

108TH CONGRESS  
1ST SESSION

# S. 1231

To eliminate the burdens and costs associated with electronic mail spam by prohibiting the transmission of all unsolicited commercial electronic mail to persons who place their electronic mail addresses on a national No-Spam Registry, and to prevent fraud and deception in commercial electronic mail by imposing requirements on the content of all commercial electronic mail messages.

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IN THE SENATE OF THE UNITED STATES

JUNE 11, 2003

Mr. SCHUMER introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To eliminate the burdens and costs associated with electronic mail spam by prohibiting the transmission of all unsolicited commercial electronic mail to persons who place their electronic mail addresses on a national No-Spam Registry, and to prevent fraud and deception in commercial electronic mail by imposing requirements on the content of all commercial electronic mail messages.

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

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Stop Pornography and  
3 Abusive Marketing Act” or the “SPAM Act”.

4 **SEC. 2. FINDINGS.**

5       Congress finds the following:

6           (1) Electronic mail is an increasingly valuable  
7 tool for personal and commercial communication.  
8 Unsolicited commercial electronic mail (UCE), com-  
9 monly known as spam, however, has become an im-  
10 pediment to efficient electronic mail use and creates  
11 problems for all types of users and organizations, in-  
12 cluding Internet Service Providers, individual users,  
13 and corporate organizations.

14           (2) UCE often contains objectionable, fraudu-  
15 lent, and offensive content. The Federal Trade Com-  
16 mission reports that over 60 percent of all UCE con-  
17 tains false, misleading, or deceptive information.  
18 Nearly one-fourth contains sexually explicit imagery.  
19 Parents have little ability to prevent these images  
20 from reaching their child’s electronic mail in-box.

21           (3) Consumers increasingly ignore or delete le-  
22 gitimate commercial messages as they face an ever  
23 increasing amount of UCE. If the vitality and force  
24 of the Internet and electronic mail are to be pre-  
25 served as a tool for commercial communication,  
26 UCE must be curbed.

1           (4) UCE is also a severe financial concern. Lost  
2           productivity, increased spending on technology sys-  
3           tems and personnel, and personal frustration are  
4           some of the costs associated with UCE.

5           (5) Despite the increasing deployment of anti-  
6           spam services and technology, the number and size  
7           of spam messages are growing faster than ever. In  
8           1999, the average electronic mail user received just  
9           40 pieces of UCE per year. In 2003, the number is  
10          expected to pass 2,500. Experts estimate as much as  
11          70 percent of electronic mail traffic qualifies as  
12          UCE.

13          (6) Existing anti-spam service solutions alone  
14          are insufficient to stop the growth of spam. Despite  
15          the fact that Internet Service Providers spend mil-  
16          lions of dollars each year on research, filtering and  
17          other anti-spam software, and larger servers to deal  
18          with the ever expanding volume of UCE, current  
19          technology alone cannot control the spam problem.

20          (7) Federal law does not specifically address  
21          UCE and leaves Federal and State law enforcement  
22          and consumers with inadequate redress for the prob-  
23          lem.

24   **SEC. 3. PURPOSES.**

25          The purposes of this Act are to—

1 (1) preserve electronic mail as a vital tool in  
 2 interstate commerce by—

3 (A) reducing the costs associated with  
 4 UCE;

5 (B) reducing the amount of UCE; and

6 (C) eliminating false, misleading, and de-  
 7 ceptive content in all commercial electronic  
 8 mail; and

9 (2) give consumers control over their in-boxes.

10 **SEC. 4. DEFINITIONS.**

11 In this Act:

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

15 (A) the message falls within the scope of  
 16 an express and unambiguous invitation or per-  
 17 mission granted by the recipient and not subse-  
 18 quently revoked;

19 (B) the recipient had clear and con-  
 20 spicuous notice, at the time such invitation or  
 21 permission was granted, of—

22 (i) the fact that the recipient was  
 23 granting the invitation or permission;

24 (ii) the scope of the invitation or per-  
 25 mission, including what types of commer-

1           cial electronic mail messages would be cov-  
 2           ered by the invitation or permission and  
 3           what senders, if any, other than the party  
 4           to whom the invitation or permission was  
 5           communicated would be covered by the in-  
 6           vitation or permission; and

7                   (iii) a reasonable and effective mecha-  
 8           nism for revoking the invitation or permis-  
 9           sion; and

10           (C) the recipient has not, after granting  
 11           the invitation or permission, submitted a re-  
 12           quest under section 204 not to receive unsolic-  
 13           ited commercial electronic mail messages from  
 14           the sender of the message.

15           (2) COMMERCIAL ELECTRONIC MAIL MES-  
 16           SAGE.—The term “commercial electronic mail mes-  
 17           sage” means any electronic mail message the pri-  
 18           mary purpose of which is to advertise or promote,  
 19           for a commercial purpose, a commercial product or  
 20           service (including content on an Internet website).

21           (3) COMMISSION.—The term “Commission”  
 22           means the Federal Trade Commission.

23           (4) DOMAIN NAME.—The term “domain name”  
 24           means any alphanumeric designation which is reg-  
 25           istered with, or assigned by, any domain name reg-

1       istrar, domain name registry, or other domain name  
2       registration authority as part of an electronic mail  
3       address on the Internet.

4           (5) ELECTRONIC MAIL ADDRESS.—

5               (A) IN GENERAL.—The term “electronic  
6       mail address” means a destination (commonly  
7       expressed as a string of characters) to which  
8       electronic mail can be sent or delivered.

9               (B) INCLUSION.—In the case of the Inter-  
10      net, the term “electronic mail address” may in-  
11      clude an electronic mail address consisting of a  
12      user name or mailbox (commonly referred to as  
13      the “local part”) and a reference to an Internet  
14      domain (commonly referred to as the “domain  
15      part”).

16          (6) ELECTRONIC MAIL SERVICE.—The term  
17      “electronic mail service” means a service for the  
18      transmission of electronic mail messages that re-  
19      ceives the content of, and recipient list for, electronic  
20      mail messages that it sends from the person or enti-  
21      ty procuring such services. For purposes of this Act,  
22      to be an electronic mail service, such service must  
23      retain identifying information about the person or  
24      entity procuring services and cooperate with law en-  
25      forcement actions brought under this Act.

1           (7) FUNCTIONING RETURN ELECTRONIC MAIL  
2 ADDRESS.—

3           (A) The term “functioning return elec-  
4 tronic mail address” means a legitimately ob-  
5 tained electronic mail address, clearly and con-  
6 spicuously displayed in an electronic mail mes-  
7 sage, that—

8           (i) remains capable of receiving mes-  
9 sages for no less than 30 days after the  
10 transmission of such commercial electronic  
11 mail message; and

12           (ii) that has capacity reasonably cal-  
13 culated, in light of the number of recipi-  
14 ents of the electronic mail message, to en-  
15 able it to receive the full expected quantity  
16 of reply messages from such recipients.

17           (B) An electronic mail address that meets  
18 the requirements of subparagraph (A) shall not  
19 be excluded from this definition because of a  
20 temporary inability to receive electronic mail  
21 messages due to technical problems, provided  
22 steps are taken to correct such technical prob-  
23 lems within a reasonable time period.

24           (8) HEADER INFORMATION.—The term “header  
25 information” means the source, destination, and

1 routing information, or information authenticating  
2 the sender, associated with an electronic mail mes-  
3 sage, including the originating domain name, origi-  
4 nating electronic mail address, information regard-  
5 ing any part of the route that an electronic mail  
6 message travels or appears to travel on the Internet  
7 or on an online service, or other authenticating in-  
8 formation.

9 (9) IMPLIED CONSENT.—The term “implied  
10 consent”, when used with respect to a commercial  
11 electronic mail message, means—

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

18 (B) the recipient was, at the time of such  
19 transaction or thereafter, provided a clear and  
20 conspicuous notice of an opportunity not to re-  
21 ceive commercial electronic mail messages from  
22 the sender and has not exercised such oppor-  
23 tunity.

24 (10) INITIATE.—The term “initiate” means to  
25 originate an electronic mail message or to procure



1 the origination of such message, regardless of wheth-  
2 er the message reaches its intended recipients, and  
3 does not include the actions of an Internet access  
4 service or an electronic mail service used by another  
5 person for the transmission of an electronic mail  
6 message for which another person has provided and  
7 selected the recipient electronic mail addresses. For  
8 purposes of this Act, more than 1 person may be  
9 considered to have initiated the same message.

10 (11) INTERNET.—The term “Internet” has the  
11 meaning given that term in the Internet Tax Free-  
12 dom Act (Public Law 105–277, div. C, title XI,  
13 § 1101(e)(3)(c)).

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

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

22 (14) RECIPIENT.—The term “recipient”, when  
23 used with respect to a commercial electronic mail  
24 message, means the addressee of such message. If  
25 an addressee of a commercial electronic mail mes-

1        sage has 1 or more electronic mail addresses in addi-  
2        tion to the address to which the message was ad-  
3        dressed, the addressee shall be treated as a separate  
4        recipient with respect to each such address.

5            (15) REGISTERED ELECTRONIC MAIL AD-  
6        DRESS.—The term “registered electronic mail ad-  
7        dress” means an electronic mail address which has  
8        been placed on the No-Spam Registry administered  
9        by the Federal Trade Commission by the owner of  
10       the electronic mail address.

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

17           (17) SENDER.—The term “sender”, when used  
18       with respect to a commercial electronic mail message  
19       or an unsolicited commercial electronic mail mes-  
20       sage, means a person who initiates such a message  
21       and whose product, service, or Internet web site is  
22       advertised or promoted by the message, but does not  
23       include any person, including a provider of Internet  
24       access service or electronic mail service, whose role

1 with respect to the message is limited to routine con-  
2 veyance of the message.

3 (18) UNSOLICITED COMMERCIAL ELECTRONIC  
4 MAIL MESSAGE; UCE.—

5 (A) IN GENERAL.—The terms “unsolicited  
6 commercial electronic mail message” and  
7 “UCE” mean any commercial electronic mail  
8 message that is sent to a recipient—

9 (i) without prior affirmative consent  
10 or implied consent from the recipient; or

11 (ii) to a recipient who, subsequent to  
12 the establishment of affirmative or implied  
13 consent under clause (i), has expressed, in  
14 a reply submitted pursuant to section 204,  
15 or in response to any other opportunity the  
16 sender may have provided to the recipient,  
17 a desire not to receive commercial elec-  
18 tronic mail messages from the sender.

19 (B) EXCLUSION.—Notwithstanding sub-  
20 paragraph (A), the term “unsolicited commer-  
21 cial electronic mail message” does not include  
22 an electronic mail message sent by or on behalf  
23 of one or more lawful owners of copyright, pat-  
24 ent, publicity, or trademark rights to an unau-  
25 thorized user of protected material notifying

1           such user that the use is unauthorized and re-  
2           questing that the use be terminated or that per-  
3           mission for such use be obtained from the  
4           rights holder or holders.

5 **TITLE I—PROTECTION FROM UN-**  
6 **SOLICITED                   ELECTRONIC**  
7 **MAIL**

8 **SEC. 101. ESTABLISHMENT OF THE NATIONAL NO-SPAM**  
9 **REGISTRY.**

10       (a) IN GENERAL.—The Commission shall establish a  
11 registry (referred to in this section as the “Registry”) in  
12 which any person that does not wish to receive unsolicited  
13 commercial electronic mail may register electronic mail ad-  
14 dresses.

15       (b) REGISTRATION.—The Commission shall permit  
16 any person to register the electronic mail addresses of the  
17 person, or the electronic mail addresses over which the  
18 person has authority or control, including registration by  
19 electronic mail, on the Registry.

20       (c) REGISTRATION BY PARENT.—The Commission  
21 shall permit a parent, legal guardian, or other person with  
22 control or authority over electronic mail addresses to  
23 which minor children have access, to register such ad-  
24 dresses.

1 (d) PROHIBITION ON UNSOLICITED COMMERCIAL  
2 ELECTRONIC MAIL TO REGISTERED ADDRESSES.—Ex-  
3 cept as otherwise authorized by the Commission in regula-  
4 tions prescribed under this section, it shall be unlawful  
5 for a person to initiate UCE to a registered electronic mail  
6 address.

7 **SEC. 102. ENFORCEMENT.**

8 (a) ENFORCEMENT POWERS.—

9 (1) IN GENERAL.—The Commission shall en-  
10 force this section as part of its duties under the  
11 Federal Trade Commission Act (15 U.S.C. 41 et  
12 seq.).

13 (2) REPORTING OF VIOLATIONS.—For purposes  
14 of the enforcement of section 101(d), the Commis-  
15 sion shall establish procedures to permit the report-  
16 ing of violations of this section to the Commission,  
17 including appropriate links on the Internet web site  
18 of the Commission and the use of a toll-free tele-  
19 phone number (commonly referred to as an “800  
20 number”) for such purposes.

21 (b) CIVIL PENALTY.—

22 (1) IN GENERAL.—The Commission may im-  
23 pose a civil penalty not to exceed \$5,000 for each  
24 violation of section 101(d). For purposes of this

1 paragraph, each day of violation shall constitute a  
 2 separate offense.

3 (2) UNAUTHORIZED USE OF REGISTRY.—The  
 4 Commission may impose a civil penalty not to exceed  
 5 \$100,000 for each unauthorized use of the Registry.

6 **SEC. 103. REGULATIONS.**

7 (a) IN GENERAL.—Not later than 180 days after the  
 8 date of enactment of this Act, the Commission shall issue  
 9 regulations for establishing and maintaining the Registry,  
 10 providing secure distribution of the Registry to marketers  
 11 for the purpose of complying with this section, protecting  
 12 the Registry from unauthorized use, and enforcing the  
 13 provisions of this section.

14 (b) PROTECTION OF CHILDREN.—

15 (1) CREATION OF CATEGORIES.—The Commis-  
 16 sion may create specific categories of electronic mail  
 17 for which recipients who are minors can receive pro-  
 18 tection under this Act.

19 (2) TYPES OF CATEGORIES.—The categories  
 20 created under paragraph (1) may include—

21 (A) products or services that a minor child  
 22 is prohibited by law from purchasing; and

23 (B) electronic mail that contains or adver-  
 24 tises adult content or links to such content.

1 (3) COMPLIANCE.—Senders shall honor the cat-  
 2 egories created under paragraph (1) without regard  
 3 to actual or implied consent given by the minor.

4 (c) FEES.—The Commission shall include in its regu-  
 5 lations a method for assessing fees on marketers for use  
 6 of the Registry that are sufficient to establish, administer,  
 7 and maintain the Registry.

8 **SEC. 104. SAFE HARBOR FOR REASONABLE PROCEDURES.**

9 No person shall be in violation of this Act if—

10 (1) the electronic mail address has been on the  
 11 Registry for less than 30 days; or

12 (2) the person reasonably relies on the Registry  
 13 provided by the Commission and takes reasonable  
 14 measures to comply with this Act.

15 **TITLE II—REQUIREMENTS FOR**  
 16 **SENDERS OF UNSOLICITED**  
 17 **COMMERCIAL ELECTRONIC**  
 18 **MAIL AND COMMERCIAL**  
 19 **ELECTRONIC MAIL**

20 **SEC. 201. LABELING REQUIREMENTS FOR UNSOLICITED**  
 21 **COMMERCIAL ELECTRONIC MAIL.**

22 (a) INCLUSION OF IDENTIFIER IN UNSOLICITED  
 23 COMMERCIAL ELECTRONIC MAIL.—Except as provided in  
 24 subsection (b), it shall be unlawful for any person to ini-  
 25 tiate the transmission of any UCE to a protected com-

1 puter unless the message provides clear and conspicuous  
2 identification that the message is an advertisement or so-  
3 licitation, by providing, as the first characters in the sub-  
4 ject line, “ADV:”.

5 (b) SAFE HARBOR.—Subsection (a) shall not apply  
6 if—

7 (1) the sender is a member of a self-regulatory  
8 organization approved by the Commission under  
9 subsection (c) and has agreed in writing to meet the  
10 requirements for participation established by that  
11 organization; and

12 (2) the sender is deemed by the self-regulatory  
13 organization to be in full compliance with the re-  
14 quirements of that organization.

15 (c) APPROVAL BY THE COMMISSION.—The Commis-  
16 sion may approve a self-regulatory organization under this  
17 section if the Commission finds the following:

18 (1) PARTICIPATION REQUIREMENTS.—The self-  
19 regulatory organization has implemented guidelines  
20 and procedures that require program participants,  
21 which may include a company or any of its divisions,  
22 to—

23 (A) adhere to the requirements of this Act;



1 (B) provide information in each electronic  
2 mail message sufficient to identify the company  
3 on whose behalf the electronic mail is sent;

4 (C) provide notice, through a publicly  
5 available policy, of—

6 (i) the ways in which electronic mail  
7 addresses are collected by the participant;

8 (ii) how such addresses are used; and

9 (iii) to whom such addresses are dis-  
10 closed;

11 (D) provide a conspicuous link in each  
12 electronic mail message to the notice referred to  
13 in subparagraph (C);

14 (E) provide recipients with a clear and  
15 conspicuous opportunity to make choices re-  
16 garding the use of their electronic mail address-  
17 es, including the disclosure of such addresses to  
18 third parties in each electronic mail message;

19 (F) enable consumers to correct or mod-  
20 ify—

21 (i) their electronic mail addresses col-  
22 lected by the participant; or

23 (ii) any of the choices consumers have  
24 made regarding the use and disclosure of  
25 such addresses;

1 (G) take reasonable steps designed to pre-  
2 vent the unauthorized disclosure or release of  
3 electronic mail addresses;

4 (H) provide clear and conspicuous informa-  
5 tion in each electronic mail message sufficient  
6 to inform recipients how they can file a com-  
7 plaint regarding the failure of a participant to  
8 follow the requirements of the self-regulatory  
9 organization of the stated practices of the par-  
10 ticipant; and

11 (I) provide an agent for service of process  
12 and consent to suit in the United States.

13 (2) ELIGIBILITY AND VERIFICATION.—The self-  
14 regulatory organization has implemented procedures  
15 and requirements to provide for—

16 (A) a written certification from a senior  
17 corporate officer or other responsible executive  
18 of the participant, prior to determining eligi-  
19 bility to participate in the self-regulatory orga-  
20 nization, that states—

21 (i) the participant has procedures and  
22 practices in place that are designed to sat-  
23 isfy, at a minimum, the guidelines, proce-  
24 dures, requirements, and restrictions of the  
25 self-regulatory organization; and

1 (ii) the participant has taken good  
 2 faith efforts to maintain compliance with  
 3 the guidelines, procedures, requirements,  
 4 and restrictions of the self-regulatory orga-  
 5 nization; and

6 (B) subsequent periodic review of the pol-  
 7 icy and practices of a participant to ensure the  
 8 compliance with the requirements of the organi-  
 9 zation.

10 (3) EVIDENCE OF PARTICIPATION.—The self-  
 11 regulatory organization has implemented provisions  
 12 to identify participation in the program, including a  
 13 seal that can be recognized by filtering technology.

14 (4) DISPUTE RESOLUTION PROCESS.—

15 (A) SELF-REGULATORY ORGANIZATION  
 16 PROCESS.—

17 (i) IN GENERAL.—The self-regulatory  
 18 organization has implemented a dispute  
 19 resolution process for recipients of UCE  
 20 from program participants.

21 (ii) PROCESS REQUIREMENTS.—The  
 22 dispute resolution process implemented  
 23 under clause (i)—

24 (I) must be available without  
 25 charge to a recipient;

1 (II) must be available to the par-  
 2 ticipant at a reasonable cost;

3 (III) must be completed not later  
 4 than 30 days after submission of a  
 5 dispute by the recipient and notifica-  
 6 tion to the participant, or not later  
 7 than 60 days after submission of the  
 8 dispute if the participant notifies the  
 9 recipient that additional time is re-  
 10 quired to obtain information to resolve  
 11 the dispute;

12 (IV) must include procedures for  
 13 suspension and termination of those  
 14 participants who violate the guide-  
 15 lines, procedures, requirements, or re-  
 16 strictions of the organization; and

17 (V) may include, as one option,  
 18 binding arbitration.

19 (B) INVOLUNTARY SUSPENSION OR TERMI-  
 20 NATION.—The self-regulatory organization has  
 21 established procedures and requirements that—

22 (i) enable a participant that is invol-  
 23 untarily suspended or terminated from  
 24 participation in the organization to take  
 25 timely remedial action to achieve compli-

1           ance before any suspension or termination  
2           becomes final;

3           (ii) provide for mandatory, public re-  
4           porting of any final decision to involun-  
5           tarily suspend or terminate a participant;  
6           and

7           (iii) provide for notice to the Commis-  
8           sion of any final decision to involuntarily  
9           terminate a participant.

10          (C) RESOLUTION BY THE COMMISSION.—

11           (i) IN GENERAL.—The Commission  
12           shall promptly refer any dispute submitted  
13           to the Commission to the participant in-  
14           volved if the recipient at issue has not ini-  
15           tially sought resolution under subpara-  
16           graph (A).

17           (ii) REQUIREMENTS.—A recipient of  
18           UCE may submit a dispute with a pro-  
19           gram participant to the Commission for  
20           resolution under this subparagraph if—

21                   (I) the dispute was initially sub-  
22                   mitted for resolution through the dis-  
23                   pute resolution process of the partici-  
24                   pant under subparagraph (A) ;

1 (II) the dispute submitted under  
2 subparagraph (A)—

3 (aa) was not resolved within  
4 30 days after submission of the  
5 dispute by the recipient; or

6 (bb) was not resolved to the  
7 satisfaction of the recipient;

8 (III) notice of the dispute is sub-  
9 mitted to the Commission not later  
10 than 30 days after the recipient was  
11 notified of the resolution;

12 (IV) the recipient has not volun-  
13 tarily accepted a resolution of the dis-  
14 pute under subparagraph (A); and

15 (V) the dispute was not resolved  
16 through binding arbitration.

17 (5) INDEPENDENCE.—The self-regulatory orga-  
18 nization has established requirements to help ensure  
19 that program eligibility, compliance, and dispute res-  
20 olution mechanisms and determinations are made  
21 exclusively by persons who are independent of the  
22 program participant.

23 (d) APPLICATION PROCESS.—

1           (1) IN GENERAL.—The Commission shall pro-  
2           mulgate rules for the application process for the ap-  
3           proval of a self-regulatory organization this section.

4           (2) PUBLIC NOTICE.—Upon receipt of an appli-  
5           cation, the Commission shall provide notice of the  
6           application and an opportunity for comment on the  
7           application to the public.

8           (3) DECISION.—The Commission shall—

9                   (A) make a decision on an application not  
10                  later than 180 days after the application is re-  
11                  ceived; and

12                   (B) set forth, in writing, its conclusions  
13                  with regard to such requests.

14           (4) DURATION.—An application approved by  
15           the Commission shall be approved for a period of 2  
16           years.

17           (5) APPEAL.—Final action by the Commission  
18           on a request for approval of guidelines, or the failure  
19           to act within 180 days on a request for approval of  
20           guidelines, may be appealed to a district court of the  
21           United States or appropriate jurisdiction as provided  
22           for in section 706 of title 5, United States Code.

23           (e) REVOCATION OF APPROVAL.—The Commission  
24           may, after notice and an opportunity to be heard, revoke

1 approval if the Commission finds that the self-regulatory  
2 organization fails to meet the requirements of this section.

3 (f) RELEASE OF CERTAIN INFORMATION.—The Com-  
4 mission may compel a self-regulatory organization, or the  
5 administrator of the self-regulatory organization, to pro-  
6 vide proprietary information or personally identifiable in-  
7 formation of consumers to the Commission.

8 (g) MISREPRESENTATION OF PARTICIPATION IN THE  
9 SELF-REGULATORY ORGANIZATION.—It shall be unlawful  
10 for an individual or entity to misrepresent that the indi-  
11 vidual or entity is a participant in the self-regulatory orga-  
12 nization, including through any evidence referred to in  
13 subsection (c)(3).

14 **SEC. 202. COMPLIANCE WITH ISP POLICIES.**

15 It shall be unlawful for a person to initiate the trans-  
16 mission of commercial electronic mail or UCE in violation  
17 of Internet Service Provider policies with respect to elec-  
18 tronic mail, account registration and use, or other terms  
19 of service.

20 **SEC. 203. VALID INFORMATION.**

21 It shall be unlawful for a sender to initiate the trans-  
22 mission of commercial electronic mail or UCE to a pro-  
23 tected computer that contains false, misleading, or decep-  
24 tive information in the subject line, header or router infor-



1 mation, or the body of the message, including the informa-  
 2 tion regarding unsubscribe option required by section 204.

3 **SEC. 204. UNSUBSCRIBE OPTION.**

4 (a) IN GENERAL.—All commercial electronic mail  
 5 and UCE shall contain the following:

6 (1) INCLUSION OF RETURN ADDRESS.—

7 (A) IN GENERAL.—A functioning return  
 8 electronic mail address or other Internet-based  
 9 mechanism, clearly and conspicuously displayed,  
 10 that—

11 (i) a recipient may use to submit a  
 12 reply electronic mail message requesting  
 13 not to receive any future UCE from that  
 14 sender at the electronic mail address where  
 15 the message was received; and

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

20 (B) TEMPORARY INABILITY TO RECEIVE  
 21 MESSAGES.—A return electronic mail address  
 22 or other mechanism does not fail to satisfy the  
 23 requirements of subparagraph (A) if it is unex-  
 24 pectedly and temporarily unable to receive mes-  
 25 sages due to technical or capacity problems, if

1           the problem with receiving messages is cor-  
 2           rected within a reasonable time period.

3           (2) NOTICE OF RIGHT TO DECLINE FURTHER  
 4           MESSAGES.—Clear and conspicuous notice, set out  
 5           in bold type and in a font no smaller than the small-  
 6           est font type used in the remainder of the message,  
 7           of the opportunity to decline to receive further com-  
 8           mercial electronic mail and UCE from the sender.

9           (b) VIOLATION.—It shall be unlawful for a sender to  
 10          initiate transmission of commercial electronic mail or  
 11          UCE to a recipient after that recipient has exercised the  
 12          unsubscribe option this section.

13       **SEC. 205. PROHIBITION OF TRANSMISSION OF COMMER-**  
 14                               **CIAL ELECTRONIC MAIL AND UNSOLICITED**  
 15                               **COMMERCIAL ELECTRONIC MAIL TO AD-**  
 16                               **DRESSES OBTAINED THROUGH ILLEGAL HAR-**  
 17                               **VESTING OR AUTOMATED MEANS.**

18          (a) IN GENERAL.—It shall be unlawful for any per-  
 19          son to initiate the transmission, to a protected computer,  
 20          of a commercial electronic mail message or UCE, or to  
 21          assist in the origination of such a message by providing  
 22          or selecting addresses to which the message will be sent,  
 23          if such person knows that, or acts with reckless disregard  
 24          as to whether—

1           (1) the electronic mail address of the recipient  
2           was obtained, using an automated means, from an  
3           Internet website or proprietary online service oper-  
4           ated by another person;

5           (2) the website or proprietary online service  
6           from which the address was obtained included, at  
7           the time the address was obtained, a notice stating  
8           that the operator of such a website or proprietary  
9           online service will not give, sell, or otherwise transfer  
10          addresses maintained by such site or service to any  
11          other party for the purpose of initiating, or enabling  
12          others to initiate, UCE; or

13          (3) the electronic mail address of the recipient  
14          was obtained using automated means based on a  
15          combination of names, letters, or numbers.

16          (b) DISCLAIMER.—Nothing in this section creates an  
17          ownership or proprietary interest in such electronic mail  
18          addresses.

19      **SEC. 206. VALID POSTAL ADDRESS.**

20          It shall be unlawful for any person to initiate the  
21          transmission of commercial electronic mail or UCE with-  
22          out identifying the valid, physical address of the sender  
23          in a clear and conspicuous manner.

1           **TITLE III—ENFORCEMENT**

2   **SEC. 301. ENFORCEMENT BY FEDERAL TRADE COMMIS-**  
3                   **SION.**

4       Except as otherwise provided in section 102, the  
5 Commission shall prevent any person from violating this  
6 Act in the same manner, by the same means, and with  
7 the same jurisdiction, powers, and duties as though all ap-  
8 plicable terms and provisions of the Federal Trade Com-  
9 mission Act (15 U.S.C. 41 et seq.) were incorporated into  
10 and made a part of this Act. Except as provided in title  
11 I, the Commission may seek penalties and fines according  
12 to all applicable terms and provisions of the Federal Trade  
13 Commission Act. Nothing in this Act shall be construed  
14 to limit the authority of the Commission under any other  
15 provision of law.

16   **SEC. 302. ENFORCEMENT BY CERTAIN OTHER AGENCIES.**

17       (a) IN GENERAL.—Compliance with this Act shall be  
18 enforced—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 section (a) of its powers under any Act referred to in that  
 2 subsection, a violation of this Act is deemed to be a viola-  
 3 tion of a requirement imposed under that Act. In addition  
 4 to its powers under any provision of law specifically re-  
 5 ferred to in subsection (a), each of the agencies referred  
 6 to in that subsection may exercise, for the purpose of en-  
 7 forcing compliance with any requirement imposed under  
 8 this Act, any other authority conferred on it by law.

9 **SEC. 303. ENFORCEMENT BY STATES.**

10 (a) CIVIL ACTION.—In any case in which the attor-  
 11 ney general of a State has reason to believe that an inter-  
 12 est of the residents of that State has been or is threatened  
 13 or adversely affected by any person engaging in a practice  
 14 that violates this Act, the State, as *parens patriae*, may  
 15 bring a civil action on behalf of the residents of the State  
 16 in a district court of the United States of appropriate ju-  
 17 risdiction or in any other court of competent jurisdiction—

18 (1) to enjoin that practice; or

19 (2) to obtain damages on behalf of residents of  
 20 the State, in an amount equal to the greater of—

21 (A) the actual monetary loss suffered by  
 22 such residents; or

23 (B) the amount determined under sub-  
 24 section (b).



1       (b) STATUTORY DAMAGES.—For purposes of sub-  
 2 section (a)(2)(B), the amount determined under this sub-  
 3 section is the amount calculated by multiplying the num-  
 4 ber of willful, knowing, or negligent violations of this Act  
 5 by an amount, in the discretion of the court, of up to \$10  
 6 (with each separately addressed unlawful message received  
 7 by such residents treated as a separate violation). In de-  
 8 termining the per-violation penalty under this subsection,  
 9 the court shall take into account the degree of culpability,  
 10 any history of prior such conduct, ability to pay, the extent  
 11 of economic gain resulting from the violation, and such  
 12 other matters as justice may require.

13       (c) ATTORNEY FEES.—In the case of any successful  
 14 action under subsection (a), the State shall be awarded  
 15 the costs of the action and reasonable attorney fees as de-  
 16 termined by the court.

17       (d) NOTICE.—

18               (1) PRE-FILING.—Before filing an action under  
 19 paragraph (1), an attorney general shall provide to  
 20 the Commission—

21                       (A) written notice of that action; and

22                       (B) a copy of the complaint for that ac-  
 23 tion.

24               (2) CONTEMPORANEOUS.—If an attorney gen-  
 25 eral of a State determines that it is not feasible to

1 provide the notice required by paragraph (1) before  
2 filing the action, the notice and a copy of the com-  
3 plaint shall be provided to the Commission when the  
4 action is filed.

5 (e) INTERVENTION.—If the Commission receives no-  
6 tice under subsection (d), the Commission—

7 (1) may intervene in the action that is the sub-  
8 ject of the notice; and

9 (2) has the right—

10 (A) to be heard with respect to any matter  
11 that arises in that action; and

12 (B) to file a petition for appeal.

13 (f) CONSTRUCTION.—For purposes of bringing any  
14 civil action under subsection (a), nothing in this Act shall  
15 be construed to prevent an attorney general of a State  
16 from exercising the powers conferred on the attorney gen-  
17 eral by the laws of that State to—

18 (1) conduct investigations;

19 (2) administer oaths or affirmations; or

20 (3) compel the attendance of witnesses or the  
21 production of documentary and other evidence.

22 (g) LIMITATION ON STATE ACTION WHILE FEDERAL  
23 ACTION IS PENDING.—If the Commission or other appro-  
24 priate Federal agency under section 208(a) has instituted  
25 a civil action or an administrative action for violation of

1 this Act, no State attorney general may bring a separate  
 2 action under this subsection during the pendency of that  
 3 action against any defendant named in the complaint of  
 4 the Commission or the other agency for any violation of  
 5 this Act alleged in the complaint. Nothing in this sub-  
 6 section shall preclude a State from joining an action  
 7 brought by the Commission or other agency or cooperating  
 8 with the Commission's or agency's prosecution of that ac-  
 9 tion.

10 **SEC. 304. ACTION BY PROVIDER OF INTERNET ACCESS**  
 11 **SERVICE.**

12 (a) ACTION AUTHORIZED.—A provider of Internet  
 13 access service adversely affected by a violation of this Act  
 14 may bring a civil action in any district court of the United  
 15 States with jurisdiction over the defendant, or in any other  
 16 court of competent jurisdiction, to—

17 (1) enjoin further violation by the defendant; or

18 (2) recover damages in an amount equal to the  
 19 greater of—

20 (A) actual monetary loss incurred by the  
 21 provider of Internet access service as a result of  
 22 such violation; or

23 (B) the amount determined under sub-  
 24 section (b).

1       (b) STATUTORY DAMAGES.—For purposes of sub-  
 2 section (a)(2)(B), the amount determined under this para-  
 3 graph is the amount calculated by multiplying the number  
 4 of willful, knowing, or negligent violations by an amount,  
 5 in the discretion of the court, of up to \$10 (with each  
 6 separately addressed unlawful message received by such  
 7 residents treated as a separate violation). In determining  
 8 the per-violation penalty under this subsection, the court  
 9 shall take into account the degree of culpability, any his-  
 10 tory of prior such conduct, ability to pay, the extent of  
 11 economic gain resulting from the violation, and such other  
 12 matters as justice may require.

13       (c) ATTORNEY FEES.—In any action brought pursu-  
 14 ant to subsection (a), the court may, in its discretion, re-  
 15 quire an undertaking for the payment of the costs of such  
 16 action, and assess reasonable costs, including reasonable  
 17 attorneys' fees, against any party.

18 **SEC. 305. ACTION BY INDIVIDUAL CONSUMERS.**

19       (a) ACTION AUTHORIZED.—A recipient adversely af-  
 20 fected by a violation of this Act may, if otherwise per-  
 21 mitted by the laws or rules of State court, bring, in an  
 22 appropriate court of that State, an action to—

- 23               (1) enjoin further violation by the defendant;
- 24               (2) recover damages in an amount equal to the
- 25               greater of—

1 (A) actual monetary losses incurred by the  
 2 plaintiff as a result of such violation; or

3 (B) the amount determined under sub-  
 4 section (b); or

5 (3) both enjoin further violation and recover  
 6 damages under paragraphs (1) and (2).

7 (b) STATUTORY DAMAGES.—For purposes of sub-  
 8 section (a)(2)(B), the amount determined under this sub-  
 9 section is the amount calculated by multiplying the num-  
 10 ber of willful, knowing, or negligent violations adversely  
 11 affecting that recipient by an amount, determined in the  
 12 discretion of the court, of not more than \$1,000. Each  
 13 separately addressed unlawful electronic mail message re-  
 14 ceived by the plaintiff shall be treated as a single violation  
 15 regardless of the number of violations contained in that  
 16 message. In determining the per-violation penalty under  
 17 this subsection, the court shall take into account the de-  
 18 gree of culpability, any prior history of such conduct, abil-  
 19 ity to pay, the extent of economic gain resulting from the  
 20 violation, and such other matters as justice may require.

21 (c) LIMITATION ON ACTIONS.—

22 (1) IN GENERAL.—No action may be brought  
 23 under or based on this section against an electronic  
 24 mail service provider or Internet Service Provider in-  
 25 volved in only the routine transmission of the com-

1       mercial electronic mail or UCE sent in violation of  
2       this Act.

3           (2) INDIVIDUAL RIGHT OF ACTION.—The right  
4       of action granted in this section is an individual  
5       right. No action brought under this section or based  
6       on this section may be maintained as a class action  
7       under Rule 23 of the Federal Rules of Civil Proce-  
8       dure or any State law, rule, or procedure for class  
9       actions or other representative actions.

10       (d) ATTORNEY FEES AND COSTS.—In any action  
11      brought pursuant to subsection (a) the court may, in its  
12      discretion, require the payment of the costs of such action,  
13      and assess reasonable costs, including reasonable attor-  
14      neys' fees, against any party.

○