



1 (3) compare and evaluate—

2 (A) alternative methods for persons ag-
3 grieved by receipt of unwanted commercial elec-
4 tronic mail messages to report such receipt and
5 submit such messages to the Commission; and

6 (B) alternative means of notifying the pub-
7 lic of the availability of such methods;

8 (4) evaluate whether there is a need—

9 (A) for additional Commission authority to
10 further expand or restrict the electronic mail
11 messages which are commercial or unsolicited,
12 for purposes of this Act; or

13 (B) to further expand or restrict the prohi-
14 bitions, limitations, definitions, or exceptions of
15 this Act, including prohibiting subject headings
16 in commercial electronic mail messages that are
17 misleading regarding the contents or subject
18 matter of the message; and

19 (5) propose legislation to effectuate such spe-
20 cific expansions or restrictions, if a need for any ex-
21 pansions or restrictions is determined pursuant to
22 paragraph (4).

23 **SEC. 302. EFFECT ON OTHER LAWS.**

24 (a) FEDERAL LAW.—



1 (1) OBSCENITY AND EXPLOITATION OF CHIL-
2 DREN.—Nothing in this Act may be construed to im-
3 pair the enforcement of section 223 or 231 of the
4 Communications Act of 1934 (47 U.S.C. 223 or
5 231, respectively), chapter 71 (relating to obscenity)
6 or 110 (relating to sexual exploitation of children) of
7 title 18, United States Code, or any other Federal
8 criminal statute.

9 (2) COMMUNICATIONS ACT OF 1934.—Except for
10 the amendments made by section 106, nothing in
11 this Act may be construed to affect the applicability
12 of any provision of title II of the Communications
13 Act of 1934.

14 (b) STATE LAW.—This Act preempts any law of a
15 State, or of a political subdivision of a State, that ex-
16 pressly regulates the form of, required inclusions in, the
17 manner or timing of sending, or the form, manner, or ef-
18 fect of recipient requests regarding receipt of, commercial
19 electronic mail, but such laws preempted shall not include
20 any law regulating falsification in commercial electronic
21 mail of the identity of the sender, of authentication infor-
22 mation relating to the sender, of header or routing infor-
23 mation relating to such mail, or of subject line informa-
24 tion.



1 (c) NO EFFECT ON POLICIES OF PROVIDERS OF
2 INTERNET ACCESS SERVICE.—Nothing in this Act shall
3 be construed to have any effect on the lawfulness or un-
4 lawfulness, under any other provision of law, of the adop-
5 tion, implementation, or enforcement by a provider of
6 Internet access service of a policy of declining to transmit,
7 route, relay, handle, receive, or store certain types of elec-
8 tronic mail messages.

9 **SEC. 303. STUDY OF EFFECTS OF ACT.**

10 (a) IN GENERAL.—Not later than 24 months after
11 the date of the enactment of this Act, the Commission and
12 the Federal Communications Commission shall jointly
13 submit a report to the Congress that provides a detailed
14 analysis of the effectiveness and enforcement of the provi-
15 sions, definitions, and exceptions of title I and this title
16 and the need (if any) for the Congress to modify such pro-
17 visions, definitions, and exceptions.

18 (b) REQUIRED ANALYSIS.—The report required by
19 subsection (a) shall include an analysis of the extent to
20 which technological and marketplace developments, includ-
21 ing changes in the nature of the devices through which
22 consumers access their electronic mail messages, may af-
23 fect the practicality and effectiveness of the provisions of
24 title I and this title.



1 **SEC. 304. DEFINITIONS.**

2 For purposes of this Act:

3 (1) BUSINESS DAY.—The term “business day”
4 means any day other than a Saturday, Sunday, or
5 legal public holiday.

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 product or service.

13 (B) REFERENCE TO COMPANY OR
14 WEBSITE.—The inclusion of a reference to a
15 commercial entity or a link to the website of a
16 commercial entity in an electronic mail message
17 does not, by itself, indicate that the primary
18 purpose of the message is the commercial ad-
19 vertisement or promotion of a product or serv-
20 ice.

21 (C) CLARIFICATION REGARDING CERTAIN
22 MESSAGES.—Such term does not include any
23 electronic mail message having a primary pur-
24 pose other than that specified in subparagraph
25 (A), including any electronic mail message the
26 primary purpose of which is to facilitate, com-



1 plete, confirm, or provide or request informa-
2 tion concerning—

3 (i) a specific commercial transaction
4 between the sender and the recipient that
5 the recipient has previously agreed to enter
6 into with the sender;

7 (ii) an existing commercial relation-
8 ship, formed with or without an exchange
9 of consideration, involving the ongoing pur-
10 chase or use by the recipient of products or
11 services offered by the sender; or

12 (iii) an existing employment relation-
13 ship or related benefit plan or service.

14 (3) COMMISSION.—The term “Commission”
15 means the Federal Trade Commission.

16 (4) CONSENT.—

17 (A) IN GENERAL.—The term “consent”,
18 when used with respect to a commercial elec-
19 tronic mail message, means that—

20 (i) the recipient has expressly con-
21 sented to receive the message, either in re-
22 sponse to a clear and conspicuous request
23 for such consent or through an affirmative
24 request to receive such message or mes-
25 sages; and



1 (ii) the recipient has not subsequently
2 made a request, by using a mechanism de-
3 scribed in section 101(a)(1)(C), not to re-
4 ceive such message or not to receive mes-
5 sages of a scope within which such mes-
6 sage falls.

7 (B) MESSAGES FROM THIRD PARTIES.—
8 Such term includes consent to receipt of a mes-
9 sage from a third party pursuant to transfer of
10 the recipient's electronic mail address, but only
11 if the recipient was provided with clear and con-
12 spicuous notice that such transfer could occur.

13 (C) MESSAGES TO PREVIOUS HOLDER OF
14 ELECTRONIC MAIL ADDRESS.—In the case of a
15 commercial electronic mail message transmitted
16 or delivered to a recipient at an electronic mail
17 address that has been reassigned to the recipi-
18 ent from a previous user, such recipient shall be
19 considered for purposes of this Act to have con-
20 sented to receipt of such messages at such ad-
21 dress to the same extent as the previous author-
22 ized user or users of such address unless the
23 sender of the message has actual knowledge
24 that the address has been so reassigned or of



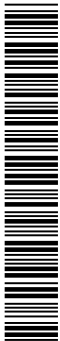
1 a request under subclause (A)(ii) by the recipi-
2 ent.

3 (D) TIMING.—Consent shall be considered
4 to be given, for purposes of this Act, at the
5 time such consent is received by the sender.

6 (5) COVERED COMPUTER.—The term “covered
7 computer” means a computer that is used in inter-
8 state or foreign commerce or communication, includ-
9 ing a computer located outside the United States
10 that is used in a manner that affects interstate or
11 foreign commerce or communication of the United
12 States.

13 (6) DOMAIN NAME.—The term “domain name”
14 means any alphanumeric designation which is reg-
15 istered with or assigned by any domain name reg-
16 istrar, domain name registry, or other domain name
17 registration authority as part of an electronic ad-
18 dress on the Internet.

19 (7) ELECTRONIC MAIL ADDRESS.—The term
20 “electronic mail address” means a destination, com-
21 monly expressed as a string of characters, which in-
22 cludes a unique user name or mailbox (commonly re-
23 ferred to as the “local part”) and may also include
24 a reference to an Internet domain (commonly re-



1 ferred to as the “domain part”), to which an elec-
2 tronic mail message can be transmitted or delivered.

3 (8) ELECTRONIC MAIL MESSAGE.—The term
4 “electronic mail message” means a message as
5 transmitted to an electronic mail address.

6 (9) HEADER INFORMATION.—The term “header
7 information” means the source, destination, and
8 routing information attached to an electronic mail
9 message, including the originating domain name and
10 originating electronic mail address.

11 (10) INITIATE.—The term “initiate”, when
12 used with respect to an electronic mail message,
13 means to originate such message or to procure the
14 origination of such message, but shall not include
15 actions that constitute routine conveyance of such
16 message.

17 (11) INTERNET.—The term “Internet” has the
18 meaning given that term in the Internet Tax Free-
19 dom Act (47 U.S.C. 151 note).

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

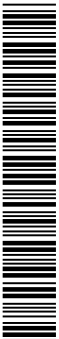
24 (13) RECIPIENT.—The term “recipient”, when
25 used with respect to a commercial electronic mail



1 message, means an authorized user of the electronic
2 mail address to which the message was transmitted
3 or delivered. If a recipient of a commercial electronic
4 mail message has 1 or more electronic mail address-
5 es in addition to the address to which the message
6 was transmitted or delivered, the recipient shall be
7 treated as a separate recipient with respect to each
8 such address. If an electronic mail address is reas-
9 signed to a new user, the new user shall not be
10 treated as a recipient of any commercial electronic
11 mail message transmitted or delivered to that ad-
12 dress before it was reassigned.

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

19 (15) SENDER.—The term “sender”, when used
20 with respect to a commercial electronic mail mes-
21 sage, means a person who initiates such a message
22 and whose product, service, or Internet web site is
23 advertised or promoted by the message, or such per-
24 son’s successor in interest.



1 (16) UNSOLICITED COMMERCIAL ELECTRONIC
2 MAIL MESSAGE.—The term “unsolicited commercial
3 electronic mail message” means any commercial
4 electronic mail message that is transmitted to a re-
5 cipient without the recipient’s prior consent.

6 **SEC. 305. EFFECTIVE DATE.**

7 Titles I and III of this Act, and the amendments
8 made by such titles, shall take effect 120 days after the
9 date of the enactment of this Act.

