

108TH CONGRESS
1ST SESSION

S. 1327

To reduce unsolicited commercial electronic mail and to protect children from sexually oriented advertisements.

IN THE SENATE OF THE UNITED STATES

JUNE 25, 2003

Mr. CORZINE introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To reduce unsolicited commercial electronic mail and to protect children from sexually oriented advertisements.

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 “Restrict and Eliminate
5 the Delivery of Unsolicited Commercial Electronic Mail or
6 Spam Act of 2003” or the “REDUCE Spam Act of
7 2003”.

8 **SEC. 2. DEFINITIONS.**

9 In this Act:

1 (1) COMMERCIAL ELECTRONIC MAIL MES-
2 SAGE.—

3 (A) IN GENERAL.—The term “commercial
4 electronic mail message” means any electronic
5 mail message the primary purpose of which is
6 the commercial advertisement or promotion of a
7 commercial product or service (including con-
8 tent on an Internet website operated for a com-
9 mercial purpose).

10 (B) REFERENCE TO COMPANY OR
11 WEBSITE.—The inclusion of a reference to a
12 commercial entity or a link to the website of a
13 commercial entity in an electronic mail message
14 does not, by itself, cause such message to be
15 treated as a commercial electronic mail message
16 for purposes of this Act if the contents or cir-
17 cumstances of the message indicate a primary
18 purpose other than commercial advertisement
19 or promotion of a commercial product or serv-
20 ice.

21 (2) COMMISSION.—The term “Commission”
22 means the Federal Trade Commission.

23 (3) 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 an
2 electronic mail message can be sent or deliv-
3 ered.

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

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

14 (5) HEADER INFORMATION.—The term “header
15 information” means the source, destination, and
16 routing information attached to an electronic mail
17 message, including the originating domain name and
18 originating electronic mail address.

19 (6) INITIATE.—The term “initiate”, when used
20 with respect to a commercial electronic mail mes-
21 sage, means to originate such message or to procure
22 the transmission of such message, either directly or
23 through an agent, but shall not include actions that
24 constitute routine conveyance of such message by a
25 provider of Internet access service. For purposes of

1 this Act, more than 1 person may be considered to
2 have initiated the same commercial electronic mail
3 message.

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

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

11 (9) PRE-EXISTING BUSINESS RELATIONSHIP.—

12 (A) IN GENERAL.—The term “pre-existing
13 business relationship”, when used with respect
14 to a commercial electronic mail message, means
15 that either—

16 (i) within the 5-year period ending
17 upon receipt of a commercial electronic
18 mail message, there has been a business
19 transaction between the sender and the re-
20 cipient, including a transaction involving
21 the provision, free of charge, of informa-
22 tion, goods, or services requested by the re-
23 cipient and the recipient was, at the time
24 of such transaction or thereafter, provided
25 a clear and conspicuous notice of an oppor-

1 tunity not to receive further commercial
2 electronic mail messages from the sender
3 and has not exercised such opportunity; or

4 (ii) the recipient has given the sender
5 permission to initiate commercial electronic
6 mail messages to the electronic mail ad-
7 dress of the recipient and has not subse-
8 quently revoked such permission.

9 (B) APPLICABILITY.—If a sender operates
10 through separate lines of business or divisions
11 and holds itself out to the recipient as that par-
12 ticular line of business or division, then such
13 line of business or division shall be treated as
14 the sender for purposes of subparagraph (A).

15 (10) RECIPIENT.—The term “recipient”, when
16 used with respect to a commercial electronic mail
17 message, means the addressee of such message.

18 (11) SENDER.—The term “sender”, when used
19 with respect to a commercial electronic mail mes-
20 sage, means the person who initiates such message.
21 The term “sender” does not include a provider of
22 Internet access service whose role with respect to
23 electronic mail messages is limited to handling,
24 transmitting, retransmitting, or relaying such mes-
25 sages.

1 (12) UNSOLICITED COMMERCIAL ELECTRONIC
2 MAIL MESSAGE.—The term “unsolicited commercial
3 electronic mail message” means any commercial
4 electronic mail message that—

5 (A) is not a transactional or relationship
6 message; and

7 (B) is sent to a recipient without the re-
8 cipient’s prior affirmative or implied consent.

9 **SEC. 3. COMMERCIAL ELECTRONIC MAIL CONTAINING**
10 **FRAUDULENT HEADER OR ROUTING INFOR-**
11 **MATION.**

12 (a) IN GENERAL.—Chapter 63 of title 18, United
13 States Code, is amended by adding at the end the fol-
14 lowing:

15 **“§ 1351. Unsolicited commercial electronic mail con-**
16 **taining fraudulent header information**

17 “(a) Any person who initiates the transmission of any
18 unsolicited commercial electronic mail message, with
19 knowledge and intent that the message contains or is ac-
20 companied by header information that is false or materi-
21 ally misleading, shall be fined or imprisoned for not more
22 than 1 year, or both, under this title.

23 “(b) For purposes of this section, the terms ‘unsolic-
24 ited commercial electronic mail message’ and ‘header in-

1 formation' have the meanings given such terms in section
 2 2 of the REDUCE Spam Act of 2003.'".

3 (b) CONFORMING AMENDMENT.—The chapter anal-
 4 ysis at the beginning of chapter 63 of title 18, United
 5 States Code, is amended by adding at the end the fol-
 6 lowing:

“1351. Unsolicited commercial electronic mail.”.

7 **SEC. 4. REQUIREMENTS FOR UNSOLICITED COMMERCIAL**
 8 **ELECTRONIC MAIL.**

9 (a) SUBJECT LINE REQUIREMENTS.—It shall be un-
 10 lawful for any person to initiate the transmission of an
 11 unsolicited commercial electronic mail message to an elec-
 12 tronic mail address within the United States, unless the
 13 subject line includes—

14 (1) except in the case of an unsolicited commer-
 15 cial electronic mail message described in paragraph
 16 (2)—

17 (A) an identification that complies with the
 18 standards adopted by the Internet Engineering
 19 Task Force for identification of unsolicited
 20 commercial electronic mail messages; or

21 (B) in the case of the absence of such
 22 standards, “ADV:” as the first four characters;
 23 or

24 (2) in the case of an unsolicited commercial
 25 electronic mail message that contains material that

1 may only be viewed, purchased, rented, leased, or
2 held in possession by an individual 18 years of age
3 and older—

4 (A) an identification that complies with the
5 standards adopted by the Internet Engineering
6 Task Force for identification of adult-oriented
7 unsolicited commercial electronic mail messages;
8 or

9 (B) in the case of the absence of such
10 standards, “ADV:ADLT” as the first eight
11 characters.

12 (b) RETURN ADDRESS REQUIREMENTS.—

13 (1) ESTABLISHMENT.—It shall be unlawful for
14 any person to initiate the transmission of an unsolic-
15 ited commercial electronic mail message to an elec-
16 tronic mail address within the United States, unless
17 the sender establishes a valid sender-operated return
18 electronic mail address where the recipient may no-
19 tify the sender not to send any further commercial
20 electronic mail messages.

21 (2) INCLUDED STATEMENT.—All unsolicited
22 commercial electronic mail messages subject to this
23 subsection shall include a statement informing the
24 recipient of the valid return electronic mail address
25 referred to in paragraph (1).

1 (3) PROHIBITION OF SENDING AFTER OBJEC-
2 TION.—Upon notification or confirmation by a re-
3 cipient of the recipient’s request not to receive any
4 further unsolicited commercial electronic mail mes-
5 sages, it shall be unlawful for a person, or anyone
6 acting on that person’s behalf, to send any unsolic-
7 ited commercial electronic mail message to that re-
8 cipient. Such a request shall be deemed to terminate
9 a pre-existing business relationship for purposes of
10 determining whether subsequent messages are unso-
11 licited commercial electronic mail messages.

12 (c) HEADER AND SUBJECT HEADING REQUIRE-
13 MENTS.—

14 (1) FALSE OR MISLEADING HEADER INFORMA-
15 TION.—It shall be unlawful for any person to initiate
16 the transmission of an unsolicited commercial elec-
17 tronic mail message that such person knows, or rea-
18 sonably should know, contains or is accompanied by
19 header information that is false or materially mis-
20 leading.

21 (2) DECEPTIVE SUBJECT HEADINGS.—It shall
22 be unlawful for any person to initiate the trans-
23 mission of an unsolicited commercial electronic mail
24 message with a subject heading that such person
25 knows, or reasonably should know, is likely to mis-

1 lead a recipient, acting reasonably under the cir-
2 cumstances, about a material fact regarding the con-
3 tents or subject matter of the message.

4 (d) AFFIRMATIVE DEFENSE.—A person who violates
5 subsection (a) or (b) shall not be liable if—

6 (1)(A) the person has established and imple-
7 mented, with due care, reasonable practices and pro-
8 cedures to effectively prevent such violations; and

9 (B) the violation occurred despite good faith ef-
10 forts to maintain compliance with such practices and
11 procedures; or

12 (2) within the 2-day period ending upon the ini-
13 tiation of the transmission of the unsolicited com-
14 mercial electronic mail message in violation of sub-
15 section (a) or (b), such person initiated the trans-
16 mission of such message, or one substantially similar
17 to it, to less than 1,000 electronic mail addresses.

18 **SEC. 5. ENFORCEMENT.**

19 (a) IN GENERAL.—Section 4 shall be enforced by the
20 Commission under the FTC Act. For purposes of such
21 Commission enforcement, a violation of this Act shall be
22 treated as a violation of a rule under section 18 (15 U.S.C.
23 57a) of the FTC Act prohibiting an unfair or deceptive
24 act or practice.

1 (b) RULEMAKING.—Not later than 30 days after the
2 date of enactment of this Act, the Commission shall insti-
3 tute a rulemaking proceeding concerning enforcement of
4 this Act. The rules adopted by the Commission shall pre-
5 vent violations of section 4 in the same manner, by the
6 same means, and with the same jurisdiction, powers, and
7 duties as though all applicable terms and provisions of the
8 FTC Act were incorporated into and made a part of this
9 section, except that the rules shall also include—

10 (1) procedures to minimize the burden of sub-
11 mitting a complaint to the Commission concerning a
12 violation of section 4, including procedures to allow
13 the electronic submission of complaints to the Com-
14 mission;

15 (2) civil penalties for violations of section 4 in
16 an amount sufficient to effectively deter future viola-
17 tions, a description of the type of evidence needed to
18 collect such penalties, and procedures to collect such
19 penalties if the Commission determines that a viola-
20 tion of section 4 has occurred;

21 (3) procedures for the Commission to grant a
22 reward of not less than 20 percent of the total civil
23 penalty collected to the first person that—

24 (A) identifies the person in violation of sec-
25 tion 4; and

1 (B) supplies information that leads to the
2 successful collection of a civil penalty by the
3 Commission;

4 (4) a provision that enables the Commission to
5 keep the remainder of the civil penalty collected and
6 use the funds toward the prosecution of further
7 claims, including for necessary staff or resources;
8 and

9 (5) civil penalties for knowingly submitting a
10 false complaint to the Commission.

11 (c) REGULATIONS.—Not later than 180 days after
12 the date of enactment of this Act, the Commission shall
13 conclude the rulemaking proceeding initiated under sub-
14 section (b) and shall prescribe implementing regulations.

15 **SEC. 6. PRIVATE RIGHT OF ACTION.**

16 (a) ACTION AUTHORIZED.—A recipient of an unsolic-
17 ited commercial electronic mail message, or a provider of
18 Internet access service, adversely affected by a violation
19 of section 4 may bring a civil action in any district court
20 of the United States with jurisdiction over the defendant
21 to—

22 (1) enjoin further violation by the defendant; or

23 (2) recover damages in an amount equal to—

1 (A) actual monetary loss incurred by the
2 recipient or provider of Internet access service
3 as a result of such violation; or

4 (B) at the discretion of the court, the
5 amount determined under subsection (b).

6 (b) STATUTORY DAMAGES.—

7 (1) IN GENERAL.—For purposes of subsection
8 (a)(2)(B), the amount determined under this sub-
9 section is the amount calculated by multiplying the
10 number of willful, knowing, or negligent violations
11 by an amount, in the discretion of the court, of up
12 to \$10.

13 (2) PER-VIOLATION PENALTY.—In determining
14 the per-violation penalty under this subsection, the
15 court shall take into account the degree of culpa-
16 bility, any history of prior such conduct, ability to
17 pay, the extent of economic gain resulting from the
18 violation, and such other matters as justice may re-
19 quire.

20 (c) ATTORNEY FEES.—In any action brought pursu-
21 ant to subsection (a), the court may, in its discretion, re-
22 quire an undertaking for the payment of the costs of such
23 action, and assess reasonable costs, including reasonable
24 attorneys' fees, against any party.

1 **SEC. 7. INTERNET ACCESS SERVICE PROVIDERS.**

2 Nothing in this Act shall be construed—

3 (1) to enlarge or diminish the application of
4 chapter 121 of title 18, relating to when a provider
5 of Internet access service may disclose customer
6 communications or records;

7 (2) to require a provider of Internet access
8 service to block, transmit, route, relay, handle, or
9 store certain types of electronic mail messages;

10 (3) to prevent or limit, in any way, a provider
11 of Internet access service from adopting a policy re-
12 garding commercial electronic mail messages, includ-
13 ing a policy of declining to transmit certain types of
14 commercial electronic mail messages, or from enforce-
15 ing such policy through technical means, through
16 contract, or pursuant to any other provision of Fed-
17 eral, State, or local criminal or civil law; or

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

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

21 Nothing in this Act shall be construed to impair the
22 enforcement of section 223 or 231 of the Communications
23 Act of 1934 (47 U.S.C. 223 or 231), chapter 71 (relating
24 to obscenity) or 110 (relating to sexual exploitation of chil-
25 dren) of title 18, United States Code, or any other Federal
26 criminal statute.

1 **SEC. 9. FTC STUDY.**

2 Not later than 24 months after the date of enactment
3 of this Act, the Commission, in consultation with appro-
4 priate agencies, shall submit a report to Congress that
5 provides a detailed analysis of the effectiveness and en-
6 forcement of the provisions of this Act and the need, if
7 any, for Congress to modify such provisions.

8 **SEC. 10. STUDY OF POSSIBLE INTERNATIONAL AGREE-**
9 **MENT.**

10 Not later than 6 months after the date of enactment
11 of this Act, the President shall—

12 (1) conduct a study in consultation with the
13 Internet Engineering Task Force on the possibility
14 of an international agreement to reduce spam; and

15 (2) issue a report to Congress setting forth the
16 findings of the study required by paragraph (1).

17 **SEC. 11. EFFECTIVE DATE.**

18 The provisions of this Act shall take effect 180 days
19 after the date of enactment of this Act, except that sub-
20 sections (b) and (c) of section 5 shall take effect upon
21 the date of enactment of this Act.

○