

HEINONLINE

Citation: 1 Controlling the Assault of Non-Solicited Pornography
Marketing CAN-SPAM Act of 2003 A Legislative History
H. Manz ed. S13057 2004

Content downloaded/printed from
HeinOnline (<http://heinonline.org>)
Mon Apr 22 11:09:34 2013

- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>
- The search text of this PDF is generated from uncorrected OCR text.

across the country. Justice Department Statistics show that 74 percent of kidnapped children who are later found murdered are killed within the first 3 hours of their abduction. The National Amber Alert Network Act will help law enforcement, in those early critical hours, as they work hard to find a missing child. I am pleased that it was also approved by Congress and signed into law as part of the PROTECT Act. Ten years ago, on August 18, 1993, Sara Ann Woods, a child of Herkimer County, NY, was abducted as she was riding home from her father's church in Litchfield, NY. After 3 years her kidnapper confessed to her murder, leaving the town devastated. Sara's death has been and continues to be the inspiration behind this legislation. I also want to mention Marc Klaas and John Walsh, the honorary co-chairmen of the Missing Children's Stamp Committee in Mohawk Valley, NY, and Herkimer County Legislator John Brezinski, who has worked tirelessly on this effort.

I am pleased to be joined in this effort with Senators SHELBY, DEWINE, LINCOLN, KENNEDY, LAUTENBERG, HAGEL and MILLER as original cosponsors.

According to a poll by Zogby, more than two out of every three Americans support a National Missing and Exploited Children's Postage Stamp. This commemorative stamp will help raise awareness and honor these missing children and their families. This stamp will reach individuals across geographic and socioeconomic spectrums, and we know that when it comes to combating these terrible crimes, awareness is crucial. I urge my colleagues to support this resolution. I believe that it will make a difference in protecting the lives of our children.

AMENDMENTS SUBMITTED & PROPOSED

SA 1891. Mr. WYDEN (for himself and Mr. BURNS) proposed an amendment to the bill S. 877, to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

SA 1892. Mr. SCHUMER (for himself, Mr. GRAHAM, of South Carolina, Mr. MCCAIN, and Mr. HOLLINGS) proposed an amendment to the bill S. 877, supra.

SA 1893. Mr. HATCH (for himself, Mr. LEAHY, Mr. NELSON, of Florida, and Mr. SCHUMER) proposed an amendment to the bill S. 877, supra.

SA 1894. Mr. MCCAIN (for Mr. ENZI (for himself, Mr. SANTORUM, and Mr. HATCH)) proposed an amendment to the bill S. 877, supra.

SA 1895. Mr. HARKIN proposed an amendment to the bill S. 877, supra.

SA 1896. Mr. MCCAIN (for Mr. CORZINE (for himself and Mr. GRAHAM, of South Carolina)) proposed an amendment to the bill S. 877, supra.

SA 1897. Mr. FRIST (for Mr. BUNNING) proposed an amendment to the concurrent resolution S. Con. Res. 21, expressing the sense of the Congress that community inclusion and enhanced lives for individuals with mental retardation or other developmental disabilities is at serious risk because of the crisis in

recruiting and retaining direct support professionals, which impedes the availability of a stable, quality direct support workforce.

SA 1898. Mr. FRIST (for Mr. BUNNING) proposed an amendment to the concurrent resolution S. Con. Res. 21, supra.

TEXT OF AMENDMENTS

SA 1891. Mr. WYDEN (for himself and Mr. BURNS) proposed an amendment to the bill S. 877, to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet; as follows:

On page 37, line 12, after the comma, insert "whether or not not displayed."

On page 44, line 20, strike "false or misleading," and insert "materially false or materially misleading."

On page 45, line 2, strike "misleading; and" and insert "materially misleading; and"

On page 45, line 5, strike "false or misleading," and insert "materially false or materially misleading; and"

On page 45, between lines 5 and 6, insert the following:

"(C) if header information attached to a message fails to identify a protected computer used to initiate the message because the person initiating the message knowingly uses another protected computer to relay or retransmit the message for purposes of disguising its origin, then such header information shall be considered materially misleading."

On page 49, between lines 11 and 12, insert the following:

(6) Materiality defined.- For purposes of paragraph (1), an inaccuracy or omission in header information is material if it would materially impede the ability of a party seeking to allege a violation of this Act to locate the person who initiated the message or to investigate the alleged violation.

On page 50, beginning in line 24, strike "establish" and insert "register for".

On page 51, after line 22, insert the following:

"(d) SUPPLEMENTARY RULEMAKING AUTHORITY.-

The Commission may by rule-

"(1) modify the 10-business-day period under subsection (a)(4)(A) or subsection (a)(4)(B), or both, if the Commission determines that a different period would be more reasonable after taking into account-

"(A) the purposes of subsection (a);

"(B) the interests of recipients of commercial electronic mail; and

"(C) the burdens imposed on senders of lawful commercial electronic mail; and

"(2) specify additional activities or practices to which subsection (b) applies if the Commission determines that these activities or practices are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under subsection (a)."

On page 58, beginning in line 16, strike "jurisdiction or in any other court of competent"

On page 62, beginning in line 14, strike "defendant, or in any other court of competent jurisdiction, to," and insert "defendant."

On page 65, beginning in line 7, strike "for any such statute, regulation, or rule that" and insert "to the extent that any such statute, regulation, or rule"

On page 65, line 16, strike "State laws" and insert "other State laws to the extent that those laws relate"

SA 1892. Mr. SCHUMER (for himself, Mr. GRAHAM of South Carolina, Mr.

MCCAIN, and Mr. HOLLINGS) proposed an amendment to the bill S. 877, to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet; as follows:

On page 66, strike lines 1 through 11 and insert the following:

SEC. 9. DO-NOT-E-MAIL REGISTRY.

(a) IN GENERAL.- Not later than 6 months after the date of enactment of this Act, the Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce a report that-

(1) sets forth a plan and timetable for establishing a nationwide marketing Do-Not-E-mail registry;

(2) includes an explanation of any practical, technical, security, privacy, enforceability, or other concerns that the Commission has regarding such a registry; and

(3) includes an explanation of how the registry would be applied with respect to children with e-mail accounts.

(b) AUTHORIZATION TO IMPLEMENT.- The Commission may establish and implement the plan, but not earlier than 9 months after the date of enactment of this Act.

SA 1893. Mr. HATCH (for himself, Mr. LEAHY, Mr. NELSON of Florida, and Mr. SCHUMER) proposed an amendment to the bill S. 877, to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet; as follows:

On page 43, beginning with line 11, strike through the matter appearing between lines 10 and 11 on page 44 and insert the following:

SEC. 4. PROHIBITION AGAINST PREDATORY AND ABUSIVE COMMERCIAL E-MAIL.

(a) OFFENSE.-

(1) IN GENERAL.- Chapter 47 of title 18, United States Code, is amended by adding at the end the following new section:

"§ 1037. Fraud and related activity in connection with electronic mail

"(a) IN GENERAL.- Whoever, in or affecting interstate or foreign commerce, knowingly-

"(1) accesses a protected computer without authorization, and intentionally initiates the transmission of multiple commercial electronic mail messages from or through such computer,

"(2) uses a protected computer to relay or retransmit multiple commercial electronic mail messages, with the intent to deceive or mislead recipients, or any Internet access service, as to the origin of such messages,

"(3) falsifies header information in multiple commercial electronic mail messages and intentionally initiates the transmission of such messages,

"(4) registers, using information that falsifies the identity of the actual registrant, for 5 or more electronic mail accounts or online user accounts or 2 or more domain names, and intentionally initiates the transmission of multiple commercial electronic mail messages from any combination of such accounts or domain names, or

"(5) falsely represents the right to use 5 or more Internet protocol addresses, and intentionally initiates the transmission of multiple commercial electronic mail messages from such addresses,

or conspires to do so, shall be punished as provided in subsection (b).

"(b) PENALTIES.- The punishment for an offense under subsection (a) is-

"(1) a fine under this title, imprisonment for more than 5 years, or both, if-

"(A) the offense is committed in furtherance of any felony under the laws of the United States or of any State; or

"(B) the defendant has previously been convicted under this section or section 1030, or under the law of any State for conduct involving the transmission of multiple commercial electronic mail messages or unauthorized access to a computer system;

"(2) a fine under this title, imprisonment for not more than 3 years, or both, if—

"(A) the offense is an offense under subsection (a)(1);

"(B) the offense is an offense under subsection (a)(4) and involved 20 or more falsified electronic mail or online user account registrations, or 10 or more falsified domain name registrations;

"(C) the volume of electronic mail messages transmitted in furtherance of the offense exceeded 2,500 during any 24-hour period, 25,000 during any 30-day period, or 250,000 during any 1-year period;

"(D) the offense caused loss to 1 or more persons aggregating \$5,000 or more in value during any 1-year period;

"(E) as a result of the offense any individual committing the offense obtained anything of value aggregating \$5,000 or more during any 1-year period; or

"(F) the offense was undertaken by the defendant in concert with 3 or more other persons with respect to whom the defendant occupied a position of organizer or leader; and

"(3) a fine under this title or imprisonment for not more than 1 year, or both, in any other case.

"(c) FORFEITURE.—

"(1) IN GENERAL.—The court, in imposing sentence on a person who is convicted of an offense under this section, shall order that the defendant forfeit, to the United States—

"(A) any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

"(B) any equipment, software, or other technology used or intended to be used to commit or to facilitate the commission of such offense.

"(2) PROCEDURES.—The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section, and in Rule 32.2 of the Federal Rules of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.

"(d) DEFINITIONS.—In this section:

"(1) LOSS.—The term 'loss' has the meaning given that term in section 1030(e) of this title.

"(2) MULTIPLE.—The term 'multiple' means more than 100 electronic mail messages during a 24-hour period, more than 1,000 electronic mail messages during a 30-day period, or more than 10,000 electronic mail messages during a 1-year period.

"(3) OTHER TERMS.—Any other term has the meaning given that term by section 3 of the CAN-SPAM Act of 2003."

"(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 47 of title 18, United States Code, is amended by adding at the end the following:

"Sec. 1037. Fraud and related activity in connection with electronic mail."

(b) UNITED STATES SENTENCING COMMISSION.—

(1) DIRECTIVE.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the sentencing guidelines and policy statements to provide appropriate penalties for violations of section 1037 of title 18, United States Code, as added by this section, and other offenses that may be facilitated by the sending

of large quantities of unsolicited electronic mail.

(2) REQUIREMENTS.—In carrying out this subsection, the Sentencing Commission shall consider providing sentencing enhancements for—

(A) those convicted under section 1037 of title 18, United States Code, who—

(i) obtained electronic mail addresses through improper means, including—

(I) harvesting electronic mail addresses of the users of a website, proprietary service, or other online public forum operated by another person, without the authorization of such person; and

(II) randomly generating electronic mail addresses by computer; or

(ii) knew that the commercial electronic mail messages involved in the offense contained or advertised an Internet domain for which the registrant of the domain had provided false registration information; and

(B) those convicted of other offenses, including offenses involving fraud, identity theft, obscenity, child pornography, and the sexual exploitation of children, if such offenses involved the sending of large quantities of unsolicited electronic mail.

(c) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) Spam has become the method of choice for those who distribute pornography, perpetrate fraudulent schemes, and introduce viruses, worms, and Trojan horses into personal and business computer systems; and

(2) the Department of Justice should use all existing law enforcement tools to investigate and prosecute those who send bulk commercial e-mail to facilitate the commission of Federal crimes, including the tools contained in chapters 47 and 63 of title 18, United States Code (relating to fraud and false statements); chapter 71 of title 18, United States Code (relating to obscenity); chapter 110 of title 18, United States Code (relating to the sexual exploitation of children); and chapter 95 of title 18, United States Code (relating to racketeering), as appropriate.

SA 1894. Mr. MCCAIN (for Mr. ENZI (for himself, Mr. SANTORUM, and Mr. HATCH)) proposed an amendment to the bill S. 877, to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet; as follows:

On page 51, after line 22, insert the following:

(d) REQUIREMENT TO PLACE WARNING LABELS ON COMMERCIAL ELECTRONIC MAIL CONTAINING SEXUALLY ORIENTED MATERIAL.—

(1) IN GENERAL.—No person may initiate in or affecting interstate commerce the transmission, to a protected computer, of any unsolicited commercial electronic mail message that includes sexually oriented material and—

(A) fail to include in subject heading for the electronic mail message the marks or notices prescribed by the Commission under this subsection; or

(B) fail to provide that the matter in the message that is initially viewable to the recipient, when the message is opened by any recipient and absent any further actions by the recipient, includes only—

(i) to the extent required or authorized pursuant to paragraph (2), any such marks or notices;

(ii) the information required to be included in the message pursuant to subsection (a)(5); and

(iii) instructions on how to access, or a mechanism to access, the sexually oriented material.

(2) PRESCRIPTION OF MARKS AND NOTICES.—

Not later than 120 days after the date of the enactment of this Act, the Commission in consultation with the Attorney General shall prescribe clearly identifiable marks or notices to be included in or associated with unsolicited commercial electronic mail that contains sexually oriented material, in order to inform the recipient of that fact and to facilitate filtering of such electronic mail. The Commission shall publish in the Federal Register and provide notice to the public of the marks or notices prescribed under this paragraph.

(3) DEFINITION.—In this subsection, the term "sexually oriented material" means any material that depicts sexually explicit conduct (as that term is defined in section 2256 of title 18, United States Code), unless the depiction constitutes a small and insignificant part of the whole, the remainder of which is not primarily devoted to sexual matters.

(4) PENALTY.—A violation of paragraph (1) is punishable as if it were a violation of section 1037(a) of title 18, United States Code.

SA 1895. Mr. HARKIN proposed an amendment to the bill S. 877, to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet; as follows:

At the appropriate place add the following:

SECTION 1. SHORT TITLE.

This title may be cited as the "Training for Realtime Writers Act of 2003".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) As directed by Congress in section 723 of the Communications Act of 1934 (47 U.S.C. 613), as added by section 305 of the Telecommunications Act of 1996 (Public Law 104-104; 110 Stat. 126), the Federal Communications Commission adopted rules requiring closed captioning of most television programming, which gradually require new video programming to be fully captioned beginning in 2006.

(2) More than 28,000,000 Americans, or 8 percent of the population, are considered deaf or hard of hearing, and many require captioning services to participate in mainstream activities.

(3) More than 24,000 children are born in the United States each year with some form of hearing loss.

(4) According to the Department of Health and Human Services and a study done by the National Council on Aging—

(A) 25 percent of Americans over 65 years old are hearing impaired;

(B) 33 percent of Americans over 70 years old are hearing impaired; and

(C) 41 percent of Americans over 75 years old are hearing impaired.

(5) The National Council on Aging study also found that depression in older adults may be directly related to hearing loss and disconnection with the spoken word.

(6) Empirical research demonstrates that captions improve the performance of individuals learning to read English and, according to numerous Federal agency statistics, could benefit—

(A) 3,700,000 remedial readers;

(B) 12,000,000 young children learning to read;

(C) 27,000,000 illiterate adults; and

(D) 30,000,000 people for whom English is a second language.

(7) Over the past 5 years, student enrollment in programs that train court reporters to become realtime writers has decreased significantly, causing such programs to close on many campuses.

SEC. 3. AUTHORIZATION OF GRANT PROGRAM TO PROMOTE TRAINING AND JOB PLACEMENT OF REALTIME WRITERS.

(a) **IN GENERAL.**— The National Telecommunications and Information Administration shall make competitive grants to eligible entities under subsection (b) to promote training and placement of individuals, including individuals who have completed a court reporting training program, as realtime writers in order to meet the requirements for closed captioning of video programming set forth in section 723 of the Communications Act of 1934 (47 U.S.C. 613) and the rules prescribed thereunder.

(b) **ELIGIBLE ENTITIES.**— For purposes of this Act, an eligible entity is a court reporting program that—

(1) can document and demonstrate to the Secretary of Commerce that it meets minimum standards of educational and financial accountability, with a curriculum capable of training realtime writers qualified to provide captioning services;

(2) is accredited by an accrediting agency recognized by the Department of Education; and

(3) is participating in student aid programs under title IV of the Higher Education Act of 1965.

(c) **PRIORITY IN GRANTS.**— In determining whether to make grants under this section, the Secretary of Commerce shall give a priority to eligible entities that, as determined by the Secretary of Commerce—

(1) possess the most substantial capacity to increase their capacity to train realtime writers;

(2) demonstrate the most promising collaboration with local educational institutions, businesses, labor organizations, or other community groups having the potential to train or provide job placement assistance to realtime writers; or

(3) propose the most promising and innovative approaches for initiating or expanding training and job placement assistance efforts with respect to realtime writers.

(d) **DURATION OF GRANT.**— A grant under this section shall be for a period of two years.

(e) **MAXIMUM AMOUNT OF GRANT.**— The amount of a grant provided under subsection (a) to an entity eligible may not exceed \$1,500,000 for the two-year period of the grant under subsection (d).

SEC. 4. APPLICATION.

(a) **IN GENERAL.**— To receive a grant under section 3, an eligible entity shall submit an application to the National Telecommunications and Information Administration at such time and in such manner as the Administration may require. The application shall contain the information set forth under subsection (b).

(b) **INFORMATION.**— Information in the application of an eligible entity under subsection (a) for a grant under section 3 shall include the following:

(1) A description of the training and assistance to be funded using the grant amount, including how such training and assistance will increase the number of realtime writers.

(2) A description of performance measures to be utilized to evaluate the progress of individuals receiving such training and assistance in matters relating to enrollment, completion of training, and job placement and retention.

(3) A description of the manner in which the eligible entity will ensure that recipients of scholarships, if any, funded by the grant will be employed and retained as realtime writers.

(4) A description of the manner in which the eligible entity intends to continue providing the training and assistance to be

funded by the grant after the end of the grant period, including any partnerships or arrangements established for that purpose.

(5) A description of how the eligible entity will work with local workforce investment boards to ensure that training and assistance to be funded with the grant will further local workforce goals, including the creation of educational opportunities for individuals who are from economically disadvantaged backgrounds or are displaced workers.

(6) Additional information, if any, of the eligibility of the eligible entity for priority in the making of grants under section 3(c).

(7) Such other information as the Administration may require.

SEC. 5. USE OF FUNDS.

(a) **IN GENERAL.**— An eligible entity receiving a grant under section 3 shall use the grant amount for purposes relating to the recruitment, training and assistance, and job placement of individuals, including individuals who have completed a court reporting training program, as realtime writers, including—

(1) recruitment;

(2) subject to subsection (b), the provision of scholarships;

(3) distance learning;

(4) development of curriculum to more effectively train realtime writing skills, and education in the knowledge necessary for the delivery of high-quality closed captioning services;

(5) assistance in job placement for upcoming and recent graduates with all types of captioning employers;

(6) encouragement of individuals with disabilities to pursue a career in realtime writing; and

(7) the employment and payment of personnel for such purposes.

(b) **SCHOLARSHIPS.**

(1) **AMOUNT.**— The amount of a scholarship under subsection (a)(2) shall be based on the amount of need of the recipient of the scholarship for financial assistance, and determined in accordance with part F of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087kk).

(2) **AGREEMENT.**— Each recipient of a scholarship under subsection (a)(2) shall enter into an agreement with the National Telecommunications and Information Administration to provide realtime writing services for a period of time (as determined by the Administration) that is appropriate (as so determined) for the amount of the scholarship received.

(3) **COURSEWORK AND EMPLOYMENT.**— The Administration shall establish requirements for coursework and employment for recipients of scholarships under subsection (a)(2), including requirements for repayment of scholarship amounts in the event of failure to meet such requirements for coursework and employment. Requirements for repayment of scholarship amounts shall take into account the effect of economic conditions on the capacity of scholarship recipients to find work as realtime writers.

(c) **ADMINISTRATIVE COSTS.**— The recipient of a grant under section 3 may not use more than 5 percent of the grant amount to pay administrative costs associated with activities funded by the grant.

(d) **SUPPLEMENT, NOT SUPPLANT.**— Grants amounts under this Act shall supplement and not supplant other Federal or non-Federal funds of the grant recipient for purposes of promoting the training and placement of individuals as realtime writers.

SEC. 6. REPORTS.

(a) **ANNUAL REPORTS.**— Each eligible entity receiving a grant under section 3 shall submit to the National Telecommunications and Information Administration, at the end

of each year of the grant period, a report on the activities of such entity with respect to the use of grant amounts during such year.

(b) **REPORT INFORMATION.**

(1) **IN GENERAL.**— Each report of an entity for a year under subsection (a) shall include a description of the use of grant amounts by the entity during such year, including an assessment by the entity of the effectiveness of activities carried out using such funds in increasing the number of realtime writers. The assessment shall utilize the performance measures submitted by the entity in the application for the grant under section 4(b).

(2) **FINAL REPORT.**— The final report of an entity on a grant under subsection (a) shall include a description of the best practices identified by the entity as a result of the grant for increasing the number of individuals who are trained, employed, and retained in employment as realtime writers.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act, amounts as follows:

(1) \$20,000,000 for each of fiscal years 2004, 2005, and 2006.

(2) Such sums as may be necessary for fiscal year 2007.

SA 1896. Mr. MCCAIN (for Mr. CORZINE (for himself and Mr. GRAHAM of South Carolina)) proposed an amendment to the bill S. 877, to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet; as follows:

At the appropriate place, insert the following:

SEC. __. IMPROVING ENFORCEMENT BY PROVIDING REWARDS FOR INFORMATION ABOUT VIOLATIONS; LABELING.

(a) **IN GENERAL.**— The Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce—

(1) a report, within 9 months after the date of enactment of this Act, that sets forth a system for rewarding those who supply information about violations of this Act, including—

(A) procedures for the Commission to grant a reward of not less than 20 percent of the total civil penalty collected for a violation of this Act to the first person that—

(i) identifies the person in violation of this Act; and

(ii) supplies information that leads to the successful collection of a civil penalty by the Commission; and

(B) procedures to minimize the burden of submitting a complaint to the Commission concerning violations of this Act, including procedures to allow the electronic submission of complaints to the Commission; and

(1) a report, within 18 months after the date of enactment of this Act, that sets forth a plan for requiring unsolicited commercial electronic mail to be identifiable from its subject line, by means of compliance with Internet Engineering Task Force standards, the use of the characters "ADV" in the subject line, or other comparable identifier, or an explanation of any concerns the Commission has that cause the Commission to recommend against the plan.

(b) **IMPLEMENTATION OF REWARD SYSTEM.**— The Commission may establish and implement the plan under subsection (a)(1), but not earlier than 12 months after the date of enactment of this Act.

SA 1897. Mr. FRIST (for Mr. BUNNING) proposed an amendment to

DOCUMENT NO. 9

