

## **S. 877**

### SUBSTITUTE AMENDMENT FOR CONSIDERATION UNDER SUSPENSION OF THE RULES

1 **SECTION 1. SHORT TITLE.**

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

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

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

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

14 (2) The convenience and efficiency of electronic  
15 mail are threatened by the extremely rapid growth  
16 in the volume of unsolicited commercial electronic  
17 mail. Unsolicited commercial electronic mail is cur-  
18 rently estimated to account for over half of all elec-  
19 tronic mail traffic, up from an estimated 7 percent  
20 in 2001, and the volume continues to rise. Most of  
21 these messages are fraudulent or deceptive in one or  
22 more respects.

1           (3) The receipt of unsolicited commercial elec-  
2           tronic mail may result in costs to recipients who  
3           cannot refuse to accept such mail and who incur  
4           costs for the storage of such mail, or for the time  
5           spent accessing, reviewing, and discarding such mail,  
6           or for both.

7           (4) The receipt of a large number of unwanted  
8           messages also decreases the convenience of electronic  
9           mail and creates a risk that wanted electronic mail  
10          messages, both commercial and noncommercial, will  
11          be lost, overlooked, or discarded amidst the larger  
12          volume of unwanted messages, thus reducing the re-  
13          liability and usefulness of electronic mail to the re-  
14          cipient.

15          (5) Some commercial electronic mail contains  
16          material that many recipients may consider vulgar  
17          or pornographic in nature.

18          (6) The growth in unsolicited commercial elec-  
19          tronic mail imposes significant monetary costs on  
20          providers of Internet access services, businesses, and  
21          educational and nonprofit institutions that carry and  
22          receive such mail, as there is a finite volume of mail  
23          that such providers, businesses, and institutions can  
24          handle without further investment in infrastructure.

1           (7) Many senders of unsolicited commercial  
2           electronic mail purposefully disguise the source of  
3           such mail.

4           (8) Many senders of unsolicited commercial  
5           electronic mail purposefully include misleading infor-  
6           mation in the message's subject lines in order to in-  
7           duce the recipients to view the messages.

8           (9) While some senders of commercial electronic  
9           mail messages provide simple and reliable ways for  
10          recipients to reject (or "opt-out" of) receipt of com-  
11          mercial electronic mail from such senders in the fu-  
12          ture, other senders provide no such "opt-out" mech-  
13          anism, or refuse to honor the requests of recipients  
14          not to receive electronic mail from such senders in  
15          the future, or both.

16          (10) Many senders of bulk unsolicited commer-  
17          cial electronic mail use computer programs to gather  
18          large numbers of electronic mail addresses on an  
19          automated basis from Internet websites or online  
20          services where users must post their addresses in  
21          order to make full use of the website or service.

22          (11) Many States have enacted legislation in-  
23          tended to regulate or reduce unsolicited commercial  
24          electronic mail, but these statutes impose different  
25          standards and requirements. As a result, they do not

1 appear to have been successful in addressing the  
2 problems associated with unsolicited commercial  
3 electronic mail, in part because, since an electronic  
4 mail address does not specify a geographic location,  
5 it can be extremely difficult for law-abiding busi-  
6 nesses to know with which of these disparate stat-  
7 utes they are required to comply.

8 (12) The problems associated with the rapid  
9 growth and abuse of unsolicited commercial elec-  
10 tronic mail cannot be solved by Federal legislation  
11 alone. The development and adoption of techno-  
12 logical approaches and the pursuit of cooperative ef-  
13 forts with other countries will be necessary as well.

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

17 (1) there is a substantial government interest in  
18 regulation of commercial electronic mail on a nation-  
19 wide basis;

20 (2) senders of commercial electronic mail should  
21 not mislead recipients as to the source or content of  
22 such mail; and

23 (3) recipients of commercial electronic mail  
24 have a right to decline to receive additional commer-  
25 cial electronic mail from the same source.

1 **SEC. 3. DEFINITIONS.**

2 In this Act:

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

6 (A) the recipient expressly consented to re-  
7 ceive the message, either in response to a clear  
8 and conspicuous request for such consent or at  
9 the recipient’s own initiative; and

10 (B) if the message is from a party other  
11 than the party to which the recipient commu-  
12 nicated such consent, the recipient was given  
13 clear and conspicuous notice at the time the  
14 consent was communicated that the recipient’s  
15 electronic mail address could be transferred to  
16 such other party for the purpose of initiating  
17 commercial electronic mail messages.

18 (2) COMMERCIAL ELECTRONIC MAIL MES-  
19 SAGE.—

20 (A) IN GENERAL.—The term “commercial  
21 electronic mail message” means any electronic  
22 mail message the primary purpose of which is  
23 the commercial advertisement or promotion of a  
24 commercial product or service (including con-  
25 tent on an Internet website operated for a com-  
26 mercial purpose).

1           (B) TRANSACTIONAL OR RELATIONSHIP  
2           MESSAGES.—The term “commercial electronic  
3           mail message” does not include a transactional  
4           or relationship message.

5           (C) REGULATIONS REGARDING PRIMARY  
6           PURPOSE.—Not later than 12 months after the  
7           date of the enactment of this Act, the Commis-  
8           sion shall issue regulations pursuant to section  
9           13 further defining the relevant criteria to fa-  
10          cilitate the determination of the primary pur-  
11          pose of an electronic mail message.

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

23          (3) COMMISSION.—The term “Commission”  
24          means the Federal Trade Commission.

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

7           (5) ELECTRONIC MAIL ADDRESS.—The term  
8 “electronic mail address” means a destination, com-  
9 monly expressed as a string of characters, consisting  
10 of a unique user name or mailbox (commonly re-  
11 ferred to as the “local part”) and a reference to an  
12 Internet domain (commonly referred to as the “do-  
13 main part”), whether or not displayed, to which an  
14 electronic mail message can be sent or delivered.

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

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

21           (8) HEADER INFORMATION.—The term “header  
22 information” means the source, destination, and  
23 routing information attached to an electronic mail  
24 message, including the originating domain name and  
25 originating electronic mail address, and any other

1 information that appears in the line identifying, or  
2 purporting to identify, a person initiating the mes-  
3 sage.

4 (9) INITIATE.—The term “initiate”, when used  
5 with respect to a commercial electronic mail mes-  
6 sage, means to originate or transmit such message  
7 or to procure the origination or transmission of such  
8 message, but shall not include actions that con-  
9 stitute routine conveyance of such message. For pur-  
10 poses of this paragraph, more than 1 person may be  
11 considered to have initiated a message.

12 (10) INTERNET.—The term “Internet” has the  
13 meaning given that term in the Internet Tax Free-  
14 dom Act (47 U.S.C. 151 nt).

15 (11) INTERNET ACCESS SERVICE.—The term  
16 “Internet access service” has the meaning given that  
17 term in section 231(e)(4) of the Communications  
18 Act of 1934 (47 U.S.C. 231(e)(4)).

19 (12) PROCURE.—The term “procure”, when  
20 used with respect to the initiation of a commercial  
21 electronic mail message, means intentionally to pay  
22 or provide other consideration to, or induce, another  
23 person to initiate such a message on one’s behalf.

24 (13) PROTECTED COMPUTER.—The term “pro-  
25 tected computer” has the meaning given that term



1 in section 1030(e)(2)(B) of title 18, United States  
2 Code.

3 (14) RECIPIENT.—The term “recipient”, when  
4 used with respect to a commercial electronic mail  
5 message, means an authorized user of the electronic  
6 mail address to which the message was sent or deliv-  
7 ered. If a recipient of a commercial electronic mail  
8 message has 1 or more electronic mail addresses in  
9 addition to the address to which the message was  
10 sent or delivered, the recipient shall be treated as a  
11 separate recipient with respect to each such address.  
12 If an electronic mail address is reassigned to a new  
13 user, the new user shall not be treated as a recipient  
14 of any commercial electronic mail message sent or  
15 delivered to that address before it was reassigned.

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

22 (16) SENDER.—

23 (A) IN GENERAL.—Except as provided in  
24 subparagraph (B), the term “sender” means a  
25 person who initiates such a message and whose

1 product, service, or Internet web site is adver-  
2 tised or promoted by the message.

3 (B) SEPARATE LINES OF BUSINESS OR DI-  
4 VISIONS.—If an entity operates through sepa-  
5 rate lines of business or divisions and holds  
6 itself out to the recipient of the message, in  
7 complying with the requirement under section  
8 5(a)(5)(B), as that particular line of business  
9 or division rather than as the entity of which  
10 such line of business or division is a part, then  
11 the line of business or the division shall be  
12 treated as the sender of such message for pur-  
13 poses of this Act.

14 (17) TRANSACTIONAL OR RELATIONSHIP MES-  
15 SAGE.—

16 (A) IN GENERAL.—The term “trans-  
17 actional or relationship message” means an  
18 electronic mail message the primary purpose of  
19 which is—

20 (i) to facilitate, complete, or confirm a  
21 commercial transaction that the recipient  
22 has previously agreed to enter into with  
23 the sender;

24 (ii) to provide warranty information,  
25 product recall information, or safety or se-

1 security information with respect to a com-  
2 mercial product or service used or pur-  
3 chased by the recipient;

4 (iii) to provide—

5 (I) notification concerning a  
6 change in the terms or features of;

7 (II) notification of a change in  
8 the recipient's standing or status with  
9 respect to; or

10 (III) at regular periodic intervals,  
11 account balance information or other  
12 type of account statement with re-  
13 spect to,

14 a subscription, membership, account, loan,  
15 or comparable ongoing commercial rela-  
16 tionship involving the ongoing purchase or  
17 use by the recipient of products or services  
18 offered by the sender;

19 (iv) to provide information directly re-  
20 lated to an employment relationship or re-  
21 lated benefit plan in which the recipient is  
22 currently involved, participating, or en-  
23 rolled; or

24 (v) to deliver goods or services, includ-  
25 ing product updates or upgrades, that the

1 recipient is entitled to receive under the  
2 terms of a transaction that the recipient  
3 has previously agreed to enter into with  
4 the sender.

5 (B) MODIFICATION OF DEFINITION.—The  
6 Commission by regulation pursuant to section  
7 13 may modify the definition in subparagraph  
8 (A) to expand or contract the categories of mes-  
9 sages that are treated as transactional or rela-  
10 tionship messages for purposes of this Act to  
11 the extent that such modification is necessary  
12 to accommodate changes in electronic mail tech-  
13 nology or practices and accomplish the purposes  
14 of this Act.

15 **SEC. 4. PROHIBITION AGAINST PREDATORY AND ABUSIVE**  
16 **COMMERCIAL E-MAIL.**

17 (a) OFFENSE.—

18 (1) IN GENERAL.—Chapter 47 of title 18,  
19 United States Code, is amended by adding at the  
20 end the following new section:

21 **“§ 1037. Fraud and related activity in connection**  
22 **with electronic mail**

23 “(a) IN GENERAL.—Whoever, in or affecting inter-  
24 state or foreign commerce, knowingly—

1           “(1) accesses a protected computer without au-  
2           thorization, and intentionally initiates the trans-  
3           mission of multiple commercial electronic mail mes-  
4           sages from or through such computer,

5           “(2) uses a protected computer to relay or re-  
6           transmit multiple commercial electronic mail mes-  
7           sages, with the intent to deceive or mislead recipi-  
8           ents, or any Internet access service, as to the origin  
9           of such messages,

10           “(3) materially falsifies header information in  
11           multiple commercial electronic mail messages and in-  
12           tentionally initiates the transmission of such mes-  
13           sages,

14           “(4) registers, using information that materially  
15           falsifies the identity of the actual registrant, for 5  
16           or more electronic mail accounts or online user ac-  
17           counts or 2 or more domain names, and inten-  
18           tionally initiates the transmission of multiple com-  
19           mercial electronic mail messages from any combina-  
20           tion of such accounts or domain names, or

21           “(5) falsely represents oneself to be the reg-  
22           istrant or the legitimate successor in interest to the  
23           registrant of 5 or more Internet protocol addresses,  
24           and intentionally initiates the transmission of mul-

1        tiple commercial electronic mail messages from such  
2        addresses,  
3 or conspires to do so, shall be punished as provided in  
4 subsection (b).

5        “(b) PENALTIES.—The punishment for an offense  
6 under subsection (a) is—

7            “(1) a fine under this title, imprisonment for  
8 not more than 5 years, or both, if—

9            “(A) the offense is committed in further-  
10            ance of any felony under the laws of the United  
11            States or of any State; or

12            “(B) the defendant has previously been  
13            convicted under this section or section 1030, or  
14            under the law of any State for conduct involv-  
15            ing the transmission of multiple commercial  
16            electronic mail messages or unauthorized access  
17            to a computer system;

18            “(2) a fine under this title, imprisonment for  
19 not more than 3 years, or both, if—

20            “(A) the offense is an offense under sub-  
21            section (a)(1);

22            “(B) the offense is an offense under sub-  
23            section (a)(4) and involved 20 or more falsified  
24            electronic mail or online user account registra-

1           tions, or 10 or more falsified domain name reg-  
2           istrations;

3           “(C) the volume of electronic mail mes-  
4           sages transmitted in furtherance of the offense  
5           exceeded 2,500 during any 24-hour period,  
6           25,000 during any 30-day period, or 250,000  
7           during any 1-year period;

8           “(D) the offense caused loss to 1 or more  
9           persons aggregating \$5,000 or more in value  
10          during any 1-year period;

11          “(E) as a result of the offense any indi-  
12          vidual committing the offense obtained anything  
13          of value aggregating \$5,000 or more during any  
14          1-year period; or

15          “(F) the offense was undertaken by the de-  
16          fendant in concert with 3 or more other persons  
17          with respect to whom the defendant occupied a  
18          position of organizer or leader; and

19          “(3) a fine under this title or imprisonment for  
20          not more than 1 year, or both, in any other case.

21          “(c) FORFEITURE.—

22          “(1) IN GENERAL.—The court, in imposing sen-  
23          tence on a person who is convicted of an offense  
24          under this section, shall order that the defendant  
25          forfeit to the United States—

1           “(A) any property, real or personal, consti-  
2           tuting or traceable to gross proceeds obtained  
3           from such offense; and

4           “(B) any equipment, software, or other  
5           technology used or intended to be used to com-  
6           mit or to facilitate the commission of such of-  
7           fense.

8           “(2) PROCEDURES.—The procedures set forth  
9           in section 413 of the Controlled Substances Act (21  
10          U.S.C. 853), other than subsection (d) of that sec-  
11          tion, and in Rule 32.2 of the Federal Rules of  
12          Criminal Procedure, shall apply to all stages of a  
13          criminal forfeiture proceeding under this section.

14          “(d) DEFINITIONS.—In this section:

15               “(1) LOSS.—The term ‘loss’ has the meaning  
16               given that term in section 1030(e) of this title.

17               “(2) MATERIALLY.—For purposes of para-  
18               graphs (3) and (4) of subsection (a), header infor-  
19               mation or registration information is materially mis-  
20               leading if it is altered or concealed in a manner that  
21               would impair the ability of a recipient of the mes-  
22               sage, an Internet access service processing the mes-  
23               sage on behalf of a recipient, a person alleging a vio-  
24               lation of this section, or a law enforcement agency  
25               to identify, locate, or respond to a person who initi-



1       ated the electronic mail message or to investigate  
2       the alleged violation.

3           “(3) MULTIPLE.—The term ‘multiple’ means  
4       more than 100 electronic mail messages during a  
5       24-hour period, more than 1,000 electronic mail  
6       messages during a 30-day period, or more than  
7       10,000 electronic mail messages during a 1-year pe-  
8       riod.

9           “(4) OTHER TERMS.—Any other term has the  
10       meaning given that term by section 3 of the CAN-  
11       SPAM Act of 2003.”.

12           (2) CONFORMING AMENDMENT.—The chapter  
13       analysis for chapter 47 of title 18, United States  
14       Code, is amended by adding at the end the fol-  
15       lowing:

      “Sec.  
      “1037. Fraud and related activity in connection with electronic mail.”.

16       (b) UNITED STATES SENTENCING COMMISSION.—

17           (1) DIRECTIVE.—Pursuant to its authority  
18       under section 994(p) of title 28, United States Code,  
19       and in accordance with this section, the United  
20       States Sentencing Commission shall review and, as  
21       appropriate, amend the sentencing guidelines and  
22       policy statements to provide appropriate penalties  
23       for violations of section 1037 of title 18, United  
24       States Code, as added by this section, and other of-

1 offenses that may be facilitated by the sending of  
2 large quantities of unsolicited electronic mail.

3 (2) REQUIREMENTS.—In carrying out this sub-  
4 section, the Sentencing Commission shall consider  
5 providing sentencing enhancements for—

6 (A) those convicted under section 1037 of  
7 title 18, United States Code, who—

8 (i) obtained electronic mail addresses  
9 through improper means, including—

10 (I) harvesting electronic mail ad-  
11 dresses of the users of a website, pro-  
12 prietary service, or other online public  
13 forum operated by another person,  
14 without the authorization of such per-  
15 son; and

16 (II) randomly generating elec-  
17 tronic mail addresses by computer; or

18 (ii) knew that the commercial elec-  
19 tronic mail messages involved in the of-  
20 fense contained or advertised an Internet  
21 domain for which the registrant of the do-  
22 main had provided false registration infor-  
23 mation; and

24 (B) those convicted of other offenses, in-  
25 cluding offenses involving fraud, identity theft,

1           obscenity, child pornography, and the sexual ex-  
2           ploitation of children, if such offenses involved  
3           the sending of large quantities of electronic  
4           mail.

5           (c) SENSE OF CONGRESS.—It is the sense of Con-  
6   gress that—

7           (1) Spam has become the method of choice for  
8           those who distribute pornography, perpetrate fraud-  
9           ulent schemes, and introduce viruses, worms, and  
10          Trojan horses into personal and business computer  
11          systems; and

12          (2) the Department of Justice should use all ex-  
13          isting law enforcement tools to investigate and pros-  
14          ecute those who send bulk commercial e-mail to fa-  
15          cilitate the commission of Federal crimes, including  
16          the tools contained in chapters 47 and 63 of title 18,  
17          United States Code (relating to fraud and false  
18          statements); chapter 71 of title 18, United States  
19          Code (relating to obscenity); chapter 110 of title 18,  
20          United States Code (relating to the sexual exploi-  
21          tation of children); and chapter 95 of title 18,  
22          United States Code (relating to racketeering), as ap-  
23          propriate.

1 **SEC. 5. OTHER PROTECTIONS FOR USERS OF COMMERCIAL**  
2 **ELECTRONIC MAIL.**

3 (a) REQUIREMENTS FOR TRANSMISSION OF MES-  
4 SAGES.—

5 (1) PROHIBITION OF FALSE OR MISLEADING  
6 TRANSMISSION INFORMATION.—It is unlawful for  
7 any person to initiate the transmission, to a pro-  
8 tected computer, of a commercial electronic mail  
9 message, or a transactional or relationship message,  
10 that contains, or is accompanied by, header informa-  
11 tion that is materially false or materially misleading.  
12 For purposes of this paragraph—

13 (A) header information that is technically  
14 accurate but includes an originating electronic  
15 mail address, domain name, or Internet pro-  
16 tocol address the access to which for purposes  
17 of initiating the message was obtained by  
18 means of false or fraudulent pretenses or rep-  
19 resentations shall be considered materially mis-  
20 leading;

21 (B) a “from” line (the line identifying or  
22 purporting to identify a person initiating the  
23 message) that accurately identifies any person  
24 who initiated the message shall not be consid-  
25 ered materially false or materially misleading;  
26 and

1 (C) header information shall be considered  
2 materially misleading if it fails to identify accu-  
3 rately a protected computer used to initiate the  
4 message because the person initiating the mes-  
5 sage knowingly uses another protected com-  
6 puter to relay or retransmit the message for  
7 purposes of disguising its origin.

8 (2) PROHIBITION OF DECEPTIVE SUBJECT  
9 HEADINGS.—It is unlawful for any person to initiate  
10 the transmission to a protected computer of a com-  
11 mercial electronic mail message if such person has  
12 actual knowledge, or knowledge fairly implied on the  
13 basis of objective circumstances, that a subject head-  
14 ing of the message would be likely to mislead a re-  
15 cipient, acting reasonably under the circumstances,  
16 about a material fact regarding the contents or sub-  
17 ject matter of the message (consistent with the cri-  
18 teria are used in enforcement of section 5 of the  
19 Federal Trade Commission Act (15 U.S.C. 45)).

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

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

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

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

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

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

1           which the recipient may choose not to receive  
2           any commercial electronic mail messages from  
3           the sender.

4           (C) TEMPORARY INABILITY TO RECEIVE  
5           MESSAGES OR PROCESS REQUESTS.—A return  
6           electronic mail address or other mechanism  
7           does not fail to satisfy the requirements of sub-  
8           paragraph (A) if it is unexpectedly and tempo-  
9           rarily unable to receive messages or process re-  
10          quests due to a technical problem beyond the  
11          control of the sender if the problem is corrected  
12          within a reasonable time period.

13          (4) PROHIBITION OF TRANSMISSION OF COM-  
14          MERCIAL ELECTRONIC MAIL AFTER OBJECTION.—

15           (A) IN GENERAL.—If a recipient makes a  
16           request using a mechanism provided pursuant  
17           to paragraph (3) not to receive some or any  
18           commercial electronic mail messages from such  
19           sender, then it is unlawful—

20           (i) for the sender to initiate the trans-  
21           mission to the recipient, more than 10  
22           business days after the receipt of such re-  
23           quest, of a commercial electronic mail mes-  
24           sage that falls within the scope of the re-  
25           quest;

1                   (ii) for any person acting on behalf of  
2                   the sender to initiate the transmission to  
3                   the recipient, more than 10 business days  
4                   after the receipt of such request, of a com-  
5                   mercial electronic mail message with actual  
6                   knowledge, or knowledge fairly implied on  
7                   the basis of objective circumstances, that  
8                   such message falls within the scope of the  
9                   request;

10                   (iii) for any person acting on behalf of  
11                   the sender to assist in initiating the trans-  
12                   mission to the recipient, through the provi-  
13                   sion or selection of addresses to which the  
14                   message will be sent, of a commercial elec-  
15                   tronic mail message with actual knowledge,  
16                   or knowledge fairly implied on the basis of  
17                   objective circumstances, that such message  
18                   would violate clause (i) or (ii); or

19                   (iv) for the sender, or any other per-  
20                   son who knows that the recipient has made  
21                   such a request, to sell, lease, exchange, or  
22                   otherwise transfer or release the electronic  
23                   mail address of the recipient (including  
24                   through any transaction or other transfer  
25                   involving mailing lists bearing the elec-



1           tronic mail address of the recipient) for  
2           any purpose other than compliance with  
3           this Act or other provision of law, except  
4           where the recipient has given express con-  
5           sent.

6           (B) OPT BACK IN.—A prohibition in in  
7           clause (i), (ii), or (iii) of subparagraph (A) does  
8           not apply if there is affirmative consent by the  
9           recipient subsequent to the request under sub-  
10          paragraph (A).

11          (5) INCLUSION OF IDENTIFIER, OPT-OUT, AND  
12          PHYSICAL ADDRESS IN COMMERCIAL ELECTRONIC  
13          MAIL.—

14           (A) It is unlawful for any person to initiate  
15           the transmission of any commercial electronic  
16           mail message to a protected computer unless  
17           the message provides—

18                   (i) clear and conspicuous identifica-  
19                   tion that the message is an advertisement  
20                   or solicitation;

21                   (ii) clear and conspicuous notice of  
22                   the opportunity under paragraph (3) to de-  
23                   cline to receive further commercial elec-  
24                   tronic mail messages from the sender; and

1 (iii) a valid physical postal address of  
2 the sender.

3 (B) Subparagraph (A)(i) does not apply to  
4 the transmission of a commercial electronic  
5 mail if the recipient has given prior affirmative  
6 consent to receipt of the message.

7 (6) SUBSEQUENT AFFIRMATIVE CONSENT.—  
8 The prohibitions in subparagraphs (A), (B), and (C)  
9 do not apply to the initiation of transmission of com-  
10 mercial electronic mail to a recipient who, subse-  
11 quent to a request using a mechanism provided pur-  
12 suant to paragraph (3) not to receive commercial  
13 electronic mail messages from the sender, has grant-  
14 ed affirmative consent to the sender to receive such  
15 messages.

16 (7) MATERIALLY.—For purposes of paragraph  
17 (1)(A), header information shall be considered to be  
18 materially misleading if it is altered or concealed in  
19 a manner that would impair the ability of an Inter-  
20 net access service processing the message on behalf  
21 of a recipient, a person alleging a violation of this  
22 section, or a law enforcement agency to identify, lo-  
23 cate, or respond to the person who initiated the elec-  
24 tronic mail message or to investigate the alleged vio-  
25 lation, or the ability of a recipient of the message to

1       respond to a person who initiated the electronic mes-  
2       sage..

3       (b) AGGRAVATED VIOLATIONS RELATING TO COM-  
4       MERCIAL ELECTRONIC MAIL.—

5             (1) ADDRESS HARVESTING AND DICTIONARY  
6       ATTACKS.—

7             (A) IN GENERAL.—It is unlawful for any  
8       person to initiate the transmission, to a pro-  
9       tected computer, of a commercial electronic  
10      mail message that is unlawful under subsection  
11      (a), or to assist in the origination of such mes-  
12      sage through the provision or selection of ad-  
13      dresses to which the message will be trans-  
14      mitted, if such person had actual knowledge, or  
15      knowledge fairly implied on the basis of objec-  
16      tive circumstances, that—

17             (i) the electronic mail address of the  
18      recipient was obtained using an automated  
19      means from an Internet website or propri-  
20      etary online service operated by another  
21      person, and such website or online service  
22      included, at the time the address was ob-  
23      tained, a notice stating that the operator  
24      of such website or online service will not  
25      give, sell, or otherwise transfer addresses

1 maintained by such website or online serv-  
2 ice to any other party for the purposes of  
3 initiating, or enabling others to initiate,  
4 electronic mail messages; or

5 (ii) the electronic mail address of the  
6 recipient was obtained using an automated  
7 means that generates possible electronic  
8 mail addresses by combining names, let-  
9 ters, or numbers into numerous permuta-  
10 tions.

11 (B) DISCLAIMER.—Nothing in this para-  
12 graph creates an ownership or proprietary in-  
13 terest in such electronic mail addresses.

14 (2) AUTOMATED CREATION OF MULTIPLE  
15 ELECTRONIC MAIL ACCOUNTS.—It is unlawful for  
16 any person to use scripts or other automated means  
17 to register for multiple electronic mail accounts or  
18 online user accounts from which to transmit to a  
19 protected computer, or enable another person to  
20 transmit to a protected computer, a commercial elec-  
21 tronic mail message that is unlawful under sub-  
22 section (a).

23 (3) RELAY OR RETRANSMISSION THROUGH UN-  
24 AUTHORIZED ACCESS.—It is unlawful for any person  
25 knowingly to relay or retransmit a commercial elec-

1       tronic mail message that is unlawful under sub-  
2       section (a) from a protected computer or computer  
3       network that such person has accessed without au-  
4       thorization.

5       (c) SUPPLEMENTARY RULEMAKING AUTHORITY.—

6       The Commission shall by rule, pursuant to section 13—

7               (1) modify the 10-business-day period under  
8       subsection (a)(4)(A) or subsection (a)(4)(B), or  
9       both, if the Commission determines that a different  
10      period would be more reasonable after taking into  
11      account—

12                       (A) the purposes of subsection (a);

13                       (B) the interests of recipients of commer-  
14      cial electronic mail; and

15                       (C) the burdens imposed on senders of  
16      lawful commercial electronic mail; and

17               (2) specify additional activities or practices to  
18      which subsection (b) applies if the Commission de-  
19      termines that those activities or practices are con-  
20      tributing substantially to the proliferation of com-  
21      mercial electronic mail messages that are unlawful  
22      under subsection (a).

23       (d) REQUIREMENT TO PLACE WARNING LABELS ON  
24      COMMERCIAL ELECTRONIC MAIL CONTAINING SEXUALLY  
25      ORIENTED MATERIAL.—

1           (1) IN GENERAL.—No person may initiate in or  
2           affecting interstate commerce the transmission, to a  
3           protected computer, of any commercial electronic  
4           mail message that includes sexually oriented mate-  
5           rial and—

6                   (A) fail to include in subject heading for  
7           the electronic mail message the marks or no-  
8           tices prescribed by the Commission under this  
9           subsection; or

10                   (B) fail to provide that the matter in the  
11           message that is initially viewable to the recipi-  
12           ent, when the message is opened by any recipi-  
13           ent and absent any further actions by the re-  
14           cipient, includes only—

15                           (i) to the extent required or author-  
16                           ized pursuant to paragraph (2), any such  
17                           marks or notices;

18                           (ii) the information required to be in-  
19                           cluded in the message pursuant to sub-  
20                           section (a)(5); and

21                           (iii) instructions on how to access, or  
22                           a mechanism to access, the sexually ori-  
23                           ented material.

24           (2) PRIOR AFFIRMATIVE CONSENT.—Paragraph  
25           (1) does not apply to the transmission of an elec-

1       tronic mail message if the recipient has given prior  
2       affirmative consent to receipt of the message.

3           (3) PRESCRIPTION OF MARKS AND NOTICES.—

4       Not later than 120 days after the date of the enact-  
5       ment of this Act, the Commission in consultation  
6       with the Attorney General shall prescribe clearly  
7       identifiable marks or notices to be included in or as-  
8       sociated with commercial electronic mail that con-  
9       tains sexually oriented material, in order to inform  
10      the recipient of that fact and to facilitate filtering of  
11      such electronic mail. The Commission shall publish  
12      in the Federal Register and provide notice to the  
13      public of the marks or notices prescribed under this  
14      paragraph.

15           (4) DEFINITION.—In this subsection, the term  
16      “sexually oriented material” means any material  
17      that depicts sexually explicit conduct (as that term  
18      is defined in section 2256 of title 18, United States  
19      Code), unless the depiction constitutes a small and  
20      insignificant part of the whole, the remainder of  
21      which is not primarily devoted to sexual matters.

22           (4) PENALTY.—Whoever knowingly violates  
23      paragraph (1) shall be fined under title 18, United  
24      States Code, or imprisoned not more than 5 years,  
25      or both.

1 **SEC. 6. BUSINESSES KNOWINGLY PROMOTED BY ELEC-**  
2 **TRONIC MAIL WITH FALSE OR MISLEADING**  
3 **TRANSMISSION INFORMATION.**

4 (a) IN GENERAL.—It is unlawful for a person to pro-  
5 mote, or allow the promotion of, that person's trade or  
6 business, or goods, products, property, or services sold, of-  
7 fered for sale, leased or offered for lease, or otherwise  
8 made available through that trade or business, in a com-  
9 mercial electronic mail message the transmission of which  
10 is in violation of section 5(a)(1) if that person—

11 (1) knows, or should have known in ordinary  
12 course of that person's trade or business, that the  
13 goods, products, property, or services sold, offered  
14 for sale, leased or offered for lease, or otherwise  
15 made available through that trade or business were  
16 being promoted in such a message;

17 (2) received or expected to receive an economic  
18 benefit from such promotion; and

19 (3) took no reasonable action—

20 (A) to prevent the transmission; or

21 (B) to detect the transmission and report  
22 it to the Commission.

23 (b) LIMITED ENFORCEMENT AGAINST THIRD PAR-  
24 TIES.—

25 (1) IN GENERAL.—Except as provided in para-  
26 graph (2), a person (hereinafter referred to as the



1 “third party”) that provides goods, products, prop-  
2 erty, or services to another person that violates sub-  
3 section (a) shall not be held liable for such violation.

4 (2) EXCEPTION.—Liability for a violation of  
5 subsection (a) shall be imputed to a third party that  
6 provides goods, products, property, or services to an-  
7 other person that violates subsection (a) if that third  
8 party—

9 (A) owns, or has a greater than 50 percent  
10 ownership or economic interest in, the trade or  
11 business of the person that violated subsection  
12 (a); or

13 (B)(i) has actual knowledge that goods,  
14 products, property, or services are promoted in  
15 a commercial electronic mail message the trans-  
16 mission of which is in violation of section  
17 5(a)(1); and

18 (ii) receives, or expects to receive, an eco-  
19 nomic benefit from such promotion.

20 (c) EXCLUSIVE ENFORCEMENT BY FTC.—Sub-  
21 sections (f) and (g) of section 7 do not apply to violations  
22 of this section.

23 (d) SAVINGS PROVISION.—Subject to section 7(f)(7),  
24 nothing in this section may be construed to limit or pre-

1 vent any action that may be taken under this Act with  
2 respect to any violation of any other section of this Act.

3 **SEC. 7. ENFORCEMENT GENERALLY.**

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

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

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

14 (A) national banks, and Federal branches  
15 and Federal agencies of foreign banks, by the  
16 Office of the Comptroller of the Currency;

17 (B) member banks of the Federal Reserve  
18 System (other than national banks), branches  
19 and agencies of foreign banks (other than Fed-  
20 eral branches, Federal agencies, and insured  
21 State branches of foreign banks), commercial  
22 lending companies owned or controlled by for-  
23 eign banks, organizations operating under sec-  
24 tion 25 or 25A of the Federal Reserve Act (12

1 U.S.C. 601 and 611), and bank holding compa-  
2 nies, by the Board;

3 (C) banks insured by the Federal Deposit  
4 Insurance Corporation (other than members of  
5 the Federal Reserve System) insured State  
6 branches of foreign banks, by the Board of Di-  
7 rectors of the Federal Deposit Insurance Cor-  
8 poration; and

9 (D) savings associations the deposits of  
10 which are insured by the Federal Deposit In-  
11 surance Corporation, by the Director of the Of-  
12 fice of Thrift Supervision;

13 (2) under the Federal Credit Union Act (12  
14 U.S.C. 1751 et seq.) by the Board of the National  
15 Credit Union Administration with respect to any  
16 Federally insured credit union;

17 (3) under the Securities Exchange Act of 1934  
18 (15 U.S.C. 78a et seq.) by the Securities and Ex-  
19 change Commission with respect to any broker or  
20 dealer;

21 (4) under the Investment Company Act of 1940  
22 (15 U.S.C. 80a-1 et seq.) by the Securities and Ex-  
23 change Commission with respect to investment com-  
24 panies;

1           (5) under the Investment Advisers Act of 1940  
2           (15 U.S.C. 80b-1 et seq.) by the Securities and Ex-  
3           change Commission with respect to investment ad-  
4           visers registered under that Act;

5           (6) under State insurance law in the case of  
6           any person engaged in providing insurance, by the  
7           applicable State insurance authority of the State in  
8           which the person is domiciled, subject to section 104  
9           of the Gramm-Bliley-Leach Act (15 U.S.C. 6701),  
10          except that in any State in which the State insur-  
11          ance authority elects not to exercise this power, the  
12          enforcement authority pursuant to this Act shall be  
13          exercised by the Commission in accordance with sub-  
14          section (a);

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

19          (8) under the Packers and Stockyards Act,  
20          1921 (7 U.S.C. 181 et seq.) (except as provided in  
21          section 406 of that Act (7 U.S.C. 226, 227)), by the  
22          Secretary of Agriculture with respect to any activi-  
23          ties subject to that Act;

24          (9) under the Farm Credit Act of 1971 (12  
25          U.S.C. 2001 et seq.) by the Farm Credit Adminis-

1       tration with respect to any Federal land bank, Fed-  
2       eral land bank association, Federal intermediate  
3       credit bank, or production credit association; and

4             (10) under the Communications Act of 1934  
5       (47 U.S.C. 151 et seq.) by the Federal Communica-  
6       tions Commission with respect to any person subject  
7       to the provisions of that Act.

8       (c) EXERCISE OF CERTAIN POWERS.—For the pur-  
9       pose of the exercise by any agency referred to in sub-  
10      section (b) of its powers under any Act referred to in that  
11      subsection, a violation of this Act is deemed to be a viola-  
12      tion of a Federal Trade Commission trade regulation rule.  
13      In addition to its powers under any provision of law spe-  
14      cifically referred to in subsection (b), each of the agencies  
15      referred to in that subsection may exercise, for the pur-  
16      pose of enforcing compliance with any requirement im-  
17      posed under this Act, any other authority conferred on it  
18      by law.

19      (d) ACTIONS BY THE COMMISSION.—The Commis-  
20      sion shall prevent any person from violating this Act in  
21      the same manner, by the same means, and with the same  
22      jurisdiction, powers, and duties as though all applicable  
23      terms and provisions of the Federal Trade Commission  
24      Act (15 U.S.C. 41 et seq.) were incorporated into and  
25      made a part of this Act. Any entity that violates any provi-

1 sion of that subtitle is subject to the penalties and entitled  
2 to the privileges and immunities provided in the Federal  
3 Trade Commission Act in the same manner, by the same  
4 means, and with the same jurisdiction, power, and duties  
5 as though all applicable terms and provisions of the Fed-  
6 eral Trade Commission Act were incorporated into and  
7 made a part of that subtitle.

8 (e) AVAILABILITY OF CEASE-AND-DESIST ORDERS  
9 AND INJUNCTIVE RELIEF WITHOUT SHOWING OF  
10 KNOWLEDGE.—Notwithstanding any other provision of  
11 this Act, in any proceeding or action pursuant to sub-  
12 section (b), (c), or (d) of this section to enforce compli-  
13 ance, through an order to cease and desist or an injunc-  
14 tion, with section 5(a)(2), subparagraph (B) or (C) of sec-  
15 tion 5(a)(4), or section 5(b)(1)(A), neither the Commis-  
16 sion nor the Federal Communications Commission shall  
17 be required to allege or prove the state of mind required  
18 by such section or subparagraph.

19 (f) ENFORCEMENT BY STATES.—

20 (1) CIVIL ACTION.—In any case in which the  
21 attorney general of a State, or an official or agency  
22 of a State, has reason to believe that an interest of  
23 the residents of that State has been or is threatened  
24 or adversely affected by any person who violates  
25 paragraph (1) or (2) of section 5(a), or who engages

1 in a pattern or practice that violates paragraph (3),  
2 (4), or (5) of section 5(a) of this Act, the attorney  
3 general, official, or agency of the State, as *parens*  
4 *patriae*, may bring a civil action on behalf of the  
5 residents of the State in a district court of the  
6 United States of appropriate jurisdiction—

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

9 (B) to obtain damages on behalf of resi-  
10 dents of the State, in an amount equal to the  
11 greater of—

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

14 (ii) the amount determined under  
15 paragraph (2).

16 (2) AVAILABILITY OF INJUNCTIVE RELIEF  
17 WITHOUT SHOWING OF KNOWLEDGE.—Notwith-  
18 standing any other provision of this Act, in a civil  
19 action under paragraph (1)(A) of this subsection,  
20 the attorney general, official, or agency of the State  
21 shall not be not required to allege or prove the state  
22 of mind required by section 5(a)(2), subparagraph  
23 (B) or (C) of section 5(a)(4), or section 5(b)(1)(A).

24 (3) STATUTORY DAMAGES.—

1           (A) IN GENERAL.—For purposes of para-  
2 graph (1)(B)(ii), the amount determined under  
3 this paragraph is the amount calculated by mul-  
4 tiplying the number of violations (with each  
5 separately addressed unlawful message received  
6 by or addressed to such residents treated as a  
7 separate violation) by up to \$250.

8           (B) LIMITATION.—For any violation of  
9 section 5 (other than section 5(a)(1)), the  
10 amount determined under subparagraph (A)  
11 may not exceed \$2,000,000.

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

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

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

22          (D) REDUCTION OF DAMAGES.—In assess-  
23 ing damages under subparagraph (A), the court  
24 may consider whether—



1 (i) the defendant has established and  
2 implemented, with due care, commercially  
3 reasonable practices and procedures to ef-  
4 fectively prevent such violations; or

5 (ii) the violation occurred despite com-  
6 mercially reasonable efforts to maintain  
7 compliance with such practices and proce-  
8 dures.

9 (3) ATTORNEY FEES.—In the case of any suc-  
10 cessful action under paragraph (1), the State may  
11 be awarded the costs of the action and reasonable  
12 attorney fees as determined by the court.

13 (4) RIGHTS OF FEDERAL REGULATORS.—The  
14 State shall serve prior written notice of any action  
15 under paragraph (1) upon the Federal Trade Com-  
16 mission or the appropriate Federal regulator deter-  
17 mined under subsection (b) and provide the Commis-  
18 sion or appropriate Federal regulator with a copy of  
19 its complaint, except in any case in which such prior  
20 notice is not feasible, in which case the State shall  
21 serve such notice immediately upon instituting such  
22 action. The Federal Trade Commission or appro-  
23 priate Federal regulator shall have the right—

24 (A) to intervene in the action;

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

3 (C) to remove the action to the appropriate  
4 United States district court; and

5 (D) to file petitions for appeal.

6 (5) CONSTRUCTION.—For purposes of bringing  
7 any civil action under paragraph (1), nothing in this  
8 Act shall be construed to prevent an attorney gen-  
9 eral of a State from exercising the powers conferred  
10 on the attorney general by the laws of that State  
11 to—

12 (A) conduct investigations;

13 (B) administer oaths or affirmations; or

14 (C) compel the attendance of witnesses or  
15 the production of documentary and other evi-  
16 dence.

17 (6) VENUE; SERVICE OF PROCESS.—

18 (A) VENUE.—Any action brought under  
19 paragraph (1) may be brought in the district  
20 court of the United States that meets applicable  
21 requirements relating to venue under section  
22 1391 of title 28, United States Code.

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

- 1 (i) is an inhabitant; or
- 2 (ii) maintains a physical place of busi-
- 3 ness.

4 (7) LIMITATION ON STATE ACTION WHILE FED-  
5 ERAL ACTION IS PENDING.—If the Commission or  
6 other appropriate Federal agency under subsection  
7 (b) has instituted a civil action or an administrative  
8 action for violation of this Act, no State attorney  
9 general, or official or agency of a State, may bring  
10 an action under this subsection during the pendency  
11 of that action against any defendant named in the  
12 complaint of the Commission or the other agency for  
13 any violation of this Act alleged in the complaint.

14 (8) REQUISITE SCIENTER FOR CERTAIN CIVIL  
15 ACTIONS.—Except as provided in subsections (a)(2),  
16 (a)(4)(B), (a)(4)(C), (b)(1), and (d) of section 5,  
17 and paragraph (2) of this subsection, in a civil ac-  
18 tion brought by a State attorney general, or an offi-  
19 cial or agency of a State, to recover monetary dam-  
20 ages for a violation of this Act, the court shall not  
21 grant the relief sought unless the attorney general,  
22 official, or agency establishes that the defendant  
23 acted with actual knowledge, or knowledge fairly im-  
24 plied on the basis of objective circumstances, of the  
25 act or omission that constitutes the violation.

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

3 (1) ACTION AUTHORIZED.—A provider of Inter-  
4 net access service adversely affected by a violation of  
5 section 5(a) or of section 5(b), or a pattern or prac-  
6 tice that vioalted paragraph (2), (3), (4), or (5) of  
7 section 5(a), may bring a civil action in any district  
8 court of the United States with jurisdiction over the  
9 defendant—

10 (A) to enjoin further violation by the de-  
11 fendant; or

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

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

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

19 (2) SPECIAL DEFINITION OF “PROCURE”.—In  
20 any action brought under paragraph (1), this Act  
21 shall be applied as if the definition of the term “pro-  
22 cure” in section 3(12) contained, after “behalf” the  
23 words “ with actual knowlege, or by consciously  
24 avoiding knowing, whether such person is engaging,

1 or will engage, in a pattern or practice that violates  
2 this Act.”.

3 (2) STATUTORY DAMAGES.—

4 (A) IN GENERAL.—For purposes of para-  
5 graph (1)(B)(ii), the amount determined under  
6 this paragraph is the amount calculated by mul-  
7 tiplying the number of violations (with each  
8 separately addressed unlawful message that is  
9 transmitted or attempted to be transmitted over  
10 the facilities of the provider of Internet access  
11 service, or that is transmitted or attempted to  
12 be transmitted to an electronic mail address ob-  
13 tained from the provider of Internet access  
14 service in violation of section 5(b)(1)(A)(i),  
15 treated as a separate violation) by—

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

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

20 (B) LIMITATION.—For any violation of  
21 section 5 (other than section 5(a)(1)), the  
22 amount determined under subparagraph (A)  
23 may not exceed \$1,000,000.

24 (C) AGGRAVATED DAMAGES.—The court  
25 may increase a damage award to an amount

1 equal to not more than three times the amount  
2 otherwise available under this paragraph if—

3 (i) the court determines that the de-  
4 fendant committed the violation willfully  
5 and knowingly; or

6 (ii) the defendant's unlawful activity  
7 included one or more of the aggravated  
8 violations set forth in section 5(b).

9 (D) REDUCTION OF DAMAGES.—In assess-  
10 ing damages under subparagraph (A), the court  
11 may consider whether—

12 (i) the defendant has established and  
13 implemented, with due care, commercially  
14 reasonable practices and procedures to ef-  
15 fectively prevent such violations; or

16 (ii) the violation occurred despite com-  
17 mercially reasonable efforts to maintain  
18 compliance with such practices and proce-  
19 dures.

20 (3) ATTORNEY FEES.—In any action brought  
21 pursuant to paragraph (1), the court may, in its dis-  
22 cretion, require an undertaking for the payment of  
23 the costs of such action, and assess reasonable costs,  
24 including reasonable attorneys' fees, against any  
25 party.

1 **SEC. 8. EFFECT ON OTHER LAWS.**

2 (a) FEDERAL LAW.—

3 (1) Nothing in this Act shall be construed to  
4 impair the enforcement of section 223 or 231 of the  
5 Communications Act of 1934 (47 U.S.C. 223 or  
6 231, respectively), chapter 71 (relating to obscenity)  
7 or 110 (relating to sexual exploitation of children) of  
8 title 18, United States Code, or any other Federal  
9 criminal statute.

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

15 (b) STATE LAW.—

16 (1) IN GENERAL.—This Act supersedes any  
17 statute, regulation, or rule of a State or political  
18 subdivision of a State that expressly regulates the  
19 use of electronic mail to send commercial messages,  
20 except to the extent that any such statute, regula-  
21 tion, or rule prohibits falsity or deception in any  
22 portion of a commercial electronic mail message or  
23 information attached thereto.

24 (2) STATE LAW NOT SPECIFIC TO ELECTRONIC  
25 MAIL.—This Act shall not be construed to preempt  
26 the applicability of—

1 (A) State laws that are not specific to elec-  
2 tronic mail, including State trespass, contract,  
3 or tort law; or

4 (B) other State laws to the extent that  
5 those laws relate to acts of fraud or computer  
6 crime.

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

15 **SEC. 9. DO-NOT-E-MAIL REGISTRY.**

16 (a) IN GENERAL.—Not later than 6 months after the  
17 date of enactment of this Act, the Commission shall trans-  
18 mit to the Senate Committee on Commerce, Science, and  
19 Transportation and the House of Representatives Com-  
20 mittee on Energy and Commerce a report that—

21 (1) sets forth a plan and timetable for estab-  
22 lishing a nationwide marketing Do-Not-E-mail reg-  
23 istry;

24 (2) includes an explanation of any practical,  
25 technical, security, privacy, enforceability, or other



1 concerns that the Commission has regarding such a  
2 registry; and

3 (3) includes an explanation of how the registry  
4 would be applied with respect to children with e-mail  
5 accounts.

6 (b) AUTHORIZATION TO IMPLEMENT.—The Commis-  
7 sion may establish and implement the plan, but not earlier  
8 than 9 months after the date of enactment of this Act.

9 **SEC. 10. STUDY OF EFFECTS OF COMMERCIAL ELECTRONIC**  
10 **MAIL.**

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

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

20 (1) an analysis of the extent to which techno-  
21 logical and marketplace developments, including  
22 changes in the nature of the devices through which  
23 consumers access their electronic mail messages,  
24 may affect the practicality and effectiveness of the  
25 provisions of this Act;

1           (2) analysis and recommendations concerning  
2           how to address commercial electronic mail that origi-  
3           nates in or is transmitted through or to facilities or  
4           computers in other nations, including initiatives or  
5           policy positions that the Federal government could  
6           pursue through international negotiations, fora, or-  
7           ganizations, or institutions; and

8           (3) analysis and recommendations concerning  
9           options for protecting consumers, including children,  
10          from the receipt and viewing of commercial elec-  
11          tronic mail that is obscene or pornographic.

12 **SEC. 11. IMPROVING ENFORCEMENT BY PROVIDING RE-**  
13 **WARDS FOR INFORMATION ABOUT VIOLA-**  
14 **TIONS; LABELING.**

15          The Commission shall transmit to the Senate Com-  
16          mittee on Commerce, Science, and Transportation and the  
17          House of Representatives Committee on Energy and  
18          Commerce—

19               (1) a report, within 9 months after the date of  
20               enactment of this Act, that sets forth a system for  
21               rewarding those who supply information about viola-  
22               tions of this Act, including—

23                       (A) procedures for the Commission to  
24                       grant a reward of not less than 20 percent of

1           the total civil penalty collected for a violation of  
2           this Act to the first person that—

3                   (i) identifies the person in violation of  
4                   this Act; and

5                   (ii) supplies information that leads to  
6                   the successful collection of a civil penalty  
7                   by the Commission; and

8           (B) procedures to minimize the burden of  
9           submitting a complaint to the Commission con-  
10          cerning violations of this Act, including proce-  
11          dures to allow the electronic submission of com-  
12          plaints to the Commission; and

13          (2) a report, within 18 months after the date  
14          of enactment of this Act, that sets forth a plan for  
15          requiring commercial electronic mail to be identifi-  
16          able from its subject line, by means of compliance  
17          with Internet Engineering Task Force Standards,  
18          the use of the characters “ADV” in the subject line,  
19          or other comparable identifier, or an explanation of  
20          any concerns the Commission has that cause the  
21          Commission to recommend against the plan.

22   **SEC. 12. RESTRICTIONS ON OTHER TRANSMISSIONS.**

23          Section 227(b)(1) of the Communications Act of  
24   1934 (47 U.S.C. 227(b)(1)) is amended, in the matter  
25   preceding subparagraph (A), by inserting “, or any person

1 outside the United States if the recipient is within the  
2 United States” after “United States”.

3 **SEC. 13. REGULATIONS.**

4 (a) **IN GENERAL.**—The Commission may issue regu-  
5 lations to implement the provisions of this Act (not includ-  
6 ing the amendments made by sections 4 and 12). Any such  
7 regulations shall be issued in accordance with section 553  
8 of title 5, United States Code.

9 (b) **LIMITATION.**—Subsection (a) may not be con-  
10 strued to authorize the Commission to establish a require-  
11 ment pursuant to section 5(a)(5)(A) to include any spe-  
12 cific words, characters, marks, or labels in a commercial  
13 electronic mail message, or to include the identification re-  
14 quired by section 5(a)(5)(A) in any particular part of such  
15 a mail message (such as the subject line or body).

16 **SEC. 14. APPLICATION TO WIRELESS.**

17 (a) **EFFECT ON OTHER LAW.**—Nothing in this Act  
18 shall be interpreted to preclude or override the applica-  
19 bility of section 227 of the Communications Act of 1934  
20 (47 U.S.C. 227) or the rules prescribed under section 3  
21 of the Telemarketing and Consumer Fraud and Abuse  
22 Prevention Act (15 U.S.C. 6102). To the extent that a  
23 requirement of such Acts, or rules or regulations promul-  
24 gated thereunder, is inconsistent with the requirement of  
25 this Act, the requirement of such other Acts, or rules or

1 regulations promulgated thereunder, shall take prece-  
2 dence.

3 (b) FCC RULEMAKING.—The Federal Communica-  
4 tions Commission, in consultation with the Federal Trade  
5 Commission, shall promulgate rules within 270 days to  
6 protect consumers from unwanted mobile service commer-  
7 cial messages. Such rules shall, to the extent consistent  
8 with subsection (c)—

9 (1) provide subscribers to commercial mobile  
10 services the ability to avoid receiving mobile service  
11 commercial messages unless the subscriber has pro-  
12 vided express prior authorization, consistent with  
13 paragraph (3);

14 (2) allow recipients of mobile service commer-  
15 cial messages to indicate electronically a desire not  
16 to receive future mobile service commercial messages  
17 from the initiator;

18 (3) take into consideration, in determining  
19 whether to subject providers of commercial mobile  
20 wireless services to paragraph (1), the relationship  
21 that exists between providers of such services and  
22 their subscribers, but if the Commission determines  
23 that such providers should not be subject to para-  
24 graph (1), the rules shall require such providers, in  
25 addition to complying with the other provisions of

1       this Act, to allow subscribers to indicate a desire not  
2       to receive future mobile service commercial messages  
3       at the time of subscribing to such service, and in  
4       any billing mechanism; and

5               (4) determine how initiators of mobile service  
6       commercial messages may comply with the provi-  
7       sions of this Act, considering the unique technical  
8       aspects, including the functional and character limi-  
9       tations, of devices that receive such messages.

10       (c) OTHER FACTORS CONSIDERED.—The Federal  
11       Communications Commission shall consider the ability of  
12       an initiator of an electronic mail message to reasonably  
13       determine that the electronic mail message is a mobile  
14       service commercial message.

15       (d) MOBILE SERVICE COMMERCIAL MESSAGE DE-  
16       FINED.—In this section, the term “mobile service commer-  
17       cial message” means a commercial electronic mail message  
18       that contains text, graphics, or images for visual display  
19       that is transmitted directly to a wireless device that—

20               (1) is utilized by a subscriber of commercial  
21       mobile service (as such term is defined in section  
22       332(d) of the Communications Act of 1934 (47  
23       U.S.C. 332(d)) in connection with such service; and

24               (2) is capable of accessing and displaying such  
25       a message.

1 **SEC. 15. SEPARABILITY.**

2       If any provision of this Act or the application thereof  
3 to any person or circumstance is held invalid, the remain-  
4 der of this Act and the application of such provision to  
5 other persons or circumstances shall not be affected.

6 **SEC. 16. EFFECTIVE DATE.**

7       The provisions of this Act, other than section 9, shall  
8 take effect on January 1, 2004.