

concept of "Electronic mail message" and "Electronic mail address" but to ensure the bill covers those e-mail messages where either the domain part is implicit or is added upon transmission or delivery of the message to a recipient by the owner of the Internet domain to facilitate delivery of the message.

Section 4 sets forth civil and criminal penalties for fraudulent, abusive and predatory commercial e-mail.

The section provides that intentionally sending multiple commercial e-mail messages from a protected computer without authorization is subject to the penalties set forth in subsection (b) of section 4. The purpose of this provision is to prevent fraudulent use of third party's computer for purposes of sending commercial e-mail.

The section also provides that materially falsifying header information in multiple commercial e-mails is subject to the penalties set forth in subsection (b) of section 4. The purpose of this provision is to prevent fraudulent practices that disguise the route or source of a commercial e-mail message.

The section also provides that using information that materially falsifies the identity of the actual registrant for five or more e-mail accounts or online user accounts, or two or more domain names, and intentionally sending commercial e-mail messages from any combination of such addresses or accounts is a violation of this Act and subject to the penalties set forth in subparagraph (b) of section 4. The term "online user accounts" is meant to include registration for an account on a website that facilitates sending of e-mail messages to other users of such website. The purpose of this provision is to prevent the fraudulent establishment of e-mail accounts, online user accounts, web addresses or domain names from or through which unwanted commercial e-mail messages are intentionally sent or routed.

The section also provides that one who falsely represents one's self to be the registrant or bona fide successor in interest to the registrant of five or more Internet protocol addresses and intentionally sends multiple commercial e-mails from such addresses is subject to the penalties set forth in subsection (b) of section 4.

Subsection (b) of section 4 sets forth criminal penalties under the legislation. An offense as defined in section 4 is punishable by a fine or imprisonment of not more than five years or both if the offense is committed in furtherance of a felony (other than one defined in this Act), or the defendant has previously been convicted of a criminal offense under this Act or under the laws of any State, for conduct involving the sending of multiple unlawful commercial e-mail messages or unauthorized access to a computer system. Other violations under section (b) are punishable by a fine or imprisonment of not more than three years, or both.

Section 4 (in newly created 18 U.S.C. 1037(d)(2)) and Section 5(a)(6) contain definitions of "materially" that apply to certain falsification violations of the Act's criminal and civil provisions. The phrase "identify, locate, or respond" as used in this definition is intended to be interpreted broadly to encompass all methods of technical falsification that impede the ability of the recipient, an ISP, the FTC or appropriate Federal regulator, the DOJ, or a State Attorney General either to identify the source of the e-mail or whether the e-mail

comes from an approved or known sender, to locate or bring enforcement action against an initiator of the e-mail, or to respond by taking countermeasures against or transmitting the e-mail message back to the initiator. Materially falsifying may also include, for example, falsifying certificates or similar sender authentication mechanisms used by a recipient or an Internet access service to identify the source of an e-mail message.

Section 5 of the legislation sets up a regulatory regime for sending commercial e-mail messages.

The section prohibits the sending of commercial e-mail messages or transactional or relationship messages with headings that are materially false or materially misleading. The section also prohibits knowingly sending commercial e-mail messages with deceptive subject headings.

The section requires a person sending commercial e-mail messages to conspicuously identify such messages as a solicitation or advertisement and provide to each recipient a conspicuous means of opting-out from receiving subsequent commercial e-mail messages. The term "clear and conspicuous" as it applies to the requirements of Section 5(a) is intended to be consistent with the meaning of that term as set forth in FTC guidance documents (e.g. "Dot-Com Disclosures" available via online publications at <http://www.ftc.gov>). It is intended that a required inclusion can meet the "clear and conspicuous" standard in a number of ways. The Act does not authorize the FTC to require the notice to be placed in a specific location such as the subject line or body of a commercial e-mail. The FTC is required by this Act to conduct a study of required labels in the subject line of commercial e-mail messages but cannot prescribe an inclusion of such label or notices in the subject line without further Congressional action. In addition, the sender of the commercial e-mail message must provide a reply e-mail address or other Internet-based mechanism, such as a clear and conspicuous link to an opt-out form, on a website that will enable recipients to reject further commercial communications within the scope of the opt-out from the sender. In addition, the sender must ensure the return e-mail address or other form of Internet-based communication is capable of receiving opt-outs for not less than 30 days from the transmission of each commercial e-mail message. We intend that senders of commercial e-mail provide a convenient, clear and simple way for consumers to opt-out of commercial e-mail. We also intend that senders of commercial e-mail devote sufficient resources to monitoring and maintaining records of consumer opt-outs so that giving effect to these consumers' opt-outs will be prompt and permanent.

The section expressly provides that senders of commercial e-mail may provide recipients with a menu of options of commercial e-mail messages that the recipient may or may not wish to receive. Such a menu must include the option of receiving no additional commercial e-mail messages. An opt-out menu gives consumers the option to continue to receive a sub-group of defined communications from a sender, if the consumer so desires.

The section provides that senders must give effect to customer opt-outs within ten business days of receiving such opt-outs. This time period is subject to regulatory modification by the FTC as described below. It further provides

that subsequent affirmative consent by a consumer (an opt-in) will allow a sender lawfully to send commercial e-mail to a consumer so consenting. The burden of proving subsequent affirmative consent should be on the sender in any dispute between a sender and a recipient of commercial e-mail.

This provision prohibits the sender, or any other person who knows that the recipient has made an opt-out request, from selling, leasing, exchanging or otherwise transferring or releasing the e-mail address of the recipient other than for purposes of compliance with this Act or any other law.

Subparagraph (5) of section 5(a) sets forth specific required inclusions in commercial e-mail. These include clear and conspicuous identification that the message is an advertisement or a solicitation; a clear and conspicuous notice of the opportunity to opt-out of receipt of subsequent commercial e-mail messages; and a valid physical postal address of the sender.

Subsection (b) of section 5 provides that harvesting e-mail addresses or generating e-mail addresses by means of a dictionary attack constitutes an aggravating factor for illegal transmission of commercial e-mail under subsection (a) of section 5. Use of automated means to generate e-mail addresses, or gathering e-mail addresses is not by itself illegal, unless the commercial e-mail messages sent to the generated or harvested addresses as a result of such activity do not comply with the requirements of subsection (a).

Subpart (2) makes reference to online user accounts. As in section 4, the term online user accounts is meant to include registration for an account on a website that facilitates sending of e-mail to other users of such website or any other protected computer not affiliated with the website.

Subsection (c) of section 5 requires the FTC to conduct a rulemaking on the 10-day period required for e-mail senders to comply with customers' opt-out requests. As technology allows, we hope that that period will be shortened.

Subsection (d) sets forth additional requirements for transmission of commercial e-mail messages containing sexually explicit material. In particular, such e-mail messages must alert recipients in the subject heading of the e-mail that the message contains sexually explicit material. Additionally, the sender must provide a means of opting-out from receipt of such messages in a manner that does not involve viewing sexually explicit images.

My views, as well as those of Ranking Member JOHN DINGELL, regarding Sections six through 16 of the Act are continued in the Statement of JOHN DINGELL submitted contemporaneously with this statement.

PERSONAL EXPLANATION

HON. PATRICK J. TIBERI

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. TIBERI. Mr. Speaker, on January 27, 2004, the flight I was scheduled to travel on from Columbus, OH to Washington D.C. was cancelled due to weather. As a result, I was unable to cast a vote on Rollcalls 6 and 7. Had I been able, I would have voted "yea" on

H.R. 3493 Medical Devices Technical Corrections Act of 2003 and H.R. 1385 to extend the authorization for the United States Postal Service to issue a special postage stamp to benefit breast cancer research.

HONORING THE CONTRIBUTIONS OF CATHOLIC SCHOOLS

HON. RAHM EMANUEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. EMANUEL. Mr. Speaker, I rise today in strong support of H. Res. 492, a resolution honoring the contributions of Catholic schools and supporting the goals of Catholic Schools Week.

The accomplishments of Catholic schools and their tremendous impact on students and communities throughout the nation is evident in the Fifth Congressional District of Illinois, where schools like St. Ferdinand Catholic Elementary, St. Patrick High School, and Notre Dame High School for Girls provide a quality education while instilling values that will serve their students throughout their lives. These schools provide strong academic curriculums and engender significant parental involvement. They not only teach students the importance of academic achievement, but also provide a balanced perspective on life that promotes responsibility, justice and social service.

Catholic schools also promote ethnic and racial diversity. Increasing numbers of children in Catholic schools in my district come from our minority communities. Students in Catholic schools achieve exceptionally high graduation rates, with increasing numbers advancing to higher education and giving back to the community through volunteer service.

It is also important to recognize that the Catholic school experience fosters more than just scholastic excellence. It provides spiritual guidance to students by encouraging fundamental ideals and an appreciation for family values, community service, and faith in their own lives. This, in turn, shapes Catholic school students into leaders of tomorrow.

I want to take this opportunity to applaud the recent accomplishments of two teachers at a Catholic school in my district—Mother Theodore Guerin High School in River Grove, Illinois—who have been recognized for their outstanding service to their students and to their community. Sister Adelaide Ortegá received the Dr. Nathan Jones Special Achievement Award last October. This honor is awarded to educators for their outstanding work with African-American students. Sister Ortegá has taught Art for thirty years and is the sponsor of the African-American Club at Mother Guerin.

I also want to recognize Mary Stephany, a social science teacher at Mother Guerin who has been chosen as an Ambassador to Chicago's Field Museum for 2003–2004. In this role, Ms. Stephany will be a liaison for her school, serve on education advisory committees to the museum, and mentor other teachers.

I thank these two outstanding individuals as well as all of the dedicated Catholic school teachers in my district for their love of learning and their devotion to their students.

Mr. Speaker, I support this important resolution and encourage Catholic schools in my

district and across the United States to continue contributing to the development of strong moral, intellectual and social values in America's young people. I thank my colleague, Representative VITTER, for introducing this resolution, and I thank the National Catholic Educational Association and the United States Conference of Catholic Bishops for their sponsorship of Catholic Schools Week.

TRIBUTE TO MARK JOSEPH LUMER

HON. ROBERT E. (BUD) CRAMER, JR.

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. CRAMER. Mr. Speaker, I would like to take this opportunity to recognize Mr. Mark J. Lumer of Huntsville, AL, for his 28 years of outstanding service in supporting the U.S. military, in particular, our soldiers in Kosovo, Bosnia, Afghanistan, and the Middle East. He is the Contracting Executive at the United States Army Space and Missile Defense Command, USASMD, in Huntsville, AL. I stand today to applaud Mark Lumer for his many years of service and loyalty in North Alabama's role in supporting our soldiers in the field.

Mark Lumer has risen through the ranks of the Federal Government and earned his current position as the Principal Assistant Responsible for Contracting at the USASMD Contracting and Acquisition Management Office with offices in Washington, DC; Huntsville, AL; Colorado Springs, CO; and Kwajalein Missile Range in the Marshall Islands. As the Director of Contracts, he oversees over \$14 billion in active contracts, annual expenditures of about \$2 billion and a staff of approximately 80.

Mark Lumer achieved the highest distinction in his field as a member of the Senior Executive Service when he was recognized by President Bush in 2001 with the "Presidential Meritorious Rank Award." In 2000, the Secretary of the Army presented Mr. Lumer with the "Decoration for Exceptional Civilian Service," the Army's highest civilian award. In addition, he has been recognized nationally for his contributions to the small business industry located in historically underutilized business zone (HUBZone) areas and received an award from the President of the National Institute of Severely Handicapped for his innovative contracting techniques that substantially increased job opportunities for handicapped individuals.

A native of New York, residing in both Virginia and Alabama, Mark Lumer has made Huntsville his home away from home. He has taken an active role in the Huntsville community serving as a board member of the U.S. Space and Rocket Center Foundation and the Space Center Museum Committee. In addition, Mark Lumer is a leader in the Huntsville community as a much sought after speaker for local organizations such as the Huntsville Association of Technical Societies, Huntsville Chapter of the National Contract Management Association, and the Huntsville Association of Small Business in Advanced Technology.

Among his many contributions to North Alabama, Mark Lumer is most recognized for his support to the small business community to include minority and women-owned businesses. He is also an advocate for historically black

colleges, universities, and minority institutions and ensures grants are awarded annually to these schools through local programs such as the Education and Employment for Technological Excellence in Aviation, Missiles, and Space.

I join his family, his wife Gail, his son Michael, his son-in-law Mo, his daughters Anne and Sarah, and friends and co-workers in congratulating him on a job well done. On behalf of the people of Alabama's 5th Congressional district, I want to express my gratitude to Mark for his extraordinary service to our community and our Nation.

HONORING COLONEL J. THOMAS MANGER, FAIRFAX COUNTY POLICE CHIEF

HON. TOM DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. TOM DAVIS of Virginia. Mr. Speaker, Mr. MORAN of Virginia, Mr. WOLF, and I rise today to honor Chief Tom Manger for 27 years of dedicated service to the Fairfax County Police Department (FCPD).

The FCPD is the largest local police department in the Commonwealth of Virginia, with 1,300 sworn and 500 civilian members. Manger first joined the FCPD in 1977 as a patrol officer. He quickly rose through the ranks, demonstrating great commitment to the safety and security of Fairfax County and the greater Washington, DC metropolitan area. Manger was promoted to deputy chief in 1995 and to acting chief in 1998. On January 10, 1999, the Fairfax Board of Supervisors appointed him chief of police.

Through impressive organization and development efforts, he brought officers closer to the people they serve, making community policing a top priority. Moreover, he held the department to the highest ethical policing standards, instituting a number of new policies to increase FCPD accountability to the public. Fairfax County's crime rate is the lowest in the country for a jurisdiction over one million people.

Over the past few years, Chief Manger has faced challenges ranging from hurricane flooding to anthrax scares. Under his leadership, the FCPD received the Fairfax County Human Rights Commission award for combating bias crimes. In 2002, when sniper shootings shocked the nation, Chief Manger tirelessly worked to capture and convict the two snipers for the murder of FBI employee Linda Franklin.

Throughout his accomplished career, Chief Manger has received numerous awards, including the Silver Medal of Valor. He significantly contributed to the FCPD tradition of excellence and will be greatly missed. We extend our heartfelt thanks for nearly three decades of service to Fairfax County and wish him the best of luck as police chief in Montgomery County, Maryland.

Mr. Speaker, Fairfax County's loss is Montgomery County's gain. Chief Manger is an outstanding police chief, and a shining example to all others in his field. We ask that our colleagues join us in applauding Chief Manger.