

108TH CONGRESS
1ST SESSION

H. R. 2214

To prevent unsolicited commercial electronic mail.

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 2003

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 Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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.

14 (3) Internet observers and experts are con-
 15 cerned about the effect of the increasing abundance
 16 of UCE on network bandwidth, network storage

1 costs, user productivity, and legal vulnerability to re-
2 duce functionality of global networks. UCE currently
3 comprises nearly 40 percent of all email activity, up
4 from 8 percent in 2001.

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

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

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

21 (7) While some senders of UCE provide simple
22 and reliable ways for recipients to reject (or “opt-
23 out” of) receipt of future UCE from such senders,
24 other senders provide no such “opt-out” mechanism,

1 or refuse to honor the repeated requests of recipients
2 not to receive UCE.

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

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

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

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

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

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

19 (1) there is substantial government interest in
20 regulation of UCE;

21 (2) senders of UCE should not mislead recipi-
22 ents or disguise the electronic source of the elec-
23 tronic mail message, nor send sexually explicit
24 emails without appropriate warnings;

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

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

9 **TITLE I—PROTECTIONS AGAINST**
 10 **CERTAIN COMMERCIAL ELEC-**
 11 **TRONIC MAIL**

12 **SEC. 101. RESTRICTIONS ON COMMERCIAL ELECTRONIC**
 13 **MAIL.**

14 (a) **REQUIRED INCLUSIONS IN ALL COMMERCIAL**
 15 **ELECTRONIC MAIL.—**

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

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

23 (B) **NOTICE OF OPT-OUT OPPORTUNITY.—**
 24 Clear and conspicuous notice of the opportunity
 25 under subparagraph (C) to decline to receive fu-

1 ture unsolicited commercial electronic mail mes-
2 sages from the sender.

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

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

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

19 (D) STREET ADDRESS.—A valid physical
20 street address of the sender.

21 (2) MORE DETAILED REQUESTS POSSIBLE.—In
22 a commercial electronic mail message complying
23 with the requirements of paragraph (1)(C), the
24 sender may also include, in the message, options for
25 the recipient to submit more detailed requests con-

1 cerning the types of commercial electronic mail mes-
2 sages that the recipient does or does not wish to re-
3 ceive in the future from the sender, based upon
4 products, services, divisions, organizations, compa-
5 nies, or other selections.

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

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

20 (1) the sender may not initiate the transmission
21 to the recipient, during the 3-year period beginning
22 10 business days after the receipt of such request,
23 of an unsolicited commercial electronic mail message
24 that falls within the scope of the request, except that
25 during the 6-month period beginning on the effective

1 date under section 305 such 3-year period shall
2 begin 20 business days after receipt of such request;

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

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

22 (4) the sender may not sell, lease, exchange, or
23 otherwise transfer or release the electronic mail ad-
24 dress of the recipient (including through any trans-
25 action or other transfer involving mailing lists bear-

1 ing the electronic mail address of the recipient) for
2 any purpose other than compliance with this Act or
3 any other provision of law.

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

18 (d) PROHIBITION OF TRANSMISSION OF COMMER-
19 CIAL ELECTRONIC MAIL FROM ILLEGALLY HARVESTED
20 ELECTRONIC MAIL ADDRESSES.—

21 (1) IN GENERAL.—No person may initiate in
22 interstate commerce the transmission, to a covered
23 computer, of a commercial electronic mail message
24 that is prohibited under subsection (a), (b), or (c) or
25 assist in the origination of such a message through

1 the provision or selection of electronic mail addresses
2 to which the transmission of such message is initi-
3 ated, if such person knows, should have known, or
4 consciously avoids knowing, that—

5 (A) the electronic mail address of the re-
6 cipient was obtained, using an automated
7 means, from an Internet website or proprietary
8 online service operated by another person, with-
9 out the authorization of that person; and

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

19 (2) DISCLAIMER.—Nothing in this subsection
20 creates an ownership or proprietary interest in such
21 electronic mail addresses.

22 (e) SAVINGS PROVISION FOR GLBA.—Subsection
23 (b)(4) of this section shall not apply to prohibit a disclo-
24 sure by a financial institution of nonpublic personal infor-
25 mation that is permissible under title V of the Gramm-

1 Leach-Bliley Act (15 U.S.C. 6801 et seq.) and the regula-
2 tions thereunder.

3 **SEC. 102. PRIVATE RIGHT OF ACTION FOR PROVIDERS OF**
4 **INTERNET ACCESS SERVICE.**

5 (a) AUTHORIZATION.—A provider of Internet access
6 service adversely affected by—

7 (1) a pattern or practice of violations of section
8 101(b) or the regulations prescribed under such sec-
9 tion; or

10 (2) a violation of subsection (c) or (d) of section
11 101 or the regulations prescribed under such sub-
12 section,

13 may bring, in an appropriate district court of the United
14 States, either or both of the civil actions under subsection
15 (b).

16 (b) CIVIL ACTIONS.—The civil actions under this
17 subsection are as follows:

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

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

1 (A) the actual monetary loss incurred by
2 the provider of Internet access service as a re-
3 sult of such violation; or

4 (B) the amount determined under sub-
5 section (c).

6 (c) STATUTORY DAMAGES.—

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

10 (A) DAMAGES PER VIOLATION.—Except as
11 provided in subparagraphs (B), (C), and (D),
12 the amount determined under this subsection is
13 \$10 for each separate electronic mail address to
14 which is initiated, in violation of such sub-
15 section, the transmission of a commercial elec-
16 tronic mail message, over the facilities of the
17 provider of Internet access service.

18 (B) LIMITATION.—Except as provided in
19 subparagraphs (C) and (D), for each commer-
20 cial electronic mail message the transmission of
21 which is unlawfully initiated and that is ad-
22 dressed to multiple electronic mail addresses,
23 the amount determined under subparagraph (A)
24 may not exceed \$500,000.

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

16 (D) REDUCTION.—

17 (i) IN GENERAL.—Subject to clause
18 (ii), the court shall reduce the amount
19 under subparagraph (A) for each violation
20 if the court determines that—

21 (I) the defendant established and
22 implemented, with due care, reason-
23 able practices and procedures in-
24 tended to prevent such violations; and

1 (II) such violations occurred de-
2 spite good faith efforts to maintain
3 compliance with such practices and
4 procedures.

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

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

20 **SEC. 103. ACTIONS BY STATES.**

21 (a) CIVIL ACTION.—Except as provided in subsection
22 (c), in any case in which the attorney general of a State,
23 or an official or agency of a State, has reason to believe
24 that any person has engaged or is engaging in a pattern
25 or practice of initiating transmissions to residents of that

1 State that violates subsection (c) or (d) of section 101 or
2 the regulations prescribed under such subsection, the at-
3 torney general, official, or agency of the State may bring
4 either or both of the following civil actions on behalf of
5 its residents:

6 (1) INJUNCTION.—An action to enjoin the de-
7 fendant from further engaging in such pattern or
8 practice.

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

12 (A) the actual monetary loss suffered by
13 such residents; or

14 (B) the amount determined under sub-
15 section (b).

16 (b) STATUTORY DAMAGES.—

17 (1) PER VIOLATION.—Except as provided in
18 paragraphs (2) and (3), for purposes of subsection
19 (a)(2)(B), the amount determined under this sub-
20 section is \$100 for each separate electronic mail ad-
21 dress to which the transmission of a commercial
22 electronic mail message is initiated in violation of
23 the subsections or regulations referred to in sub-
24 section (a).

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

6 (A) except as provided in subparagraph
7 (B), \$1,000,000; or

8 (B) in any case in which the court in-
9 creases the amount of the award pursuant to
10 paragraph (3), \$3,000,000.

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

20 (A) The volume of electronic mail involved
21 in the violation.

22 (B) The manner in which the violation was
23 perpetrated.

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

1 (D) The extent of economic gain resulting
2 from the violation.

3 (E) Any history of prior violations by the
4 violator.

5 (F) Whether violation involved use of auto-
6 mated means to generate electronic mail ad-
7 dresses based on permutations of combining of
8 names, letters, or numbers.

9 (G) Such other factors as justice may re-
10 quire.

11 (c) LIMITATION IN CASES OF FEDERAL ACTION.—

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

22 (d) EXCLUSIVE JURISDICTION OF FEDERAL
23 COURTS.—The district courts of the United States, the
24 United States courts of any territory, and the District
25 Court of the United States for the District of Columbia

1 shall have exclusive jurisdiction over all civil actions
2 brought under this section. Upon proper application, such
3 courts shall also have jurisdiction to issue writs of man-
4 damus, or orders affording like relief, commanding the de-
5 fendant to comply with the provisions of subsection (c) or
6 (d) of section 101 or the regulations prescribed under such
7 section, including the requirement that the defendant take
8 such action as is necessary to remove the danger of such
9 violation. Upon a proper showing, a permanent or tem-
10 porary injunction or restraining order shall be granted
11 without bond.

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

22 (f) VENUE AND SERVICE OF PROCESS.—Any civil ac-
23 tion brought under this section in a district court of the
24 United States may be brought in any district court of the
25 United States that meets applicable requirements relating

1 to venue under section 1391 of title 28, United States
2 Code.

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

12 **SEC. 104. PROHIBITION OF CLASS ACTIONS; ATTORNEY'S**
13 **FEEES.**

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

18 (b) COSTS AND ATTORNEY'S FEES.—In any action
19 brought under section 102 or 103, the court may, in its
20 discretion, require an undertaking for the payment of
21 costs of such action, and assess reasonable costs, including
22 reasonable attorneys' fees, against any party found in the
23 action to have committed a violation on which the action
24 was based.

1 **SEC. 105. ENFORCEMENT BY FEDERAL TRADE COMMIS-**
2 **SION.**

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

18 **SEC. 106. RESTRICTIONS ON OTHER UNSOLICITED TRANS-**
19 **MISSIONS.**

20 (a) CLARIFICATION REGARDING LOCATION OF ORIGI-
21 NATOR.—Section 227(b)(1) of the Communications Act of
22 1934 (47 U.S.C. 227(b)(1)) is amended, in the matter
23 preceding subparagraph (A), by inserting “, or any person
24 outside the United States if the recipient is within the
25 United States” after “United States”.

1 (b) CLARIFICATION REGARDING PROHIBITION OF
 2 SENDING UNSOLICITED FAX ADVERTISEMENTS.—Section
 3 227(b)(1)(C) of the Communications Act of 1934 (47
 4 U.S.C. 227(b)(1)(C)) is amended by inserting “, or hire,
 5 employ, contract, or otherwise cause someone else to use,”
 6 after “to use”.

7 **SEC. 107. EXCLUSIVENESS OF REMEDIES.**

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

10 **TITLE II—AMENDMENTS TO**
 11 **TITLE 18, UNITED STATES CODE**

12 **SEC. 201. CRIMINAL PENALTIES AND RELATED PROVI-**
 13 **SIONS.**

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

17 **“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.

18 **“§ 621. Definitions for chapter**

19 “In this chapter, the following definitions apply:

20 “(1) COMMERCIAL ELECTRONIC MAIL MES-
 21 SAGE.—

1 “(A) GENERALLY.—The term ‘commercial
2 electronic mail message’ means an electronic
3 mail message the primary purpose of which is
4 the commercial advertisement or promotion of a
5 product or service.

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

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

17 “(3) CONSENT.—

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

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

1 request to receive such message or mes-
2 sages; and

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

10 “(B) MESSAGES FROM THIRD PARTIES.—

11 Such term includes consent to receipt of a mes-
12 sage from a third party pursuant to transfer of
13 the recipient’s electronic mail address, but only
14 if the recipient was provided with clear and con-
15 spicuous notice that such transfer could occur.

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

1 the sender of the message has actual knowledge
2 that the address has been so reassigned or of
3 a request under subclause (A)(ii) by the recipi-
4 ent.

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

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

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

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

20 “(7) UNSOLICITED COMMERCIAL ELECTRONIC
21 MAIL MESSAGE.—The term ‘unsolicited commercial
22 electronic mail message’ means any commercial elec-
23 tronic mail message that is transmitted to a recipi-
24 ent without the recipient’s prior consent.

1 **“§ 622. Falsifying sender’s identity in commercial**
2 **electronic mail.**

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

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

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

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

21 “(3) Registering, using information that fal-
22 sifies the identity of the registrant, for multiple elec-
23 tronic mail accounts or domain names, and sending
24 the message from those accounts, or from or adver-
25 tising those domain names, but failing to include in

1 a conspicuous form in the message the identity and
2 current contact information of the sender.

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

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

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

19 “(b) PRESCRIPTION OF MARKS AND NOTICES.—The
20 Federal Trade Commission shall prescribe marks or no-
21 tices to be included in or associated with unsolicited com-
22 mercial electronic mail that contains a sexually oriented
23 advertisement, in order to inform the recipient of that fact
24 and to facilitate filtering of such electronic mail.

1 Sentencing Commission shall consider the following fac-
2 tors:

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

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

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

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

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

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

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

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

23 **“§ 626. Civil enforcement**

24 “(a) CIVIL ACTION BY PROVIDERS.—A provider of
25 Internet access service (as defined in section 231(e) of the

1 Communications Act of 1934 (47 U.S.C. 231(e)(4)) who
2 is adversely affected by illicit conduct described in this
3 chapter may, in a civil action, recover any appropriate re-
4 lief, including actual damages or, at the election of the
5 plaintiff, statutory damages of \$500 for each electronic
6 mail message involved in the illicit conduct. A class action
7 may not be brought for a claim under this subsection.

8 “(b) ADDITIONAL ENFORCEMENT TOOLS FOR THE
9 DEPARTMENT OF JUSTICE.—

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

16 “(2) INTERVENTION.—The Justice Department
17 may also intervene in any civil action brought under
18 subsection (a) or subsection (d).

19 “(c) REMEDIES UNDER THE FEDERAL TRADE COM-
20 MISSION ACT.—The same powers and authorities by which
21 the Federal Trade Commission and the Attorney General
22 enforce compliance, by persons subject to the jurisdiction
23 of the Commission under the Federal Trade Commission
24 Act, with the provisions of such Act and the regulations
25 issued thereunder by the Commission, shall be available

1 to the Commission and the Attorney General, respectively,
2 for use against all persons who engage in illicit conduct
3 described in this chapter with respect to that conduct.

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

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

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

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

23 (b) CLERICAL AMENDMENT.—The table of chapters
24 at the beginning of part I of title 18, United States Code,

1 is amended by inserting after the item relating to chapter
2 29 the following new item:

“**30. Electronic mail** **621**”.

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

6 **TITLE III—GENERAL** 7 **PROVISIONS**

8 **SEC. 301. REGULATIONS AND REPORT.**

9 (a) REGULATIONS.—

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

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

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

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

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

24 (3) compare and evaluate—

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

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

7 (4) evaluate whether there is a need—

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

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

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

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

23 (a) FEDERAL LAW.—

24 (1) OBSCENITY AND EXPLOITATION OF CHIL-
25 DREN.—Nothing in this Act may be construed to im-

1 pair the enforcement of section 223 or 231 of the
2 Communications Act of 1934 (47 U.S.C. 223 or
3 231, respectively), chapter 71 (relating to obscenity)
4 or 110 (relating to sexual exploitation of children) of
5 title 18, United States Code, or any other Federal
6 criminal statute.

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

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

23 (c) NO EFFECT ON POLICIES OF PROVIDERS OF
24 INTERNET ACCESS SERVICE.—Nothing in this Act shall
25 be construed to have any effect on the lawfulness or un-

1 lawfulness, under any other provision of law, of the adop-
2 tion, implementation, or enforcement by a provider of
3 Internet access service of a policy of declining to transmit,
4 route, relay, handle, receive, or store certain types of elec-
5 tronic mail messages.

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

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

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

22 **SEC. 304. DEFINITIONS.**

23 For purposes of this Act:

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

4 (2) COMMERCIAL ELECTRONIC MAIL MES-
5 SAGE.—

6 (A) IN GENERAL.—The term “commercial
7 electronic mail message” means any electronic
8 mail message the primary purpose of which is
9 the commercial advertisement or promotion of a
10 product or service.

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

19 (C) CLARIFICATION REGARDING CERTAIN
20 MESSAGES.—Such term does not include any
21 electronic mail message having a primary pur-
22 pose other than that specified in subparagraph
23 (A), including any electronic mail message the
24 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.

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