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2D SESSION

H. R. 3113

IN THE SENATE OF THE UNITED STATES

JULY 19, 2000

Received, read twice and referred to the Committee on Commerce, Science,
and Transportation

AN ACT

To protect individuals, families, and Internet service providers from unsolicited and unwanted electronic mail.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Unsolicited Commer-
3 cial Electronic Mail Act of 2000”.

4 **SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.**

5 (a) FINDINGS.—The Congress finds the following:

6 (1) There is a right of free speech on the Inter-
7 net.

8 (2) The Internet has increasingly become a crit-
9 ical mode of global communication and now presents
10 unprecedented opportunities for the development and
11 growth of global commerce and an integrated world-
12 wide economy. In order for global commerce on the
13 Internet to reach its full potential, individuals and
14 entities using the Internet and other online services
15 should be prevented from engaging in activities that
16 prevent other users and Internet service providers
17 from having a reasonably predictable, efficient, and
18 economical online experience.

19 (3) Unsolicited commercial electronic mail can
20 be an important mechanism through which busi-
21 nesses advertise and attract customers in the online
22 environment.

23 (4) The receipt of unsolicited commercial elec-
24 tronic mail may result in costs to recipients who
25 cannot refuse to accept such mail and who incur
26 costs for the storage of such mail, or for the time

1 spent accessing, reviewing, and discarding such mail,
2 or for both.

3 (5) Unsolicited commercial electronic mail may
4 impose significant monetary costs on Internet access
5 services, businesses, and educational and nonprofit
6 institutions that carry and receive such mail, as
7 there is a finite volume of mail that such providers,
8 businesses, and institutions can handle without fur-
9 ther investment. The sending of such mail is increas-
10 ingly and negatively affecting the quality of service
11 provided to customers of Internet access service, and
12 shifting costs from the sender of the advertisement
13 to the Internet access service.

14 (6) While some senders of unsolicited commer-
15 cial electronic mail messages provide simple and reli-
16 able ways for recipients to reject (or “opt-out” of)
17 receipt of unsolicited commercial electronic mail
18 from such senders in the future, other senders pro-
19 vide no such “opt-out” mechanism, or refuse to
20 honor the requests of recipients not to receive elec-
21 tronic mail from such senders in the future, or both.

22 (7) An increasing number of senders of unsolic-
23 ited commercial electronic mail purposefully disguise
24 the source of such mail so as to prevent recipients
25 from responding to such mail quickly and easily.

1 (8) Many senders of unsolicited commercial
2 electronic mail collect or harvest electronic mail ad-
3 dresses of potential recipients without the knowledge
4 of those recipients and in violation of the rules or
5 terms of service of the database from which such ad-
6 dresses are collected.

7 (9) Because recipients of unsolicited commercial
8 electronic mail are unable to avoid the receipt of
9 such mail through reasonable means, such mail may
10 invade the privacy of recipients.

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

16 (b) CONGRESSIONAL DETERMINATION OF PUBLIC
17 POLICY.—On the basis of the findings in subsection (a),
18 the Congress determines that—

19 (1) there is substantial government interest in
20 regulation of unsolicited commercial electronic mail;

21 (2) Internet service providers should not be
22 compelled to bear the costs of unsolicited commercial
23 electronic mail without compensation from the send-
24 er; and

1 (3) recipients of unsolicited commercial elec-
2 tronic mail have a right to decline to receive or have
3 their children receive unsolicited commercial elec-
4 tronic mail.

5 **SEC. 3. DEFINITIONS.**

6 In this Act:

7 (1) CHILDREN.—The term “children” includes
8 natural children, stepchildren, adopted children, and
9 children who are wards of or in custody of the par-
10 ent, who have not attained the age of 18 and who
11 reside with the parent or are under his or her care,
12 custody, or supervision.

13 (2) COMMERCIAL ELECTRONIC MAIL MES-
14 SAGE.—The term “commercial electronic mail mes-
15 sage” means any electronic mail message that pri-
16 marily advertises or promotes the commercial avail-
17 ability of a product or service for profit or invites
18 the recipient to view content on an Internet web site
19 that is operated for a commercial purpose. An elec-
20 tronic mail message shall not be considered to be a
21 commercial electronic mail message solely because
22 such message includes a reference to a commercial
23 entity that serves to identify the initiator.

24 (3) COMMISSION.—The term “Commission”
25 means the Federal Trade Commission.

1 (4) DOMAIN NAME.—The term “domain name”
2 means any alphanumeric designation which is reg-
3 istered with or assigned by any domain name reg-
4 istrar, domain name registry, or other domain name
5 registration authority as part of an electronic ad-
6 dress on the Internet.

7 (5) ELECTRONIC MAIL ADDRESS.—

8 (A) IN GENERAL.—The term “electronic
9 mail address” means a destination (commonly
10 expressed as a string of characters) to which
11 electronic mail can be sent or delivered.

12 (B) INCLUSION.—In the case of the Inter-
13 net, the term “electronic mail address” may in-
14 clude an electronic mail address consisting of a
15 user name or mailbox (commonly referred to as
16 the “local part”) and a reference to an Internet
17 domain (commonly referred to as the “domain
18 part”).

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

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

1 (8) INITIATE.—The term “initiate”, when used
2 with respect to a commercial electronic mail mes-
3 sage, means to originate such message or to procure
4 the transmission of such message.

5 (9) INITIATOR.—The term “initiator”, when
6 used with respect to a commercial electronic mail
7 message, means the person who initiates such mes-
8 sage. Such term does not include a provider of an
9 Internet access service whose role with respect to the
10 message is limited to handling, transmitting, re-
11 transmitting, or relaying the message.

12 (10) PRE-EXISTING BUSINESS RELATION-
13 SHIP.—The term “pre-existing business relation-
14 ship” means, when used with respect to the initiator
15 and recipient of a commercial electronic mail mes-
16 sage, that either of the following circumstances exist:

17 (A) PREVIOUS BUSINESS TRANSACTION.—

18 (i) Within the 5-year period ending
19 upon receipt of such message, there has
20 been a business transaction between the
21 initiator and the recipient (including a
22 transaction involving the provision, free of
23 charge, of information requested by the re-
24 cipient, of goods, or of services); and

1 (ii) the recipient was, at the time of
2 such transaction or thereafter, provided a
3 clear and conspicuous notice of an oppor-
4 tunity not to receive further messages from
5 the initiator and has not exercised such op-
6 portunity.

7 (B) OPT IN.—The recipient has given the
8 initiator permission to initiate commercial elec-
9 tronic mail messages to the electronic mail ad-
10 dress of the recipient and has not subsequently
11 revoked such permission.

12 (11) RECIPIENT.—The term “recipient”, when
13 used with respect to a commercial electronic mail
14 message, means the addressee of such message.

15 (12) UNSOLICITED COMMERCIAL ELECTRONIC
16 MAIL MESSAGE.—The term “unsolicited commercial
17 electronic mail message” means any commercial
18 electronic mail message that is sent by the initiator
19 to a recipient with whom the initiator does not have
20 a pre-existing business relationship.

21 **SEC. 4. CRIMINAL PENALTY FOR UNSOLICITED COMMER-**
22 **CIAL ELECTRONIC MAIL CONTAINING FRAUD-**
23 **ULENT ROUTING INFORMATION.**

24 Section 1030 of title 18, United States Code, is
25 amended—

1 (1) in subsection (a)(5)—

2 (A) in subparagraph (B), by striking “or”
3 at the end;

4 (B) in subparagraph (C), by inserting “or”
5 after the semicolon at the end; and

6 (C) by adding at the end the following new
7 subparagraph:

8 “(D) intentionally initiates the transmission of
9 any unsolicited commercial electronic mail message
10 to a protected computer in the United States with
11 knowledge that any domain name, header informa-
12 tion, date or time stamp, originating electronic mail
13 address, or other information identifying the
14 initiator or the routing of such message, that is con-
15 tained in or accompanies such message, is false or
16 inaccurate;”;

17 (2) in subsection (c)(2)(A)—

18 (A) by inserting “(i)” after “in the case
19 of”; and

20 (B) by inserting before “; and” the fol-
21 lowing: “, or (ii) an offense under subsection
22 (a)(5)(D) of this section”; and

23 (3) in subsection (e)—

24 (A) by striking “and” at the end of para-
25 graph (8);

1 (B) by striking the period at the end of
2 paragraph (9) and inserting a semicolon; and

3 (C) by adding at the end the following new
4 paragraph:

5 “(10) the terms ‘initiate’, ‘initiator’, ‘unsolicited
6 commercial electronic mail message’, and ‘domain
7 name’ have the meanings given such terms in section
8 3 of the Unsolicited Commercial Electronic Mail Act
9 of 2000.”.

10 **SEC. 5. OTHER PROTECTIONS AGAINST UNSOLICITED COM-**
11 **MERCIAL ELECTRONIC MAIL.**

12 (a) **REQUIREMENTS FOR TRANSMISSION OF MES-**
13 **SAGES.—**

14 (1) **INCLUSION OF RETURN ADDRESS IN COM-**
15 **MERCIAL ELECTRONIC MAIL.—**It shall be unlawful
16 for any person to initiate the transmission of a com-
17 mercial electronic mail message to any person within
18 the United States unless such message contains a
19 valid electronic mail address, conspicuously dis-
20 played, to which a recipient may send a reply to the
21 initiator to indicate a desire not to receive any fur-
22 ther messages.

23 (2) **PROHIBITION OF TRANSMISSION OF UNSO-**
24 **LICITED COMMERCIAL ELECTRONIC MAIL AFTER OB-**
25 **JECTION.—**If a recipient makes a request to a per-

1 son to be removed from all distribution lists under
2 the control of such person, it shall be unlawful for
3 such person to initiate the transmission of an unsol-
4 licited commercial electronic mail message to such a
5 recipient within the United States after the expira-
6 tion, after receipt of such request, of a reasonable
7 period of time for removal from such lists. Such a
8 request shall be deemed to terminate a pre-existing
9 business relationship for purposes of determining
10 whether subsequent messages are unsolicited com-
11 mercial electronic mail messages.

12 (3) INCLUSION OF IDENTIFIER AND OPT-OUT IN
13 UNSOLICITED COMMERCIAL ELECTRONIC MAIL.—It
14 shall be unlawful for any person to initiate the
15 transmission of any unsolicited commercial electronic
16 mail message to any person within the United States
17 unless the message provides, in a manner that is
18 clear and conspicuous to the recipient—

19 (A) identification that the message is an
20 unsolicited commercial electronic mail message;
21 and

22 (B) notice of the opportunity under para-
23 graph (2) not to receive further unsolicited
24 commercial electronic mail messages from the
25 initiator.

1 (b) ENFORCEMENT OF POLICIES BY INTERNET AC-
2 CESS SERVICE PROVIDERS.—

3 (1) PROHIBITION OF TRANSMISSIONS IN VIOLA-
4 TION OF POSTED POLICY.—It shall be unlawful for
5 any person to initiate the transmission of an unsolic-
6 ited commercial electronic mail message to any per-
7 son within the United States in violation of a policy
8 governing the use of the equipment of a provider of
9 Internet access service for transmission of unsolic-
10 ited commercial electronic mail messages that meets
11 the requirements of paragraph (2).

12 (2) REQUIREMENTS FOR ENFORCEABILITY.—
13 The requirements under this paragraph for a policy
14 regarding unsolicited commercial electronic mail
15 messages are as follows:

16 (A) CLARITY.—The policy shall explicitly
17 provide that compliance with a rule or set of
18 rules is a condition of use of the equipment of
19 a provider of Internet access service to deliver
20 commercial electronic mail messages.

21 (B) PUBLICLY AVAILABILITY.—The policy
22 shall be publicly available by at least one of the
23 following methods:

24 (i) WEB POSTING.—The policy is
25 clearly and conspicuously posted on a

1 World Wide Web site of the provider of
2 Internet access service, which has an Inter-
3 net domain name that is identical to the
4 Internet domain name of the electronic
5 mail address to which the rule or set of
6 rules applies.

7 (ii) NOTIFICATION IN COMPLIANCE
8 WITH TECHNOLOGICAL STANDARD.—Such
9 policy is made publicly available by the
10 provider of Internet access service in ac-
11 cordance with a technological standard
12 adopted by an appropriate Internet stand-
13 ards setting body (such as the Internet
14 Engineering Task Force) and recognized
15 by the Commission by rule as a fair stand-
16 ard.

17 (C) INTERNAL OPT-OUT LIST.—If the pol-
18 icy of a provider of Internet access service re-
19 quires compensation specifically for the trans-
20 mission of unsolicited commercial electronic
21 mail messages into its system, the provider
22 shall provide an option to its subscribers not to
23 receive any unsolicited commercial electronic
24 mail messages, except that such option is not
25 required for any subscriber who has agreed to

1 receive unsolicited commercial electronic mail
2 messages in exchange for discounted or free
3 Internet access service.

4 (3) OTHER ENFORCEMENT.—Nothing in this
5 Act shall be construed to prevent or limit, in any
6 way, a provider of Internet access service from en-
7 forcing, pursuant to any remedy available under any
8 other provision of Federal, State, or local criminal or
9 civil law, a policy regarding unsolicited commercial
10 electronic mail messages.

11 (c) PROTECTION OF INTERNET ACCESS SERVICE
12 PROVIDERS.—

13 (1) GOOD FAITH EFFORTS TO BLOCK TRANS-
14 MISSIONS.—A provider of Internet access service
15 shall not be liable, under any Federal, State, or local
16 civil or criminal law, for any action it takes in good
17 faith to block the transmission or receipt of unsolic-
18 ited commercial electronic mail messages.

19 (2) INNOCENT RETRANSMISSION.—A provider
20 of Internet access service the facilities of which are
21 used only to handle, transmit, retransmit, or relay
22 an unsolicited commercial electronic mail message
23 transmitted in violation of subsection (a) shall not
24 be liable for any harm resulting from the trans-
25 mission or receipt of such message unless such pro-

1 vider permits the transmission or retransmission of
2 such message with actual knowledge that the trans-
3 mission is prohibited by subsection (a) or subsection
4 (b)(1).

5 **SEC. 6. ENFORCEMENT.**

6 (a) GOVERNMENTAL ORDER.—

7 (1) NOTIFICATION OF ALLEGED VIOLATION.—

8 The Commission shall send a notification of alleged
9 violation to any person who violates section 5 if—

10 (A) a recipient or a provider of Internet
11 access service notifies the Commission, in such
12 form and manner as the Commission shall de-
13 termine, that a transmission has been received
14 in violation of section 5; or

15 (B) the Commission has other reason to
16 believe that such person has violated or is vio-
17 lating section 5.

18 (2) TERMS OF NOTIFICATION.—A notification
19 of alleged violation shall—

20 (A) identify the violation for which the no-
21 tification was issued;

22 (B) direct the initiator to refrain from fur-
23 ther violations of section 5;

24 (C) expressly prohibit the initiator (and
25 the agents or assigns of the initiator) from fur-

1 ther initiating unsolicited commercial electronic
2 mail messages in violation of section 5 to the
3 designated recipients or providers of Internet
4 access service, effective on the third day (ex-
5 cluding Saturdays, Sundays, and legal public
6 holidays) after receipt of the notification; and

7 (D) direct the initiator (and the agents or
8 assigns of the initiator) to delete immediately
9 the names and electronic mail addresses of the
10 designated recipients or providers from all mail-
11 ing lists owned or controlled by the initiator (or
12 such agents or assigns) and prohibit the
13 initiator (and such agents or assigns) from the
14 sale, lease, exchange, license, or other trans-
15 action involving mailing lists bearing the names
16 and electronic mail addresses of the designated
17 recipients or providers.

18 (3) COVERAGE OF MINOR CHILDREN BY NOTIFI-
19 CATION.—Upon request of a recipient of an elec-
20 tronic mail message transmitted in violation of sec-
21 tion 5, the Commission shall include in the notifica-
22 tion of alleged violation the names and electronic
23 mail addresses of any child of the recipient.

24 (4) ENFORCEMENT OF NOTIFICATION TERMS.—

1 (A) COMPLAINT.—If the Commission be-
2 believes that the initiator (or the agents or as-
3 signs of the initiator) has failed to comply with
4 the terms of a notification issued under this
5 subsection, the Commission shall serve upon the
6 initiator (or such agents or assigns), by reg-
7 istered or certified mail, a complaint stating the
8 reasons for its belief and request that any re-
9 sponse thereto be filed in writing with the Com-
10 mission within 15 days after the date of such
11 service.

12 (B) HEARING AND ORDER.—If the Com-
13 mission, after an opportunity for a hearing on
14 the record, determines that the person upon
15 whom the complaint was served violated the
16 terms of the notification, the Commission shall
17 issue an order directing that person to comply
18 with the terms of the notification.

19 (C) PRESUMPTION.—For purposes of a de-
20 termination under subparagraph (B), receipt of
21 any transmission in violation of a notification of
22 alleged violation 30 days (excluding Saturdays,
23 Sundays, and legal public holidays) or more
24 after the effective date of the notification shall

1 create a rebuttable presumption that such
2 transmission was sent after such effective date.

3 (5) ENFORCEMENT BY COURT ORDER.—Any
4 district court of the United States within the juris-
5 diction of which any transmission is sent or received
6 in violation of a notification given under this sub-
7 section shall have jurisdiction, upon application by
8 the Attorney General, to issue an order commanding
9 compliance with such notification. Failure to observe
10 such order may be punishable by the court as con-
11 tempt thereof.

12 (b) PRIVATE RIGHT OF ACTION.—

13 (1) ACTIONS AUTHORIZED.—A recipient or a
14 provider of Internet access service may, if otherwise
15 permitted by the laws or rules of court of a State,
16 bring in an appropriate court of that State, or may
17 bring in an appropriate Federal court if such laws
18 or rules do not so permit, either or both of the fol-
19 lowing actions:

20 (A) An action based on a violation of sec-
21 tion 5 to enjoin such violation.

22 (B) An action to recover for actual mone-
23 etary loss from such a violation in an amount
24 equal to the greatest of—

1 (i) the amount of such actual mone-
2 tary loss; or

3 (ii) \$500 for each such violation, not
4 to exceed a total of \$50,000.

5 (2) ADDITIONAL REMEDIES.—If the court finds
6 that the defendant willfully, knowingly, or repeatedly
7 violated section 5, the court may, in its discretion,
8 increase the amount of the award to an amount
9 equal to not more than three times the amount
10 available under paragraph (1).

11 (3) ATTORNEY FEES.—In any such action, the
12 court may, in its discretion, require an undertaking
13 for the payment of the costs of such action, and as-
14 sess reasonable costs, including reasonable attorneys'
15 fees, against any party.

16 (4) PROTECTION OF TRADE SECRETS.—At the
17 request of any party to an action brought pursuant
18 to this subsection or any other participant in such
19 an action, the court may, in its discretion, issue pro-
20 tective orders and conduct legal proceedings in such
21 a way as to protect the secrecy and security of the
22 computer, computer network, computer data, com-
23 puter program, and computer software involved in
24 order to prevent possible recurrence of the same or

1 a similar act by another person and to protect any
2 trade secrets of any such party or participant.

3 **SEC. 7. EFFECT ON OTHER LAWS.**

4 (a) FEDERAL LAW.—Nothing in this Act shall be
5 construed to impair the enforcement of section 223 or 231
6 of the Communications Act of 1934, chapter 71 (relating
7 to obscenity) or 110 (relating to sexual exploitation of chil-
8 dren) of title 18, United States Code, or any other Federal
9 criminal statute.

10 (b) STATE LAW.—No State or local government may
11 impose any civil liability for commercial activities or ac-
12 tions in interstate or foreign commerce in connection with
13 an activity or action described in section 5 of this Act that
14 is inconsistent with the treatment of such activities or ac-
15 tions under this Act, except that this Act shall not pre-
16 empt any civil remedy under State trespass or contract
17 law or under any provision of Federal, State, or local
18 criminal law or any civil remedy available under such law
19 that relates to acts of computer fraud or abuse arising
20 from the unauthorized transmission of unsolicited com-
21 mercial electronic mail messages.

22 **SEC. 8. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL**
23 **ELECTRONIC MAIL.**

24 Not later than 18 months after the date of the enact-
25 ment of this Act, the Federal Trade Commission shall sub-

1 mit a report to the Congress that provides a detailed anal-
2 ysis of the effectiveness and enforcement of the provisions
3 of this Act and the need (if any) for the Congress to mod-
4 ify such provisions.

5 **SEC. 9 SEPARABILITY.**

6 If any provision of this Act or the application thereof
7 to any person or circumstance is held invalid, the remain-
8 der of this Act and the application of such provision to
9 other persons or circumstances shall not be affected.

10 **SEC. 10. EFFECTIVE DATE.**

11 The provisions of this Act shall take effect 90 days
12 after the date of the enactment of this Act.

Passed the House of Representatives July 18, 2000.

Attest:

Jeff Trandahl,

Clerk.