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Citation: 1 Controlling the Assault of Non-Solicited Pornography  
Marketing CAN-SPAM Act of 2003 A Legislative History  
H. Manz ed. 1 2004

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106TH CONGRESS  
1ST SESSION

# S. 759

To regulate the transmission of unsolicited commercial electronic mail on the Internet, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 25, 1999

Mr. MURKOWSKI (for himself, Mr. TORRICELLI, Mr. BURNS, and Mr. REID) 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 regulate the transmission of unsolicited commercial electronic mail on the Internet, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Inbox Privacy Act of  
5 1999”.

6 **SEC. 2. TRANSMISSIONS OF UNSOLICITED COMMERCIAL**  
7 **ELECTRONIC MAIL.**

8 (a) **PROHIBITION ON TRANSMISSION TO PERSONS**  
9 **DECLINING RECEIPT.—**

1           (1) IN GENERAL.—A person may not initiate  
2 the transmission of unsolicited commercial electronic  
3 mail to another person if such other person submits  
4 to the person a request that the initiation of the  
5 transmission of such mail by the person to such  
6 other person not occur.

7           (2) FORM OF REQUEST.—A request under  
8 paragraph (1) may take any form appropriate to no-  
9 tify a person who initiates the transmission of unso-  
10 licited commercial electronic mail of the request, in-  
11 cluding an appropriate reply to a notice specified in  
12 subsection (d)(2).

13           (3) CONSTRUCTIVE AUTHORIZATION.—

14           (A) IN GENERAL.—Subject to subpara-  
15 graph (B), for purposes of this subsection, a  
16 person who secures a good or service from, or  
17 otherwise responds electronically to an offer in  
18 a commercial electronic mail message shall be  
19 deemed to have authorized the initiation of  
20 transmissions of unsolicited commercial elec-  
21 tronic mail from the person who initiated trans-  
22 mission of the message.

23           (B) NO AUTHORIZATION FOR REQUEST  
24 FOR TERMINATION.—A reply to a notice speci-  
25 fied in subsection (d)(2) shall not constitute au-

1           thorization for the initiation of transmissions of  
2           unsolicited commercial electronic mail under  
3           this paragraph.

4           (b) PROHIBITION ON TRANSMISSION TO DOMAIN  
5 OWNERS DECLINING RECEIPT.—

6           (1) IN GENERAL.—Except as provided in para-  
7           graph (2), a person may not initiate the trans-  
8           mission of unsolicited commercial electronic mail to  
9           any electronic mail addresses served by a domain if  
10          the domain owner has elected not to receive trans-  
11          missions of such mail at the domain in accordance  
12          with subsection (c).

13          (2) EXCEPTIONS.—The prohibition in para-  
14          graph (1) shall not apply in the case of the fol-  
15          lowing:

16                (A) A domain owner initiating trans-  
17                missions of commercial electronic mail to its  
18                own domain.

19                (B) Any customer of an Internet service  
20                provider or interactive computer service pro-  
21                vider included on a list under subsection  
22                (c)(3)(C).

23          (c) DOMAIN-WIDE OPT-OUT SYSTEM.—

1           (1) IN GENERAL.—A domain owner may elect  
2 not to receive transmissions of unsolicited commercial  
3 electronic mail at its own domain.

4           (2) NOTICE OF ELECTION.—A domain owner  
5 making an election under this subsection shall—

6                 (A) notify the Federal Trade Commission  
7 of the election in such form and manner as the  
8 Commission shall require for purposes of section  
9 4(c); and

10                (B) if the domain owner is an Internet  
11 service provider or interactive computer service  
12 provider, notify the customers of its Internet  
13 service or interactive computer service, as the  
14 case may be, in such manner as the provider  
15 customarily employs for notifying such cus-  
16 tomers of matters relating to such service, of—

17                         (i) the election; and

18                         (ii) the authority of the customers to  
19 make the election provided for under para-  
20 graph (3).

21           (3) CUSTOMER ELECTION TO CONTINUE RE-  
22 CEIPT OF MAIL.—

23                 (A) ELECTION.—Any customer of an  
24 Internet service provider or interactive com-  
25 puter service provider receiving a notice under

1 paragraph (2)(B) may elect to continue to re-  
2 ceive transmissions of unsolicited commercial  
3 electronic mail through the domain covered by  
4 the notice, notwithstanding the election of the  
5 Internet service provider or interactive com-  
6 puter service provider under paragraph (1) to  
7 which the notice applies.

8 (B) TRANSMITTAL OF MAIL.—An Internet  
9 service provider or interactive computer service  
10 provider may not impose or collect any fee for  
11 the receipt of unsolicited commercial electronic  
12 mail under this paragraph (other than the  
13 usual and customary fee imposed and collected  
14 for the receipt of commercial electronic mail by  
15 its customers) or otherwise discriminate against  
16 a customer for the receipt of such mail under  
17 this paragraph.

18 (C) LIST OF CUSTOMERS MAKING ELEC-  
19 TION.—

20 (i) REQUIREMENT.—An Internet serv-  
21 ice provider or interactive computer service  
22 provider shall maintain a list of each of its  
23 current customers who have made an elec-  
24 tion under subparagraph (A).

1                   (ii) AVAILABILITY OF LIST.—Each  
2                   such provider shall make such list available  
3                   to the public in such form and manner as  
4                   the Commission shall require for purposes  
5                   of section 4(c).

6                   (iii) PROHIBITION ON FEE.—A pro-  
7                   vider may not impose or collect any fee in  
8                   connection with any action taken under  
9                   this subparagraph.

10           (d) INFORMATION TO BE INCLUDED IN ALL TRANS-  
11           MISSIONS.—A person initiating the transmission of any  
12           unsolicited commercial electronic mail message shall in-  
13           clude in the body of such message the following informa-  
14           tion:

15                   (1) The name, physical address, electronic mail  
16                   address, and telephone number of the person.

17                   (2) A clear and obvious notice that the person  
18                   will cease further transmissions of commercial elec-  
19                   tronic mail to the recipient of the message at no cost  
20                   to that recipient upon the transmittal by that recipi-  
21                   ent to the person, at the electronic mail address  
22                   from which transmission of the message was initi-  
23                   ated, of an electronic mail message containing the  
24                   word “remove” in the subject line.

1 (e) ROUTING INFORMATION.—A person initiating the  
2 transmission of any commercial electronic mail message  
3 shall ensure that all Internet routing information con-  
4 tained in or accompanying such message is accurate, valid  
5 according to the prevailing standards for Internet proto-  
6 cols, and accurately reflects the routing of such message.

7 **SEC. 3. DECEPTIVE ACTS OR PRACTICES IN CONNECTION**  
8 **WITH SALE OF GOODS OR SERVICES OVER**  
9 **THE INTERNET.**

10 (a) AUTHORITY TO REGULATE.—

11 (1) IN GENERAL.—The Federal Trade Commis-  
12 sion may prescribe rules for purposes of defining  
13 and prohibiting deceptive acts or practices in connec-  
14 tion with the promotion, advertisement, offering for  
15 sale, or sale of goods or services on or by means of  
16 the Internet.

17 (2) COMMERCIAL ELECTRONIC MAIL.—The  
18 rules under paragraph (1) may contain specific pro-  
19 visions addressing deceptive acts or practices in the  
20 initiation, transmission, or receipt of commercial  
21 electronic mail.

22 (3) NATURE OF VIOLATION.—The rules under  
23 paragraph (1) shall treat any violation of such rules  
24 as a violation of a rule under section 18 of the Fed-  
25 eral Trade Commission Act (15 U.S.C. 57a), relat-



1 ing to unfair or deceptive acts or practices affecting  
2 commerce.

3 (b) PRESCRIPTION.—Section 553 of title 5, United  
4 States Code, shall apply to the prescription of any rules  
5 under subsection (a).

6 **SEC. 4. FEDERAL TRADE COMMISSION ACTIVITIES WITH**  
7 **RESPECT TO UNSOLICITED COMMERCIAL**  
8 **ELECTRONIC MAIL.**

9 (a) INVESTIGATION.—

10 (1) IN GENERAL.—Subject to paragraph (2),  
11 upon notice of an alleged violation of a provision of  
12 section 2, the Federal Trade Commission may con-  
13 duct an investigation in order to determine whether  
14 or not the violation occurred.

15 (2) LIMITATION.—The Commission may not  
16 undertake an investigation of an alleged violation  
17 under paragraph (1) more than 2 years after the  
18 date of the alleged violation.

19 (3) RECEIPT OF NOTICES.—The Commission  
20 shall provide for appropriate means of receiving no-  
21 tices under paragraph (1). Such means shall include  
22 an Internet web page on the World Wide Web that  
23 the Commission maintains for that purpose.

24 (b) ENFORCEMENT POWERS.—If as a result of an in-  
25 vestigation under subsection (a) the Commission deter-

1 mines that a violation of a provision of section 2 has oc-  
2 curred, the Commission shall have the power to enforce  
3 such provision as if such violation were a violation of a  
4 rule prescribed under section 18 of the Federal Trade  
5 Commission Act (15 U.S.C. 57a), relating to unfair or de-  
6 ceptive acts or practices affecting commerce.

7 (c) INFORMATION ON ELECTIONS UNDER DOMAIN-  
8 WIDE OPT-OUT SYSTEM.—

9 (1) INITIAL SITE FOR INFORMATION.—The  
10 Commission shall establish and maintain an Internet  
11 web page on the World Wide Web containing infor-  
12 mation sufficient to make known to the public for  
13 purposes of section 2 the domain owners who have  
14 made an election under subsection (c)(1) of that sec-  
15 tion and the persons who have made an election  
16 under subsection (c)(3) of that section.

17 (2) ALTERNATIVE SITE.—The Commission may  
18 from time to time select another means of making  
19 known to the public the information specified in  
20 paragraph (1). Any such selection shall be made in  
21 consultation with the members of the Internet com-  
22 munity.

23 (d) ASSISTANCE OF OTHER FEDERAL AGENCIES.—  
24 Other Federal departments and agencies may, upon re-

1 quest of the Commission, assist the Commission in car-  
2 rying out activities under this section.

3 **SEC. 5. ACTIONS BY STATES.**

4 (a) IN GENERAL.—Whenever the attorney general of  
5 a State has reason to believe that the interests of the resi-  
6 dents of the State have been or are being threatened or  
7 adversely affected because any person is engaging in a pat-  
8 tern or practice of the transmission of electronic mail in  
9 violation of a provision of section 2, or of any rule pre-  
10 scribed pursuant to section 3, the State, as *parens patriae*,  
11 may bring a civil action on behalf of its residents to enjoin  
12 such transmission, to enforce compliance with such provi-  
13 sion or rule, to obtain damages or other compensation on  
14 behalf of its residents, or to obtain such further and other  
15 relief as the court considers appropriate.

16 (b) NOTICE TO COMMISSION.—

17 (1) NOTICE.—The State shall serve prior writ-  
18 ten notice of any civil action under this section on  
19 the Federal Trade Commission and provide the  
20 Commission with a copy of its complaint, except that  
21 if it is not feasible for the State to provide such  
22 prior notice, the State shall serve written notice im-  
23 mediately after instituting such action.

1           (2) RIGHTS OF COMMISSION.—On receiving a  
2       notice with respect to a civil action under paragraph  
3       (1), the Commission shall have the right—

4                   (A) to intervene in the action;

5                   (B) upon so intervening, to be heard in all  
6       matters arising therein; and

7                   (C) to file petitions for appeal.

8       (c) ACTIONS BY COMMISSION.—Whenever a civil ac-  
9       tion has been instituted by or on behalf of the Commission  
10      for violation of a provision of section 2, or of any rule  
11      prescribed pursuant to section 3, no State may, during  
12      the pendency of such action, institute a civil action under  
13      this section against any defendant named in the complaint  
14      in such action for violation of any provision or rule as al-  
15      leged in the complaint.

16      (d) CONSTRUCTION.—For purposes of bringing a civil  
17      action under subsection (a), nothing in this section shall  
18      prevent an attorney general from exercising the powers  
19      conferred on the attorney general by the laws of the State  
20      concerned to conduct investigations or to administer oaths  
21      or affirmations or to compel the attendance of witnesses  
22      or the production of documentary or other evidence.

23      (e) VENUE; SERVICE OF PROCESS.—Any civil action  
24      brought under subsection (a) in a district court of the  
25      United States may be brought in the district in which the

1 defendant is found, is an inhabitant, or transacts business  
2 or wherever venue is proper under section 1391 of title  
3 28, United States Code. Process in such an action may  
4 be served in any district in which the defendant is an in-  
5 habitant or in which the defendant may be found.

6 (f) DEFINITIONS.—In this section:

7 (1) ATTORNEY GENERAL.—The term “attorney  
8 general” means the chief legal officer of a State.

9 (2) STATE.—The term “State” means any  
10 State of the United States, the District of Columbia,  
11 Puerto Rico, Guam, American Samoa, the United  
12 States Virgin Islands, the Commonwealth of the  
13 Northern Mariana Islands, the Republic of the Mar-  
14 shall Islands, the Federated States of Micronesia,  
15 the Republic of Palau, and any possession of the  
16 United States.

17 **SEC. 6. ACTIONS BY INTERNET SERVICE PROVIDERS AND**  
18 **INTERACTIVE COMPUTER SERVICE PRO-**  
19 **VIDERS.**

20 (a) ACTIONS AUTHORIZED.—In addition to any other  
21 remedies available under any other provision of law, any  
22 Internet service provider or interactive computer service  
23 provider adversely affected by a violation of section  
24 2(b)(1) may, within 1 year after discovery of the violation,

1 bring a civil action in a district court of the United States  
2 against a person who violates such section.

3 (b) RELIEF.—

4 (1) IN GENERAL.—An action may be brought  
5 under subsection (a) to enjoin a violation referred to  
6 in that subsection, to enforce compliance with the  
7 provision referred to in that subsection, to obtain  
8 damages as specified in paragraph (2), or to obtain  
9 such further and other relief as the court considers  
10 appropriate.

11 (2) DAMAGES.—

12 (A) IN GENERAL.—The amount of dam-  
13 ages in an action under this section for a viola-  
14 tion specified in subsection (a) may not exceed  
15 \$50,000 per day in which electronic mail consti-  
16 tuting such violation was received.

17 (B) RELATIONSHIP TO OTHER DAM-  
18 AGES.—Damages awarded under this subsection  
19 for a violation under subsection (a) are in addi-  
20 tion to any other damages awardable for the  
21 violation under any other provision of law.

22 (C) COST AND FEES.—The court may, in  
23 issuing any final order in any action brought  
24 under subsection (a), award costs of suit, rea-  
25 sonable costs of obtaining service of process,

1 reasonable attorney fees, and expert witness  
2 fees for the prevailing party.

3 (c) VENUE; SERVICE OF PROCESS.—Any civil action  
4 brought under subsection (a) in a district court of the  
5 United States may be brought in the district in which the  
6 defendant or in which the Internet service provider or  
7 interactive computer service provider is located, is an in-  
8 habitant, or transacts business or wherever venue is prop-  
9 er under section 1391 of title 28, United States Code.  
10 Process in such an action may be served in any district  
11 in which the defendant is an inhabitant or in which the  
12 defendant may be found.

13 **SEC. 7. PREEMPTION.**

14 This Act preempts any State or local laws regarding  
15 the transmission or receipt of commercial electronic mail.

16 **SEC. 8. DEFINITIONS.**

17 In this Act:

18 (1) **COMMERCIAL ELECTRONIC MAIL.**—The  
19 term “commercial electronic mail” means any elec-  
20 tronic mail or similar message whose primary pur-  
21 pose is to initiate a commercial transaction, not in-  
22 cluding messages sent by persons to others with  
23 whom they have a prior business relationship.

24 (2) **INITIATE THE TRANSMISSION.**—

1           (A) IN GENERAL.—The term “initiate the  
2           transmission”, in the case of an electronic mail  
3           message, means to originate the electronic mail  
4           message.

5           (B) EXCLUSION.—Such term does not in-  
6           clude any intervening action to relay, handle, or  
7           otherwise retransmit an electronic mail mes-  
8           sage, unless such action is carried out in inten-  
9           tional violation of a provision of section 2.

10          (3) INTERACTIVE COMPUTER SERVICE PRO-  
11          VIDER.—The term “interactive computer service  
12          provider” means a provider of an interactive com-  
13          puter service (as that term is defined in section  
14          230(e)(2) of the Communications Act of 1934 (47  
15          U.S.C. 230(e)(2)).

16          (4) INTERNET.—The term “Internet” has the  
17          meaning given that term in section 230(e)(1) of the  
18          Communications Act of 1934 (47 U.S.C. 230(e)(1)).

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## **DOCUMENT NO. 36**

