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107TH CONGRESS
1ST SESSION

H. R. 3146

To restrict the transmission of unsolicited electronic mail messages.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 16, 2001

Mr. SMITH of New Jersey introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To restrict the transmission of unsolicited electronic mail messages.

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 “Netizens Protection
5 Act of 2001”.

6 **SEC. 2. PROHIBITION OF INITIATION OF TRANSMISSION OF**
7 **UNSOLICITED ELECTRONIC MAIL.**

8 (a) IN GENERAL.—No person may initiate, or cause
9 to be initiated, the transmission of an unsolicited elec-
10 tronic mail message in or affecting interstate or foreign
11 commerce if the message—

1 (1) does not contain the name, physical ad-
2 dress, and electronic mail address of the person who
3 initiates the transmission of the message;

4 (2) does not provide an electronic method by
5 which the recipient of the message can contact the
6 person who initiated the transmission of the message
7 to request that no further such messages be sent,
8 which method may include electronic mail or Inter-
9 net access; or

10 (3)(A) is part of a bulk transmission of such
11 messages; and

12 (B) includes information that is located in the
13 subject line of the message and is false or misleading
14 with respect to the body of the message.

15 (b) TREATMENT OF STATE LAWS.—Subsection (a)
16 may not be construed to preempt any State law relating
17 to unsolicited commercial electronic mail.

18 (c) PRIVATE RIGHT OF ACTION.—

19 (1) CAUSE OF ACTION.—Any person adversely
20 affected by a violation of subsection (a) may, within
21 1 year after discovery of the violation, bring a civil
22 action against a person who violates such subsection
23 in a district court of the United States or in any
24 other court of competent jurisdiction, for the district
25 or jurisdiction in which the unsolicited electronic

1 mail message was received or in which the defendant
2 is located.

3 (2) RELIEF.—In a civil action under this sub-
4 section, the court may—

5 (A) grant temporary and final injunctions
6 on such terms as it may deem reasonable to
7 prevent or restrain violations of subsection (a);

8 (B) award damages as described in para-
9 graph (3); and

10 (C) direct the recovery of full costs, includ-
11 ing awarding reasonable attorneys' fees to an
12 aggrieved party who prevails.

13 (3) DAMAGES.—

14 (A) AMOUNT.—The amount of damages in
15 an action under this subsection for a violation
16 of subsection (a) may not exceed \$500 for each
17 unsolicited electronic mail message the trans-
18 mission of which was initiated in violation of
19 such subsection. The court shall treble the
20 amount recovered under the preceding sentence
21 for any transmission of an unsolicited electronic
22 mail message to the aggrieved party in violation
23 of subsection (a) that the court finds was initi-
24 ated after the aggrieved party contacted the
25 initiator of the transmission to request that the

1 initiator not initiate further transmissions of
2 such mail to such person.

3 (B) RELATIONSHIP TO OTHER DAM-
4 AGES.—Damages awarded under this para-
5 graph for a violation under subsection (a) are
6 in addition to any other damages awardable for
7 the violation under any other provision of law.

8 **SEC. 3. RESTRICTIONS AGAINST USE OF INTERACTIVE**
9 **COMPUTER SERVICES TO INITIATE UNSOLIC-**
10 **ITED ELECTRONIC MAIL.**

11 (a) STATEMENT OF POLICY.—Each interactive com-
12 puter service provider shall make available to each cus-
13 tomer of the interactive computer service of the provider
14 the policy of the provider regarding unsolicited electronic
15 mail, including any option the provider may have for the
16 customer to elect to receive or not to receive unsolicited
17 electronic mail and any other options customers may exer-
18 cise to restrict the receipt of unsolicited electronic mail.
19 Such policy shall be set forth in writing, in clear and un-
20 derstandable language, in the agreement for the provision
21 of the interactive computer service by the customer.

22 (b) VIOLATION OF POLICY AGAINST BULK MAIL.—
23 No customer of an interactive computer service provider
24 may use the equipment or facilities of the provider to ini-
25 tiate, or cause to be initiated, the bulk transmission of

1 an unsolicited electronic mail message if the policy re-
2 ferred to in subsection (a) of the provider prohibits the
3 initiation of such bulk transmissions.

4 (c) CAUSE OF ACTION.—

5 (1) IN GENERAL.—In addition to any other
6 remedies available under any other provision of law,
7 any interactive computer service provider adversely
8 affected by a violation of subsection (b) may bring
9 a civil action in a district court of the United States
10 against a person who violates such subsection.

11 (2) RELIEF.—

12 (A) IN GENERAL.—An action may be
13 brought under paragraph (1) to enjoin a viola-
14 tion of subsection (b), to obtain damages as
15 specified in subparagraph (B), or to obtain such
16 further and other relief as the court considers
17 appropriate.

18 (B) DAMAGES.—The amount of damages
19 in an action under this subsection for a viola-
20 tion of subsection (b) may not exceed \$500 for
21 each unsolicited electronic mail message the
22 transmission of which was initiated in violation
23 of such subsection.

24 (C) RELATIONSHIP TO OTHER DAMAGES.—
25 Damages awarded under this paragraph for a

1 violation of subsection (b) are in addition to
2 any other damages awardable for the violation
3 under any other provision of law.

4 (D) COST AND FEES.—The court may, in
5 issuing any final order in any action brought
6 under this subsection, award costs of suit, rea-
7 sonable costs of obtaining service of process,
8 reasonable attorney fees, and expert witness
9 fees for the prevailing party.

10 (3) VENUE; SERVICE OF PROCESS.—Any civil
11 action brought under this subsection in a district
12 court of the United States may be brought in the
13 district in which the defendant or in which the inter-
14 active computer service provider is located, is an in-
15 habitant, or transacts business or wherever venue is
16 proper under section 1391 of title 28, United States
17 Code. Process in such an action may be served in
18 any district in which the defendant is an inhabitant
19 or in which the defendant may be found.

20 **SEC. 4. PROTECTION OF INTERACTIVE COMPUTER SERV-**
21 **ICE PROVIDERS.**

22 (a) IN GENERAL.—An interactive computer service
23 provider who, in good faith, takes action to restrict or pre-
24 vent the receipt of unsolicited electronic mail by its cus-

1 tomers shall not be liable for any harm resulting from fail-
2 ure to prevent such receipt.

3 (b) **RULE OF CONSTRUCTION.**—Subsection (a) may
4 not be construed to prevent or restrict the liability of any
5 interactive computer service provider for any failure to
6 provide any services other than restriction or prevention
7 for customers of receipt of unsolicited electronic mail.

8 **SEC. 5. DEFINITIONS.**

9 For purposes of this Act, the following definitions
10 shall apply:

11 (1) **BULK.**—The term “bulk” means, with re-
12 spect to the transmission of an electronic mail mes-
13 sage, the transmission, within a 7-day period, of
14 such a message or messages that are identical or
15 substantially similar to 50 or more intended recipi-
16 ents.

17 (2) **INITIATE THE TRANSMISSION.**—The term
18 “initiate the transmission” means, with respect to
19 an electronic mail, to originate the message, and
20 does not include the actions of any interactive com-
21 puter service whose facilities or services are used
22 only to relay, handle, or otherwise retransmit the
23 message.

24 (3) **INTERACTIVE COMPUTER SERVICE.**—The
25 term “interactive computer service” has the meaning

1 given such term in section 230(e) of the Commu-
2 nications Act of 1934 (47 U.S.C. 230(e)).

3 (4) INTERACTIVE COMPUTER SERVICE PRO-
4 VIDER.—The term “interactive computer service
5 provider” means the provider of an interactive com-
6 puter service.

7 (5) RECIPIENT.—The term “recipient” means,
8 with respect to an electronic mail message, an indi-
9 vidual electronic mail address to which the message
10 is directed, without regard to whether such address
11 corresponds to a person, computer, list server, or
12 other automated electronic device.

13 (6) UNSOLICITED ELECTRONIC MAIL.—The
14 term “unsolicited electronic mail” means electronic
15 mail unless such mail is transmitted (A) to any per-
16 son with that person’s prior express invitation or
17 permission, or (B) to any person with whom the
18 sender has an established business or personal rela-
19 tionship.

20 **SEC. 6. EFFECTIVE DATE.**

21 This Act shall take effect upon the expiration of the
22 60-day period beginning on the date of the enactment of
23 this Act and shall apply to transmissions of electronic mail
24 initiated after the expiration of such period.

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