

105TH CONGRESS  
2D SESSION

# H. R. 4124

To promote online commerce and communications, to protect consumers and service providers from the misuse of computer facilities by others sending unsolicited commercial electronic mail over such facilities, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 1998

Mr. COOK introduced the following bill; which was referred to the Committee on Commerce

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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 unsolicited commercial 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 “E-Mail User Protection  
5 Act of 1998”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

1           (1) The Internet has become a critical mode of  
2 global communication and now presents unprece-  
3 dented opportunities for the development and growth  
4 of global commerce and an integrated worldwide  
5 economy.

6           (2) The receipt of unsolicited commercial e-mail  
7 may result in undue monetary costs to recipients  
8 who cannot refuse to accept such mail and who  
9 incur costs for the storage of such mail, or for the  
10 time spent accessing, reviewing, and discarding such  
11 mail, or for both.

12           (3) An increasing number of senders of unsolic-  
13 ited commercial e-mail purposefully disguise the  
14 source of such mail so as to prevent recipients from  
15 responding to such mail quickly and easily.

16           (4) Because recipients of unsolicited commercial  
17 e-mail that does not provide a return address are  
18 unable to avoid the receipt of such mail through rea-  
19 sonable means, such mail may threaten the privacy  
20 of recipients.

21           (5) By providing remedies similar to those pro-  
22 vided with respect to unsolicited facsimile trans-  
23 missions and automated dialing equipment in the  
24 Telephone Consumer Protection Act of 1991, the  
25 Congress can provide privacy protections without in-

1 fringing important Constitutional rights or imperil-  
2 ing the commercial development of the Internet.

3 **SEC. 3. RESTRICTIONS ON THE USE OF UNSOLICITED COM-**  
4 **MERCIAL E-MAIL.**

5 Part 1 of title II of the Communications Act of 1934  
6 is amended by inserting after section 230 (47 U.S.C. 230)  
7 the following new section:

8 **“SEC. 231. RESTRICTIONS ON THE USE OF UNSOLICITED**  
9 **COMMERCIAL E-MAIL.**

10 **“(a) VIOLATIONS DIRECTED AT INTERACTIVE COM-**  
11 **PUTER SERVICES.—**

12 **“(1) For purposes of this subsection, a violation**  
13 **is defined as each initiation of a transmission with-**  
14 **out regard to the number of electronic mail address-**  
15 **es to which the transmission is sent.**

16 **“(2) It shall be a violation of this Act, punish-**  
17 **able under subsection (c)(1), for any person—**

18 **“(A) to intentionally initiate the trans-**  
19 **mission of an unsolicited commercial e-mail**  
20 **message from an unregistered or fictitious**  
21 **Internet domain, or an unregistered or fictitious**  
22 **electronic mail address, for the purpose of—**

23 **“(i) preventing replies to such mes-**  
24 **sage through the use of standard reply**

1 mechanisms in the recipient's electronic  
2 mail system, or

3 “(ii) preventing receipt of standard  
4 notices of non-delivery;

5 “(B) to intentionally use or distribute a  
6 computer program or other technical mecha-  
7 nism or procedure intending to disguise the  
8 source of unsolicited commercial e-mail mes-  
9 sages or to disable or circumvent a mail filter-  
10 ing tool;

11 “(C) to intentionally distribute, through  
12 computer software or in any other manner, a  
13 collection or list of electronic mail addresses  
14 knowing that the collection or list contains ad-  
15 dresses of persons who have previously re-  
16 quested removal from the list;

17 “(D) to intentionally register, create, or  
18 cause to be created an Internet domain under  
19 false pretenses or to apply for, register, or oth-  
20 erwise obtain the use of an Internet electronic  
21 mail account for the sole or primary purpose of  
22 disguising the source of unsolicited electronic  
23 mail messages;

24 “(E) to direct an unsolicited commercial e-  
25 mail message through the server of an inter-

1 active computer service provider to one or more  
2 subscribers of the interactive computer service,  
3 knowing or having reason to know that such ac-  
4 tion is in contravention of the rules of the inter-  
5 active computer service with respect to unsolic-  
6 ited commercial e-mail messages;

7 “(F) knowing or having reason to know  
8 that such action is in contravention of the rules  
9 of an interactive computer service, to access the  
10 server of such interactive computer service and  
11 to use a computer program to collect electronic  
12 mail addresses of subscribers of the interactive  
13 computer service for the purpose of sending  
14 such subscribers unsolicited commercial e-mail  
15 or selling or distributing the list thereby col-  
16 lected or obtained.

17 “(b) VIOLATIONS DIRECTED AT INDIVIDUALS.—

18 “(1) For purposes of this subsection, a violation  
19 is defined as each electronic mail address which re-  
20 ceives a transmission.

21 “(2) It shall be a violation of this Act, punish-  
22 able under subsection (c)(2), for any person—

23 “(A) to fail to comply with the request of  
24 the recipient of an electronic mail message,  
25 made to the sender or mailing list manager, as

1 appropriate, to cease sending electronic mes-  
2 sages to the recipient in the future; or

3 “(B) to initiate the transmission of an un-  
4 solicited commercial e-mail message to a recipi-  
5 ent despite having been given prior notice (ei-  
6 ther directly or through a standard method de-  
7 veloped, adopted, or modified by an Internet  
8 standard setting organization, such as the  
9 Internet Engineering Task Force, to better fa-  
10 cilitate pre-emptive consumer control over unso-  
11 licited, commercial e-mail) that the recipient  
12 does not wish to receive such messages.

13 “(c) LIABILITY FOR VIOLATIONS.—Any person or en-  
14 tity who violates any provision of subsection (a) or (b)  
15 shall be liable to any injured party for such relief as is  
16 set out below.

17 “(1) RELIEF FOR INTERACTIVE COMPUTER  
18 SERVICES.—In an action under this section for viola-  
19 tion of subsection (a), relief may include—

20 “(A) such preliminary and other equitable  
21 or declaratory relief as may be appropriate;

22 “(B) for actual monetary loss from a viola-  
23 tion, statutory damages of not more than  
24 \$10,000 for each violation, and, if the court  
25 finds that the defendant’s actions were particu-

1 larly egregious, willful, or knowing, the court  
2 may, in its discretion, increase the amount of  
3 an award to an amount equal to not more than  
4 10 times the amount available hereunder, and  
5 “(C) reasonable attorneys’ fees and other  
6 litigation costs reasonably incurred.

7 “(2) RELIEF FOR INDIVIDUALS.—

8 “(A) In an action under this section for  
9 violation of subsection (b), relief shall be sought  
10 in an action brought by the attorney general of  
11 one or more states.

12 “(B) Whenever the attorney general of a  
13 State, or an official or agency designated by a  
14 State, has reason to believe that any person has  
15 engaged or is engaging in a pattern or practice  
16 of transmitting unsolicited commercial e-mail to  
17 residents of that State in violation of this sec-  
18 tion or the regulations prescribed under this  
19 section, the State may bring a civil action on  
20 behalf of its residents for such relief as may be  
21 appropriate.

22 “(C) In an action under this subsection,  
23 appropriate relief includes—

1                   “(i) an injunction or such preliminary  
2                   and other equitable or declaratory relief as  
3                   may be appropriate;

4                   “(ii) an action to recover statutory  
5                   \$500 in damages for each violation; or

6                   “(iii) both such actions.

7                   “(D) If the court finds the defendant’s ac-  
8                   tions were particularly egregious, willful, or  
9                   knowing, the court may, in its discretion, in-  
10                  crease the amount of the award to an amount  
11                  equal to not more than ten times the amount  
12                  available in (C).

13                  “(E) reasonable attorneys’ fees and other  
14                  litigation costs reasonably occurred.

15                  “(d) STATE LAW.—Nothing in this Act shall be con-  
16                  strued to prevent any State from enforcing any State law  
17                  that is consistent with this Act. No cause of action may  
18                  be brought and no liability may be imposed under any  
19                  State or local law that is inconsistent with this Act.

20                  “(e) DEFINITIONS.—In this Act:

21                   “(1) 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’ may  
3           include an electronic mail address consisting of  
4           a user name of mailbox (commonly referred to  
5           as the ‘local part’) and a reference to an Inter-  
6           net domain (commonly referred to as the ‘do-  
7           main part’).

8           “(2) INITIATES THE TRANSMISSION.—The term  
9           ‘initiates the transmission’, in the case of 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          “(3) INTERACTIVE COMPUTER SERVICE.—The  
17          term ‘interactive computer service’ has the meaning  
18          given that term in section 230(c)(2) of the Commu-  
19          nications Act of 1934 (47 U.S.C. 230(c)(2)).

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

23          “(5) 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             “(6) MAILING LIST.—The term ‘mailing list’ re-  
8     fers to a computer program that provides electronic  
9     mailing list management functions, including func-  
10    tions that allow individuals to subscribe and  
11    unsubscribe to and from electronic mailing lists.

12            “(7) 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            “(8) SERVERS.—The term ‘server’ refers to any  
19    computer or program that provides support or serv-  
20    ices of any kind, including electronic mailboxes, to  
21    other computers.

22            “(9) UNSOLICITED COMMERCIAL E-MAIL MES-  
23    SAGE.—The term ‘unsolicited commercial e-mail  
24    message’ means any electronic mail other than—

1           “(A) electronic mail sent by persons to re-  
2           cipients with whom they have a direct or indi-  
3           rect relationship, including a prior business re-  
4           lationship; or

5           “(B) mail sent by a source to a recipient  
6           where such recipient, or someone authorized by  
7           him, has at any time affirmatively requested  
8           communications from that source.”.

9   **SEC. 4. EFFECTIVE DATE.**

10          The provisions of this Act shall take effect 45 days  
11   after the date of enactment of this Act.

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