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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

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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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Can Spam Act".

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SEC. 2. PROHIBITION REGARDING SPAMMING.

(a) IN GENERAL.—No person may use the equipment of an electronic mail service provider, or cause such equipment to be used, for transmission of unsolicited commercial electronic mail in violation of a posted policy of such provider.

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

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

(2) to alter, limit, or restrict—

(A) the rights of an electronic mail service provider under section 230(c)(1) of the Communications Act of 1934 (47 U.S.C. 230(c)(1));

(B) any decision of an electronic mail service provider to permit or restrict access to or use of its equipment; or

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

(c) CIVIL ACTION.—

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

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for relief under paragraph (2) in an appropriate district court of the United States or State court.

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

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

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

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

(ii) for purposes of this subparagraph, each electronic mail message that uses the equipment of an electronic mail service provider shall be considered to be a separate use of such equipment.

The court may also award injunctive relief or such other equitable relief as the court considers appropriate, and shall award to the prevailing party reasonable attorney's fees and costs.

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

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(1) COMMERCIAL ELECTRONIC MAIL.—The term "commercial electronic mail" means any electronic mail message, the principal purpose of which is to promote, directly or indirectly, the sale or other distribution of goods or services to the recipient.

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

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

(4) POSTED POLICY.—The term "posted policy" means a rule or set of rules established by an electronic mail service provider that—

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

(B) explicitly provides that compliance with such rule or set of rules is a condition of use of such equipment of the provider by a registered user (including any guest of a registered user); and

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

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

(ii) prohibits such use and provides a sender of electronic mail notice of such prohibition through the inclusion, in the initial banner message that is automatically transmitted upon the establishment of a connection to any standard port for accepting electronic mail of any mail host designated to receive mail for the provider (which connection results from an attempt to send any electronic mail), of a textual message reading "NO UCE";

(iii) provides a sender of electronic mail notice of such rule or set of rules through the inclusion, in the initial banner message described in clause (ii), of a textual message identifying a publicly available location or means (which may include a telephone number, World Wide Web site, or electronic mail address) at or by which to access the entire rule or set of rules, and that is in the following form: "UCE POLICY AT ____" (the blank being filled in

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

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

(5) REGISTERED USER.—The term "registered user" means any person that maintains an electronic mail address with an electronic mail service provider.

(6) UNSOLICITED COMMERCIAL ELECTRONIC MAIL.—The term "unsolicited commercial electronic mail" means any commercial electronic mail that is—

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

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

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

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

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

(1) in paragraph (7), by inserting "or" after the semicolon at the end; and

(2) by inserting after paragraph (7) the following new paragraph:

"(8) knowingly and without authorization uses the Internet domain name of another person in connection with the sending of one or more electronic mail messages and, as a result of such conduct, causes damage to a computer, computer system, or computer network;".

(b) PENALTIES.—Section 1030(c) of title 18, United States Code, is amended by adding at the end the following new paragraph:

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

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

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or an attempt to commit an offense punishable under this subparagraph.".

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

(1) in paragraph (7), by striking "and" at the end;

(2) in paragraph (8)—

(A) in subparagraph (A)—

(i) by inserting "(i) except as provided in clause (ii)," after "(A)";

(ii) by inserting "or" after the semicolon at the end; and

(iii) by adding at the end the following new clause:

"(ii) in the case of an offense under subsection (a)(8), causes any loss in value;"; and

(B) by striking "and" at the end;

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

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

"(10) the term 'computer network' means any system that provides communications or transfer of data between one or more computers or computer systems and input or output devices, including dis-

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play terminals and printers connected by telecommunication facilities;

"(11) the term 'Internet' has the meaning given the term in section 230(f) of the Communications Act of 1934 (47 U.S.C. 230(f)); and

"(12) the term 'Internet domain name' means a globally unique, hierarchical reference to an Internet host or service that is attached to or able to be referenced from the Internet, which—

"(A) consists of a series of character strings separated by periods, with the rightmost character string specifying the top of the hierarchy; and

"(B) is assigned and registered through a centralized naming authority recognized as a registrant of such references.".

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

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

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with the sending of one or more electronic mail messages.".

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