

106TH CONGRESS
1ST SESSION

H. R. 3113

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

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 1999

Mrs. WILSON (for herself, Mr. GREEN of Texas, Mr. BAKER, Mr. BARRETT of Wisconsin, Mr. BLUNT, Mr. BOUCHER, Mrs. CUBIN, Mr. DEAL of Georgia, Mr. EHRlich, Mr. ENGLISH, Mr. GILLMOR, Mr. GORDON, Mr. GREENWOOD, Mr. HASTINGS of Washington, Mr. KLINK, Mr. LUTHER, Ms. MCCARTHY of Missouri, Mr. MCINTOSH, Mr. OXLEY, Mr. ROGAN, Mr. SANDLIN, Mr. SAWYER, Mr. SHIMKUS, Mr. STEARNS, Mr. STRICKLAND, and Mr. STUPAK) introduced the following bill; which was referred to the Committee on Commerce

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Unsolicited Electronic
5 Mail Act of 1999”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) CHILDREN.—The term “children” includes
2 natural children, stepchildren, adopted children, and
3 children who are wards of or in custody of the par-
4 ent, who have not attained the age of 18 and who
5 reside with the parent or are under his or her care,
6 custody, or supervision.

7 (2) 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 (3) INTERACTIVE COMPUTER SERVICE.—The
20 term “interactive computer service” has the meaning
21 given that term in section 230(e)(2) of the Commu-
22 nications Act of 1934 (47 U.S.C. 230(e)(2)).

23 (4) INITIATOR.—The term “initiator” when
24 used with respect to an electronic mail message
25 means the person who initiated the transmission of

1 such message, or caused the initiation of the trans-
2 mission of such message.

3 (5) INTERNET.—The term “Internet” has the
4 meaning given that term in section 230(e)(1) of the
5 Communications Act of 1934 (47 U.S.C. 230(e)(1)).

6 (6) INTERNET DOMAIN.—The term “Internet
7 domain” refers to a specific computer system (com-
8 monly referred to as a “host”) or collection of com-
9 puter systems attached to or able to be referenced
10 from the Internet which are assigned a specific ref-
11 erence point on the Internet (commonly referred to
12 as the “Internet domain name”) and registered with
13 an organization that registers Internet domains.

14 (7) UNSOLICITED COMMERCIAL ELECTRONIC
15 MAIL MESSAGE.—The term “unsolicited commercial
16 electronic mail message” means any electronic mail
17 message that advertises a product or service for
18 profit or for a business purpose that is sent to a re-
19 cipient with whom the initiator does not have an ex-
20 isting business relationship.

21 (8) UNSOLICITED PANDERING ELECTRONIC
22 MAIL MESSAGE.—The term “unsolicited pandering
23 electronic mail message” means any electronic mail
24 message which the recipient, in his or her sole dis-
25 cretion, believes to be erotically arousing or sexually

1 provocative that is sent to a recipient with whom the
2 initiator does not have an existing consensual rela-
3 tionship or has been sent by the initiator without the
4 express consent of the recipient.

5 **SEC. 3. FINDINGS; POLICY.**

6 (a) FINDINGS.—The Congress finds that:

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

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

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

24 (4) The receipt of unsolicited commercial elec-
25 tronic mail may result in costs to recipients who

1 cannot refuse to accept such mail and who incur
2 costs for the storage of such mail, or for the time
3 spent accessing, reviewing, and discarding such mail,
4 or for both.

5 (5) Unsolicited commercial electronic mail may
6 impose significant monetary costs on interactive
7 computer services, businesses, and educational and
8 nonprofit institutions that carry and receive such
9 mail, as there is a finite volume of mail that such
10 providers, businesses, and institutions can handle
11 without further investment. The sending of such
12 mail is increasingly and negatively affecting the
13 quality of service provided to customers of inter-
14 active computer service, and shifting costs from the
15 sender of the advertisement to the interactive com-
16 puter service.

17 (6) While some senders of unsolicited commer-
18 cial electronic mail provide simple and reliable ways
19 for recipients to reject (or “opt-out” of) receipt of
20 unsolicited commercial electronic mail from such
21 senders in the future, other senders provide no such
22 “opt-out” mechanism, or refuse to honor the re-
23 quests of recipients not to receive electronic mail
24 from such senders in the future, or both.

1 (7) An increasing number of senders of unsolic-
2 ited commercial electronic mail and unsolicited pan-
3 dering electronic mail purposefully disguise the
4 source of such mail so as to prevent recipients from
5 responding to such mail quickly and easily.

6 (8) Many senders of unsolicited commercial
7 electronic mail and unsolicited pandering electronic
8 mail collect or harvest electronic mail addresses of
9 potential recipients without the knowledge of those
10 recipients and in violation of the rules or terms of
11 service of the database from which such addresses
12 are collected.

13 (9) Because recipients of unsolicited commercial
14 electronic mail and unsolicited pandering electronic
15 mail are unable to avoid the receipt of such mail
16 through reasonable means, such mail may invade the
17 privacy of recipients.

18 (10) In legislating against certain abuses on the
19 Internet, Congress should be very careful to avoid
20 infringing in any way upon constitutionally protected
21 rights, including the rights of assembly, free speech,
22 and privacy.

23 (b) CONGRESSIONAL DETERMINATION OF PUBLIC
24 POLICY.—On the basis of the findings in subsection (a),
25 the Congress determines that—

1 (1) there is substantial government interest in
2 regulation of unsolicited commercial electronic mail
3 and unsolicited pandering electronic mail;

4 (2) interactive computer services should not be
5 compelled to bear the costs of unsolicited commercial
6 electronic mail and unsolicited pandering electronic
7 mail without compensation from the sender; and

8 (3) recipients of unsolicited commercial elec-
9 tronic mail and unsolicited pandering electronic mail
10 have a right to decline to receive or have their chil-
11 dren receive unsolicited commercial electronic mail
12 and unsolicited pandering electronic mail.

13 **SEC. 4. PROTECTIONS AGAINST UNSOLICITED ELECTRONIC**
14 **MAIL.**

15 (a) **UNSOLICITED COMMERCIAL ELECTRONIC MAIL**
16 **OPT-OUT LIST.—**

17 (1) **SELF-LISTING; MAINTENANCE OF LIST.—**

18 Any person, on his or her own behalf or on the be-
19 half of any of his or her children, may file with the
20 Federal Communication Commission a statement, in
21 such form and manner as the Federal Communica-
22 tion Commission may prescribe, that he or she de-
23 sires to receive no unsolicited commercial electronic
24 mail, unsolicited pandering electronic mail, or both.

1 The Federal Communication Commission, insofar as
2 practicable—

3 (A) shall maintain and keep current, or
4 shall by contract provide for the maintenance
5 and currency of, lists of the names and elec-
6 tronic mail addresses of persons filing such
7 statements; and

8 (B) shall (directly or by such contract)
9 make the lists (including portions thereof or
10 changes therein) available to any person, upon
11 such reasonable terms and conditions as the
12 Commission may prescribe, including the pay-
13 ment of such service charge as it determines to
14 be necessary to defray the cost of compiling and
15 maintaining the list and making it available in
16 accordance with this paragraph.

17 (2) TRANSMISSIONS TO LISTED PERSONS PRO-
18 HIBITED.—No person shall initiate the transmission
19 or cause to be initiated the transmission of any un-
20 solicited commercial electronic mail or any unsolic-
21 ited pandering electronic mail to any individual
22 whose name and electronic mail address has been on
23 such list for more than 30 days.

24 (3) OTHER USES OF LIST PROHIBITED.—No
25 person shall sell, lease, lend, exchange, or license the

1 use of, or, except for the purpose expressly author-
2 ized by this section, use any mailing list compiled in
3 whole or in part from the list maintained by the
4 Federal Communication Commission pursuant to
5 paragraph (1).

6 (b) PROTECTIONS AGAINST UNSOLICITED ELEC-
7 TRONIC MAIL.—

8 (1) RETURN ADDRESSES REQUIRED.—It shall
9 be unlawful for any person within the United States
10 to initiate the transmission of an unsolicited com-
11 mercial electronic mail message or an unsolicited
12 pandering electronic mail message unless such mes-
13 sage contains a reply electronic mail address, con-
14 spicuously displayed, to which a recipient may send
15 a reply to indicate a desire not to receive any further
16 messages.

17 (2) TRANSMISSIONS AFTER OBJECTION SUB-
18 JECT TO ORDER.—Whoever, following a request by
19 a recipient to the initiator to be removed from all
20 distribution lists, directly or by any agent or assign,
21 initiates the transmission or causes to be initiated
22 the transmission of any unsolicited commercial elec-
23 tronic mail or unsolicited pandering electronic mail,
24 or who violates paragraph (1), shall be subject to an
25 order of the Federal Communication Commission to

1 refrain from further mailings of such materials to
2 designated addresses of the recipient.

3 (3) ISSUANCE OF ORDERS.—Upon receipt of
4 notice from a recipient that he or she has received
5 a transmission that is determined by the recipient to
6 violate paragraph (1) or (2), the Federal Commu-
7 nication Commission shall issue an order, if re-
8 quested by the recipient, to the initiator thereof di-
9 recting the initiator and his or her agents or assigns
10 to refrain from further transmissions to the named
11 recipient.

12 (4) COVERAGE OF MINOR CHILDREN BY OR-
13 DERS.—Upon request of any recipient, the order of
14 the Federal Communication Commission shall in-
15 clude the names and electronic mail addresses of any
16 of the children of the recipient.

17 (5) PROHIBITIONS CONTAINED IN ORDERS.—
18 The order of the Federal Communication Commis-
19 sion shall expressly prohibit the initiator and his
20 agents or assigns from making any further trans-
21 missions of unsolicited commercial electronic mail or
22 unsolicited pandering electronic mail (as applicable)
23 to the designated recipients, effective on the 30th
24 calendar day after receipt of the order. The order
25 shall also direct the initiator and his or her agents

1 or assigns to delete immediately the names and elec-
2 tronic mail addresses of the designated recipients
3 from all mailing lists owned or controlled by the
4 initiator or his or her agents or assigns and shall
5 prohibit the initiator and his or her agents or as-
6 signs from the sale, lease, exchange, license, or other
7 transaction involving mailing lists bearing the names
8 and electronic mail addresses of the designated re-
9 cipients.

10 **SEC. 5. ENFORCEMENT.**

11 (a) PRIVATE RIGHT OF ACTION.—

12 (1) ACTIONS AUTHORIZED.—A person may, if
13 otherwise permitted by the laws or rules of court of
14 a State, bring in an appropriate court of that State
15 either or both of the following actions:

16 (A) An action based on a violation of sec-
17 tion 4 or the regulations prescribed therein to
18 enjoin such violation.

19 (B) An action to recover for actual mone-
20 tary loss from such a violation in an amount
21 equal to the greatest of—

22 (i) the amount of such actual mone-
23 tary loss;

24 (ii) \$500 for each such violation; or

1 (iii) \$25,000 per day for each day
2 such violation continues.

3 (2) ADDITIONAL REMEDIES.—If the court finds
4 that the defendant willfully or knowingly violated an
5 order given under or the regulations prescribed
6 under section 4, the court may, in its discretion, in-
7 crease the amount of the award to an amount equal
8 to not more than three times the amount available
9 under paragraph (1).

10 (b) GOVERNMENTAL ORDER.—

11 (1) ENFORCEMENT OF ORDERS.—Whenever the
12 Federal Communication Commission believes that
13 the initiator or anyone acting on his behalf has vio-
14 lated or is violating an order given under or the reg-
15 ulations prescribed under section 4, it shall serve
16 upon the initiator, by registered or certified mail, a
17 complaint stating the reasons for its belief and re-
18 quest that any response thereto be filed in writing
19 with the Federal Communication Commission within
20 15 days after the date of such service. If the Federal
21 Communication Commission, after appropriate hear-
22 ing if requested by the initiator, and without a hear-
23 ing if such a hearing is not requested, thereafter de-
24 termines that the order given has been or is being
25 violated, it is authorized to request the Attorney

1 General to make application, and the Attorney Gen-
2 eral is authorized to make application, to a district
3 court of the United States for an order directing
4 compliance with such notice.

5 (2) PRESUMPTION.—Receipt of any trans-
6 mission in violation of an order under section 4 30
7 days or more after the effective date of the order
8 shall create a rebuttable presumption that such
9 transmission was sent after such effective date.

10 (3) REMEDIES.—Any district court of the
11 United States within the jurisdiction of which any
12 transmission shall have been sent or received in vio-
13 lation of an order given under or the regulations
14 prescribed under section 4 shall have jurisdiction,
15 upon application by the Attorney General, to issue
16 an order commanding compliance with such notice.
17 Failure to observe such order may be punishable by
18 the court as contempt thereof.

19 **SEC. 6. INTERACTIVE COMPUTER SERVICE POLICIES RE-**
20 **GARDING UNSOLICITED COMMERCIAL ELEC-**
21 **TRONIC MAIL RESPECTED.**

22 (a) INTERACTIVE COMPUTER SERVICE POLICIES
23 PERMITTED.—An interactive computer service is per-
24 mitted to establish and enforce policies that are non-

1 discriminatory on the basis of content regarding unsolic-
2 ited commercial electronic mail.

3 (b) UNCOMPENSATED TRANSMISSION NOT RE-
4 QUIRED.—An interactive computer service may decline to
5 transmit unsolicited commercial electronic mail messages
6 to its subscribers without compensation from the sender
7 of the unsolicited commercial electronic mail.

8 (c) NOTICE OF VIOLATION REQUIRED.—Upon re-
9 ceipt of unsolicited electronic mail in violation of a pub-
10 licly-available policy in compliance with subsection (a), an
11 interactive computer service shall notify the violator of the
12 policy in writing and request compliance. Such notification
13 shall include the text of the policy or an appropriate ref-
14 erence to the publicly-available location of the policy.

15 (d) TRANSMISSIONS AFTER OBJECTION SUBJECT TO
16 ORDER.—Whoever, 14 days after the date of notification
17 prescribed in subsection (b), directly or by any agent or
18 assign, initiates the transmission or causes to be initiated
19 the transmission of any unsolicited commercial electronic
20 mail message in violation of a policy permitted by sub-
21 section (a) shall be subject to an order of the Federal
22 Communication Commission to refrain from further trans-
23 missions to the interactive computer service.

24 (e) ISSUANCE OF ORDERS.—Upon receipt of notice
25 from an interactive computer service that it has received

1 a transmission that is determined by the interactive com-
2 puter service to be in violation of a policy as described
3 in subsection (a), the Federal Communication Commission
4 shall issue an order, if requested by the interactive com-
5 puter service, to the initiator thereof, directing the
6 initiator and his or her agents or assigns to refrain from
7 further transmissions to the interactive computer service.

8 (f) PROHIBITIONS CONTAINED IN ORDERS.—The
9 order of the Federal Communication Commission shall ex-
10 pressly prohibit the initiator and his agents or assigns
11 from making any further transmissions to the interactive
12 computer service, effective on the 30th calendar day after
13 receipt of the order. The order shall also direct the
14 initiator and his or her agents or assigns to delete imme-
15 diately the names and electronic mail addresses of any
16 designated recipients from all mailing lists owned or con-
17 trolled by the initiator or his or her agents or assigns and
18 shall prohibit the initiator and his or her agents or assigns
19 from the sale, lease, exchange, license, or other transaction
20 involving mailing lists bearing the names or electronic mail
21 addresses of the designated recipients.

22 (g) ENFORCEMENT.—

23 (1) PRIVATE RIGHT OF ACTION.—

24 (A) ACTIONS AUTHORIZED.—An inter-
25 active computer service may, if otherwise per-

1 mitted by the laws or rules of court of a State,
2 bring in an appropriate court of that State ei-
3 ther or both of the following actions:

4 (i) An action based on a violation of
5 the order given under this section or the
6 regulations prescribed under this section to
7 enjoin such violation.

8 (ii) An action to recover for actual
9 monetary loss from such a violation in an
10 amount equal to the greatest of—

11 (I) the amount of such actual
12 monetary loss;

13 (II) \$500 for each such violation;

14 or

15 (III) \$25,000 per day for each
16 day such violation continues.

17 (B) ADDITIONAL REMEDIES.—If the court
18 finds that the defendant willfully or knowingly
19 violated the order given under or the regula-
20 tions prescribed under this subsection, the court
21 may, in its discretion, increase the amount of
22 the award to an amount equal to not more than
23 three times the amount available under sub-
24 paragraph (A).

25 (2) GOVERNMENTAL ORDER.—

1 (A) ENFORCEMENT OF ORDERS.—When-
2 ever the Federal Communication Commission
3 believes that the initiator or anyone acting on
4 his behalf has violated or is violating the order
5 given under this section, it shall serve upon the
6 initiator, by registered or certified mail, a com-
7 plaint stating the reasons for its belief and re-
8 quest that any response thereto be filed in writ-
9 ing with the Federal Communication Commis-
10 sion within 15 days after the date of such serv-
11 ice. If the Federal Communication Commission,
12 after appropriate hearing if requested by the
13 initiator, and without a hearing if such a hear-
14 ing is not requested, thereafter determines that
15 the order given has been or is being violated, it
16 is authorized to request the Attorney General to
17 make application, and the Attorney General is
18 authorized to make application, to a district
19 court of the United States for an order direct-
20 ing compliance with such notice.

21 (B) PRESUMPTION.—Receipt of any trans-
22 mission in violation of an order under this sec-
23 tion 30 days or more after the effective date of
24 the order shall create a rebuttable presumption

1 that such transmission was sent after such ef-
2 fective date.

3 (C) REMEDIES.—Any district court of the
4 United States within the jurisdiction of which
5 any transmission shall have been sent or re-
6 ceived in violation of the order provided for by
7 this section shall have jurisdiction, upon appli-
8 cation by the Attorney General, to issue an
9 order commanding compliance with such notice.
10 Failure to observe such order may be punish-
11 able by the court as contempt thereof.

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

13 (a) NO EFFECT ON CRIMINAL LAW.—Nothing in this
14 Act shall be construed to impair the enforcement of sec-
15 tion 223 or 231 of the Communications Act of 1934, chap-
16 ter 71 (relating to obscenity) or 110 (relating to sexual
17 exploitation of children) of title 18, United States Code,
18 or any other Federal criminal statute.

19 (b) STATE LAW.—This Act is in addition to and not
20 in lieu of any other provision of State law relating to the
21 transmission of electronic mail messages. Nothing in this
22 Act shall be construed to prevent any State from enacting
23 or enforcing any such State law.

1 **SEC. 8. FEDERAL COMMUNICATION COMMISSION STUDY**
2 **INTO EFFECTS OF UNSOLICITED COMMER-**
3 **CIAL ELECTRONIC MAIL.**

4 Not later than 18 months after the date of enactment
5 of this Act, the Federal Communication Commission shall
6 submit to Congress a report detailing the effectiveness of,
7 enforcement of, and the need, if any, for Congress to mod-
8 ify the provisions of this Act.

9 **SEC. 9. EFFECTIVE DATE.**

10 This provisions of this Act shall take effect 90 days
11 after the date of enactment of this Act.

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