

108TH CONGRESS  
1ST SESSION

# S. 877

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## AN ACT

To regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

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

1 **TITLE I—CONTROLLING THE AS-**  
2 **SAULT OF NON-SOLICITED**  
3 **PORNOGRAPHY AND MAR-**  
4 **KETING ACT OF 2003**

5 **SEC. 101. SHORT TITLE.**

6 This title may be cited as the “Controlling the As-  
7 sault of Non-Solicited Pornography and Marketing Act of  
8 2003”, or the “CAN-SPAM Act of 2003”.

9 **SEC. 102. CONGRESSIONAL FINDINGS AND POLICY.**

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

11 (1) Electronic mail has become an extremely  
12 important and popular means of communication, re-  
13 lied on by millions of Americans on a daily basis for  
14 personal and commercial purposes. Its low cost and  
15 global reach make it extremely convenient and effi-  
16 cient, and offer unique opportunities for the develop-  
17 ment and growth of frictionless commerce.

18 (2) The convenience and efficiency of electronic  
19 mail are threatened by the extremely rapid growth  
20 in the volume of unsolicited commercial electronic  
21 mail. Unsolicited commercial electronic mail is cur-  
22 rently estimated to account for over 45 percent of all  
23 electronic mail traffic, up from an estimated 7 per-  
24 cent in 2001, and the volume continues to rise. Most  
25 of these unsolicited commercial electronic mail mes-

1       sages are fraudulent or deceptive in one or more re-  
2       spects.

3           (3) The receipt of unsolicited commercial elec-  
4       tronic mail may result in costs to recipients who  
5       cannot refuse to accept such mail and who incur  
6       costs for the storage of such mail, or for the time  
7       spent accessing, reviewing, and discarding such mail,  
8       or for both.

9           (4) The receipt of a large number of unsolicited  
10      messages also decreases the convenience of electronic  
11      mail and creates a risk that wanted electronic mail  
12      messages, both commercial and noncommercial, will  
13      be lost, overlooked, or discarded amidst the larger  
14      volume of unwanted messages, thus reducing the re-  
15      liability and usefulness of electronic mail to the re-  
16      cipient.

17          (5) Some unsolicited commercial electronic mail  
18      contains material that many recipients may consider  
19      vulgar or pornographic in nature.

20          (6) The growth in unsolicited commercial elec-  
21      tronic mail imposes significant monetary costs on  
22      providers of Internet access services, businesses, and  
23      educational and nonprofit institutions that carry and  
24      receive such mail, as there is a finite volume of mail

1 that such providers, businesses, and institutions can  
2 handle without further investment in infrastructure.

3 (7) Many senders of unsolicited commercial  
4 electronic mail purposefully disguise the source of  
5 such mail.

6 (8) Many senders of unsolicited commercial  
7 electronic mail purposefully include misleading infor-  
8 mation in the message's subject lines in order to in-  
9 duce the recipients to view the messages.

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

18 (10) Many senders of bulk unsolicited commer-  
19 cial electronic mail use computer programs to gather  
20 large numbers of electronic mail addresses on an  
21 automated basis from Internet websites or online  
22 services where users must post their addresses in  
23 order to make full use of the website or service.

24 (11) Many States have enacted legislation in-  
25 tended to regulate or reduce unsolicited commercial

1 electronic mail, but these statutes impose different  
2 standards and requirements. As a result, they do not  
3 appear to have been successful in addressing the  
4 problems associated with unsolicited commercial  
5 electronic mail, in part because, since an electronic  
6 mail address does not specify a geographic location,  
7 it can be extremely difficult for law-abiding busi-  
8 nesses to know with which of these disparate stat-  
9 utes they are required to comply.

10 (12) The problems associated with the rapid  
11 growth and abuse of unsolicited commercial elec-  
12 tronic mail cannot be solved by Federal legislation  
13 alone. The development and adoption of techno-  
14 logical approaches and the pursuit of cooperative ef-  
15 forts with other countries will be necessary as well.

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 a substantial government interest in  
20 regulation of unsolicited commercial electronic mail  
21 on a nationwide basis;

22 (2) senders of unsolicited commercial electronic  
23 mail should not mislead recipients as to the source  
24 or content of such mail; and

1           (3) recipients of unsolicited commercial elec-  
 2           tronic mail have a right to decline to receive addi-  
 3           tional unsolicited commercial electronic mail from  
 4           the same source.

5 **SEC. 103. DEFINITIONS.**

6           In this title:

7           (1) **AFFIRMATIVE CONSENT.**—The term “af-  
 8           firmative consent”, when used with respect to a  
 9           commercial electronic mail message, means that—

10                   (A) the recipient expressly consented to re-  
 11                   ceive the message, either in response to a clear  
 12                   and conspicuous request for such consent or at  
 13                   the recipient’s own initiative; and

14                   (B) if the message is from a party other  
 15                   than the party to which the recipient commu-  
 16                   nicated such consent, the recipient was given  
 17                   clear and conspicuous notice at the time the  
 18                   consent was communicated that the recipient’s  
 19                   electronic mail address could be transferred to  
 20                   such other party for the purpose of initiating  
 21                   commercial electronic mail messages.

22           (2) **COMMERCIAL ELECTRONIC MAIL MES-**  
 23           **SAGE.**—

24                   (A) **IN GENERAL.**—The term “commercial  
 25                   electronic mail message” means any electronic

1 mail message the primary purpose of which is  
2 the commercial advertisement or promotion of a  
3 commercial product or service (including con-  
4 tent on an Internet website operated for a com-  
5 mercial purpose).

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

17 (3) COMMISSION.—The term “Commission”  
18 means the Federal Trade Commission.

19 (4) DOMAIN NAME.—The term “domain name”  
20 means any alphanumeric designation which is reg-  
21 istered with or assigned by any domain name reg-  
22 istrar, domain name registry, or other domain name  
23 registration authority as part of an electronic ad-  
24 dress on the Internet.

1           (5) ELECTRONIC MAIL ADDRESS.—The term  
2           “electronic mail address” means a destination, com-  
3           monly expressed as a string of characters, consisting  
4           of a unique user name or mailbox (commonly re-  
5           ferred to as the “local part”) and a reference to an  
6           Internet domain (commonly referred to as the “do-  
7           main part”), whether or not displayed, to which an  
8           electronic mail message can be sent or delivered.

9           (6) ELECTRONIC MAIL MESSAGE.—The term  
10          “electronic mail message” means a message sent to  
11          a unique electronic mail address.

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

15          (8) HEADER INFORMATION.—The term “header  
16          information” means the source, destination, and  
17          routing information attached to an electronic mail  
18          message, including the originating domain name and  
19          originating electronic mail address, and any other  
20          information that appears in the line identifying, or  
21          purporting to identify, a person initiating the mes-  
22          sage.

23          (9) IMPLIED CONSENT.—

1 (A) IN GENERAL.—The term “implied con-  
2 sent”, when used with respect to a commercial  
3 electronic mail message, means that—

4 (i) within the 3-year period ending  
5 upon receipt of such message, there has  
6 been a business transaction between the  
7 sender and the recipient (including a  
8 transaction involving the provision, free of  
9 charge, of information, goods, or services  
10 requested by the recipient); and

11 (ii) the recipient was, at the time of  
12 such transaction or thereafter in the first  
13 electronic mail message received from the  
14 sender after the effective date of this title,  
15 provided a clear and conspicuous notice of  
16 an opportunity not to receive unsolicited  
17 commercial electronic mail messages from  
18 the sender and has not exercised such op-  
19 portunity.

20 (B) MERE VISITATION.—A visit by a re-  
21 cipient to a publicly available website shall not  
22 be treated as a transaction for purposes of sub-  
23 paragraph (A)(i) if the recipient did not know-  
24 ingly submit the recipient’s electronic mail ad-  
25 dress to the operator of the website.

1           (C) SEPARATE LINES OF BUSINESS OR DI-  
2           VISIONS.—If a sender operates through sepa-  
3           rate lines of business or divisions and holds  
4           itself out to the recipient, both at the time of  
5           the transaction described in subparagraph  
6           (A)(i) and at the time the notice under sub-  
7           paragraph (A)(ii) was provided to the recipient,  
8           as that particular line of business or division  
9           rather than as the entity of which such line of  
10          business or division is a part, then the line of  
11          business or the division shall be treated as the  
12          sender for purposes of this paragraph.

13          (10) INITIATE.—The term “initiate”, when  
14          used with respect to a commercial electronic mail  
15          message, means to originate or transmit such mes-  
16          sage or to procure the origination or transmission of  
17          such message, but shall not include actions that con-  
18          stitute routine conveyance of such message. For pur-  
19          poses of this paragraph, more than 1 person may be  
20          considered to have initiated a message.

21          (11) INTERNET.—The term “Internet” has the  
22          meaning given that term in the Internet Tax Free-  
23          dom Act (47 U.S.C. 151 nt).

24          (12) INTERNET ACCESS SERVICE.—The term  
25          “Internet access service” has the meaning given that

1 term in section 231(e)(4) of the Communications  
2 Act of 1934 (47 U.S.C. 231(e)(4)).

3 (13) PROCURE.—The term “procure”, when  
4 used with respect to the initiation of a commercial  
5 electronic mail message, means intentionally to pay  
6 or provide other consideration to, or induce, another  
7 person to initiate such a message on one’s behalf,  
8 knowing, or consciously avoiding knowing, the extent  
9 to which that person intends to comply with the re-  
10 quirements of this title.

11 (14) PROTECTED COMPUTER.—The term “pro-  
12 tected computer” has the meaning given that term  
13 in section 1030(e)(2)(B) of title 18, United States  
14 Code.

15 (15) RECIPIENT.—The term “recipient”, when  
16 used with respect to a commercial electronic mail  
17 message, means an authorized user of the electronic  
18 mail address to which the message was sent or deliv-  
19 ered. If a recipient of a commercial electronic mail  
20 message has 1 or more electronic mail addresses in  
21 addition to the address to which the message was  
22 sent or delivered, the recipient shall be treated as a  
23 separate recipient with respect to each such address.  
24 If an electronic mail address is reassigned to a new  
25 user, the new user shall not be treated as a recipient

1 of any commercial electronic mail message sent or  
2 delivered to that address before it was reassigned.

3 (16) ROUTINE CONVEYANCE.—The term “rou-  
4 tine conveyance” means the transmission, routing,  
5 relaying, handling, or storing, through an automatic  
6 technical process, of an electronic mail message for  
7 which another person has identified the recipients or  
8 provided the recipient addresses.

9 (17) SENDER.—The term “sender”, when used  
10 with respect to a commercial electronic mail mes-  
11 sage, means a person who initiates such a message  
12 and whose product, service, or Internet web site is  
13 advertised or promoted by the message.

14 (18) TRANSACTIONAL OR RELATIONSHIP MES-  
15 SAGE.—The term “transactional or relationship mes-  
16 sage” means an electronic mail message the primary  
17 purpose of which is—

18 (A) to facilitate, complete, or confirm a  
19 commercial transaction that the recipient has  
20 previously agreed to enter into with the sender;

21 (B) to provide warranty information, prod-  
22 uct recall information, or safety or security in-  
23 formation with respect to a commercial product  
24 or service used or purchased by the recipient;

25 (C) to provide—

1 (i) notification concerning a change in  
2 the terms or features of;

3 (ii) notification of a change in the re-  
4 cipient's standing or status with respect to;  
5 or

6 (iii) at regular periodic intervals, ac-  
7 count balance information or other type of  
8 account statement with respect to,  
9 a subscription, membership, account, loan, or  
10 comparable ongoing commercial relationship in-  
11 volving the ongoing purchase or use by the re-  
12 cipient of products or services offered by the  
13 sender;

14 (D) to provide information directly related  
15 to an employment relationship or related benefit  
16 plan in which the recipient is currently involved,  
17 participating, or enrolled; or

18 (E) to deliver goods or services, including  
19 product updates or upgrades, that the recipient  
20 is entitled to receive under the terms of a trans-  
21 action that the recipient has previously agreed  
22 to enter into with the sender.

23 (19) UNSOLICITED COMMERCIAL ELECTRONIC  
24 MAIL MESSAGE.—The term “unsolicited commercial

1 electronic mail message” means any commercial  
2 electronic mail message that—

3 (A) is not a transactional or relationship  
4 message; and

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

7 **SEC. 104. PROHIBITION AGAINST PREDATORY AND ABU-**  
8 **SIVE COMMERCIAL E-MAIL.**

9 (a) OFFENSE.—

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

13 **“§ 1037. Fraud and related activity in connection**  
14 **with electronic mail**

15 “(a) IN GENERAL.—Whoever, in or affecting inter-  
16 state or foreign commerce, knowingly—

17 “(1) accesses a protected computer without au-  
18 thorization, and intentionally initiates the trans-  
19 mission of multiple commercial electronic mail mes-  
20 sages from or through such computer,

21 “(2) uses a protected computer to relay or re-  
22 transmit multiple commercial electronic mail mes-  
23 sages, with the intent to deceive or mislead recipi-  
24 ents, or any Internet access service, as to the origin  
25 of such messages,

1           “(3) falsifies header information in multiple  
2 commercial electronic mail messages and inten-  
3 tionally initiates the transmission of such messages,

4           “(4) registers, using information that falsifies  
5 the identity of the actual registrant, for 5 or more  
6 electronic mail accounts or online user accounts or  
7 2 or more domain names, and intentionally initiates  
8 the transmission of multiple commercial electronic  
9 mail messages from any combination of such ac-  
10 counts or domain names, or

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

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

17           “(b) PENALTIES.—The punishment for an offense  
18 under subsection (a) is—

19           “(1) a fine under this title, imprisonment for  
20 not more than 5 years, or both, if—

21           “(A) the offense is committed in further-  
22 ance of any felony under the laws of the United  
23 States or of any State; or

24           “(B) the defendant has previously been  
25 convicted under this section or section 1030, or

1 under the law of any State for conduct involv-  
2 ing the transmission of multiple commercial  
3 electronic mail messages or unauthorized access  
4 to a computer system;

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

7 “(A) the offense is an offense under sub-  
8 section (a)(1);

9 “(B) the offense is an offense under sub-  
10 section (a)(4) and involved 20 or more falsified  
11 electronic mail or online user account registra-  
12 tions, or 10 or more falsified domain name reg-  
13 istrations;

14 “(C) the volume of electronic mail mes-  
15 sages transmitted in furtherance of the offense  
16 exceeded 2,500 during any 24-hour period,  
17 25,000 during any 30-day period, or 250,000  
18 during any 1-year period;

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

22 “(E) as a result of the offense any indi-  
23 vidual committing the offense obtained anything  
24 of value aggregating \$5,000 or more during any  
25 1-year period; or

1           “(F) the offense was undertaken by the de-  
2           fendant in concert with 3 or more other persons  
3           with respect to whom the defendant occupied a  
4           position of organizer or leader; and

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

7           “(c) FORFEITURE.—

8           “(1) IN GENERAL.—The court, in imposing sen-  
9           tence on a person who is convicted of an offense  
10          under this section, shall order that the defendant  
11          forfeit to the United States—

12           “(A) any property, real or personal, consti-  
13          tuting or traceable to gross proceeds obtained  
14          from such offense; and

15           “(B) any equipment, software, or other  
16          technology used or intended to be used to com-  
17          mit or to facilitate the commission of such of-  
18          fense.

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

25           “(d) DEFINITIONS.—In this section:

1           “(1) LOSS.—The term ‘loss’ has the meaning  
2 given that term in section 1030(e) of this title.

3           “(2) MULTIPLE.—The term ‘multiple’ means  
4 more than 100 electronic mail messages during a  
5 24-hour period, more than 1,000 electronic mail  
6 messages during a 30-day period, or more than  
7 10,000 electronic mail messages during a 1-year pe-  
8 riod.

9           “(3) OTHER TERMS.—Any other term has the  
10 meaning given that term by section 3 of the CAN-  
11 SPAM Act of 2003.”.

12           (2) CONFORMING AMENDMENT.—The chapter  
13 analysis for chapter 47 of title 18, United States  
14 Code, is amended by adding at the end the fol-  
15 lowing:

“Sec.

“1037. Fraud and related activity in connection with electronic mail.”.

16           (b) UNITED STATES SENTENCING COMMISSION.—

17           (1) DIRECTIVE.—Pursuant to its authority  
18 under section 994(p) of title 28, United States Code,  
19 and in accordance with this section, the United  
20 States Sentencing Commission shall review and, as  
21 appropriate, amend the sentencing guidelines and  
22 policy statements to provide appropriate penalties  
23 for violations of section 1037 of title 18, United  
24 States Code, as added by this section, and other of-

1 fenses that may be facilitated by the sending of  
2 large quantities of unsolicited electronic mail.

3 (2) REQUIREMENTS.—In carrying out this sub-  
4 section, the Sentencing Commission shall consider  
5 providing sentencing enhancements for—

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

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

10 (I) harvesting electronic mail ad-  
11 dresses of the users of a website, pro-  
12 prietary service, or other online public  
13 forum operated by another person,  
14 without the authorization of such per-  
15 son; and

16 (II) randomly generating elec-  
17 tronic mail addresses by computer; or

18 (ii) knew that the commercial elec-  
19 tronic mail messages involved in the of-  
20 fense contained or advertised an Internet  
21 domain for which the registrant of the do-  
22 main had provided false registration infor-  
23 mation; and

24 (B) those convicted of other offenses, in-  
25 cluding offenses involving fraud, identity theft,

1           obscenity, child pornography, and the sexual ex-  
2           ploitation of children, if such offenses involved  
3           the sending of large quantities of unsolicited  
4           electronic mail.

5           (c) SENSE OF CONGRESS.—It is the sense of Con-  
6   gress that—

7           (1) Spam has become the method of choice for  
8           those who distribute pornography, perpetrate fraud-  
9           ulent schemes, and introduce viruses, worms, and  
10          Trojan horses into personal and business computer  
11          systems; and

12          (2) the Department of Justice should use all ex-  
13          isting law enforcement tools to investigate and pros-  
14          ecute those who send bulk commercial e-mail to fa-  
15          cilitate the commission of Federal crimes, including  
16          the tools contained in chapters 47 and 63 of title 18,  
17          United States Code (relating to fraud and false  
18          statements); chapter 71 of title 18, United States  
19          Code (relating to obscenity); chapter 110 of title 18,  
20          United States Code (relating to the sexual exploi-  
21          tation of children); and chapter 95 of title 18,  
22          United States Code (relating to racketeering), as ap-  
23          propriate.

1 **SEC. 105. OTHER PROTECTIONS FOR USERS OF COMMER-**  
2 **CIAL ELECTRONIC MAIL.**

3 (a) REQUIREMENTS FOR TRANSMISSION OF MES-  
4 SAGES.—

5 (1) PROHIBITION OF FALSE OR MISLEADING  
6 TRANSMISSION INFORMATION.—It is unlawful for  
7 any person to initiate the transmission, to a pro-  
8 tected computer, of a commercial electronic mail  
9 message that contains, or is accompanied by, header  
10 information that is materially false or materially  
11 misleading. For purposes of this paragraph—

12 (A) header information that is technically  
13 accurate but includes an originating electronic  
14 mail address the access to which for purposes  
15 of initiating the message was obtained by  
16 means of false or fraudulent pretenses or rep-  
17 resentations shall be considered materially mis-  
18 leading;

19 (B) a “from” line that accurately identifies  
20 any person who initiated the message shall not  
21 be considered materially false or materially mis-  
22 leading; and

23 “(C) if header information attached to a  
24 message fails to identify a protected computer  
25 used to initiate the message because the person  
26 initiating the message knowingly uses another

1           protected computer to relay or retransmit the  
2           message for purposes of disguising its origin,  
3           then such header information shall be consid-  
4           ered materially misleading.”.

5           (2) PROHIBITION OF DECEPTIVE SUBJECT  
6           HEADINGS.—It is unlawful for any person to initiate  
7           the transmission to a protected computer of a com-  
8           mercial electronic mail message with a subject head-  
9           ing that such person knows would be likely to mis-  
10          lead a recipient, acting reasonably under the cir-  
11          cumstances, about a material fact regarding the con-  
12          tents or subject matter of the message.

13          (3) INCLUSION OF RETURN ADDRESS OR COM-  
14          PARABLE MECHANISM IN COMMERCIAL ELECTRONIC  
15          MAIL.—

16                (A) IN GENERAL.—It is unlawful for any  
17                person to initiate the transmission to a pro-  
18                tected computer of a commercial electronic mail  
19                message that does not contain a functioning re-  
20                turn electronic mail address or other Internet-  
21                based mechanism, clearly and conspicuously dis-  
22                played, that—

23                       (i) a recipient may use to submit, in  
24                       a manner specified in the message, a reply  
25                       electronic mail message or other form of

1 Internet-based communication requesting  
2 not to receive future commercial electronic  
3 mail messages from that sender at the  
4 electronic mail address where the message  
5 was received; and

6 (ii) remains capable of receiving such  
7 messages or communications for no less  
8 than 30 days after the transmission of the  
9 original message.

10 (B) MORE DETAILED OPTIONS POS-  
11 SIBLE.—The person initiating a commercial  
12 electronic mail message may comply with sub-  
13 paragraph (A)(i) by providing the recipient a  
14 list or menu from which the recipient may  
15 choose the specific types of commercial elec-  
16 tronic mail messages the recipient wants to re-  
17 ceive or does not want to receive from the send-  
18 er, if the list or menu includes an option under  
19 which the recipient may choose not to receive  
20 any unsolicited commercial electronic mail mes-  
21 sages from the sender.

22 (C) TEMPORARY INABILITY TO RECEIVE  
23 MESSAGES OR PROCESS REQUESTS.—A return  
24 electronic mail address or other mechanism  
25 does not fail to satisfy the requirements of sub-

1 paragraph (A) if it is unexpectedly and tempo-  
2 rarily unable to receive messages or process re-  
3 quests due to technical or capacity problems, if  
4 the technical or capacity problems were not rea-  
5 sonably foreseeable in light of the potential vol-  
6 ume of response messages or requests, and if  
7 the problem with receiving messages or proc-  
8 essing requests is corrected within a reasonable  
9 time period.

10 (D) EXCEPTION.—The requirements of  
11 this paragraph shall not apply to a message  
12 that is a transactional or relationship message.

13 (4) PROHIBITION OF TRANSMISSION OF UNSO-  
14 LICITED COMMERCIAL ELECTRONIC MAIL AFTER OB-  
15 JECTION.—If a recipient makes a request using a  
16 mechanism provided pursuant to paragraph (3) not  
17 to receive some or any unsolicited commercial elec-  
18 tronic mail messages from such sender, then it is  
19 unlawful—

20 (A) for the sender to initiate the trans-  
21 mission to the recipient, more than 10 business  
22 days after the receipt of such request, of an un-  
23 solicited commercial electronic mail message  
24 that falls within the scope of the request;

1           (B) for any person acting on behalf of the  
2 sender to initiate the transmission to the recipi-  
3 ent, more than 10 business days after the re-  
4 ceipt of such request, of an unsolicited commer-  
5 cial electronic mail message that such person  
6 knows or consciously avoids knowing falls with-  
7 in the scope of the request;

8           (C) for any person acting on behalf of the  
9 sender to assist in initiating the transmission to  
10 the recipient, through the provision or selection  
11 of addresses to which the message will be sent,  
12 of an unsolicited commercial electronic mail  
13 message that the person knows, or consciously  
14 avoids knowing, would violate subparagraph (A)  
15 or (B); or

16           (D) for the sender, or any other person  
17 who knows that the recipient has made such a  
18 request, to sell, lease, exchange, or otherwise  
19 transfer or release the electronic mail address  
20 of the recipient (including through any trans-  
21 action or other transfer involving mailing lists  
22 bearing the electronic mail address of the re-  
23 cipient) for any purpose other than compliance  
24 with this title or other provision of law.

1           (5) INCLUSION OF IDENTIFIER, OPT-OUT, AND  
 2           PHYSICAL ADDRESS IN UNSOLICITED COMMERCIAL  
 3           ELECTRONIC MAIL.—It is unlawful for any person to  
 4           initiate the transmission of any unsolicited commer-  
 5           cial electronic mail message to a protected computer  
 6           unless the message provides—

7                   (A) clear and conspicuous identification  
 8                   that the message is an advertisement or solici-  
 9                   tation;

10                   (B) clear and conspicuous notice of the op-  
 11                   portunity under paragraph (3) to decline to re-  
 12                   ceive further unsolicited commercial electronic  
 13                   mail messages from the sender; and

14                   (C) a valid physical postal address of the  
 15                   sender.

16           (6) MATERIALITY DEFINED.—For purposes of  
 17           paragraph (1), an inaccuracy or omission in header  
 18           information is material if it would materially impede  
 19           the ability of a party seeking to allege a violation of  
 20           this title to locate the person who initiated the mes-  
 21           sage or to investigate the alleged violation.

22           (b) AGGRAVATED VIOLATIONS RELATING TO UNSO-  
 23           LICITED COMMERCIAL ELECTRONIC MAIL.—

24                   (1) ADDRESS HARVESTING AND DICTIONARY  
 25                   ATTACKS.—

1 (A) IN GENERAL.—It is unlawful for any  
2 person to initiate the transmission, to a pro-  
3 tected computer, of an unsolicited commercial  
4 electronic mail message that is unlawful under  
5 subsection (a), or to assist in the origination of  
6 such message through the provision or selection  
7 of addresses to which the message will be trans-  
8 mitted, if such person knows, should have  
9 known, or consciously avoids knowing that—

10 (i) the electronic mail address of the  
11 recipient was obtained using an automated  
12 means from an Internet website or propri-  
13 etary online service operated by another  
14 person, and such website or online service  
15 included, at the time the address was ob-  
16 tained, a notice stating that the operator  
17 of such website or online service will not  
18 give, sell, or otherwise transfer addresses  
19 maintained by such website or online serv-  
20 ice to any other party for the purposes of  
21 initiating, or enabling others to initiate,  
22 unsolicited electronic mail messages; or

23 (ii) the electronic mail address of the  
24 recipient was obtained using an automated  
25 means that generates possible electronic

1 mail addresses by combining names, let-  
2 ters, or numbers into numerous permuta-  
3 tions.

4 (B) DISCLAIMER.—Nothing in this para-  
5 graph creates an ownership or proprietary in-  
6 terest in such electronic mail addresses.

7 (2) AUTOMATED CREATION OF MULTIPLE  
8 ELECTRONIC MAIL ACCOUNTS.—It is unlawful for  
9 any person to use scripts or other automated means  
10 to register for multiple electronic mail accounts or  
11 online user accounts from which to transmit to a  
12 protected computer, or enable another person to  
13 transmit to a protected computer, an unsolicited  
14 commercial electronic mail message that is unlawful  
15 under subsection (a).

16 (3) RELAY OR RETRANSMISSION THROUGH UN-  
17 AUTHORIZED ACCESS.—It is unlawful for any person  
18 knowingly to relay or retransmit an unsolicited com-  
19 mercial electronic mail message that is unlawful  
20 under subsection (a) from a protected computer or  
21 computer network that such person has accessed  
22 without authorization.

23 (c) COMPLIANCE PROCEDURES.—An action for viola-  
24 tion of paragraph (2), (3), (4), or (5) of subsection (a)

1 may not proceed if the person against whom the action  
2 is brought demonstrates that —

3           (1) the person has established and imple-  
4           mented, with due care, reasonable practices and  
5           procedures to effectively prevent violations of  
6           such paragraph; and

7           (2) the violation occurred despite good  
8           faith efforts to maintain compliance with such  
9           practices and procedures.

10       (d) SUPPLEMENTARY RULEMAKING AUTHORITY.—

11 The Commission may by rule—

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

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

18                   (B) the interests of recipients of commer-  
19           cial electronic mail; and

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

22           (2) specify additional activities or practices to  
23           which subsection (b) applies if the Commission de-  
24           termines that those activities or practices are con-  
25           tributing substantially to the proliferation of com-

1       mercial electronic mail messages that are unlawful  
2       under subsection (a).

3       (e) REQUIREMENT TO PLACE WARNING LABELS ON  
4       COMMERCIAL ELECTRONIC MAIL CONTAINING SEXUALLY  
5       ORIENTED MATERIAL.—

6               (1) IN GENERAL.—No person may initiate in or  
7       affecting interstate commerce the transmission, to a  
8       protected computer, of any unsolicited commercial  
9       electronic mail message that includes sexually ori-  
10      ented material and—

11               (A) fail to include in subject heading for  
12      the electronic mail message the marks or no-  
13      tices prescribed by the Commission under this  
14      subsection; or

15               (B) fail to provide that the matter in the  
16      message that is initially viewable to the recipi-  
17      ent, when the message is opened by any recipi-  
18      ent and absent any further actions by the re-  
19      cipient, includes only—

20                       (i) to the extent required or author-  
21                       ized pursuant to paragraph (2), any such  
22                       marks or notices;

23                       (ii) the information required to be in-  
24                       cluded in the message pursuant to sub-  
25                       section (a)(5); and

1 (iii) instructions on how to access, or  
2 a mechanism to access, the sexually ori-  
3 ented material.

4 (2) PRESCRIPTION OF MARKS AND NOTICES.—  
5 Not later than 120 days after the date of the enact-  
6 ment of this title, the Commission in consultation  
7 with the Attorney General shall prescribe clearly  
8 identifiable marks or notices to be included in or as-  
9 sociated with unsolicited commercial electronic mail  
10 that contains sexually oriented material, in order to  
11 inform the recipient of that fact and to facilitate fil-  
12 tering of such electronic mail. The Commission shall  
13 publish in the Federal Register and provide notice to  
14 the public of the marks or notices prescribed under  
15 this paragraph.

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

23 (4) PENALTY.—A violation of paragraph (1) is  
24 punishable as if it were a violation of section  
25 1037(a) of title 18, United States Code.

1 **SEC. 106. BUSINESSES KNOWINGLY PROMOTED BY ELEC-**  
2 **TRONIC MAIL WITH FALSE OR MISLEADING**  
3 **TRANSMISSION INFORMATION.**

4 (a) **IN GENERAL.**—It is unlawful for a person to pro-  
5 mote, or allow the promotion of, that person’s trade or  
6 business, or goods, products, property, or services sold, of-  
7 fered for sale, leased or offered for lease, or otherwise  
8 made available through that trade or business, in a com-  
9 mercial electronic mail message the transmission of which  
10 is in violation of section 105(a)(1) if that person—

11 (1) knows, or should have known in ordinary  
12 course of that person’s trade or business, that the  
13 goods, products, property, or services sold, offered  
14 for sale, leased or offered for lease, or otherwise  
15 made available through that trade or business were  
16 being promoted in such a message;

17 (2) received or expected to receive an economic  
18 benefit from such promotion; and

19 (3) took no reasonable action—

20 (A) to prevent the transmission; or

21 (B) to detect the transmission and report  
22 it to the Commission.

23 (b) **LIMITED ENFORCEMENT AGAINST THIRD PAR-**  
24 **TIES.**—

25 (1) **IN GENERAL.**—Except as provided in para-  
26 graph (2), a person (hereinafter referred to as the

1 “third party”) that provides goods, products, prop-  
2 erty, or services to another person that violates sub-  
3 section (a) shall not be held liable for such violation.

4 (2) EXCEPTION.—Liability for a violation of  
5 subsection (a) shall be imputed to a third party that  
6 provides goods, products, property, or services to an-  
7 other person that violates subsection (a) if that third  
8 party—

9 (A) owns, or has a greater than 50 percent  
10 ownership or economic interest in, the trade or  
11 business of the person that violated subsection  
12 (a); or

13 (B)(i) has actual knowledge that goods,  
14 products, property, or services are promoted in  
15 a commercial electronic mail message the trans-  
16 mission of which is in violation of section  
17 105(a)(1); and

18 (ii) receives, or expects to receive, an eco-  
19 nomic benefit from such promotion.

20 (c) EXCLUSIVE ENFORCEMENT BY FTC.—Sub-  
21 sections (e) and (f) of section 107 do not apply to viola-  
22 tions of this section.

1 **SEC. 107. ENFORCEMENT BY FEDERAL TRADE COMMIS-**  
2 **SION.**

3 (a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR  
4 PRACTICE.—Except as provided in subsection (b), this  
5 title shall be enforced by the Commission as if the viola-  
6 tion of this title were an unfair or deceptive act or practice  
7 proscribed under section 18(a)(1)(B) of the Federal Trade  
8 Commission Act (15 U.S.C. 57a(a)(1)(B)).

9 (b) ENFORCEMENT BY CERTAIN OTHER AGEN-  
10 CIES.—Compliance with this title shall be enforced—

11 (1) under section 8 of the Federal Deposit In-  
12 surance Act (12 U.S.C. 1818), in the case of—

13 (A) national banks, and Federal branches  
14 and Federal agencies of foreign banks, and any  
15 subsidiaries of such entities (except brokers,  
16 dealers, persons providing insurance, invest-  
17 ment companies, and investment advisers), by  
18 the Office of the Comptroller of the Currency;

19 (B) member banks of the Federal Reserve  
20 System (other than national banks), branches  
21 and agencies of foreign banks (other than Fed-  
22 eral branches, Federal agencies, and insured  
23 State branches of foreign banks), commercial  
24 lending companies owned or controlled by for-  
25 eign banks, organizations operating under sec-  
26 tion 25 or 25A of the Federal Reserve Act (12

1 U.S.C. 601 and 611), and bank holding compa-  
2 nies and their nonbank subsidiaries or affiliates  
3 (except brokers, dealers, persons providing in-  
4 surance, investment companies, and investment  
5 advisers), by the Board;

6 (C) banks insured by the Federal Deposit  
7 Insurance Corporation (other than members of  
8 the Federal Reserve System) insured State  
9 branches of foreign banks, and any subsidiaries  
10 of such entities (except brokers, dealers, per-  
11 sons providing insurance, investment compa-  
12 nies, and investment advisers), by the Board of  
13 Directors of the Federal Deposit Insurance Cor-  
14 poration; and

15 (D) savings associations the deposits of  
16 which are insured by the Federal Deposit In-  
17 surance Corporation, and any subsidiaries of  
18 such savings associations (except brokers, deal-  
19 ers, persons providing insurance, investment  
20 companies, and investment advisers), by the Di-  
21 rector of the Office of Thrift Supervision;

22 (2) under the Federal Credit Union Act (12  
23 U.S.C. 1751 et seq.) by the Board of the National  
24 Credit Union Administration with respect to any

1 Federally insured credit union, and any subsidiaries  
2 of such a credit union;

3 (3) under the Securities Exchange Act of 1934  
4 (15 U.S.C. 78a et seq.) by the Securities and Ex-  
5 change Commission with respect to any broker or  
6 dealer;

7 (4) under the Investment Company Act of 1940  
8 (15 U.S.C. 80a–1 et seq.) by the Securities and Ex-  
9 change Commission with respect to investment com-  
10 panies;

11 (5) under the Investment Advisers Act of 1940  
12 (15 U.S.C. 80b–1 et seq.) by the Securities and Ex-  
13 change Commission with respect to investment ad-  
14 visers registered under that Act;

15 (6) under State insurance law in the case of  
16 any person engaged in providing insurance, by the  
17 applicable State insurance authority of the State in  
18 which the person is domiciled, subject to section 104  
19 of the Gramm-Bliley-Leach Act (15 U.S.C. 6701);

20 (7) under part A of subtitle VII of title 49,  
21 United States Code, by the Secretary of Transpor-  
22 tation with respect to any air carrier or foreign air  
23 carrier subject to that part;

24 (8) under the Packers and Stockyards Act,  
25 1921 (7 U.S.C. 181 et seq.) (except as provided in

1 section 406 of that Act (7 U.S.C. 226, 227)), by the  
2 Secretary of Agriculture with respect to any activi-  
3 ties subject to that Act;

4 (9) under the Farm Credit Act of 1971 (12  
5 U.S.C. 2001 et seq.) by the Farm Credit Adminis-  
6 tration with respect to any Federal land bank, Fed-  
7 eral land bank association, Federal intermediate  
8 credit bank, or production credit association; and

9 (10) under the Communications Act of 1934  
10 (47 U.S.C. 151 et seq.) by the Federal Communica-  
11 tions Commission with respect to any person subject  
12 to the provisions of that Act.

13 (c) EXERCISE OF CERTAIN POWERS.—For the pur-  
14 pose of the exercise by any agency referred to in sub-  
15 section (b) of its powers under any Act referred to in that  
16 subsection, a violation of this title is deemed to be a viola-  
17 tion of a Federal Trade Commission trade regulation rule.  
18 In addition to its powers under any provision of law spe-  
19 cifically referred to in subsection (b), each of the agencies  
20 referred to in that subsection may exercise, for the pur-  
21 pose of enforcing compliance with any requirement im-  
22 posed under this title, any other authority conferred on  
23 it by law.

24 (d) ACTIONS BY THE COMMISSION.—The Commis-  
25 sion shall prevent any person from violating this title in

1 the same manner, by the same means, and with the same  
2 jurisdiction, powers, and duties as though all applicable  
3 terms and provisions of the Federal Trade Commission  
4 Act (15 U.S.C. 41 et seq.) were incorporated into and  
5 made a part of this title. Any entity that violates any pro-  
6 vision of that subtitle is subject to the penalties and enti-  
7 tled to the privileges and immunities provided in the Fed-  
8 eral Trade Commission Act in the same manner, by the  
9 same means, and with the same jurisdiction, power, and  
10 duties as though all applicable terms and provisions of the  
11 Federal Trade Commission Act were incorporated into and  
12 made a part of that subtitle.

13 (e) ENFORCEMENT BY STATES.—

14 (1) CIVIL ACTION.—In any case in which the  
15 attorney general of a State has reason to believe  
16 that an interest of the residents of that State has  
17 been or is threatened or adversely affected by any  
18 person engaging in a practice that violates section  
19 105 of this title, the State, as *parens patriae*, may  
20 bring a civil action on behalf of the residents of the  
21 State in a district court of the United States of ap-  
22 propriate jurisdiction—

23 (A) to enjoin further violation of section  
24 105 of this title by the defendant; or

1 (B) to obtain damages on behalf of resi-  
2 dents of the State, in an amount equal to the  
3 greater of—

4 (i) the actual monetary loss suffered  
5 by such residents; or

6 (ii) the amount determined under  
7 paragraph (2).

8 (2) STATUTORY DAMAGES.—

9 (A) IN GENERAL.—For purposes of para-  
10 graph (1)(B)(ii), the amount determined under  
11 this paragraph is the amount calculated by mul-  
12 tiplying the number of violations (with each  
13 separately addressed unlawful message received  
14 by or addressed to such residents treated as a  
15 separate violation) by—

16 (i) up to \$100, in the case of a viola-  
17 tion of section 105(a)(1); or

18 (ii) \$25, in the case of any other vio-  
19 lation of section 105.

20 (B) LIMITATION.—For any violation of  
21 section 105 (other than section 105(a)(1)), the  
22 amount determined under subparagraph (A)  
23 may not exceed \$1,000,000.

24 (C) AGGRAVATED DAMAGES.—The court  
25 may increase a damage award to an amount

1 equal to not more than three times the amount  
2 otherwise available under this paragraph if—

3 (i) the court determines that the de-  
4 fendant committed the violation willfully  
5 and knowingly; or

6 (ii) the defendant's unlawful activity  
7 included one or more of the aggravating  
8 violations set forth in section 105(b).

9 (3) ATTORNEY FEES.—In the case of any suc-  
10 cessful action under paragraph (1), the State shall  
11 be awarded the costs of the action and reasonable  
12 attorney fees as determined by the court.

13 (4) RIGHTS OF FEDERAL REGULATORS.—The  
14 State shall serve prior written notice of any action  
15 under paragraph (1) upon the Federal Trade Com-  
16 mission or the appropriate Federal regulator deter-  
17 mined under subsection (b) and provide the Commis-  
18 sion or appropriate Federal regulator with a copy of  
19 its complaint, except in any case in which such prior  
20 notice is not feasible, in which case the State shall  
21 serve such notice immediately upon instituting such  
22 action. The Federal Trade Commission or appro-  
23 priate Federal regulator shall have the right—

24 (A) to intervene in the action;

1 (B) upon so intervening, to be heard on all  
2 matters arising therein;

3 (C) to remove the action to the appropriate  
4 United States district court; and

5 (D) to file petitions for appeal.

6 (5) CONSTRUCTION.—For purposes of bringing  
7 any civil action under paragraph (1), nothing in this  
8 title shall be construed to prevent an attorney gen-  
9 eral of a State from exercising the powers conferred  
10 on the attorney general by the laws of that State  
11 to—

12 (A) conduct investigations;

13 (B) administer oaths or affirmations; or

14 (C) compel the attendance of witnesses or  
15 the production of documentary and other evi-  
16 dence.

17 (6) VENUE; SERVICE OF PROCESS.—

18 (A) VENUE.—Any action brought under  
19 paragraph (1) may be brought in the district  
20 court of the United States that meets applicable  
21 requirements relating to venue under section  
22 1391 of title 28, United States Code.

23 (B) SERVICE OF PROCESS.—In an action  
24 brought under paragraph (1), process may be  
25 served in any district in which the defendant—

- 1 (i) is an inhabitant; or  
2 (ii) maintains a physical place of busi-  
3 ness.

4 (7) LIMITATION ON STATE ACTION WHILE FED-  
5 ERAL ACTION IS PENDING.—If the Commission or  
6 other appropriate Federal agency under subsection  
7 (b) has instituted a civil action or an administrative  
8 action for violation of this title, no State attorney  
9 general may bring an action under this subsection  
10 during the pendency of that action against any de-  
11 fendant named in the complaint of the Commission  
12 or the other agency for any violation of this title al-  
13 leged in the complaint.

14 (f) ACTION BY PROVIDER OF INTERNET ACCESS  
15 SERVICE.—

16 (1) ACTION AUTHORIZED.—A provider of Inter-  
17 net access service adversely affected by a violation of  
18 section 105 may bring a civil action in any district  
19 court of the United States with jurisdiction over the  
20 defendant—

21 (A) enjoin further violation by the defend-  
22 ant; or

23 (B) recover damages in an amount equal  
24 to the greater of—

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

4 (ii) the amount determined under  
5 paragraph (2).

6 (2) STATUTORY DAMAGES.—

7 (A) IN GENERAL.—For purposes of para-  
8 graph (1)(B)(ii), the amount determined under  
9 this paragraph is the amount calculated by mul-  
10 tiplying the number of violations (with each  
11 separately addressed unlawful message that is  
12 transmitted or attempted to be transmitted over  
13 the facilities of the provider of Internet access  
14 service, or that is transmitted or attempted to  
15 be transmitted to an electronic mail address ob-  
16 tained from the provider of Internet access  
17 service in violation of section 105(b)(1)(A)(i),  
18 treated as a separate violation) by—

19 (i) up to \$100, in the case of a viola-  
20 tion of section 105(a)(1); or

21 (ii) \$25, in the case of any other vio-  
22 lation of section 105.

23 (B) LIMITATION.—For any violation of  
24 section 105 (other than section 105(a)(1)), the

1 amount determined under subparagraph (A)  
2 may not exceed \$1,000,000.

3 (C) AGGRAVATED DAMAGES.—The court  
4 may increase a damage award to an amount  
5 equal to not more than three times the amount  
6 otherwise available under this paragraph if—

7 (i) the court determines that the de-  
8 fendant committed the violation willfully  
9 and knowingly; or

10 (ii) the defendant’s unlawful activity  
11 included one or more of the aggravated  
12 violations set forth in section 105(b).

13 (3) ATTORNEY FEES.—In any action brought  
14 pursuant to paragraph (1), the court may, in its dis-  
15 cretion, require an undertaking for the payment of  
16 the costs of such action, and assess reasonable costs,  
17 including reasonable attorneys’ fees, against any  
18 party.

19 **SEC. 108. EFFECT ON OTHER LAWS.**

20 (a) FEDERAL LAW.—

21 (1) Nothing in this title shall be construed to  
22 impair the enforcement of section 223 or 231 of the  
23 Communications Act of 1934 (47 U.S.C. 223 or  
24 231, respectively), chapter 71 (relating to obscenity)  
25 or 110 (relating to sexual exploitation of children) of

1 title 18, United States Code, or any other Federal  
2 criminal statute.

3 (2) Nothing in this title shall be construed to  
4 affect in any way the Commission's authority to  
5 bring enforcement actions under FTC Act for mate-  
6 rially false or deceptive representations or unfair  
7 practices in commercial electronic mail messages.

8 (b) STATE LAW.—

9 (1) IN GENERAL.—This title supersedes any  
10 statute, regulation, or rule of a State or political  
11 subdivision of a State that expressly regulates the  
12 use of electronic mail to send commercial messages,  
13 except to the extent that any such statute, regula-  
14 tion, or rule prohibits falsity or deception in any  
15 portion of a commercial electronic mail message or  
16 information attached thereto.

17 (2) STATE LAW NOT SPECIFIC TO ELECTRONIC  
18 MAIL.—This title shall not be construed to preempt  
19 the applicability of State laws that are not specific  
20 to electronic mail, including State trespass, contract,  
21 or tort law, and other State laws to the extent that  
22 those laws relate to acts of fraud or computer crime.

23 (c) NO EFFECT ON POLICIES OF PROVIDERS OF  
24 INTERNET ACCESS SERVICE.—Nothing in this title shall  
25 be construed to have any effect on the lawfulness or un-

1 lawfulness, under any other provision of law, of the adop-  
2 tion, implementation, or enforcement by a provider of  
3 Internet access service of a policy of declining to transmit,  
4 route, relay, handle, or store certain types of electronic  
5 mail messages.

6 **SEC. 109. DO-NOT-E-MAIL REGISTRY.**

7 (a) IN GENERAL.—Not later than 6 months after the  
8 date of enactment of this title, the Commission shall trans-  
9 mit to the Senate Committee on Commerce, Science, and  
10 Transportation and the House of Representatives Com-  
11 mittee on Energy and Commerce a report that—

12 (1) sets forth a plan and timetable for estab-  
13 lishing a nationwide marketing Do-Not-E-mail reg-  
14 istry;

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

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

22 (b) AUTHORIZATION TO IMPLEMENT.—The Commis-  
23 sion may establish and implement the plan, but not earlier  
24 than 9 months after the date of enactment of this title.

1 **SEC. 110. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL.**  
2

3 (a) IN GENERAL.—Not later than 24 months after  
4 the date of the enactment of this title, the Commission,  
5 in consultation with the Department of Justice and other  
6 appropriate agencies, shall submit a report to the Con-  
7 gress that provides a detailed analysis of the effectiveness  
8 and enforcement of the provisions of this title and the need  
9 (if any) for the Congress to modify such provisions.

10 (b) REQUIRED ANALYSIS.—The Commission shall in-  
11 clude in the report required by subsection (a)—

12 (1) an analysis of the extent to which techno-  
13 logical and marketplace developments, including  
14 changes in the nature of the devices through which  
15 consumers access their electronic mail messages,  
16 may affect the practicality and effectiveness of the  
17 provisions of this title;

18 (2) analysis and recommendations concerning  
19 how to address unsolicited commercial electronic  
20 mail that originates in or is transmitted through or  
21 to facilities or computers in other nations, including  
22 initiatives or policy positions that the Federal gov-  
23 ernment could pursue through international negotia-  
24 tions, fora, organizations, or institutions; and

25 (3) analysis and recommendations concerning  
26 options for protecting consumers, including children,

1 from the receipt and viewing of unsolicited commer-  
2 cial electronic mail that is obscene or pornographic.

3 **SEC. 111. IMPROVING ENFORCEMENT BY PROVIDING RE-**  
4 **WARDS FOR INFORMATION ABOUT VIOLA-**  
5 **TIONS; LABELING.**

6 (a) IN GENERAL.—The Commission shall transmit to  
7 the Senate Committee on Commerce, Science, and Trans-  
8 portation and the House of Representatives Committee on  
9 Energy and Commerce—

10 (1) a report, within 9 months after the date of  
11 enactment of this title, that sets forth a system for  
12 rewarding those who supply information about viola-  
13 tions of this title, including—

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

18 (i) identifies the person in violation of  
19 this title; and

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

23 (B) procedures to minimize the burden of  
24 submitting a complaint to the Commission con-  
25 cerning violations of this title, including proce-

1           dures to allow the electronic submission of com-  
2           plaints to the Commission; and

3           (2) a report, within 18 months after the date  
4           of enactment of this title, that sets forth a plan for  
5           requiring unsolicited commercial electronic mail to  
6           be identifiable from its subject line, by means of  
7           compliance with Internet Engineering Task Force  
8           Standards, the use of the characters “ADV” in the  
9           subject line, or other comparable identifier, or an ex-  
10          planation of any concerns the Commission has that  
11          cause the Commission to recommend against the  
12          plan.

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

17          **SEC. 112. SEPARABILITY.**

18          If any provision of this title or the application thereof  
19          to any person or circumstance is held invalid, the remain-  
20          der of this title and the application of such provision to  
21          other persons or circumstances shall not be affected.

22          **SEC. 113. EFFECTIVE DATE.**

23          The provisions of this title other than section 109,  
24          shall take effect 120 days after the date of the enactment  
25          of this title.

1     **TITLE II—REALTIME WRITERS**  
2                                     **ACT**

3     **SEC. 201. SHORT TITLE.**

4             This title may be cited as the “Training for Realtime  
5 Writers Act of 2003”.

6     **SEC. 202. FINDINGS.**

7             Congress makes the following findings:

8                     (1) As directed by Congress in section 723 of  
9             the Communications Act of 1934 (47 U.S.C. 613),  
10            as added by section 305 of the Telecommunications  
11            Act of 1996 (Public Law 104–104; 110 Stat. 126),  
12            the Federal Communications Commission adopted  
13            rules requiring closed captioning of most television  
14            programming, which gradually require new video  
15            programming to be fully captioned beginning in  
16            2006.

17                    (2) More than 28,000,000 Americans, or 8 per-  
18            cent of the population, are considered deaf or hard  
19            of hearing, and many require captioning services to  
20            participate in mainstream activities.

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

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

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

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

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

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

14          (6) Empirical research demonstrates that cap-  
15 tions improve the performance of individuals learn-  
16 ing to read English and, according to numerous  
17 Federal agency statistics, could benefit—

18           (A) 3,700,000 remedial readers;

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

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

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

24          (7) Over the past 5 years, student enrollment in  
25 programs that train court reporters to become

1 realtime writers has decreased significantly, causing  
2 such programs to close on many campuses.

3 **SEC. 203. AUTHORIZATION OF GRANT PROGRAM TO PRO-**  
4 **MOTE TRAINING AND JOB PLACEMENT OF**  
5 **REALTIME WRITERS.**

6 (a) IN GENERAL.—The National Telecommuni-  
7 cations and Information Administration shall make com-  
8 petitive grants to eligible entities under subsection (b) to  
9 promote training and placement of individuals, including  
10 individuals who have completed a court reporting training  
11 program, as realtime writers in order to meet the require-  
12 ments for closed captioning of video programming set  
13 forth in section 723 of the Communications Act of 1934  
14 (47 U.S.C. 613) and the rules prescribed thereunder.

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

17 (1) can document and demonstrate to the Sec-  
18 retary of Commerce that it meets minimum stand-  
19 ards of educational and financial accountability, with  
20 a curriculum capable of training realtime writers  
21 qualified to provide captioning services;

22 (2) is accredited by an accrediting agency rec-  
23 ognized by the Department of Education; and

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

1 (c) PRIORITY IN GRANTS.—In determining whether  
2 to make grants under this section, the Secretary of Com-  
3 merce shall give a priority to eligible entities that, as de-  
4 termined by the Secretary of Commerce—

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

7 (2) demonstrate the most promising collabora-  
8 tion with local educational institutions, businesses,  
9 labor organizations, or other community groups hav-  
10 ing the potential to train or provide job placement  
11 assistance to realtime writers; or

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

16 (d) DURATION OF GRANT.—A grant under this sec-  
17 tion shall be for a period of two years.

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

22 **SEC. 204. APPLICATION.**

23 (a) IN GENERAL.—To receive a grant under section  
24 203, an eligible entity shall submit an application to the  
25 National Telecommunications and Information Adminis-

1 tration at such time and in such manner as the Adminis-  
2 tration may require. The application shall contain the in-  
3 formation set forth under subsection (b).

4 (b) INFORMATION.—Information in the application of  
5 an eligible entity under subsection (a) for a grant under  
6 section 203 shall include the following:

7 (1) A description of the training and assistance  
8 to be funded using the grant amount, including how  
9 such training and assistance will increase the num-  
10 ber of realtime writers.

11 (2) A description of performance measures to  
12 be utilized to evaluate the progress of individuals re-  
13 ceiving such training and assistance in matters relat-  
14 ing to enrollment, completion of training, and job  
15 placement and retention.

16 (3) A description of the manner in which the el-  
17 igible entity will ensure that recipients of scholar-  
18 ships, if any, funded by the grant will be employed  
19 and retained as realtime writers.

20 (4) A description of the manner in which the el-  
21 igible entity intends to continue providing the train-  
22 ing and assistance to be funded by the grant after  
23 the end of the grant period, including any partner-  
24 ships or arrangements established for that purpose.

1           (5) A description of how the eligible entity will  
2           work with local workforce investment boards to en-  
3           sure that training and assistance to be funded with  
4           the grant will further local workforce goals, includ-  
5           ing the creation of educational opportunities for in-  
6           dividuals who are from economically disadvantaged  
7           backgrounds or are displaced workers.

8           (6) Additional information, if any, of the eligi-  
9           bility of the eligible entity for priority in the making  
10          of grants under section 203(c).

11          (7) Such other information as the Administra-  
12          tion may require.

13 **SEC. 205. USE OF FUNDS.**

14          (a) IN GENERAL.—An eligible entity receiving a  
15          grant under section 203 shall use the grant amount for  
16          purposes relating to the recruitment, training and assist-  
17          ance, and job placement of individuals, including individ-  
18          uals who have completed a court reporting training pro-  
19          gram, as realtime writers, including—

20                (1) recruitment;

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

23                (3) distance learning;

24                (4) development of curriculum to more effec-  
25          tively train realtime writing skills, and education in

1 the knowledge necessary for the delivery of high-  
2 quality closed captioning services;

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

6 (6) encouragement of individuals with disabil-  
7 ities to pursue a career in realtime writing; and

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

10 (b) SCHOLARSHIPS.—

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

17 (2) AGREEMENT.—Each recipient of a scholar-  
18 ship under subsection (a)(2) shall enter into an  
19 agreement with the National Telecommunications  
20 and Information Administration to provide realtime  
21 writing services for a period of time (as determined  
22 by the Administration) that is appropriate (as so de-  
23 termined) for the amount of the scholarship re-  
24 ceived.

1           (3) COURSEWORK AND EMPLOYMENT.—The  
2 Administration shall establish requirements for  
3 coursework and employment for recipients of schol-  
4 arships under subsection (a)(2), including require-  
5 ments for repayment of scholarship amounts in the  
6 event of failure to meet such requirements for  
7 coursework and employment. Requirements for re-  
8 payment of scholarship amounts shall take into ac-  
9 count the effect of economic conditions on the capac-  
10 ity of scholarship recipients to find work as realtime  
11 writers.

12       (c) ADMINISTRATIVE COSTS.—The recipient of a  
13 grant under section 203 may not use more than 5 percent  
14 of the grant amount to pay administrative costs associated  
15 with activities funded by the grant.

16       (d) SUPPLEMENT NOT SUPPLANT.—Grants amounts  
17 under this title shall supplement and not supplant other  
18 Federal or non-Federal funds of the grant recipient for  
19 purposes of promoting the training and placement of indi-  
20 viduals as realtime writers

21 **SEC. 206. REPORTS.**

22       (a) ANNUAL REPORTS.—Each eligible entity receiv-  
23 ing a grant under section 203 shall submit to the National  
24 Telecommunications and Information Administration, at  
25 the end of each year of the grant period, a report on the

1 activities of such entity with respect to the use of grant  
2 amounts during such year.

3 (b) REPORT INFORMATION.—

4 (1) IN GENERAL.—Each report of an entity for  
5 a year under subsection (a) shall include a descrip-  
6 tion of the use of grant amounts by the entity dur-  
7 ing such year, including an assessment by the entity  
8 of the effectiveness of activities carried out using  
9 such funds in increasing the number of realtime  
10 writers. The assessment shall utilize the performance  
11 measures submitted by the entity in the application  
12 for the grant under section 204(b).

13 (2) FINAL REPORT.—The final report of an en-  
14 tity on a grant under subsection (a) shall include a  
15 description of the best practices identified by the en-  
16 tity as a result of the grant for increasing the num-  
17 ber of individuals who are trained, employed, and re-  
18 tained in employment as realtime writers.

19 **SEC. 207. AUTHORIZATION OF APPROPRIATIONS.**

20 There is authorized to be appropriated to carry out  
21 this title, amounts as follows:

22 (1) \$20,000,000 for each of fiscal years 2004,  
23 2005, and 2006.

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

Passed the Senate October 22, 2003.

Attest:

*Secretary.*

108TH CONGRESS  
1ST SESSION

**S. 877**

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**AN ACT**

To regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.