

(b) Congressional determination of public policy

On the basis of the findings in subsection (a), the Congress determines that—

- (1) there is a substantial government interest in regulation of commercial electronic mail on a nationwide basis;
- (2) senders of commercial electronic mail should not mislead recipients as to the source or content of such mail; and
- (3) recipients of commercial electronic mail have a right to decline to receive additional commercial electronic mail from the same source.

(Pub. L. 108-187, § 2, Dec. 16, 2003, 117 Stat. 2699.)

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE**

Pub. L. 108-187, § 16, Dec. 16, 2003, 117 Stat. 2719, provided that: “The provisions of this Act [see Short Title note below], other than section 9 [enacting section 7708 of this title], shall take effect on January 1, 2004.”

SHORT TITLE

Pub. L. 108-187, § 1, Dec. 16, 2003, 117 Stat. 2699, provided that: “This Act [enacting this chapter and section 1037 of Title 18, Crimes and Criminal Procedure, amending section 227 of Title 47, Telecommunications, and enacting provisions listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003’, or the ‘CAN-SPAM Act of 2003’.”

§ 7702. Definitions

In this chapter:

(1) Affirmative consent

The term “affirmative consent”, when used with respect to a commercial electronic mail message, means that—

- (A) the recipient expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient’s own initiative; and
- (B) if the message is from a party other than the party to which the recipient communicated such consent, the recipient was given clear and conspicuous notice at the time the consent was communicated that the recipient’s electronic mail address could be transferred to such other party for the purpose of initiating commercial electronic mail messages.

(2) Commercial electronic mail message**(A) In general**

The term “commercial electronic mail message” means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).

(B) Transactional or relationship messages

The term “commercial electronic mail message” does not include a transactional or relationship message.

(C) Regulations regarding primary purpose

Not later than 12 months after December 16, 2003, the Commission shall issue regula-

tions pursuant to section 7711 of this title defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.

(D) Reference to company or website

The inclusion of a reference to a commercial entity or a link to the website of a commercial entity in an electronic mail message does not, by itself, cause such message to be treated as a commercial electronic mail message for purposes of this chapter if the contents or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or service.

(3) Commission

The term “Commission” means the Federal Trade Commission.

(4) Domain name

The term “domain name” means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

(5) Electronic mail address

The term “electronic mail address” means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local part”) and a reference to an Internet domain (commonly referred to as the “domain part”), whether or not displayed, to which an electronic mail message can be sent or delivered.

(6) Electronic mail message

The term “electronic mail message” means a message sent to a unique electronic mail address.

(7) FTC Act

The term “FTC Act” means the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(8) Header information

The term “header information” means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message.

(9) Initiate

The term “initiate”, when used with respect to a commercial electronic mail message, means to originate or transmit such message or to procure the origination or transmission of such message, but shall not include actions that constitute routine conveyance of such message. For purposes of this paragraph, more than one person may be considered to have initiated a message.

(10) Internet

The term “Internet” has the meaning given that term in the Internet Tax Freedom Act (47 U.S.C. 151 nt).

(11) Internet access service

The term “Internet access service” has the meaning given that term in section 231(e)(4) of title 47.

(12) Procure

The term “procure”, when used with respect to the initiation of a commercial electronic mail message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one’s behalf.

(13) Protected computer

The term “protected computer” has the meaning given that term in section 1030(e)(2)(B) of title 18.

(14) Recipient

The term “recipient”, when used with respect to a commercial electronic mail message, means an authorized user of the electronic mail address to which the message was sent or delivered. If a recipient of a commercial electronic mail message has one or more electronic mail addresses in addition to the address to which the message was sent or delivered, the recipient shall be treated as a separate recipient with respect to each such address. If an electronic mail address is reassigned to a new user, the new user shall not be treated as a recipient of any commercial electronic mail message sent or delivered to that address before it was reassigned.

(15) Routine conveyance

The term “routine conveyance” means the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message for which another person has identified the recipients or provided the recipient addresses.

(16) Sender**(A) In general**

Except as provided in subparagraph (B), the term “sender”, when used with respect to a commercial electronic mail message, means a person who initiates such a message and whose product, service, or Internet web site is advertised or promoted by the message.

(B) Separate lines of business or divisions

If an entity operates through separate lines of business or divisions and holds itself out to the recipient throughout the message as that particular line of business or division rather than as the entity of which such line of business or division is a part, then the line of business or the division shall be treated as the sender of such message for purposes of this chapter.

(17) Transactional or relationship message**(A) In general**

The term “transactional or relationship message” means an electronic mail message the primary purpose of which is—

- (i) to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;

- (ii) to provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;

- (iii) to provide—

- (I) notification concerning a change in the terms or features of;

- (II) notification of a change in the recipient’s standing or status with respect to; or

- (III) at regular periodic intervals, account balance information or other type of account statement with respect to,

a subscription, membership, account, loan, or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender;

- (iv) to provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or

- (v) to deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.

(B) Modification of definition

The Commission by regulation pursuant to section 7711 of this title may modify the definition in subparagraph (A) to expand or contract the categories of messages that are treated as transactional or relationship messages for purposes of this chapter to the extent that such modification is necessary to accommodate changes in electronic mail technology or practices and accomplish the purposes of this chapter.

(Pub. L. 108–187, §3, Dec. 16, 2003, 117 Stat. 2700.)

Editorial Notes**REFERENCES IN TEXT**

This chapter, referred to in text, was in the original “this Act”, meaning Pub. L. 108–187, Dec. 16, 2003, 117 Stat. 2699, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7701 of this title and Tables.

The Federal Trade Commission Act, referred to in par. (7), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, which is classified generally to subchapter I (§41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

The Internet Tax Freedom Act, referred to in par. (10), is title XI of Pub. L. 105–277, div. C, Oct. 21, 1998, 112 Stat. 2681–719, which is set out as a note under section 151 of Title 47, Telecommunications.

Statutory Notes and Related Subsidiaries**EFFECTIVE DATE**

Section effective Jan. 1, 2004, see section 16 of Pub. L. 108–187, set out as a note under section 7701 of this title.

§ 7703. Prohibition against predatory and abusive commercial e-mail

(a) Omitted

(b) United States Sentencing Commission

(1) Directive

Pursuant to its authority under section 994(p) of title 28 and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the sentencing guidelines and policy statements to provide appropriate penalties for violations of section 1037 of title 18, as added by this section, and other offenses that may be facilitated by the sending of large quantities of unsolicited electronic mail.

(2) Requirements

In carrying out this subsection, the Sentencing Commission shall consider providing sentencing enhancements for—

(A) those convicted under section 1037 of title 18 who—

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

(I) harvesting electronic mail addresses of the users of a website, proprietary service, or other online public forum operated by another person, without the authorization of such person; and

(II) randomly generating electronic mail addresses by computer; or

(ii) knew that the commercial electronic mail messages involved in the offense contained or advertised an Internet domain for which the registrant of the domain had provided false registration information; and

(B) those convicted of other offenses, including offenses involving fraud, identity theft, obscenity, child pornography, and the sexual exploitation of children, if such offenses involved the sending of large quantities of electronic mail.

(c) Sense of Congress

It is the sense of Congress that—

(1) Spam has become the method of choice for those who distribute pornography, perpetrate fraudulent schemes, and introduce viruses, worms, and Trojan horses into personal and business computer systems; and

(2) the Department of Justice should use all existing law enforcement tools to investigate and prosecute those who send bulk commercial e-mail to facilitate the commission of Federal crimes, including the tools contained in chapters 47 and 63 of title 18 (relating to fraud and false statements); chapter 71 of title 18 (relating to obscenity); chapter 110 of title 18 (relating to the sexual exploitation of children); and chapter 95 of title 18 (relating to racketeering), as appropriate.

(Pub. L. 108–187, § 4, Dec. 16, 2003, 117 Stat. 2703.)

Editorial Notes

CODIFICATION

Section is comprised of section 4 of Pub. L. 108–187. Subsec. (a) of section 4 of Pub. L. 108–187 enacted sec-

tion 1037 of Title 18, Crimes and Criminal Procedure, and amended analysis for chapter 47 of Title 18. The provisions of subsec. (b) of section 4 of Pub. L. 108–187 are also listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE

Section effective Jan. 1, 2004, see section 16 of Pub. L. 108–187, set out as a note under section 7701 of this title.

§ 7704. Other protections for users of commercial electronic mail

(a) Requirements for transmission of messages

(1) Prohibition of false or misleading transmission information

It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message, or a transactional or relationship message, that contains, or is accompanied by, header information that is materially false or materially misleading. For purposes of this paragraph—

(A) header information that is technically accurate but includes an originating electronic mail address, domain name, or Internet Protocol address the access to which for purposes of initiating the message was obtained by means of false or fraudulent pretenses or representations shall be considered materially misleading;

(B) a “from” line (the line identifying or purporting to identify a person initiating the message) that accurately identifies any person who initiated the message shall not be considered materially false or materially misleading; and

(C) header information shall be considered materially misleading if it fails to identify accurately a protected computer used to initiate the message because the person initiating the message knowingly uses another protected computer to relay or retransmit the message for purposes of disguising its origin.

(2) Prohibition of deceptive subject headings

It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message if such person has actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that a subject heading of the message would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message (consistent with the criteria used in enforcement of section 45 of this title).

(3) Inclusion of return address or comparable mechanism in commercial electronic mail

(A) In general

It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message that does not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—