

106TH CONGRESS
1ST SESSION

H. R. 2162

To prohibit the use of the equipment of an electronic mail service provider to send unsolicited commercial electronic mail in contravention of the provider's posted policy and to prohibit unauthorized use of Internet domain names.

IN THE HOUSE OF REPRESENTATIVES

JUNE 10, 1999

Mr. GARY MILLER of California (for himself, Mr. HOLT, Mr. METCALF, Mr. ENGLISH, Mr. UNDERWOOD, Mr. PETERSON of Minnesota, Mr. CALVERT, Mrs. MORELLA, and Mr. BAKER) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prohibit the use of the equipment of an electronic mail service provider to send unsolicited commercial electronic mail in contravention of the provider's posted policy and to prohibit unauthorized use of Internet domain names.

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 "Can Spam Act".

1 **SEC. 2. PROHIBITION REGARDING SPAMMING.**

2 (a) IN GENERAL.—No person may use the equipment
3 of an electronic mail service provider, or cause such equip-
4 ment to be used, for transmission of unsolicited commer-
5 cial electronic mail in violation of a posted policy of such
6 provider.

7 (b) RULE OF CONSTRUCTION.—This section may not
8 be construed—

9 (1) to require any electronic mail service pro-
10 vider to establish, create, or have in effect any policy
11 regarding the use of the provider's equipment; or

12 (2) to alter, limit, or restrict—

13 (A) the rights of an electronic mail service
14 provider under section 230(c)(1) of the Commu-
15 nications Act of 1934 (47 U.S.C. 230(c)(1));

16 (B) any decision of an electronic mail serv-
17 ice provider to permit or restrict access to or
18 use of its equipment; or

19 (C) any exercise of the editorial function of
20 an electronic mail service provider.

21 (c) CIVIL ACTION.—

22 (1) IN GENERAL.—In addition to any other
23 remedy available under law, an electronic mail serv-
24 ice provider who suffers damage or loss by reason of
25 a violation of subsection (a) may bring a civil action

1 for relief under paragraph (2) in an appropriate dis-
2 trict court of the United States or State court.

3 (2) RELIEF.—If the court determines that a
4 violation of subsection (a) has occurred, the court
5 shall award damages in an amount equal to the
6 greater of—

7 (A) the actual monetary loss suffered by
8 the provider as a result of the violation; and

9 (B) the amount that is equal to \$50 for
10 each use of the equipment of the provider that
11 constitutes such a violation, except that—

12 (i) the aggregate amount of damages
13 under this subparagraph for any single day
14 may not exceed \$25,000; and

15 (ii) for purposes of this subparagraph,
16 each electronic mail message that uses the
17 equipment of an electronic mail service
18 provider shall be considered to be a sepa-
19 rate use of such equipment.

20 The court may also award injunctive relief or such
21 other equitable relief as the court considers appro-
22 priate, and shall award to the prevailing party rea-
23 sonable attorney's fees and costs.

24 (d) DEFINITIONS.—For purposes of this section, the
25 following definitions shall apply:

1 (1) COMMERCIAL ELECTRONIC MAIL.—The
2 term “commercial electronic mail” means any elec-
3 tronic mail message, the principal purpose of which
4 is to promote, directly or indirectly, the sale or other
5 distribution of goods or services to the recipient.

6 (2) INTERNET.—The term “Internet” has the
7 meaning given such term in section 230(f) of the
8 Communications Act of 1934 (47 U.S.C. 230(f)).

9 (3) INTERNET DOMAIN NAME.—The term
10 “Internet domain name” has the meaning given
11 such term in section 1030(e) of title 18, United
12 States Code.

13 (4) POSTED POLICY.—The term “posted policy”
14 means a rule or set of rules established by an elec-
15 tronic mail service provider that—

16 (A) governs the use of the equipment of
17 the provider for transmission of commercial
18 electronic mail;

19 (B) explicitly provides that compliance
20 with such rule or set of rules is a condition of
21 use of such equipment of the provider by a reg-
22 istered user (including any guest of a registered
23 user); and

24 (C)(i) is clearly and conspicuously posted
25 on a World Wide Web site of an interactive

1 computer service whose Internet domain name
2 is identical to the Internet domain name of the
3 electronic mail address to which the rule or set
4 of rules applies;

5 (ii) prohibits such use and provides a send-
6 er of electronic mail notice of such prohibition
7 through the inclusion, in the initial banner mes-
8 sage that is automatically transmitted upon the
9 establishment of a connection to any standard
10 port for accepting electronic mail of any mail
11 host designated to receive mail for the provider
12 (which connection results from an attempt to
13 send any electronic mail), of a textual message
14 reading “NO UCE”;

15 (iii) provides a sender of electronic mail
16 notice of such rule or set of rules through the
17 inclusion, in the initial banner message de-
18 scribed in clause (ii), of a textual message iden-
19 tifying a publicly available location or means
20 (which may include a telephone number, World
21 Wide Web site, or electronic mail address) at or
22 by which to access the entire rule or set of
23 rules, and that is in the following form: “UCE
24 POLICY AT ____” (the blank being filled in

1 with information identifying such location or
2 means of access); or

3 (iv) is otherwise publicly posted or other-
4 wise made publicly available by the electronic
5 mail service provider in a manner reasonably
6 designed to facilitate access to such rule or set
7 of rules by persons using the equipment of the
8 provider to transmit unsolicited commercial
9 electronic mail, at the time of such use.

10 (5) REGISTERED USER.—The term “registered
11 user” means any person that maintains an electronic
12 mail address with an electronic mail service provider.

13 (6) UNSOLICITED COMMERCIAL ELECTRONIC
14 MAIL.—The term “unsolicited commercial electronic
15 mail” means any commercial electronic mail that
16 is—

17 (A) addressed to a recipient with whom the
18 initiator of the mail does not have an existing
19 business or personal relationship; and

20 (B) not sent at the request of, or with the
21 express consent of, the recipient.

22 (e) PREEMPTION.—No State or political subdivision
23 thereof may establish, continue in effect, or enforce any
24 provision of law or regulation regarding the transmission
25 of unsolicited commercial electronic mail.

1 **SEC. 3. CRIMINAL PENALTY FOR UNAUTHORIZED USE OF**
2 **INTERNET DOMAIN NAMES.**

3 (a) PROHIBITION.—Section 1030(a) of title 18,
4 United States Code, is amended—

5 (1) in paragraph (7), by inserting “or” after
6 the semicolon at the end; and

7 (2) by inserting after paragraph (7) the fol-
8 lowing new paragraph:

9 “(8) knowingly and without authorization uses
10 the Internet domain name of another person in con-
11 nection with the sending of one or more electronic
12 mail messages and, as a result of such conduct,
13 causes damage to a computer, computer system, or
14 computer network;”.

15 (b) PENALTIES.—Section 1030(c) of title 18, United
16 States Code, is amended by adding at the end the fol-
17 lowing new paragraph:

18 “(4)(A) a fine under this title, in the case of an
19 offense under subsection (a)(8) of this section, which
20 does not occur after a conviction for another offense
21 under such subsection or an attempt to commit an
22 offense punishable under this subparagraph; and

23 “(B) a fine under this title or imprisonment for
24 not more than one year, or both, in the case of an
25 offense under subsection (a)(8) which occurs after a
26 conviction for another offense under such subsection,

1 or an attempt to commit an offense punishable
2 under this subparagraph.”.

3 (c) DEFINITIONS.—Section 1030(e) of title 18,
4 United States Code, is amended—

5 (1) in paragraph (7), by striking “and” at the
6 end;

7 (2) in paragraph (8)—

8 (A) in subparagraph (A)—

9 (i) by inserting “(i) except as provided
10 in clause (ii),” after “(A)”;

11 (ii) by inserting “or” after the semi-
12 colon at the end; and

13 (iii) by adding at the end the fol-
14 lowing new clause:

15 “(ii) in the case of an offense under sub-
16 section (a)(8), causes any loss in value;”;

17 (B) by striking “and” at the end;

18 (3) in paragraph (9), by striking the period at
19 the end and inserting a semicolon; and

20 (4) by adding at the end the following new
21 paragraphs:

22 “(10) the term ‘computer network’ means any
23 system that provides communications or transfer of
24 data between one or more computers or computer
25 systems and input or output devices, including dis-

1 play terminals and printers connected by tele-
2 communication facilities;

3 “(11) the term ‘Internet’ has the meaning given
4 the term in section 230(f) of the Communications
5 Act of 1934 (47 U.S.C. 230(f)); and

6 “(12) the term ‘Internet domain name’ means
7 a globally unique, hierarchical reference to an Inter-
8 net host or service that is attached to or able to be
9 referenced from the Internet, which—

10 “(A) consists of a series of character
11 strings separated by periods, with the rightmost
12 character string specifying the top of the hier-
13 archy; and

14 “(B) is assigned and registered through a
15 centralized naming authority recognized as a
16 registrant of such references.”.

17 (d) PREEMPTION.—Section 1030 of title 18, United
18 States Code, is amended by adding at the end the fol-
19 lowing new subsection:

20 “(i) PREEMPTION.—No State or political subdivision
21 thereof may establish, continue in effect, or enforce any
22 provision of law or regulation regarding the use of the
23 Internet domain name of another person in connection

1 with the sending of one or more electronic mail mes-
2 sages.”.

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