

## ***Electronic Mailbox Protection Act***

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To promote online commerce and communications, to protect consumers and service providers from the misuse of computer facilities by others sending bulk unsolicited electronic mail over such facilities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

June 11, 1997

Mr. TORRICELLI 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 promote online commerce and communications, to protect consumers and service providers from the misuse of computer facilities by others sending bulk unsolicited electronic mail over such facilities, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

### **SECTION 1. SHORT TITLE.** ➡

This Act may be cited as the `Electronic Mailbox Protection Act of 1997'.

## **SEC. 2. FINDINGS.** ➡

Congress makes the following findings:

(1) The Internet has increasingly become a critical mode of global communication and now presents unprecedented opportunities for the development and growth of global commerce and an integrated worldwide economy.

(2) In order for global commerce on the Internet to reach its full potential, individuals and entities using the Internet and other online services should be prevented from engaging in activities that prevent other users and Internet service providers from having a reasonably predictable, efficient, and economical online experience.

(3) Unsolicited electronic mail can be an important mechanism through which commercial vendors, nonprofit organizations, and other providers of services recruit members, advertise, and attract customers in the online environment.

(4) The receipt of unsolicited electronic mail may result in undue monetary costs to recipients who cannot refuse to accept such mail and who incur costs for the storage of such mail, or for the time spent accessing, reviewing, and discarding such mail, or for both.

(5) Unsolicited electronic mail sent in bulk may impose significant monetary costs on the Internet service providers, businesses, and educational and non-profit institutions that carry and receive such mail, as there is a finite volume of mail that such providers, businesses, and institutions can handle at any one point in time. The sending of such mail is increasingly and negatively affecting the quality of service provided to customers of Internet service providers.

(6) While many senders of bulk unsolicited electronic mail provide simple and reliable ways for recipients to reject (or 'opt-out' of) receipt of unsolicited electronic mail from such senders in the future, other senders provide no such 'opt-out' mechanism, or refuse to honor the requests of recipients not to receive electronic mail from such senders in the future, or both.

(7) An increasing number of senders of bulk unsolicited electronic mail purposefully disguise the source of such mail so as to prevent recipients from responding to such mail quickly and easily.

(8) Many senders of unsolicited electronic mail collect (or 'harvest') electronic mail addresses of potential recipients without the knowledge of their intended recipients and in violation of the rules or terms of service of the fora from which such addresses are collected.

(9) Because recipients of unsolicited electronic mail are unable to avoid the receipt of such mail through reasonable means, such mail may threaten the privacy of recipients. This privacy threat is enhanced for recipients whose electronic mail software or server alerts them to new mail as it arrives, as unsolicited electronic mail thereby disrupts the normal operation of the recipient's computer.

(10) In legislating against certain abuses on the Internet, Congress and the States should be very careful to avoid infringing in any way upon constitutionally protected rights, including the rights of assembly, free speech, and privacy.

(11) In order to realize the full potential for online electronic commerce, senders of bulk unsolicited electronic mail should be required to abide by the requests of electronic mail recipients, Internet service providers, businesses, and educational and non-profit institutions to cease sending such mail to such recipients, providers, businesses, and educational and non-profit institutions.

### **SEC. 3. PROHIBITION ON CERTAIN ACTIVITIES THAT MISAPPROPRIATE THE RESOURCES OF ONLINE SERVICE PROVIDERS. ➡**

(a) IN GENERAL- Whoever, in or affecting interstate or foreign commerce--

(1) initiates the transmission of an unsolicited electronic mail message from an unregistered or fictitious Internet domain, or an unregistered or fictitious electronic mail address, for the purpose of--

(A) preventing replies to such message through use of a standard reply mechanism in the recipient's electronic mail system; or

(B) preventing receipt of standard notices of non-delivery;

(2) uses a computer program or other technical mechanism or procedure to disguise the source of unsolicited electronic mail messages for the purpose of preventing recipients, or recipient interactive computer services, from implementing a mail filtering tool to block the messages from reaching the intended recipients;

(3) initiates the transmission of an unsolicited electronic mail message and fails to comply with the request of the recipient of the message, made to the sender or the listserver as appropriate, to cease sending electronic messages to the recipient in the future;

(4) distributes a collection or list of electronic mail addresses, having been given prior notice that one or more of the recipients identified by such addresses does not wish to receive unsolicited electronic mail and knowing that the recipient of such addresses intends to use such addresses for the purpose of sending unsolicited electronic mail;

(5) initiates the transmission of an unsolicited electronic mail message to a recipient despite having been given prior notice (either directly or through a standard method developed, adopted, or modified by an Internet standard setting organization (such as the Internet Engineering Task Force or the World Wide Web Consortium) to better facilitate pre-emptive consumer control over bulk unsolicited electronic mail) that the recipient does not wish to receive such messages;

(6) registers, creates, or causes to be created an Internet domain or applies for, registers, or otherwise obtains the use of an Internet electronic mail account for the sole or primary purpose of initiating the transmission of an unsolicited electronic mail message in contravention of paragraph (1) or (2);

(7) directs an unsolicited electronic mail message through the server of an interactive computer service to one or more subscribers of the interactive computer service, knowing that such action is in contravention of the rules of the interactive computer service with respect to bulk unsolicited electronic mail messages;

(8) knowing that such action is in contravention of the rules of the interactive computer service concerned, accesses the server of the interactive computer service and uses a computer program to collect electronic mail addresses of subscribers of the interactive computer service for the purpose of sending such subscribers unsolicited electronic mail or distributing such addresses knowing that the recipient of such addresses intends to use such addresses for the purpose of sending unsolicited electronic mail; or

(9) initiates the transmission of bulk unsolicited electronic mail messages and divides the mailing of such messages into smaller mailings for the purpose of circumventing another provision of this Act,

shall be subject to a civil penalty of not more than \$5,000 per individual violation.

(b) ENFORCEMENT- The Federal Trade Commission shall have the authority to commence civil actions under subsection (a).

#### **SEC. 4. RECOVERY OF CIVIL DAMAGES.** ➔

(a) IN GENERAL- Any person whose interactive computer service or electronic mailbox is intentionally misused or infiltrated, or whose requests for cessation of electronic mail messages have been ignored, in violation of section 3 may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

(b) RELIEF- In an action under this section, appropriate relief includes--

(1) such preliminary and other equitable or declaratory relief as may be appropriate;

(2) actual monetary loss from a violation, statutory damages of not more than \$500 for each violation, and, if the court finds that the defendant's actions were particularly egregious, willful, or knowing violations of section 3, the court may, in its discretion, increase the amount of an award to an amount equal to not more than 10 times the amount available hereunder; and

(3) a reasonable attorney's fee and other litigation costs reasonably incurred.

#### **SEC. 5. STATE LAW.** ➔

Nothing in this Act shall be construed to prevent any State from enforcing any State law that is consistent with this Act. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this Act.

#### **SEC. 6. FEDERAL TRADE COMMISSION STUDY INTO EFFECTS OF UNSOLICITED ELECTRONIC MAIL.** ➔

Not later than 18 months after the date of enactment of this Act, the Federal Trade Commission shall submit to Congress a report detailing the effectiveness of, enforcement of, and the need, if any, for Congress to modify the provisions of this Act.

## **SEC. 7. DEFINITIONS.** ➔

In this Act:

(1) **BULK UNSOLICITED ELECTRONIC MAIL MESSAGE-** The term 'bulk unsolicited electronic mail message' means any substantially identical unsolicited electronic mail message with 25 or more intended recipients.

(2) **ELECTRONIC MAIL ADDRESS-**

(A) **IN GENERAL-** The term 'electronic mail address' means a destination (commonly expressed as a string of characters) to which electronic mail can be sent or delivered.

(B) **INCLUSION-** In the case of the Internet, the term 'electronic mail address' may include an electronic mail address consisting of a user name or mailbox (commonly referred to as the 'local part') and a reference to an Internet domain (commonly referred to as the 'domain part').

(3) **INITIATES THE TRANSMISSION-** The term 'initiates the transmission', in the case an electronic mail message, refers to the action of the original sender of the message and not to any intervening computer service that may handle or retransmit the message, unless the intervening computer service retransmits the message with an intent to engage in activities prohibited by this Act.

(4) **INTERACTIVE COMPUTER SERVICE-** The term 'interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. 230(e)(2)).

(5) **INTERNET-** The term 'Internet' has the meaning given that term in section 230(e)(1) of the Communications Act of 1934 (47 U.S.C. 230(e)(1)).

(6) **INTERNET DOMAIN-** The term 'Internet domain' refers to a specific computer system (commonly referred to as a 'host') or collection of computer systems attached to or able to be referenced from the Internet which are assigned a specific reference point on the Internet (commonly referred to as the 'Internet domain name') and registered with an organization recognized by the computer industry as a registrant of Internet domains.

(7) **LISTSERVER-** The term 'listserver' refers to a computer program that provides electronic mailing list management functions, including functions that allow individuals to subscribe and unsubscribe to and from electronic mailing lists.

(8) **MAIL FILTERING TOOL-** The term 'mail filtering tool' means any computer program, procedure, or mechanism used by an individual recipient or interactive computer service to block, return, reroute, or otherwise screen or sort incoming electronic mail messages.

(9) **SERVER-** The term 'server' refers to any computer that provides support or services of any kind, including electronic mailboxes, to other computers (commonly referred to as 'clients').

(10) **UNSOLICITED ELECTRONIC MAIL MESSAGE-** The term 'unsolicited electronic mail message' means any electronic mail other than electronic mail sent by persons to others with whom they have a prior relationship, including a prior business relationship, or mail

sent by a source to recipients where such recipients, or someone authorized by them, have at any time affirmatively requested to receive communications from that source.

**SEC. 8. EFFECTIVE DATE.** ➔

This provisions of this Act shall take effect 45 days after the date of enactment of this Act.