

DISCUSSION DRAFT

MAY 31, 2001

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Controlling the Assault
3 of Non-Solicited Pornography and Marketing Act of
4 2001”, or the “CANSPAM Act of 2001”.

5 **SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.**

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

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 a mechanism through which businesses advertise
22 and attract customers in the online environment.

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

7 (5) Unsolicited commercial electronic mail may
8 impose significant monetary costs on providers of
9 Internet access services, businesses, and educational
10 and nonprofit institutions that carry and receive
11 such mail, as there is a finite volume of mail that
12 such providers, businesses, and institutions can han-
13 dle without further investment.

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

22 (7) An increasing number of senders of unsolic-
23 ited commercial electronic mail purposefully disguise
24 the source of such mail so as to prevent recipients
25 from responding to such mail quickly and easily.

1 (8) An increasing number of senders of unsolic-
2 ited commercial electronic mail purposefully include
3 misleading information in the message's subject lines
4 in order to induce the recipients to view the mes-
5 sages.

6 (9) In legislating against certain abuses on the
7 Internet, Congress should be very careful to avoid
8 infringing in any way upon constitutionally protected
9 rights, including the rights of assemble, free speech,
10 and privacy.

11 (b) CONGRESSIONAL DETERMINATION OF PUBLIC
12 POLICY.—On the basis of the findings in subsection (a),
13 the Congress determines that—

14 (1) there is substantial government interest in
15 regulation of unsolicited commercial electronic mail;

16 (2) senders of unsolicited commercial electronic
17 mail should not mislead recipients as to the source
18 or content of such mail; and

19 (3) recipients of unsolicited commercial elec-
20 tronic mail have a right to decline to receive addi-
21 tional unsolicited commercial electronic mail from
22 the same source.

23 **SEC. 3. DEFINITIONS.**

24 In this Act:

1 (1) AFFIRMATIVE CONSENT.—The term “af-
2 firmative consent”, when used with respect to a
3 commercial electronic mail message, means that the
4 message is being sent with the express, consciously
5 given consent, or at the express, consciously given
6 direction of, the recipient.

7 (2) COMMERCIAL ELECTRONIC MAIL MES-
8 SAGE.—

9 (A) IN GENERAL.—The term “commercial
10 electronic mail message” means any electronic
11 mail message the primary purpose of which is
12 the commercial advertisement or promotion of a
13 commercial product or service (including con-
14 tent on an Internet website operated for a com-
15 mercial purpose).

16 (B) TRANSACTIONAL OR RELATIONSHIP
17 MESSAGES.—The term “commercial electronic
18 mail message” does not include an electronic
19 mail message the primary purpose of which is
20 to facilitate, complete, confirm, or provide or re-
21 quest information concerning, a commercial
22 transaction or ongoing commercial or employ-
23 ment relationship that the recipient has pre-
24 viously agreed to enter into with the sender.

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

12 (3) COMMISSION.—The term “Commission”
13 means the Federal Trade Commission.

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

20 (5) ELECTRONIC MAIL ADDRESS.—

21 (A) IN GENERAL.—The term “electronic
22 mail address” means a destination (commonly
23 expressed as a string of characters) to which
24 electronic mail can be sent or delivered.

1 (B) INCLUSION.—In the case of the Inter-
2 net, the term “electronic mail address” may in-
3 clude an electronic mail address consisting of a
4 user name or mailbox (commonly referred to as
5 the “local part”) and a reference to an Internet
6 domain (commonly referred to as the “domain
7 part”).

8 (6) FTC ACT.—The term “FTC Act” means
9 the Federal Trade Commission Act (15 U.S.C. 41 et
10 seq.).

11 (7) HEADER INFORMATION.—The term “header
12 information” means the source, destination, and
13 routing information attached to the beginning of an
14 electronic mail message, including the originating
15 domain name and originating electronic mail ad-
16 dress.

17 (8) IMPLIED CONSENT.—A recipient of a com-
18 mercial electronic mail message is considered for
19 purposes of paragraph (16) to have granted prior
20 implied consent to its receipt if—

21 (A) within the 5-year period ending upon
22 receipt of such message, there has been a busi-
23 ness transaction between the sender and the re-
24 cipient (including a transaction involving the

1 provision, free of charge, of information, goods,
2 or services requested by the recipient);

3 (B) the recipient was, at the time of such
4 transaction or thereafter, provided a clear and
5 conspicuous notice of an opportunity not to re-
6 ceive unsolicited commercial electronic mail
7 messages from the sender and has not exercised
8 such opportunity; and

9 (C) the recipient has not expressed, in a
10 reply submitted pursuant to section 5(a)(3) or
11 in response to any other opportunity the sender
12 may have provided to the recipient, a desire not
13 to receive such a message.

14 (9) INITIATE.—The term “initiate”, when used
15 with respect to a commercial electronic mail mes-
16 sage, means to originate such message or to procure
17 the origination of such message, but shall not in-
18 clude actions that constitute routine conveyance of
19 such message.

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

23 (11) INTERNET ACCESS SERVICE.—The term
24 “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 (12) PROTECTED COMPUTER.—The term “pro-
4 tected computer” has the meaning given that term
5 in section 1030(e)(2) of title 18, United States
6 Code.

7 (13) RECIPIENT.—The term “recipient”, when
8 used with respect to a commercial electronic mail
9 message, means the addressee of such message. If
10 an addressee of a commercial electronic mail mes-
11 sage has 1 or more electronic mail addresses in addi-
12 tion to the address to which the message was ad-
13 dressed, the addressee shall be treated as a separate
14 recipient with respect to each such address.

15 (14) ROUTINE CONVEYANCE.—The term “rou-
16 tine conveyance” means the transmission, routing,
17 relaying, handling, or storing, through an automatic
18 technical process, of an electronic mail message for
19 which another person has provided and selected the
20 recipient addresses.

21 (15) SENDER.—The term “sender”, when used
22 with respect to a commercial electronic mail mes-
23 sage, means a person who initiates such a message
24 and whose product, service, or Internet web site is
25 advertised or promoted by the message.

1 (16) UNSOLICITED COMMERCIAL ELECTRONIC
2 MAIL MESSAGE.—The term “unsolicited commercial
3 electronic mail message” means any commercial
4 electronic mail message that is sent to a recipient
5 without the recipient’s prior affirmative or implied
6 consent.

7 **SEC. 4. CRIMINAL PENALTY FOR UNSOLICITED COMMER-**
8 **CIAL ELECTRONIC MAIL CONTAINING FRAUD-**
9 **ULENT ROUTING INFORMATION.**

10 (a) IN GENERAL.—Chapter 63 of title 18, United
11 States Code, is amended by adding at the end the fol-
12 lowing:

13 **“§ 1348. Unsolicited commercial electronic mail con-**
14 **taining fraudulent transmission informa-**
15 **tion**

16 “(a) IN GENERAL.—Any person who initiates the
17 transmission, to a protected computer in the United
18 States, of an unsolicited commercial electronic mail mes-
19 sage that contains or is accompanied by header informa-
20 tion that is materially and intentionally false or misleading
21 shall be fined or imprisoned for not more than 1 year,
22 or both, under this title.

23 “(b) DEFINITIONS.—Any term used in subsection (a)
24 that is defined in section 3 of the CAN SPAM Act of 2001
25 has the meaning giving it in that section.”.

1 (b) CONFORMING AMENDMENT.—The chapter anal-
2 ysis for chapter 63 of title 18, United States Code, is
3 amended by adding at the end the following:

“1348. Unsolicited commercial electronic mail containing fraudulent routing infor-
mation”.

4 **SEC. 5. OTHER PROTECTIONS AGAINST UNSOLICITED COM-**
5 **MERCIAL ELECTRONIC MAIL.**

6 (a) REQUIREMENTS FOR TRANSMISSION OF MES-
7 SAGES.—

8 (1) PROHIBITION OF FALSE OR MISLEADING
9 TRANSMISSION INFORMATION.—It is unlawful for
10 any person to initiate the transmission, to a pro-
11 tected computer, of a commercial electronic mail
12 message that contains, or is accompanied by, header
13 information that is materially or intentionally false
14 or misleading. For purposes of this paragraph, head-
15 er information that includes an originating electronic
16 mail address that was not legitimately obtained shall
17 be considered misleading.

18 (2) PROHIBITION OF DECEPTIVE SUBJECT
19 HEADINGS.—It is unlawful for any person to initiate
20 the transmission to a protected computer of a com-
21 mercial electronic mail message with a subject head-
22 ing that such person knows would be likely to mis-
23 lead a recipient, acting reasonably under the cir-

1 cumstances, about a material fact regarding the con-
2 tents or subject matter of the message.

3 (3) INCLUSION OF RETURN ADDRESS IN COM-
4 Mercial ELECTRONIC MAIL.—

5 (A) IN GENERAL.—It is unlawful for any
6 person to initiate the transmission to a pro-
7 tected computer of a commercial electronic mail
8 message that does not contain, clearly and con-
9 spicuously displayed, a functioning return elec-
10 tronic mail address or other mechanism that—

11 (i) enables a recipient to send a reply
12 message, using the same electronic mail
13 system through which the original message
14 was received, to an electronic mail address
15 that remains capable of receiving messages
16 for no less than 30 days after the trans-
17 mission of the original message; and

18 (ii) a recipient may use to submit a
19 request not to receive any future unsolic-
20 ited commercial electronic mail messages
21 from that sender at the electronic mail ad-
22 dress where the message was received.

23 (B) MORE DETAILED REQUESTS POS-
24 SIBLE.—Nothing in subparagraph (A) prohibits
25 the sender of a commercial electronic mail mes-

1 sage from, in addition to permitting a recipient
2 to submit a request described in subparagraph
3 (A)(ii), providing the recipient the option of
4 submitting more detailed requests concerning
5 the types of unsolicited messages that the re-
6 cipient does or does not wish to receive in the
7 future from the sender or from some or all af-
8 filiates of the sender.

9 (C) TEMPORARY INABILITY TO RECEIVE
10 MESSAGES.—A return electronic mail address
11 or other mechanism does not fail to satisfy the
12 requirements of subparagraph (A) if it is unex-
13 pectedly and temporarily unable to receive mes-
14 sages due to technical or capacity problems, if
15 the problem with receiving messages is cor-
16 rected within a reasonable time period.

17 (4) PROHIBITION OF TRANSMISSION OF UNSO-
18 LICITED COMMERCIAL ELECTRONIC MAIL AFTER OB-
19 JECTION.—If a recipient makes a request to a send-
20 er, using a mechanism provided pursuant to para-
21 graph (3), not to receive some or any unsolicited
22 commercial electronic mail messages from such send-
23 er, then it is unlawful—

24 (A) for the sender to initiate the trans-
25 mission to the recipient, more than 10 days

1 after the receipt of such request, of an unsolic-
2 ited commercial electronic mail message that
3 falls within the scope of the request;

4 (B) for any person acting on behalf of the
5 sender to initiate the transmission to the recipi-
6 ent, more than 10 days after the receipt of such
7 request, of an unsolicited commercial electronic
8 mail message that such person knows or con-
9 sciously avoids knowing falls within the scope of
10 the request; or

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

19 (5) INCLUSION OF IDENTIFIER, OPT-OUT, AND
20 PHYSICAL ADDRESS IN UNSOLICITED COMMERCIAL
21 ELECTRONIC MAIL.—It is unlawful for any person to
22 initiate the transmission of any unsolicited commer-
23 cial electronic mail message to a protected computer
24 unless the message provides, in a manner that is
25 clear and conspicuous to the recipient—

1 (A) identification that the message is an
2 advertisement or solicitation;

3 (B) notice of the opportunity under para-
4 graph (3) to decline to receive further unsolic-
5 ited commercial electronic mail messages from
6 the sender; and

7 (C) a valid physical postal address of the
8 sender.

9 (b) AFFIRMATIVE DEFENSE.—A person shall not be
10 found to have violated this section if—

11 (1) that person has established and imple-
12 mented, with due care, reasonable practices and pro-
13 cedures to effectively prevent violations of this sec-
14 tion; and

15 (2) the violation of this section occurred despite
16 good faith efforts to maintain compliance with such
17 practices and procedures.

18 **SEC. 6. ENFORCEMENT.**

19 (a) ENFORCEMENT BY COMMISSION.—

20 (1) IN GENERAL.—Except as provided in para-
21 graph (b) of this section, section 5 of this Act shall
22 be enforced by the Commission under the FTC Act.
23 For purposes of such Commission enforcement, a
24 violation of section 5 of this Act shall be treated as
25 a violation of a rule under section 18 (15 U.S.C.

1 57a) of the FTC Act regarding unfair or deceptive
2 acts or practices.

3 (2) SCOPE OF COMMISSION ENFORCEMENT AU-
4 THORITY.—

5 (A) IN GENERAL.—The Commission shall
6 enforce section 5 of this Act in the same man-
7 ner, by the same means, and with the same ju-
8 risdiction, powers, and duties as though all ap-
9 plicable terms and provisions of the FTC Act
10 were incorporated into and made a part of this
11 section. Any person who violates section 5 of
12 this Act shall be subject to the penalties and
13 entitled to the privileges and immunities pro-
14 vided in the FTC Act in the same manner, by
15 the same means, and with the same jurisdic-
16 tion, powers, and duties as though all applicable
17 terms and provisions of the FTC Act were in-
18 corporated into and made a part of this section.

19 (B) LIMITATION.—Except as provided in
20 subparagraph (A), nothing in this Act shall be
21 construed to give the Commission authority
22 over activities that are otherwise outside the ju-
23 risdiction of the FTC Act.

24 (b) ENFORCEMENT BY CERTAIN OTHER AGEN-
25 CIES.—

1 (1) IN GENERAL.—Compliance with section 5 of
2 this Act shall be enforced under—

3 (A) section 8 of the Federal Deposit Insur-
4 ance Act (12 U.S.C. 1818), in the case of—

5 (i) national banks, and Federal
6 branches and Federal agencies of foreign
7 banks, by the Office of the Comptroller of
8 the Currency;

9 (ii) member banks of the Federal Re-
10 serve System (other than national banks),
11 branches and agencies of foreign banks
12 (other than Federal branches, Federal
13 agencies, and insured State branches of
14 foreign banks), commercial lending compa-
15 nies owned or controlled by foreign banks,
16 and organizations operating under section
17 25 or 25A of the Federal Reserve Act (12
18 U.S.C. 601 et seq. and 611 et seq.), by the
19 Federal Reserve Board; and

20 (iii) banks insured by the Federal De-
21 posit Insurance Corporation (other than
22 members of the Federal Reserve System)
23 and insured State branches of foreign
24 banks, by the Board of Directors of the
25 Federal Deposit Insurance Corporation;

1 (B) section 8 of the Federal Deposit Insur-
2 ance Act (12 U.S.C. 1818), by the Director of
3 the Office of Thrift Supervision, in the case of
4 a savings association the deposits of which are
5 insured by the Federal Deposit Insurance Cor-
6 poration;

7 (C) the Federal Credit Union Act (12
8 U.S.C. 1751 et seq.) by the National Credit
9 Union Administration Board with respect to
10 any Federal credit union;

11 (D) part A of subtitle VII of title 49,
12 United States Code, by the Secretary of Trans-
13 portation with respect to any air carrier or for-
14 eign air carrier subject to that part;

15 (E) the Packers and Stockyards Act, 1921
16 (7 U.S.C. 181 et seq.) (except as provided in
17 section 406 of that Act (7 U.S.C. 226, 227)),
18 by the Secretary of Agriculture with respect to
19 any activities subject to that Act;

20 (F) the Farm Credit Act of 1971 (12
21 U.S.C. 2001 et seq.) by the Farm Credit Ad-
22 ministration with respect to any Federal land
23 bank, Federal land bank association, Federal
24 intermediate credit bank, or production credit
25 association; and

1 (G) the Communications Act of 1934 (47
2 U.S.C. 151 et seq.) by the Federal Communica-
3 tions Commission with respect to any person
4 subject to the provisions of that Act.

5 (2) EXERCISE OF CERTAIN POWERS.—For the
6 purpose of the exercise by any agency referred to in
7 paragraph (1) of its powers under any Act referred
8 to in that paragraph, a violation of section 5 of this
9 Act is deemed to be a violation of a requirement im-
10 posed under that Act. In addition to its powers
11 under any provision of law specifically referred to in
12 paragraph (1), each of the agencies referred to in
13 that paragraph may exercise, for the purpose of en-
14 forcing compliance with any requirement imposed
15 under section 5 of this Act, any other authority con-
16 ferred on it by law.

17 (c) ENFORCEMENT BY STATES.—

18 (1) CIVIL ACTION.—In any case in which the
19 attorney general of a State has reason to believe
20 that an interest of the residents of that State has
21 been or is threatened or adversely affected by any
22 person engaging in a practice that violates section 5
23 of this Act, the State, as *parens patriae*, may bring
24 a civil action on behalf of the residents of the State
25 in a district court of the United States of appro-

1 appropriate jurisdiction or in any other court of com-
2 petent jurisdiction—

3 (A) to enjoin that practice; or

4 (B) to obtain damages on behalf of resi-
5 dents of the State, in an amount equal to the
6 greater of—

7 (i) the actual monetary loss suffered
8 by such residents; or

9 (ii) the amount determined under
10 paragraph (2).

11 (2) STATUTORY DAMAGES.—For purposes of
12 paragraph (1)(B)(ii), the amount determined under
13 this paragraph is the smaller of—

14 (A) the amount determined by multiplying
15 the number of willful, knowing, or negligent vio-
16 lations by an amount, in the discretion of the
17 court, of up to \$10 (with each separately ad-
18 dressed unlawful message received by such resi-
19 dents treated as a separate violation); or

20 (B) \$500,000.

21 In determining the per-violation penalty under this
22 paragraph, the court shall take into account the de-
23 gree of culpability, any history of prior such conduct,
24 ability to pay, effect on ability to continue to do

1 business, and such other matters as justice may re-
2 quire.

3 (3) TREBLE DAMAGES.—If the court finds that
4 the defendant committed the violation willfully and
5 knowingly, the court may increase the amount recov-
6 erable under paragraph (2) up to threefold.

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

11 (5) NOTICE.—

12 (A) PRE-FILING.—Before filing an action
13 under paragraph (1), an attorney general shall
14 provide to the Commission—

15 (i) written notice of that action; and

16 (ii) a copy of the complaint for that
17 action.

18 (B) CONTEMPORANEOUS.—If an attorney
19 general determines that it is not feasible to pro-
20 vide the notice required by subparagraph (A)
21 before filing the action, the notice and a copy
22 of the complaint shall be provided to the Com-
23 mission when the action is filed.

24 (6) INTERVENTION.—If the Commission re-
25 ceives notice under paragraph (4), it—

1 (A) may intervene in the action that is the
2 subject of the notice; and

3 (B) has the right—

4 (i) to be heard with respect to any
5 matter that arises in that action; and

6 (ii) to file a petition for appeal.

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

13 (A) conduct investigations;

14 (B) administer oaths or affirmations; or

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

18 (8) VENUE; SERVICE OF PROCESS.—

19 (A) VENUE.—Any action brought under
20 paragraph (1) may be brought in the district
21 court of the United States that meets applicable
22 requirements relating to venue under section
23 1391 of title 28, United States Code.

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

4 (i) is an inhabitant; or

5 (ii) maintains a physical place of busi-
6 ness.

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

17 (d) ACTION BY PROVIDER OF INTERNET ACCESS
18 SERVICE.—

19 (1) ACTION AUTHORIZED.—A provider of Inter-
20 net access service adversely affected by a violation of
21 section 5 may bring a civil action in any district
22 court of the United States with jurisdiction over the
23 defendant, or in any other court of competent juris-
24 diction, to—

1 (A) enjoin further violation by the defend-
2 ant; or

3 (B) recover damages in an amount equal
4 to the greater of—

5 (i) actual monetary loss incurred by
6 the provider of Internet access service as a
7 result of such violation; or

8 (ii) the amount determined under
9 paragraph (2).

10 (2) STATUTORY DAMAGES.—For purposes of
11 paragraph (1)(B)(ii), the amount determined under
12 this paragraph is the smaller of—

13 (A) the amount determined by multiplying
14 the number of willful, knowing, or negligent vio-
15 lations by an amount, in the discretion of the
16 court, of up to \$10 (with each separately ad-
17 dressed unlawful message carried over the fa-
18 cilities of the provider of Internet access service
19 treated as a separate violation); or

20 (B) \$500,000.

21 In determining the per-violation penalty under this
22 paragraph, the court shall take into account the de-
23 gree of culpability, any history of prior such conduct,
24 ability to pay, effect on ability to continue to do

1 business, and such other matters as justice may re-
2 quire.

3 (3) TREBLE DAMAGES.—If the court finds that
4 the defendant committed the violation willfully and
5 knowingly, the court may increase the amount recov-
6 erable under paragraph (2) up to threefold.

7 (4) ATTORNEY FEES.—In any action brought
8 pursuant to paragraph (1), the court may, in its dis-
9 cretion, require an undertaking for the payment of
10 the costs of such action, and assess reasonable costs,
11 including reasonable attorneys' fees, against any
12 party.

13 (e) EVIDENTIARY PRESUMPTION.—In any action
14 brought under this Act in which a violation of section 5
15 is alleged, a showing that a recipient has submitted a com-
16 plaint about a commercial electronic mail message to an
17 electronic mail address maintained and publicized by the
18 provider of Internet access service for the purpose of re-
19 ceiving complaints about unsolicited commercial electronic
20 mail messages creates a rebuttable presumption that the
21 message in question was unsolicited within the meaning
22 of this Act.

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

24 (a) FEDERAL LAW.—

1 (1) Nothing in this Act shall be construed to
2 impair the enforcement of section 223 or 231 of the
3 Communications Act of 1934 (47 U.S.C. 223 or
4 231, respectively), chapter 71 (relating to obscenity)
5 or 110 (relating to sexual exploitation of children) of
6 title 18, United States Code, or any other Federal
7 criminal statute.

8 (2) Nothing in this Act shall be construed to af-
9 fect in any way the Commission's authority to bring
10 enforcement actions under FTC Act for materially
11 false or deceptive representations in commercial elec-
12 tronic mail messages.

13 (b) STATE LAW.—No State or local government may
14 impose any civil liability for commercial activities or ac-
15 tions in interstate or foreign commerce in connection with
16 an activity or action described in section 5 of this Act that
17 is inconsistent with, or more restrictive than, the treat-
18 ment of such activities or actions under this Act, except
19 that this Act shall not preempt any civil action under—

20 (1) State trespass, contract, or tort law; or

21 (2) any provision of Federal, State, or local
22 criminal law or any civil remedy available under
23 such law that relates to acts of computer fraud per-
24 petrated by means of the unauthorized transmission
25 of unsolicited commercial electronic mail messages,

1 provided that the mere sending of unsolicited com-
2 mercial electronic mail in a manner that complies
3 with this Act shall not constitute an act of computer
4 fraud for purposes of this subparagraph.

5 (c) NO EFFECT ON POLICIES OF PROVIDERS OF
6 INTERNET ACCESS SERVICE.—Nothing in this Act shall
7 be construed to have any effect on the lawfulness or un-
8 lawfulness, under any other provision of law, of the adop-
9 tion, implementation, or enforcement by a provider of
10 Internet access service of a policy of declining to transmit,
11 route, relay, handle, or store certain types of electronic
12 mail messages.

13 **SEC. 8. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL**
14 **ELECTRONIC MAIL.**

15 Not later than 24 months after the date of the enact-
16 ment of this Act, the Commission, in consultation with the
17 Department of Justice and other appropriate agencies,
18 shall submit a report to the Congress that provides a de-
19 tailed analysis of the effectiveness and enforcement of the
20 provisions of this Act and the need (if any) for the Con-
21 gress to modify such provisions.

22 **SEC. 9 SEPARABILITY.**

23 If any provision of this Act or the application thereof
24 to any person or circumstance is held invalid, the remain-

1 der of this Act and the application of such provision to
2 other persons or circumstances shall not be affected.

3 **SEC. 10. EFFECTIVE DATE.**

4 The provisions of this Act shall take effect 120 days
5 after the date of the enactment of this Act.

