

**S. 630, AS ORDERED REPORTED,
AND PROPOSED TO BE
AMENDED**

[STAFF DISCUSSION DRAFT]

OCTOBER 15, 2002

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 2002”, or the “CAN-SPAM Act of 2002”.

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

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

7 (1) There is a right of free speech on the Inter-
8 net.

9 (2) The Internet has increasingly become a crit-
10 ical mode of global communication and now presents
11 unprecedented opportunities for the development and
12 growth of global commerce and an integrated world-
13 wide economy.

14 (3) In order for global commerce on the Inter-
15 net to reach its full potential, individuals and enti-
16 ties using the Internet and other online services
17 should be prevented from engaging in activities that
18 prevent other users and Internet service providers
19 from having a reasonably predictable, efficient, and
20 economical online experience.

1 (4) Unsolicited commercial electronic mail can
2 be a mechanism through which businesses advertise
3 and attract customers in the online environment.

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

10 (6) Unsolicited commercial electronic mail may
11 impose significant monetary costs on providers of
12 Internet access services, businesses, and educational
13 and nonprofit institutions that carry and receive
14 such mail, as there is a finite volume of mail that
15 such providers, businesses, and institutions can han-
16 dle without further investment in infrastructure.

17 (7) Some unsolicited commercial electronic mail
18 contains material that many recipients may consider
19 vulgar or pornographic in nature.

20 (8) While some senders of unsolicited commer-
21 cial electronic mail messages provide simple and reli-
22 able ways for recipients to reject (or “opt-out” of)
23 receipt of unsolicited commercial electronic mail
24 from such senders in the future, other senders pro-
25 vide no such “opt-out” mechanism, or refuse to

1 honor the requests of recipients not to receive elec-
2 tronic mail from such senders in the future, or both.

3 (9) An increasing number of senders of unsolic-
4 ited commercial electronic mail purposefully disguise
5 the source of such mail so as to prevent recipients
6 from responding to such mail quickly and easily.

7 (10) An increasing number of senders of unso-
8 licited commercial electronic mail purposefully in-
9 clude misleading information in the message's sub-
10 ject lines in order to induce the recipients to view
11 the messages.

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

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

20 (1) there is a substantial government interest in
21 regulation of unsolicited commercial electronic mail;

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

1 (3) recipients of unsolicited commercial elec-
2 tronic mail have a right to decline to receive addi-
3 tional unsolicited commercial electronic mail from
4 the same source.

5 **SEC. 3. DEFINITIONS.**

6 In this Act:

7 (1) **AFFIRMATIVE CONSENT.**—The term “af-
8 firmative consent”, when used with respect to a
9 commercial electronic mail message, means that the
10 message is being sent with the express consent, or
11 at the express direction of, the recipient.

12 (2) **COMMERCIAL ELECTRONIC MAIL MES-**
13 **SAGE.**—

14 (A) **IN GENERAL.**—The term “commercial
15 electronic mail message” means any electronic
16 mail message the primary purpose of which is
17 the commercial advertisement or promotion of a
18 commercial product or service (including con-
19 tent on an Internet website operated for a com-
20 mercial purpose).

21 (B) **TRANSACTIONAL OR RELATIONSHIP**
22 **MESSAGES.**—The term “commercial electronic
23 mail message” does not include an electronic
24 mail message the primary purpose of which is

1 to facilitate, complete, confirm, provide, or re-
2 quest information concerning—

3 (i) a commercial transaction,

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

9 (iii) an existing employment relation-
10 ship,

11 that the recipient has previously agreed to enter
12 into with the sender,

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

24 (3) COMMISSION.—The term “Commission”
25 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”), to which an electronic mail message
14 can be sent or delivered.

15 (6) ELECTRONIC MAIL MESSAGE.—The term
16 “electronic mail message” means a message sent to
17 an 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 the beginning of an
24 electronic mail message, including the originating

1 domain name and originating electronic mail ad-
2 dress.

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

6 (A) within the 3-year period ending upon
7 receipt of such message, there has been a busi-
8 ness transaction between the sender and the re-
9 cipient (including a transaction involving the
10 provision, free of charge, of information, goods,
11 or services requested by the recipient); and

12 (B) the recipient was, at the time of such
13 transaction or thereafter, provided a clear and
14 conspicuous notice of an opportunity not to re-
15 ceive unsolicited commercial electronic mail
16 messages from the sender and has not exercised
17 such opportunity.

18 If a sender operates through separate lines of busi-
19 ness or divisions and holds itself out to the recipient,
20 both at the time of the transaction described in sub-
21 paragraph (A) and at the time the notice under sub-
22 paragraph (B) was provided to the recipient, as that
23 particular line of business or division rather than as
24 the entity of which such line of business or division
25 is a part, then the line of business or the division

1 shall be treated as the sender for purposes of this
2 paragraph.

3 (10) INITIATE.—The term “initiate”, when
4 used with respect to a commercial electronic mail
5 message, means to originate such message or to pro-
6 cure the origination of such message, but shall not
7 include actions that constitute routine conveyance of
8 such message.

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

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

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

20 (14) RECIPIENT.—The term “recipient”, when
21 used with respect to a commercial electronic mail
22 message, means an authorized user of the electronic
23 mail address to which the message was sent or deliv-
24 ered. If a recipient of a commercial electronic mail
25 message has 1 or more electronic mail addresses in

1 addition to the address to which the message was
2 sent or delivered, the recipient shall be treated as a
3 separate recipient with respect to each such address.
4 If an electronic mail address is reassigned to a new
5 user, the new user shall not be treated as a recipient
6 of any commercial electronic mail message sent or
7 delivered to that address before it was reassigned.

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

14 (16) SENDER.—The term “sender”, when used
15 with respect to a commercial electronic mail mes-
16 sage, means a person who initiates such a message
17 and whose product, service, or Internet web site is
18 advertised or promoted by the message.

19 (17) UNSOLICITED COMMERCIAL ELECTRONIC
20 MAIL MESSAGE.—The term “unsolicited commercial
21 electronic mail message” means any commercial
22 electronic mail message that is sent to a recipient
23 without the recipient’s prior affirmative or implied
24 consent.

1 **SEC. 4. CRIMINAL PENALTY FOR UNSOLICITED COMMERCIAL ELECTRONIC MAIL CONTAINING FRAUDULENT ROUTING INFORMATION.**

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3
4 (a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

5
6
7 **“§ 1351. Unsolicited commercial electronic mail containing fraudulent transmission information**

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9
10 “(a) IN GENERAL.—Any person who initiates the transmission, to a protected computer in the United States, of an unsolicited commercial electronic mail message, with knowledge and intent that the message contains or is accompanied by header information that is materially false or materially misleading shall be fined or imprisoned for not more than 1 year, or both, under this title. For purposes of this subsection, header information that is technically accurate but includes an originating electronic mail address the access to which for purposes of initiating the message was obtained without the consent of the person to whom the address is assigned, or by means of false or fraudulent pretenses or representations, shall be considered materially misleading.

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24 “(b) DEFINITIONS.—Any term used in subsection (a) that is defined in section 3 of the CAN-SPAM Act of 2002 has the meaning given it in that section.”.

1 (b) CONFORMING AMENDMENT.—The chapter anal-
2 ysis for chapter 63 of title 18, United States Code, is
3 amended by adding at the end the following:

“1351. Unsolicited commercial electronic mail containing fraudulent routing in-
formation”.

4 **SEC. 5. OTHER PROTECTIONS AGAINST UNSOLICITED COM-**
5 **MERCIAL ELECTRONIC MAIL.**

6 (a) REQUIREMENTS FOR TRANSMISSION OF MES-
7 SAGES.—

8 (1) PROHIBITION OF FALSE OR MISLEADING
9 TRANSMISSION INFORMATION.—It is unlawful for
10 any person to initiate the transmission, to a pro-
11 tected computer, of a commercial electronic mail
12 message that contains, or is accompanied by, header
13 information that is materially or intentionally false
14 or materially or intentionally misleading. For pur-
15 poses of this paragraph, header information that is
16 technically accurate but includes an originating elec-
17 tronic mail address the access to which for purposes
18 of initiating the message was obtained without the
19 consent of the person to whom the address is as-
20 signed, or by means of false or fraudulent pretenses
21 or representations, shall be considered materially
22 misleading.

23 (2) PROHIBITION OF DECEPTIVE SUBJECT
24 HEADINGS.—It is unlawful for any person to initiate

1 the transmission to a protected computer of a com-
2 mercial electronic mail message with a subject head-
3 ing that such person knows would be likely to mis-
4 lead a recipient, acting reasonably under the cir-
5 cumstances, about a material fact regarding the con-
6 tents or subject matter of the message.

7 (3) INCLUSION OF RETURN ADDRESS OR COM-
8 PARABLE MECHANISM IN UNSOLICITED COMMERCIAL
9 ELECTRONIC MAIL.—

10 (A) IN GENERAL.—It is unlawful for any
11 person to initiate the transmission to a pro-
12 tected computer of an unsolicited commercial
13 electronic mail message that does not contain a
14 functioning return electronic mail address or
15 other Internet-based mechanism, clearly and
16 conspicuously displayed, that—

17 (i) a recipient may use to submit, in
18 a manner specified by the sender, a reply
19 electronic mail message or other form of
20 Internet-based communication requesting
21 not to receive any future unsolicited com-
22 mercial electronic mail messages from that
23 sender at the electronic mail address where
24 the message was received; and

1 (ii) remains capable of receiving such
2 messages or communications for no less
3 than 30 days after the transmission of the
4 original message.

5 (B) MORE DETAILED OPTIONS POS-
6 SIBLE.—The sender of a commercial electronic
7 mail message may comply with subparagraph
8 (A)(i) by providing the recipient a list or menu
9 from which the recipient may choose the spe-
10 cific types of commercial electronic mail mes-
11 sages the recipient wants to receive or does not
12 want to receive from the sender, if the list or
13 menu includes an option under which the recipi-
14 ent may choose not to receive any unsolicited
15 commercial electronic mail messages from the
16 sender.

17 (C) TEMPORARY INABILITY TO RECEIVE
18 MESSAGES OR PROCESS REQUESTS.—A return
19 electronic mail address or other mechanism
20 does not fail to satisfy the requirements of sub-
21 paragraph (A) if it is unexpectedly and tempo-
22 rarily unable to receive messages or process re-
23 quests due to technical or capacity problems, if
24 the problem with receiving messages or proc-

1 essing requests is corrected within a reasonable
2 time period.

3 (4) PROHIBITION OF TRANSMISSION OF UNSO-
4 LICITED COMMERCIAL ELECTRONIC MAIL AFTER OB-
5 JECTION.—If a recipient makes a request to a send-
6 er, using a mechanism provided pursuant to para-
7 graph (3), not to receive some or any unsolicited
8 commercial electronic mail messages from such send-
9 er, then it is unlawful—

10 (A) for the sender to initiate the trans-
11 mission to the recipient, more than 10 days
12 after the receipt of such request, of an unsolic-
13 ited commercial electronic mail message that
14 falls within the scope of the request;

15 (B) for any person acting on behalf of the
16 sender to initiate the transmission to the recipi-
17 ent, more than 10 days after the receipt of such
18 request, of an unsolicited commercial electronic
19 mail message that such person knows or con-
20 sciously avoids knowing falls within the scope of
21 the request; or

22 (C) for any person acting on behalf of the
23 sender to assist in initiating the transmission to
24 the recipient, through the provision or selection
25 of addresses to which the message will be sent,

1 of an unsolicited commercial electronic mail
2 message that the person knows, or consciously
3 avoids knowing, would violate subparagraph (A)
4 or (B).

5 (5) INCLUSION OF IDENTIFIER, OPT-OUT, AND
6 PHYSICAL ADDRESS IN UNSOLICITED COMMERCIAL
7 ELECTRONIC MAIL.—It is unlawful for any person to
8 initiate the transmission of any unsolicited commer-
9 cial electronic mail message to a protected computer
10 unless the message provides—

11 (A) clear and conspicuous identification
12 that the message is an advertisement or solici-
13 tation;

14 (B) clear and conspicuous notice of the op-
15 portunity under paragraph (3) to decline to re-
16 ceive further unsolicited commercial electronic
17 mail messages from the sender; and

18 (C) a valid physical postal address of the
19 sender.

20 (b) PROHIBITION OF TRANSMISSION OF UN-
21 LAWFUL UNSOLICITED COMMERCIAL ELECTRONIC
22 MAIL TO HARVESTED ELECTRONIC MAIL ADDRESS-
23 ES.—

24 (1) IN GENERAL.—It is unlawful for any person
25 to initiate the transmission, to a protected computer,

1 of an unsolicited commercial electronic mail message
2 that is unlawful under subsection (a), or to assist in
3 the origination of such a message through the provi-
4 sion or selection of addresses to which the message
5 will be sent, if such person knows that, or acts with
6 reckless disregard as to whether—

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

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

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

23 (c) COMPLIANCE PROCEDURES.—An action for viola-
24 tion of paragraph (2), (3), (4), or (5) of subsection (a)

1 may not proceed if the person against whom the action
2 is brought demonstrates that —

3 (1) the person has established and imple-
4 mented, with due care, reasonable practices and pro-
5 cedures to effectively prevent violations of such para-
6 graph; and

7 (2) the violation occurred despite good faith ef-
8 forts to maintain compliance with such practices and
9 procedures.

10 **SEC. 6. ENFORCEMENT BY FEDERAL TRADE COMMISSION.**

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

17 (b) ENFORCEMENT BY CERTAIN OTHER AGEN-
18 CIES.—Compliance with this Act shall be 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 (c) EXERCISE OF CERTAIN POWERS.—For the pur-
25 pose of the exercise by any agency referred to in sub-

1 section (b) 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 (b), 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 (d) ACTIONS BY THE COMMISSION.—The Commis-
10 sion shall prevent any person from violating this Act in
11 the same manner, by the same means, and with the same
12 jurisdiction, powers, and duties as though all applicable
13 terms and provisions of the Federal Trade Commission
14 Act (15 U.S.C. 41 et seq.) were incorporated into and
15 made a part of this Act. Any entity that violates any provi-
16 sion of that subtitle is subject to the penalties and entitled
17 to the privileges and immunities provided in the Federal
18 Trade Commission Act in the same manner, by the same
19 means, and with the same jurisdiction, power, and duties
20 as though all applicable terms and provisions of the Fed-
21 eral Trade Commission Act were incorporated into and
22 made a part of that subtitle.

23 (e) ENFORCEMENT BY STATES.—

24 (1) CIVIL ACTION.—In any case in which the
25 attorney general of a State has reason to believe

1 that an interest of the residents of that State has
2 been or is threatened or adversely affected by any
3 person engaging in a practice that violates section 5
4 of this Act, the State, as *parens patriae*, may bring
5 a civil action on behalf of the residents of the State
6 in a district court of the United States of appro-
7 priate jurisdiction or in any other court of com-
8 petent jurisdiction—

9 (A) to enjoin that practice; or

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

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

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

17 (2) STATUTORY DAMAGES.—

18 (A) IN GENERAL.—For purposes of para-
19 graph (1)(B)(ii), the amount determined under
20 this paragraph is the amount calculated by mul-
21 tiplying the number of willful, knowing, or neg-
22 ligent violations by an amount, in the discretion
23 of the court, of up to \$10 (with each separately
24 addressed unlawful message received by such
25 residents treated as a separate violation). In de-

1 termining the per-violation penalty under this
2 subparagraph, the court shall take into account
3 the degree of culpability, any history of prior
4 such conduct, ability to pay, the extent of eco-
5 nomic gain resulting from the violation, and
6 such other matters as justice may require.

7 (B) LIMITATION.—For any violation of
8 section 5 (other than section 5(a)(1)), the
9 amount determined under subparagraph (A)
10 may not exceed \$500,000, except that if the
11 court finds that the defendant committed the
12 violation willfully and knowingly, the court may
13 increase the limitation established by this para-
14 graph from \$500,000 to an amount not to ex-
15 ceed \$1,500,000.

16 (3) ATTORNEY FEES.—In the case of any suc-
17 cessful action under paragraph (1), the State shall
18 be awarded the costs of the action and reasonable
19 attorney fees as determined by the court.

20 (4) NOTICE.—

21 (A) PRE-FILING.—Before filing an action
22 under paragraph (1), an attorney general shall
23 provide to the Commission—

24 (i) written notice of that action; and

1 (ii) a copy of the complaint for that
2 action.

3 (B) CONTEMPORANEOUS.—If an attorney
4 general determines that it is not feasible to pro-
5 vide the notice required by subparagraph (A)
6 before filing the action, the notice and a copy
7 of the complaint shall be provided to the Com-
8 mission when the action is filed.

9 (5) INTERVENTION.—If the Commission re-
10 ceives notice under paragraph (4), it—

11 (A) may intervene in the action that is the
12 subject of the notice; and

13 (B) has the right—

14 (i) to be heard with respect to any
15 matter that arises in that action; and

16 (ii) to file a petition for appeal.

17 (6) CONSTRUCTION.—For purposes of bringing
18 any civil action under paragraph (1), nothing in this
19 Act shall be construed to prevent an attorney gen-
20 eral of a State from exercising the powers conferred
21 on the attorney general by the laws of that State
22 to—

23 (A) conduct investigations;

24 (B) administer oaths or affirmations; or

1 (C) compel the attendance of witnesses or
2 the production of documentary and other evi-
3 dence.

4 (7) VENUE; SERVICE OF PROCESS.—

5 (A) VENUE.—Any action brought under
6 paragraph (1) may be brought in the district
7 court of the United States that meets applicable
8 requirements relating to venue under section
9 1391 of title 28, United States Code.

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

13 (i) is an inhabitant; or

14 (ii) maintains a physical place of busi-
15 ness.

16 (8) LIMITATION ON STATE ACTION WHILE FED-
17 ERAL ACTION IS PENDING.—If the Commission or
18 other appropriate Federal agency under subsection
19 (b) has instituted a civil action or an administrative
20 action for violation of this Act, no State attorney
21 general may bring an action under this subsection
22 during the pendency of that action against any de-
23 fendant named in the complaint of the Commission
24 or the other agency for any violation of this Act al-
25 leged in the complaint.

1 (f) 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 may bring a civil action in any district
6 court of the United States with jurisdiction over the
7 defendant, or in any other court of competent juris-
8 diction, to—

9 (A) enjoin further violation by the defend-
10 ant; or

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

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

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

18 (2) STATUTORY DAMAGES.—

19 (A) IN GENERAL.—For purposes of para-
20 graph (1)(B)(ii), the amount determined under
21 this paragraph is the amount calculated by mul-
22 tiplying the number of willful, knowing, or neg-
23 ligent violations by an amount, in the discretion
24 of the court, of up to \$10 (with each separately
25 addressed unlawful message carried over the fa-

1 ilities of the provider of Internet access service
2 or sent to an electronic mail address obtained
3 from the provider of Internet access service in
4 violation of section 5(b) treated as a separate
5 violation). In determining the per-violation pen-
6 alty under this subparagraph, the court shall
7 take into account the degree of culpability, any
8 history of prior such conduct, ability to pay, the
9 extent of economic gain resulting from the vio-
10 lation, and such other matters as justice may
11 require.

12 (B) LIMITATION.—For any violation of
13 section 5 (other than section 5(a)(1)), the
14 amount determined under subparagraph (A)
15 may not exceed \$500,000, except that if the
16 court finds that the defendant committed the
17 violation willfully and knowingly, the court may
18 increase the limitation established by this para-
19 graph from \$500,000 to an amount not to ex-
20 ceed \$1,500,000.

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

1 including reasonable attorneys' fees, against any
2 party.

3 **SEC. 7. EFFECT ON OTHER LAWS.**

4 (a) FEDERAL LAW.—

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

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

17 (b) STATE LAW.—

18 (1) IN GENERAL.—This Act supersedes any
19 State or local government statute, regulation, or rule
20 regulating the use of electronic mail to send com-
21 mercial messages.

22 (2) EXCEPTIONS.—Except as provided in para-
23 graph (3), this Act does not supersede or pre-
24 empt—

1 (A) State trespass, contract, or tort law or
2 any civil action thereunder; or

3 (B) any provision of Federal, State, or
4 local criminal law or any civil remedy available
5 under such law that relates to acts of computer
6 fraud perpetrated by means of the unauthorized
7 transmission of unsolicited commercial elec-
8 tronic mail messages.

9 (3) LIMITATION ON EXCEPTIONS.—Paragraph
10 (2) does not apply to a State or local government
11 statute, regulation, or rule that directly regulates
12 unsolicited commercial electronic mail and that
13 treats the mere sending of unsolicited commercial
14 electronic mail in a manner that complies with this
15 Act as sufficient to constitute a violation of such
16 statute, regulation, or rule or to create a cause of
17 action thereunder.

18 (c) NO EFFECT ON POLICIES OF PROVIDERS OF
19 INTERNET ACCESS SERVICE.—Nothing in this Act shall
20 be construed to have any effect on the lawfulness or un-
21 lawfulness, under any other provision of law, of the adop-
22 tion, implementation, or enforcement by a provider of
23 Internet access service of a policy of declining to transmit,
24 route, relay, handle, or store certain types of electronic
25 mail messages.

1 **SEC. 8. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL**
2 **ELECTRONIC MAIL.**

3 (a) IN GENERAL.—Not later than 24 months after
4 the date of the enactment of this Act, the Commission,
5 in consultation with the Department of Justice and other
6 appropriate agencies, shall submit a report to the Con-
7 gress that provides a detailed analysis of the effectiveness
8 and enforcement of the provisions of this Act and the need
9 (if any) for the Congress to modify such provisions.

10 (b) REQUIRED ANALYSIS.—The Commission shall in-
11 clude in the report required by subsection (a) an analysis
12 of the extent to which technological and marketplace de-
13 velopments, including changes in the nature of the devices
14 through which consumers access their electronic mail mes-
15 sages, may affect the practicality and effectiveness of the
16 provisions of this Act.

17 **SEC. 9 SEPARABILITY.**

18 If any provision of this Act or the application thereof
19 to any person or circumstance is held invalid, the remain-
20 der of this Act and the application of such provision to
21 other persons or circumstances shall not be affected.

22 **SEC. 10. EFFECTIVE DATE.**

23 The provisions of this Act shall take effect 120 days
24 after the date of the enactment of this Act.

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