

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 718
OFFERED BY MRS. WILSON OR MR. GREEN

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

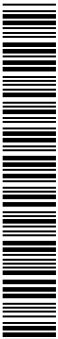
2 This Act may be cited as the “Unsolicited Commer-
3 cial Electronic Mail Act of 2001”.

4 SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.

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

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

(2) 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. 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.



1 (3) Unsolicited commercial electronic mail can
2 be an important mechanism through which busi-
3 nesses advertise and attract customers in the online
4 environment.

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

11 (5) Unsolicited commercial electronic mail may
12 impose significant monetary costs on Internet access
13 services, businesses, and educational and nonprofit
14 institutions that carry and receive such mail, as
15 there is a finite volume of mail that such providers,
16 businesses, and institutions can handle without fur-
17 ther investment. The sending of such mail is increas-
18 ingly and negatively affecting the quality of service
19 provided to customers of Internet access service, and
20 shifting costs from the sender of the advertisement
21 to the Internet access service.

22 (6) While some senders of unsolicited commer-
23 cial electronic mail messages provide simple and reli-
24 able ways for recipients to reject (or “opt-out” of)
25 receipt of unsolicited commercial electronic mail



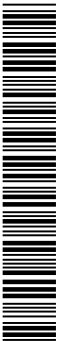
1 from such senders in the future, other senders pro-
2 vide no such “opt-out” mechanism, or refuse to
3 honor the requests of recipients not to receive elec-
4 tronic mail from such senders in the future, or both.

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

9 (8) Many senders of unsolicited commercial
10 electronic mail collect or harvest electronic mail ad-
11 dresses of potential recipients without the knowledge
12 of those recipients and in violation of the rules or
13 terms of service of the database from which such ad-
14 dresses are collected.

15 (9) Because recipients of unsolicited commercial
16 electronic mail are unable to avoid the receipt of
17 such mail through reasonable means, such mail may
18 invade the privacy of recipients.

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



1 (b) CONGRESSIONAL DETERMINATION OF PUBLIC
2 POLICY.—On the basis of the findings in subsection (a),
3 the Congress determines that—

4 (1) there is substantial government interest in
5 regulation of unsolicited commercial electronic mail;

6 (2) Internet service providers should not be
7 compelled to bear the costs of unsolicited commercial
8 electronic mail without compensation from the send-
9 er; and

10 (3) recipients of unsolicited commercial elec-
11 tronic mail have a right to decline to receive or have
12 their children receive unsolicited commercial elec-
13 tronic mail.

14 **SEC. 3. DEFINITIONS.**

15 In this Act:

16 (1) AFFILIATE.—The term “affiliate” means,
17 with respect to an entity, any other entity that—

18 (A) controls, is controlled by, or is under
19 common control with such entity; and

20 (B) provides marketing information to, re-
21 ceives marketing information from, or shares
22 marking information with such entity.

23 (2) CHILDREN.—The term “children” includes
24 natural children, stepchildren, adopted children, and
25 children who are wards of or in custody of the par-



1 ent, who have not attained the age of 18 and who
2 reside with the parent or are under his or her care,
3 custody, or supervision.

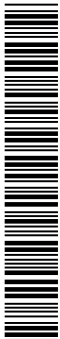
4 (3) COMMERCIAL ELECTRONIC MAIL MES-
5 SAGE.—The term “commercial electronic mail mes-
6 sage” means any electronic mail message that pri-
7 marily advertises or promotes the commercial avail-
8 ability of a product or service for profit or invites
9 the recipient to view content on an Internet web site
10 that is operated for a commercial purpose. An elec-
11 tronic mail message shall not be considered to be a
12 commercial electronic mail message solely because
13 such message includes a reference to a commercial
14 entity that serves to identify the initiator.

15 (4) COMMISSION.—The term “Commission”
16 means the Federal Trade Commission.

17 (5) DOMAIN NAME.—The term “domain name”
18 means any alphanumeric designation which is reg-
19 istered with or assigned by any domain name reg-
20 istrar, domain name registry, or other domain name
21 registration authority as part of an electronic ad-
22 dress on the Internet.

23 (6) ELECTRONIC MAIL ADDRESS.—

24 (A) IN GENERAL.—The term “electronic
25 mail address” means a destination (commonly



1 expressed as a string of characters) to which
2 electronic mail can be sent or delivered.

3 (B) INCLUSION.—In the case of the Inter-
4 net, the term “electronic mail address” may in-
5 clude an electronic mail address consisting of a
6 user name or mailbox (commonly referred to as
7 the “local part”) and a reference to an Internet
8 domain (commonly referred to as the “domain
9 part”).

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

13 (8) INITIATE.—The term “initiate”, when used
14 with respect to a commercial electronic mail mes-
15 sage, means to originate such message or to procure
16 the origination of such message.

17 (9) INITIATOR.—The term “initiator”, when
18 used with respect to a commercial electronic mail
19 message, means the person who initiates such mes-
20 sage. Such term does not include a provider of an
21 Internet access service, or any other person, whose
22 role with respect to the message is limited to the
23 transmission, routing, relaying, handling, or storing,
24 through an automatic technical process, of a mes-
25 sage originated by others.



1 (10) INTERNET.—The term “Internet” has the
2 meaning given that term in section 231(e)(3) of the
3 Communications Act of 1934 (47 U.S.C. 231(e)(3)).

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

8 (12) RECIPIENT CONSENT.—The term “recipi-
9 ent consent”, when used with respect to a commer-
10 cial electronic mail message, means that—

11 (A) the message falls within the scope of
12 an express and unambiguous invitation or con-
13 sent granted by the recipient and not subse-
14 quently revoked;

15 (B) the recipient had clear and con-
16 spicuous notice, at the time such invitation or
17 consent was granted, of—

18 (i) the fact that the recipient was
19 granting the invitation or consent;

20 (ii) the scope of the invitation or con-
21 sent, including what types of commercial
22 electronic mail messages would be covered
23 by the invitation or consent and what
24 senders or types of senders, if any, other
25 than the party to whom the invitation or



1 consent was communicated would be cov-
2 ered by the invitation or consent; and

3 (iii) a reasonable and effective mecha-
4 nism for revoking the invitation or consent;
5 and

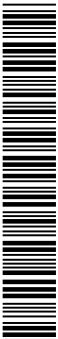
6 (C) the recipient has not, after granting
7 the invitation or consent, submitted a request
8 under section 5(a)(1) not to receive unsolicited
9 commercial electronic mail messages from the
10 initiator.

11 (13) PRE-EXISTING BUSINESS RELATION-
12 SHIP.—The term “pre-existing business relation-
13 ship” means, when used with respect to the initiator
14 and recipient of a commercial electronic mail mes-
15 sage, that—

16 (A) within the 5-year period ending upon
17 receipt of such message, there has been a busi-
18 ness transaction (including a transaction involv-
19 ing the provision, free of charge, of information,
20 goods, or services, that were requested by the
21 recipient) between—

22 (i) the initiator or any affiliate of the
23 initiator; and

24 (ii) the recipient; and



1 (B) the recipient was, at the time of such
2 transaction or thereafter or in the transmission
3 of the commercial electronic mail message, pro-
4 vided a clear and conspicuous notice of an op-
5 portunity not to receive further messages from
6 the initiator and any affiliates of the initiator
7 and has not exercised such opportunity.

8 (14) RECIPIENT.—The term “recipient”, when
9 used with respect to a commercial electronic mail
10 message, means the addressee of such message. If
11 an addressee of a commercial electronic mail mes-
12 sage has one or more electronic mail addresses in
13 addition to the address to which the message was
14 addressed, the addressee shall be treated as a sepa-
15 rate recipient with respect to each such address.

16 (15) UNSOLICITED COMMERCIAL ELECTRONIC
17 MAIL MESSAGE.—The term “unsolicited commercial
18 electronic mail message” means any commercial
19 electronic mail message that is sent to a recipient—

20 (A) without prior recipient consent; and

21 (B)(i) with whom the initiator does not
22 have a pre-existing business relationship;

23 (ii) by an initiator or any affiliate of the
24 initiator after the recipient requests, pursuant
25 to section 5(a)(1), not to receive further com-



1 mercials electronic mail messages from that
2 initiator; or

3 (iii) by a person or any affiliate of the per-
4 son after the expiration of a reasonable period
5 of time after the recipient requests, pursuant to
6 section 5(a)(2), to be removed from the dis-
7 tribution lists under the control of a person.

8 **SEC. 4. CRIMINAL PENALTY FOR UNSOLICITED COMMER-**
9 **CIAL ELECTRONIC MAIL CONTAINING FRAUD-**
10 **ULENT ROUTING INFORMATION.**

11 Section 1030 of title 18, United States Code, is
12 amended—

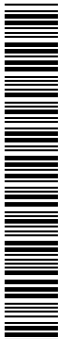
13 (1) in subsection (a)(5)—

14 (A) in subparagraph (B), by striking “or”
15 at the end;

16 (B) in subparagraph (C), by inserting “or”
17 after the semicolon at the end; and

18 (C) by adding at the end the following new
19 subparagraph:

20 “(D) intentionally initiates the transmission of
21 any unsolicited commercial electronic mail message
22 to a protected computer in the United States with
23 knowledge that any domain name, header informa-
24 tion, date or time stamp, originating electronic mail
25 address, or other information identifying the



1 initiator or the routing of such message, that is con-
2 tained in or accompanies such message, is false or
3 inaccurate;”;

4 (2) in subsection (c)(2)(A)—

5 (A) by inserting “(i)” after “in the case
6 of”; and

7 (B) by inserting before “; and” the fol-
8 lowing: “, or (ii) an offense under subsection
9 (a)(5)(D) of this section”; and
10 (3) in subsection (e)—

11 (A) by striking “and” at the end of para-
12 graph (8);

13 (B) by striking the period at the end of
14 paragraph (9) and inserting a semicolon; and

15 (C) by adding at the end the following new
16 paragraph:

17 “(10) the terms ‘initiate’, ‘initiator’, ‘unsolicited
18 commercial electronic mail message’, and ‘domain
19 name’ have the meanings given such terms in section
20 3 of the Unsolicited Commercial Electronic Mail Act
21 of 2001.”.

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

24 (a) REQUIREMENTS FOR TRANSMISSION OF MES-
25 SAGES.—



1 (1) INCLUSION OF RETURN ADDRESS IN COM-
2 MERCIAL ELECTRONIC MAIL.—It shall be unlawful
3 for any person or affiliate of such person to initiate
4 the transmission of a commercial electronic mail
5 message to any person within the United States un-
6 less such message contains a valid electronic mail
7 address, conspicuously displayed, to which a recipi-
8 ent may send a reply to the initiator to indicate a
9 desire not to receive any further messages from the
10 initiator and any affiliates of the initiator.

11 (2) PROHIBITION OF TRANSMISSION OF UNSO-
12 LICITED COMMERCIAL ELECTRONIC MAIL AFTER OB-
13 JECTION.—If a recipient makes a request to a per-
14 son to be removed from all distribution lists under
15 the control of such person, after receipt of such
16 request—

17 (A) it shall be unlawful for such person or
18 any affiliate of such person to initiate the
19 transmission of an unsolicited commercial elec-
20 tronic mail message to such a recipient within
21 the United States after the expiration of a rea-
22 sonable period of time for removal from such
23 lists;

24 (B) such person and affiliates (and the
25 agents or assigns of the person or affiliate)



1 shall delete or suppress the electronic mail ad-
2 dresses of the recipient from all mailing lists
3 owned or controlled by such person or affiliate
4 (or such agents or assigns) within a reasonable
5 period of time for such deletion or suppression;
6 and

7 (C) it shall be unlawful for such person or
8 affiliate (or such agents or assigns) to sell,
9 lease, exchange, license, or engage in any other
10 transaction involving mailing lists bearing the
11 electronic mail addresses of the recipient.

12 (3) INCLUSION OF IDENTIFIER, OPT-OUT, AND
13 PHYSICAL ADDRESS IN UNSOLICITED COMMERCIAL
14 ELECTRONIC MAIL.—It shall be unlawful for any
15 person to initiate the transmission of any unsolicited
16 commercial electronic mail message to any person
17 within the United States unless the message pro-
18 vides, in a manner that is clear and conspicuous to
19 the recipient—

20 (A) identification that the message is an
21 unsolicited commercial electronic mail message;

22 (B) notice of the opportunity under para-
23 graph (2) to decline to receive further unsolic-
24 ited commercial electronic mail messages from
25 the initiator or any affiliate of the initiator; and



1 (C) the physical mailing address of the
2 initiator.

3 (4) TREATMENT OF INTERNAL OPT-OUT
4 LISTS.—If the policy of a provider of Internet access
5 service requires compensation specifically for the
6 transmission of unsolicited commercial electronic
7 mail messages into its system, it shall be unlawful
8 for the provider to fail to provide an option to its
9 subscribers not to receive any unsolicited commercial
10 electronic mail messages, except that such option
11 shall not be required for any subscriber who has
12 agreed to receive unsolicited commercial electronic
13 mail messages in exchange for discounted or free
14 Internet access service.

15 (5) AFFIRMATIVE DEFENSE.—It shall be an af-
16 firmative defense in any action or proceeding
17 brought for a violation of any paragraph of this sub-
18 section that the violation was not intentional.

19 (b) CONDITIONS FOR ENFORCEMENT BY PROVIDERS
20 OF INTERNET ACCESS SERVICE.—

21 (1) AUTHORITY TO OPT OUT.—After the expira-
22 tion of a reasonable period of time for taking any
23 action necessary to comply with a request under sub-
24 paragraph (B) that begins upon the receipt of such
25 a request, it shall be unlawful for a person or any



1 affiliate of such person to initiate the transmission
2 of an unsolicited commercial electronic mail mes-
3 sage, to any recipient within the United States, that
4 uses the equipment of a provider of Internet access
5 service to recipients of electronic mail messages for
6 such transmission, if such provider—

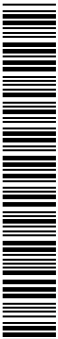
7 (A)(i) has in effect a policy that meets the
8 requirements under paragraph (2); or

9 (ii) has received a significant number of
10 complaints from its bona fide subscribers that
11 they have received unsolicited commercial elec-
12 tronic mail messages from such person; and

13 (B) makes a request to such person by
14 means of an electronic mail message not to use
15 the equipment of the provider for the trans-
16 mission of any unsolicited commercial electronic
17 mail message.

18 (2) UCE POLICY.—A policy of a provider of
19 Internet access service to recipients meets the re-
20 quirements under this paragraph only if—

21 (A) it is a policy regarding the use of the
22 equipment of the provider for the transmission
23 of unsolicited commercial electronic mail mes-
24 sages that prohibits the transmission, using
25 such equipment, of all such messages;



1 (B) the provider of Internet access service
2 is making a good faith effort to block the trans-
3 mission of all unsolicited commercial electronic
4 mail messages that use the equipment of pro-
5 vider for such transmission;

6 (C) the policy is made publicly available by
7 clear and conspicuous posting on a World Wide
8 Web site of the provider of Internet access serv-
9 ice, which has an Internet domain name that is
10 identical to the Internet domain name of the
11 electronic mail address to which the prohibition
12 referred to in subparagraph (A) applies; and

13 (D) the provider of Internet access service
14 informs each subscriber to such service of the
15 policy.

16 (c) RULE OF CONSTRUCTION.—Nothing in this Act
17 shall be construed—

18 (1) to prevent or limit, in any way, a provider
19 of Internet access service from adopting a policy re-
20 garding commercial or other electronic mail, includ-
21 ing a policy of declining to transmit certain types of
22 electronic mail messages, and from enforcing such
23 policy through technical means, through contract, or
24 pursuant to any remedy available under any other



1 provision of Federal, State, or local criminal or civil
2 law; or

3 (2) to render lawful any such policy that is un-
4 lawful under any other provision of law.

5 (d) PROTECTION OF INTERNET ACCESS SERVICE
6 PROVIDERS GOOD FAITH EFFORTS TO BLOCK TRANS-
7 MISSIONS.—A provider of Internet access service shall not
8 be liable, under any Federal, State, or local civil or crimi-
9 nal law, for any action it takes in good faith to block the
10 transmission or receipt of unsolicited commercial elec-
11 tronic mail messages.

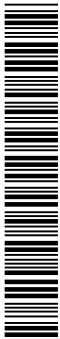
12 **SEC. 6. ENFORCEMENT.**

13 (a) ENFORCEMENT THROUGH FTC ACT.—

14 (1) ENFORCEMENT.—Except as otherwise pro-
15 vided in this Act, section 5 shall be enforced by the
16 Commission under the FTC Act.

17 (2) UNFAIR OR DECEPTIVE PRACTICE.—Any
18 violation of section 5 shall be treated as a violation
19 of a rule under section 18 of the FTC Act (15
20 U.S.C. 57a) regarding unfair or deceptive acts or
21 practices.

22 (3) SCOPE OF COMMISSION ENFORCEMENT.—
23 The Commission shall prevent any person from vio-
24 lating section 5 of this Act in the same manner, by
25 the same means, and with the same jurisdiction,



1 powers, and duties as though all applicable terms
2 and provisions of the FTC Act were incorporated
3 into and made a part of this section. Any person
4 who violates section 5 of this Act shall be subject to
5 the penalties and entitled to the privileges and im-
6 munities provided in the FTC Act in the same man-
7 ner, by the same means, and with the same jurisdic-
8 tion, powers, and duties as though all applicable
9 terms and provisions of the FTC Act were incor-
10 porated into and made a part of this section.

11 (4) PROHIBITION OF REGULATIONS.—Neither
12 the Commission nor any other Federal department
13 or agency shall have any authority to issue any regu-
14 lations to implement the provisions of this Act.

15 (b) PRIVATE RIGHT OF ACTION.—

16 (1) ACTIONS AUTHORIZED.—A recipient or a
17 provider of Internet access service may, if otherwise
18 permitted by the laws or rules of court of a State,
19 bring in an appropriate court of that State, or may
20 bring in an appropriate Federal court if such laws
21 or rules do not so permit, either or both of the fol-
22 lowing actions:

23 (A) An action based on a violation of sec-
24 tion 5 to enjoin such violation.



1 (B) An action to recover for actual mone-
2 tary loss from such a violation in an amount
3 equal to the greater of—

4 (i) the amount of such actual mone-
5 tary loss; or

6 (ii) \$500 for each such violation, not
7 to exceed a total of \$50,000.

8 (2) ADDITIONAL REMEDIES.—If the court finds
9 that the defendant willfully and repeatedly violated
10 section 5, the court may, in its discretion, increase
11 the amount of the award to an amount equal to not
12 more than three times the amount available under
13 paragraph (1).

14 (3) ATTORNEY FEES.—In any such action, the
15 court may, in its discretion, require an undertaking
16 for the payment of the costs of such action, and as-
17 sess reasonable costs, including reasonable attorneys'
18 fees, against any party.

19 (4) PROHIBITION OF CLASS ACTIONS.—A pri-
20 vate action arising under this subsection may not be
21 brought as a plaintiff class action pursuant to the
22 Federal Rules of Civil Procedure nor as a plaintiff
23 class action pursuant to the law or rules of proce-
24 dure of any State.

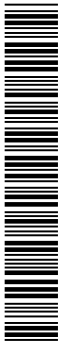


1 (5) PROTECTION OF TRADE SECRETS.—At the
2 request of any party to an action brought pursuant
3 to this subsection or any other participant in such
4 an action, the court may, in its discretion, issue pro-
5 tective orders and conduct legal proceedings in such
6 a way as to protect the secrecy and security of the
7 computer, computer network, computer data, com-
8 puter program, and computer software involved in
9 order to prevent possible recurrence of the same or
10 a similar act by another person and to protect any
11 trade secrets of any such party or participant.

12 (c) ENFORCEMENT BY STATES.—

13 (1) IN GENERAL.—

14 (A) CIVIL ACTIONS.—In any case in which
15 the attorney general of a State has reason to
16 believe that an interest of the residents of that
17 State has been or is threatened or adversely af-
18 fected by the engagement of any person in a
19 practice that violates section 5 of this Act, the
20 State may bring civil action on behalf of the
21 residents of the State in an appropriate court
22 of that State, or in a district court of the
23 United States of appropriate jurisdiction for
24 any or all of the following relief:



1 (i) INJUNCTION.—To enjoin that
2 practice.

3 (ii) COMPLIANCE ENFORCEMENT.—To
4 enforce compliance with the provisions of
5 section 5.

6 (iii) DAMAGES.—To recover actual
7 monetary loss or receive \$500 in damages
8 for each violation, except that if the court
9 finds that the defendant willfully and re-
10 peatedly violated section 5, the court may,
11 in its discretion, increase the amount of
12 the award to an amount equal to not more
13 than 3 times the amount otherwise avail-
14 able under this clause.

15 (B) LIMITATION ON MONETARY DAM-
16 AGES.—All monetary amounts recovered or re-
17 ceived by settlement or judgment in an action
18 under this paragraph shall be paid directly to
19 the persons who incurred losses or suffered
20 damages as a result of the violation under sec-
21 tion 5 for which the action was brought, and no
22 such amounts may be retained by the State or
23 may be used directly or indirectly to offset the
24 cost of such litigation.

25 (C) NOTICE.—



1 (i) IN GENERAL.—Before filing an ac-
2 tion under subparagraph (A), the attorney
3 general of the State involved shall provide
4 to the Commission—

5 (I) written notice of that action;
6 and

7 (II) a copy of the complaint for
8 that action.

9 (ii) EXEMPTION.—

10 (I) IN GENERAL.—Clause (i)
11 shall not apply with respect to the fil-
12 ing of an action by an attorney gen-
13 eral of a State under this subsection,
14 if the attorney general determines
15 that it is not feasible to provide the
16 notice described in that subparagraph
17 before the filing of the action.

18 (II) NOTIFICATION.—In an ac-
19 tion described in subclause (I), the at-
20 torney general of a State shall provide
21 notice and a copy of the complaint to
22 the Commission at the same time as
23 the attorney general files the action.

24 (2) INTERVENTION.—



1 (A) IN GENERAL.—On receiving notice
2 under paragraph (1)(B), the Commission shall
3 have the right to intervene in the action that is
4 the subject of the notice.

5 (B) EFFECT OF INTERVENTION.—If the
6 Commission intervenes in an action under para-
7 graph (1), it shall have the right—

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

10 (ii) to file a petition for appeal.

11 (3) CONSTRUCTION.—For purposes of bringing
12 any civil action under paragraph (1), nothing in this
13 Act shall be construed to prevent an attorney gen-
14 eral of a State from exercising the powers conferred
15 on the attorney general by the laws of that State
16 to—

17 (A) conduct investigations;

18 (B) administer oaths or affirmations; or

19 (C) compel the attendance of witnesses or
20 the production of documentary and other evi-
21 dence.

22 (4) VENUE; SERVICE OF PROCESS.—

23 (A) VENUE.—Any action brought under
24 paragraph (1) may be brought in the district
25 court of the United States that meets applicable



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

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

6 (i) is an inhabitant; or

7 (ii) may be found.

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

9 (a) FEDERAL LAW.—Nothing in this Act shall be
10 construed to impair the enforcement of section 223 or 231
11 of the Communications Act of 1934, chapter 71 (relating
12 to obscenity) or 110 (relating to sexual exploitation of chil-
13 dren) of title 18, United States Code, or any other Federal
14 criminal law or any State criminal law regarding obscenity
15 or the sexual exploitation of children.

16 (b) STATE LAW.—No State or local government may
17 impose any civil liability for commercial activities or ac-
18 tions in interstate or foreign commerce in connection with
19 an activity or action described in section 5 of this Act that
20 is inconsistent with the treatment of such activities or ac-
21 tions under this Act, except that this Act shall not pre-
22 empt any civil action under—

23 (1) State trespass or contract law; or

24 (2) any provision of Federal, State, or local
25 criminal law or any civil remedy available under



1 such law that relates to acts of computer fraud or
2 abuse arising from the unauthorized transmission of
3 unsolicited commercial electronic mail messages.

4 **SEC. 8. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL**
5 **ELECTRONIC MAIL.**

6 Not later than 18 months after the date of the enact-
7 ment of this Act, the Federal Trade Commission shall sub-
8 mit a report to the Congress that provides a detailed anal-
9 ysis of the effectiveness and enforcement of the provisions
10 of this Act and the need (if any) for the Congress to mod-
11 ify such provisions.

12 **SEC. 9. SEVERABILITY.**

13 If any provision of this Act or the application thereof
14 to any person or circumstance is held invalid, the remain-
15 der of this Act and the application of such provision to
16 other persons or circumstances shall not be affected.

17 **SEC. 10. EFFECTIVE DATE.**

18 The provisions of this Act shall take effect 60 days
19 after the date of the enactment of this Act.

