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105TH CONGRESS  
1ST SESSION

# S. 875

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.

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## 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.

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 “Electronic Mailbox  
5 Protection Act of 1997”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1           (1) The Internet has increasingly become a crit-  
2 ical mode of global communication and now presents  
3 unprecedented opportunities for the development and  
4 growth of global commerce and an integrated world-  
5 wide economy.

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

13           (3) Unsolicited electronic mail can be an impor-  
14 tant mechanism through which commercial vendors,  
15 nonprofit organizations, and other providers of serv-  
16 ices recruit members, advertise, and attract cus-  
17 tomers in the online environment.

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

24           (5) Unsolicited electronic mail sent in bulk may  
25 impose significant monetary costs on the Internet

1 service providers, businesses, and educational and  
2 non-profit institutions that carry and receive such  
3 mail, as there is a finite volume of mail that such  
4 providers, businesses, and institutions can handle at  
5 any one point in time. The sending of such mail is  
6 increasingly and negatively affecting the quality of  
7 service provided to customers of Internet service pro-  
8 viders.

9 (6) While many senders of bulk unsolicited elec-  
10 tronic mail provide simple and reliable ways for re-  
11 cipients to reject (or “opt-out” of) receipt of unsolic-  
12 ited electronic mail from such senders in the future,  
13 other senders provide no such “opt-out” mechanism,  
14 or refuse to honor the requests of recipients not to  
15 receive electronic mail from such senders in the fu-  
16 ture, or both.

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

21 (8) Many senders of unsolicited electronic mail  
22 collect (or “harvest”) electronic mail addresses of  
23 potential recipients without the knowledge of their  
24 intended recipients and in violation of the rules or

1 terms of service of the fora from which such ad-  
2 dresses are collected.

3 (9) Because recipients of unsolicited electronic  
4 mail are unable to avoid the receipt of such mail  
5 through reasonable means, such mail may threaten  
6 the privacy of recipients. This privacy threat is en-  
7 hanced for recipients whose electronic mail software  
8 or server alerts them to new mail as it arrives, as  
9 unsolicited electronic mail thereby disrupts the nor-  
10 mal operation of the recipient's computer.

11 (10) In legislating against certain abuses on the  
12 Internet, Congress and the States should be very  
13 careful to avoid infringing in any way upon constitu-  
14 tionally protected rights, including the rights of as-  
15 sembly, free speech, and privacy.

16 (11) In order to realize the full potential for on-  
17 line electronic commerce, senders of bulk unsolicited  
18 electronic mail should be required to abide by the re-  
19 quests of electronic mail recipients, Internet service  
20 providers, businesses, and educational and non-profit  
21 institutions to cease sending such mail to such re-  
22 cipients, providers, businesses, and educational and  
23 non-profit institutions.

1 **SEC. 3. PROHIBITION ON CERTAIN ACTIVITIES THAT MIS-**  
2 **APPROPRIATE THE RESOURCES OF ONLINE**  
3 **SERVICE PROVIDERS.**

4 (a) IN GENERAL.—Whoever, in or affecting inter-  
5 state or foreign commerce—

6 (1) initiates the transmission of an unsolicited  
7 electronic mail message from an unregistered or fic-  
8 titious Internet domain, or an unregistered or ficti-  
9 tious electronic mail address, for the purpose of—

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

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

15 (2) uses a computer program or other technical  
16 mechanism or procedure to disguise the source of  
17 unsolicited electronic mail messages for the purpose  
18 of preventing recipients, or recipient interactive com-  
19 puter services, from implementing a mail filtering  
20 tool to block the messages from reaching the in-  
21 tended recipients;

22 (3) initiates the transmission of an unsolicited  
23 electronic mail message and fails to comply with the  
24 request of the recipient of the message, made to the  
25 sender or the listserver as appropriate, to cease

1 sending electronic messages to the recipient in the  
2 future;

3 (4) distributes a collection or list of electronic  
4 mail addresses, having been given prior notice that  
5 one or more of the recipients identified by such ad-  
6 dresses does not wish to receive unsolicited electronic  
7 mail and knowing that the recipient of such address-  
8 es intends to use such addresses for the purpose of  
9 sending unsolicited electronic mail;

10 (5) initiates the transmission of an unsolicited  
11 electronic mail message to a recipient despite having  
12 been given prior notice (either directly or through a  
13 standard method developed, adopted, or modified by  
14 an Internet standard setting organization (such as  
15 the Internet Engineering Task Force or the World  
16 Wide Web Consortium) to better facilitate pre-  
17 emptive consumer control over bulk unsolicited elec-  
18 tronic mail) that the recipient does not wish to re-  
19 ceive such messages;

20 (6) registers, creates, or causes to be created an  
21 Internet domain or applies for, registers, or other-  
22 wise obtains the use of an Internet electronic mail  
23 account for the sole or primary purpose of initiating  
24 the transmission of an unsolicited electronic mail  
25 message in contravention of paragraph (1) or (2);

1           (7) directs an unsolicited electronic mail mes-  
2           sage through the server of an interactive computer  
3           service to one or more subscribers of the interactive  
4           computer service, knowing that such action is in  
5           contravention of the rules of the interactive com-  
6           puter service with respect to bulk unsolicited elec-  
7           tronic mail messages;

8           (8) knowing that such action is in contravention  
9           of the rules of the interactive computer service con-  
10          cerned, accesses the server of the interactive com-  
11          puter service and uses a computer program to collect  
12          electronic mail addresses of subscribers of the inter-  
13          active computer service for the purpose of sending  
14          such subscribers unsolicited electronic mail or dis-  
15          tributing such addresses knowing that the recipient  
16          of such addresses intends to use such addresses for  
17          the purpose of sending unsolicited electronic mail; or

18          (9) initiates the transmission of bulk unsolicited  
19          electronic mail messages and divides the mailing of  
20          such messages into smaller mailings for the purpose  
21          of circumventing another provision of this Act,  
22 shall be subject to a civil penalty of not more than \$5,000  
23 per individual violation.



1 (b) ENFORCEMENT.—The Federal Trade Commis-  
2 sion shall have the authority to commence civil actions  
3 under subsection (a).

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

5 (a) IN GENERAL.—Any person whose interactive  
6 computer service or electronic mailbox is intentionally mis-  
7 used or infiltrated, or whose requests for cessation of elec-  
8 tronic mail messages have been ignored, in violation of sec-  
9 tion 3 may in a civil action recover from the person or  
10 entity which engaged in that violation such relief as may  
11 be appropriate.

12 (b) RELIEF.—In an action under this section, appro-  
13 priate relief includes—

14 (1) such preliminary and other equitable or de-  
15 claratory relief as may be appropriate;

16 (2) actual monetary loss from a violation, statu-  
17 tory damages of not more than \$500 for each viola-  
18 tion, and, if the court finds that the defendant's ac-  
19 tions were particularly egregious, willful, or knowing  
20 violations of section 3, the court may, in its discre-  
21 tion, increase the amount of an award to an amount  
22 equal to not more than 10 times the amount avail-  
23 able hereunder; and

24 (3) a reasonable attorney's fee and other litiga-  
25 tion costs reasonably incurred.

1 **SEC. 5. STATE LAW.**

2 Nothing in this Act shall be construed to prevent any  
3 State from enforcing any State law that is consistent with  
4 this Act. No cause of action may be brought and no liabil-  
5 ity may be imposed under any State or local law that is  
6 inconsistent with this Act.

7 **SEC. 6. FEDERAL TRADE COMMISSION STUDY INTO EF-**  
8 **FECTS OF UNSOLICITED ELECTRONIC MAIL.**

9 Not later than 18 months after the date of enactment  
10 of this Act, the Federal Trade Commission shall submit  
11 to Congress a report detailing the effectiveness of, enforce-  
12 ment of, and the need, if any, for Congress to modify the  
13 provisions of this Act.

14 **SEC. 7. DEFINITIONS.**

15 In this Act:

16 (1) **BULK UNSOLICITED ELECTRONIC MAIL**  
17 **MESSAGE.**—The term “bulk unsolicited electronic  
18 mail message” means any substantially identical un-  
19 solicited electronic mail message with 25 or more in-  
20 tended recipients.

21 (2) **ELECTRONIC MAIL ADDRESS.**—

22 (A) **IN GENERAL.**—The term “electronic  
23 mail address” means a destination (commonly  
24 expressed as a string of characters) to which  
25 electronic mail can be sent or delivered.

1 (B) INCLUSION.—In the case of the  
2 Internet, the term “electronic mail address”  
3 may include an electronic mail address consist-  
4 ing of a user name or mailbox (commonly re-  
5 ferred to as the “local part”) and a reference  
6 to an Internet domain (commonly referred to as  
7 the “domain part”).

8 (3) INITIATES THE TRANSMISSION.—The term  
9 “initiates the transmission”, in the case an elec-  
10 tronic mail message, refers to the action of the origi-  
11 nal sender of the message and not to any interven-  
12 ing computer service that may handle or retransmit  
13 the message, unless the intervening computer service  
14 retransmits the message with an intent to engage in  
15 activities prohibited by this Act.

16 (4) INTERACTIVE COMPUTER SERVICE.—The  
17 term “interactive computer service” has the meaning  
18 given that term in section 230(e)(2) of the Commu-  
19 nications Act of 1934 (47 U.S.C. 230(e)(2)).

20 (5) INTERNET.—The term “Internet” has the  
21 meaning given that term in section 230(e)(1) of the  
22 Communications Act of 1934 (47 U.S.C. 230(e)(1)).

23 (6) INTERNET DOMAIN.—The term “Internet  
24 domain” refers to a specific computer system (com-  
25 monly referred to as a “host”) or collection of com-

1       puter systems attached to or able to be referenced  
2       from the Internet which are assigned a specific ref-  
3       erence point on the Internet (commonly referred to  
4       as the “Internet domain name”) and registered with  
5       an organization recognized by the computer industry  
6       as a registrant of Internet domains.

7               (7) LISTSERVER.—The term “listserver” refers  
8       to a computer program that provides electronic mail-  
9       ing list management functions, including functions  
10      that allow individuals to subscribe and unsubscribe  
11      to and from electronic mailing lists.

12              (8) MAIL FILTERING TOOL.—The term “mail  
13      filtering tool” means any computer program, proce-  
14      dure, or mechanism used by an individual recipient  
15      or interactive computer service to block, return, re-  
16      route, or otherwise screen or sort incoming electronic  
17      mail messages.

18              (9) SERVER.—The term “server” refers to any  
19      computer that provides support or services of any  
20      kind, including electronic mailboxes, to other com-  
21      puters (commonly referred to as “clients”).

22              (10) UNSOLICITED ELECTRONIC MAIL MES-  
23      SAGE.—The term “unsolicited electronic mail mes-  
24      sage” means any electronic mail other than elec-  
25      tronic mail sent by persons to others with whom

1       they have a prior relationship, including a prior  
2       business relationship, or mail sent by a source to re-  
3       cipients where such recipients, or someone author-  
4       ized by them, have at any time affirmatively re-  
5       quested to receive communications from that source.

6       **SEC. 8. EFFECTIVE DATE.**

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

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## **DOCUMENT NO. 29**

