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108TH CONGRESS
1ST SESSION

S. 1293

To criminalize the sending of predatory and abusive e-mail.

IN THE SENATE OF THE UNITED STATES

JUNE 19, 2003

Mr. HATCH (for himself, Mr. LEAHY, Mr. SCHUMER, Mr. GRASSLEY, Mrs. FEINSTEIN, Mr. DEWINE, and Mr. EDWARDS) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To criminalize the sending of predatory and abusive e-mail.

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 “Criminal Spam Act
5 of 2003”.

6 **SEC. 2. PROHIBITION AGAINST PREDATORY AND ABUSIVE**

7 **COMMERCIAL E-MAIL.**

8 (a) OFFENSE.—

9 (1) IN GENERAL.—Chapter 47 of title 18,
10 United States Code, is amended by adding at the
11 end the following new section:

1 **“§ 1037. Fraud and related activity in connection**
2 **with electronic mail**

3 “(a) IN GENERAL.—Whoever, in or affecting inter-
4 state or foreign commerce, knowingly—

5 “(1) accesses a protected computer without au-
6 thorization, and intentionally initiates the trans-
7 mission of multiple commercial electronic mail mes-
8 sages from or through such computer;

9 “(2) uses a protected computer to relay or re-
10 transmit multiple commercial electronic mail mes-
11 sages, with the intent to deceive or mislead recipi-
12 ents, or any Internet access service, as to the origin
13 of such messages;

14 “(3) falsifies header information in multiple
15 commercial electronic mail messages and inten-
16 tionally initiates the transmission of such messages;
17 or

18 “(4) registers, using information that falsifies
19 the identity of the actual registrant, for 5 or more
20 electronic mail accounts or online user accounts or
21 2 or more domain names, and intentionally initiates
22 the transmission of multiple commercial electronic
23 mail messages from such accounts or domain names;
24 or conspires to do so, shall be punished as provided in
25 subsection (b).

1 “(b) PENALTIES.—The punishment for an offense
2 under subsection (a) is—

3 “(1) a fine under this title, imprisonment for
4 not more than 5 years, or both, if—

5 “(A) the offense is committed in further-
6 ance of any felony under the laws of the United
7 States or of any State; or

8 “(B) the defendant has previously been
9 convicted under this section or section 1030, or
10 under the law of any State for conduct involv-
11 ing the transmission of multiple commercial
12 electronic mail messages or unauthorized access
13 to a computer system;

14 “(2) a fine under this title, imprisonment for
15 not more than 3 years, or both, if—

16 “(A) the offense is an offense under sub-
17 section (a)(1);

18 “(B) the offense is an offense under sub-
19 section (a)(4) and involved 20 or more falsified
20 electronic mail or online user account registra-
21 tions, or 10 or more falsified domain name reg-
22 istrations;

23 “(C) the volume of electronic mail mes-
24 sages transmitted in furtherance of the offense
25 exceeded 2,500 during any 24-hour period,

1 25,000 during any 30-day period, or 250,000
2 during any 1-year period;

3 “(D) the offense caused loss to 1 or more
4 persons aggregating \$5,000 or more in value
5 during any 1-year period;

6 “(E) as a result of the offense any indi-
7 vidual committing the offense obtained anything
8 of value aggregating \$5,000 or more during any
9 1-year period; or

10 “(F) the offense was undertaken by the de-
11 fendant in concert with 3 or more other persons
12 with respect to whom the defendant occupied a
13 position of organizer or leader; and

14 “(3) a fine under this title or imprisonment for
15 not more than 1 year, or both, in any other case.

16 “(c) FORFEITURE.—A person who is convicted of an
17 offense under this section shall forfeit to the United States
18 such person’s interest in—

19 “(1) any property, real or personal, constituting
20 or traceable to gross profits or other proceeds ob-
21 tained from such offense; and

22 “(2) any equipment, software, or other tech-
23 nology used or intended to be used to commit or to
24 promote the commission of such offense.

25 “(d) CIVIL REMEDIES.—

1 “(1) IN GENERAL.—The Attorney General, or
2 any person engaged in the business of providing an
3 Internet access service to the public aggrieved by
4 reason of a violation of subsection (a), may com-
5 mence a civil action against the violator in any ap-
6 propriate United States District Court for the relief
7 set forth in paragraphs (2) and (3). No action may
8 be brought under this subsection unless such action
9 is begun within 2 years of the date of the act which
10 is the basis for the action.

11 “(2) ATTORNEY GENERAL ACTION.—In an ac-
12 tion by the Attorney General under paragraph (1),
13 the court may award appropriate relief, including
14 temporary, preliminary, or permanent injunctive re-
15 lief. The court may also assess a civil penalty in an
16 amount not exceeding \$25,000 per day of violation,
17 or not less than \$2 or more than \$8 per electronic
18 mail message initiated in violation of subsection (a),
19 as the court considers just.

20 “(3) OTHER ACTIONS.—In any other action
21 under paragraph (1), the court may award appro-
22 priate relief, including temporary, preliminary, or
23 permanent injunctive relief, and damages in an
24 amount equal to the greater of—

1 “(A) the actual damages suffered by the
2 Internet access service as a result of the viola-
3 tion, and any receipts of the violator that are
4 attributable to the violation and are not taken
5 into account in computing actual damages; or

6 “(B) statutory damages in the sum of
7 \$25,000 per day of violation, or not less than
8 \$2 or more than \$8 per electronic mail message
9 initiated in violation of subsection (a), as the
10 court considers just.

11 “(e) DEFINITIONS.—In this section:

12 “(1) COMMERCIAL ELECTRONIC MAIL MES-
13 SAGE.—The term ‘commercial electronic mail mes-
14 sage’ means any electronic mail message the primary
15 purpose of which is the commercial advertisement or
16 promotion of a commercial product or service (in-
17 cluding content on an Internet website or online site
18 operated for a commercial purpose).

19 “(2) COMPUTER AND PROTECTED COM-
20 PUTER.—The terms ‘computer’ and ‘protected com-
21 puter’ have the meaning given those terms in section
22 1030(e) of this title.

23 “(3) DOMAIN NAME.—The term ‘domain name’
24 means any alphanumeric designation which is reg-
25 istered with or assigned by any domain name reg-

1 istrar, domain name registry, or other domain name
2 registration authority, and that is included in an
3 electronic mail message.

4 “(4) **HEADER INFORMATION.**—The term ‘head-
5 er information’ means the source, destination, rout-
6 ing information, or information authenticating the
7 sender, associated with an electronic mail message,
8 including but not limited to the originating domain
9 name, originating electronic mail address, informa-
10 tion regarding any part of the route that an elec-
11 tronic mail message travels or appears to travel on
12 the Internet or on an online service, or other authen-
13 ticating information.

14 “(5) **INITIATE.**—The term ‘initiate’ means to
15 originate an electronic mail message or to procure
16 the origination of such message, regardless of wheth-
17 er the message reaches its intended recipients, and
18 does not include the actions of an Internet access
19 service used by another person for the transmission
20 of an electronic mail message for which another per-
21 son has provided and selected the recipient electronic
22 mail addresses.

23 “(6) **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 “(7) LOSS.—The term ‘loss’ has the meaning
4 given that term in section 1030(e) of this title.

5 “(8) MESSAGE.—The term ‘message’ means
6 each electronic mail message addressed to a discrete
7 addressee.

8 “(9) MULTIPLE.—The term ‘multiple’ means
9 more than 100 electronic mail messages during a
10 24-hour period, more than 1,000 electronic mail
11 messages during a 30-day period, or more than
12 10,000 electronic mail messages during a 1-year pe-
13 riod.”.

14 (2) CONFORMING AMENDMENT.—The chapter
15 analysis for chapter 47 of title 18, United States
16 Code, is amended by adding at the end the fol-
17 lowing:

“Sec.
“1037. Fraud and related activity in connection with electronic mail.”.

18 (b) UNITED STATES SENTENCING COMMISSION.—

19 (1) DIRECTIVE.—Pursuant to its authority
20 under section 994(p) of title 28, United States Code,
21 and in accordance with this section, the United
22 States Sentencing Commission shall review and, as
23 appropriate, amend the sentencing guidelines and
24 policy statements to provide appropriate penalties

1 for violations of section 1037 of title 18, United
2 States Code, as added by this section.

3 (2) REQUIREMENTS.—In carrying out this sub-
4 section, the Sentencing Commission shall consider
5 providing sentencing enhancements for those con-
6 victed under section 1037 of title 18, United States
7 Code, who—

8 (A) obtained electronic mail addresses
9 through improper means, including—

10 (i) harvesting electronic mail address-
11 es of the users of a website, proprietary
12 service, or other online public forum oper-
13 ated by another person, without the au-
14 thorization of such person; and

15 (ii) randomly generating electronic
16 mail addresses by computer; or

17 (B) knew that the commercial electronic
18 mail messages involved in the offense contained
19 or advertised an Internet domain for which the
20 registrant of the domain had provided false reg-
21 istration information.

22 **SEC. 3. REPORT AND SENSE OF CONGRESS REGARDING**
23 **INTERNATIONAL SPAM.**

24 (a) FINDINGS.—Congress finds the following:

1 (1) The Internet is a global communications
2 medium.

3 (2) Commercial e-mail sent in violation of this
4 Act can be sent from virtually anywhere in the
5 world.

6 (3) As domestic deterrence and enforcement
7 against predatory and abusive commercial e-mail im-
8 proves, there is a risk that predatory and abusive
9 spammers will move their activities abroad and spam
10 into the United States.

11 (4) As with other forms of cyber-crime, inter-
12 national cooperation of law enforcement officials is
13 essential to combat predatory and abusive spam.

14 (b) REPORT.—The Department of Justice and the
15 Department of State shall report to Congress within 18
16 months of the date of enactment of this Act regarding the
17 status of their efforts to achieve international cooperation
18 in the investigation and prosecution of spammers who en-
19 gage in conduct that violates this Act, including the juris-
20 dictions involved and the outcomes of any prosecutions,
21 and any recommendations for addressing predatory and
22 abusive spam sent to the United States from other coun-
23 tries.

24 (c) SENSE OF CONGRESS.—It is the sense of Con-
25 gress that the Department of Justice and the Department

1 of State, as part of their efforts to improve investigation
2 and prosecution of international cyber-crime, should work
3 through international fora for the cooperation of other
4 countries in investigating and prosecuting predatory and
5 abusive spammers who engage in conduct that violates this
6 Act.

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