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106TH CONGRESS  
1ST SESSION

# H. R. 3024

To amend the Communications Act of 1934 to restrict the transmission of unsolicited electronic mail messages.

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## IN THE HOUSE OF REPRESENTATIVES

OCTOBER 5, 1999

Mr. SMITH of New Jersey introduced the following bill; which was referred to the Committee on Commerce

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## A BILL

To amend the Communications Act of 1934 to restrict the transmission of unsolicited electronic mail messages.

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 “Netizens Protection  
5 Act of 1999”.

6 **SEC. 2. PROHIBITION OF INITIATION OF TRANSMISSION OF**  
7 **UNSOLICITED ELECTRONIC MAIL.**

8 (a) IN GENERAL.—No person may initiate, or cause  
9 to be initiated, the transmission of an unsolicited elec-

1 tronic mail message in or affecting interstate or foreign  
2 commerce if the message—

3 (1) does not contain the name, physical ad-  
4 dress, and electronic mail address of the person who  
5 initiates the transmission of the message;

6 (2) does not provide an electronic method by  
7 which the recipient of the message can contact the  
8 person who initiated the transmission of the message  
9 to request that no further such messages be sent,  
10 which method may include electronic mail or Inter-  
11 net access; or

12 (3)(A) is part of a bulk transmission of such  
13 messages; and

14 (B) includes information that is located in the  
15 subject line of the message and is false or misleading  
16 with respect to the body of the message.

17 (b) TREATMENT OF STATE LAWS.—Subsection (a)  
18 may not be construed to preempt any State law relating  
19 to unsolicited commercial electronic mail.

20 (c) PRIVATE RIGHT OF ACTION.—

21 (1) CAUSE OF ACTION.—Any person adversely  
22 affected by a violation of subsection (a) may, within  
23 1 year after discovery of the violation, bring a civil  
24 action against a person who violates such subsection  
25 in a district court of the United States or in any

1 other court of competent jurisdiction, for the district  
2 or jurisdiction in which the unsolicited electronic  
3 mail message was received or in which the defendant  
4 is located.

5 (2) RELIEF.—In a civil action under this sub-  
6 section, the court may—

7 (A) grant temporary and final injunctions  
8 on such terms as it may deem reasonable to  
9 prevent or restrain violations of subsection (a);

10 (B) award damages as described in para-  
11 graph (3); and

12 (C) direct the recovery of full costs, includ-  
13 ing awarding reasonable attorneys' fees to an  
14 aggrieved party who prevails.

15 (3) DAMAGES.—

16 (A) AMOUNT.—The amount of damages in  
17 an action under this subsection for a violation  
18 of subsection (a) may not exceed \$500 for each  
19 unsolicited electronic mail message the trans-  
20 mission of which was initiated in violation of  
21 such subsection. The court shall treble the  
22 amount recovered under the preceding sentence  
23 for any transmission of an unsolicited electronic  
24 mail message to the aggrieved party in violation  
25 of subsection (a) that the court finds was initi-

1           ated after the aggrieved party contacted the  
2           initiator of the transmission to request that the  
3           initiator not initiate further transmissions of  
4           such mail to such person.

5                   (B) RELATIONSHIP TO OTHER DAM-  
6           AGES.—Damages awarded under this para-  
7           graph for a violation under subsection (a) are  
8           in addition to any other damages awardable for  
9           the violation under any other provision of law.

10 **SEC. 3. RESTRICTIONS AGAINST USE OF INTERACTIVE**  
11                   **COMPUTER SERVICES TO INITIATE UNSOLIC-**  
12                   **ITED ELECTRONIC MAIL.**

13           (a) STATEMENT OF POLICY.—Each interactive com-  
14           puter service provider shall make available to each cus-  
15           tomer of the interactive computer service of the provider  
16           the policy of the provider regarding unsolicited electronic  
17           mail, including any option the provider may have for the  
18           customer to elect to receive or not to receive unsolicited  
19           electronic mail and any other options customers may exer-  
20           cise to restrict the receipt of unsolicited electronic mail.  
21           Such policy shall be set forth in writing, in clear and un-  
22           derstandable language, in the agreement for the provision  
23           of the interactive computer service by the customer.

24           (b) VIOLATION OF POLICY AGAINST BULK MAIL.—  
25           No customer of an interactive computer service provider

1 may use the equipment or facilities of the provider to ini-  
2 tiate, or cause to be initiated, the bulk transmission of  
3 an unsolicited electronic mail message if the policy re-  
4 ferred to in subsection (a) of the provider prohibits the  
5 initiation of such bulk transmissions.

6 (c) CAUSE OF ACTION.—

7 (1) IN GENERAL.—In addition to any other  
8 remedies available under any other provision of law,  
9 any interactive computer service provider adversely  
10 affected by a violation of subsection (b) may bring  
11 a civil action in a district court of the United States  
12 against a person who violates such subsection.

13 (2) RELIEF.—

14 (A) IN GENERAL.—An action may be  
15 brought under paragraph (1) to enjoin a viola-  
16 tion of subsection (b), to obtain damages as  
17 specified in subparagraph (B), or to obtain such  
18 further and other relief as the court considers  
19 appropriate.

20 (B) DAMAGES.—The amount of damages  
21 in an action under this subsection for a viola-  
22 tion of subsection (b) may not exceed \$500 for  
23 each unsolicited electronic mail message the  
24 transmission of which was initiated in violation  
25 of such subsection.

1 (C) RELATIONSHIP TO OTHER DAMAGES.—

2 Damages awarded under this paragraph for a  
3 violation of subsection (b) are in addition to  
4 any other damages awardable for the violation  
5 under any other provision of law.

6 (D) COST AND FEES.—The court may, in  
7 issuing any final order in any action brought  
8 under this subsection, award costs of suit, rea-  
9 sonable costs of obtaining service of process,  
10 reasonable attorney fees, and expert witness  
11 fees for the prevailing party.

12 (3) VENUE; SERVICE OF PROCESS.—Any civil  
13 action brought under this subsection in a district  
14 court of the United States may be brought in the  
15 district in which the defendant or in which the inter-  
16 active computer service provider is located, is an in-  
17 habitant, or transacts business or wherever venue is  
18 proper under section 1391 of title 28, United States  
19 Code. Process in such an action may be served in  
20 any district in which the defendant is an inhabitant  
21 or in which the defendant may be found.

22 **SEC. 4. PROTECTION OF INTERACTIVE COMPUTER SERV-**  
23 **ICE PROVIDERS.**

24 (a) IN GENERAL.—An interactive computer service  
25 provider who, in good faith, takes action to restrict or pre-

1 vent the receipt of unsolicited electronic mail by its cus-  
2 tomers shall not be liable for any harm resulting from fail-  
3 ure to prevent such receipt.

4 (b) **RULE OF CONSTRUCTION.**—Subsection (a) may  
5 not be construed to prevent or restrict the liability of any  
6 interactive computer service provider for any failure to  
7 provide any services other than restriction or prevention  
8 for customers of receipt of unsolicited electronic mail.

9 **SEC. 5. DEFINITIONS.**

10 For purposes of this Act, the following definitions  
11 shall apply:

12 (1) **BULK.**—The term “bulk” means, with re-  
13 spect to the transmission of an electronic mail mes-  
14 sage, the transmission, within a 7-day period, of  
15 such a message or messages that are identical or  
16 substantially similar to 50 or more intended recipi-  
17 ents.

18 (2) **INITIATE THE TRANSMISSION.**—The term  
19 “initiate the transmission” means, with respect to  
20 an electronic mail, to originate the message, and  
21 does not include the actions of any interactive com-  
22 puter service whose facilities or services are used  
23 only to relay, handle, or otherwise retransmit the  
24 message.



1           (3) INTERACTIVE COMPUTER SERVICE.—The  
2           term “interactive computer service” has the meaning  
3           given such term in section 230(e) of the Commu-  
4           nications Act of 1934 (47 U.S.C. 230(e)).

5           (4) INTERACTIVE COMPUTER SERVICE PRO-  
6           VIDER.—The term “interactive computer service  
7           provider” means the provider of an interactive com-  
8           puter service.

9           (5) RECIPIENT.—The term “recipient” means,  
10          with respect to an electronic mail message, an indi-  
11          vidual electronic mail address to which the message  
12          is directed, without regard to whether such address  
13          corresponds to a person, computer, list server, or  
14          other automated electronic device.

15          (6) UNSOLICITED ELECTRONIC MAIL.—The  
16          term “unsolicited electronic mail” means electronic  
17          mail unless such mail is transmitted (A) to any per-  
18          son with that person’s prior express invitation or  
19          permission, or (B) to any person with whom the  
20          sender has an established business or personal rela-  
21          tionship.

22 **SEC. 6. EFFECTIVE DATE.**

23          This Act shall take effect upon the expiration of the  
24          60-day period beginning on the date of the enactment of

- 1 this Act and shall apply to transmissions of electronic mail
- 2 initiated after the expiration of such period.

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## **DOCUMENT NO. 32**

