The tax writers should have completed their work on tax provisions in time to meet that schedule. We will provide conference language to all House and Senate conferees, Republican and Democrat, 48 hours in advance of the conference. We plan to make the language public 48 hours before the conference.

We see no reason that final passage of this bill cannot occur soon after the conference. Members of Congress have spent the past 3 years negotiating the resolution of a difficult regional issue and many national issues that pertain to energy and America's future. We are on the verge of completing work on a comprehensive Energy bill for the first time since 1992. This Senator believes this bill is even more significant than the 1992 bill.

To repeat, Chairman BILLY TAUZIN and myself, as chairman of our committee in the Senate, are announcing we will have a meeting of the conferees on the Energy bill on October 28, Tuesday, 10 a.m., in Dirksen 106. We have scheduled this conference for Tuesday morning, but implicit in my statement is that the tax writers have not completed their work on the tax provisions, but the two chairmen are suggesting in this announcement they should have their work completed in time for us to release that with the conference report, since it is part of it, without which there is not a conference, without which we do not know whether the rest of the work is valid or has to be changed.

Everyone who is interested at the leadership level is working to get this tax provision done. I want to repeat, it is not done. We do expect it to be done in time for this announcement to be effective.

CAN-SPAM ACT OF 2003

Mr. MCCAIN. Madam President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 209, S. 877; provided further that the committee amendment be agreed to and be considered original text for the purpose of further amendment.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 877) to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

The PRESIDING OFFICER. Is there objection to the Senator's request? Without objection, it is so ordered.

The Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with an amendment to strike all after enacting clause and insert in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 877

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 "Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003", or the "CAN-SPAM Act of 2003".

[SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.

[(a) FINDINGS.- The Congress finds the following:

(1) There is a right of free speech on the Internet.

[(2) The Internet has increasingly become a critical mode of global communication and now presents unprecedented opportunities for the development and growth of global commerce and an integrated worldwide economy.

[(3) In order for global commerce on the Internet to reach its full potential, individuals and entities using the Internet and other online services should be prevented from engaging in activities that prevent other users and Internet service providers from having a reasonably predictable, efficient, and economical online experience.

[(4) Unsolicited commercial electronic mail can be a mechanism through which businesses advertise and attract customers in the online environment.

[(5) The receipt of unsolicited commercial electronic mail may result in costs to recipients who cannot refuse to accept such mail and who incur costs for the storage of such mail, or for the time spent accessing, reviewing, and discarding such mail, or for both.

[(6) Unsolicited commercial electronic mail may impose significant monetary costs on providers of Internet access services, businesses, and educational and nonprofit institutions that carry and receive such mail, as there is a finite volume of mail that such providers, businesses, and institutions can handle without further investment in infrastructure.

[(7) Some unsolicited commercial electronic mail contains material that many recipients may consider vulgar or pornographic in nature.

[(8) While some senders of unsolicited commercial electronic mail messages provide simple and reliable ways for recipients to reject (or "opt-out" of) receipt of unsolicited commercial electronic mail from such senders in the future, other senders provide no such "opt-out" mechanism, or refuse to honor the requests of recipients not to receive electronic mail from such senders in the future, or both.

[(9) An increasing number of senders of unsolicited commercial electronic mail purposefully disguise the source of such mail so as to prevent recipients from responding to such mail quickly and easily.

[(10) An increasing number of senders of unsolicited commercial electronic mail purposefully include misleading information in the message's subject lines in order to induce the recipients to view the messages.

[(11) In legislating against certain abuses on the Internet, Congress should be very careful to avoid infringing in any way upon constitutionally protected rights, including the rights of assembly, free speech, and privacy.

[(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 unsolicited commercial electronic mail;

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

[(3) recipients of unsolicited commercial electronic mail have a right to decline to receive additional unsolicited commercial electronic mail from the same source.

[SEC. 3. DEFINITIONS.

[In this Act:

[(1) AFFIRMATIVE CONSENT.- The term "affirmative consent", when used with respect to a commercial electronic mail message, means that the recipient has 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.

[(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) 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 Act 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"), 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 an 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.

[(9) IMPLIED CONSENT.- The term "implied consent", when used with respect to a commercial electronic mail message, means that-

[(A) within the 3-year period ending upon receipt of such message, there has been a business transaction between the sender and the recipient (including a transaction involving the provision, free of charge, of information, goods, or services requested by the recipient); and

[(B) the recipient was, at the time of such transaction or thereafter in the first electronic mail message received from the sender after the effective date of this Act, provided a clear and conspicuous notice of an opportunity not to receive unsolicited commercial electronic mail messages from the sender and has not exercised such opportunity.

[If a sender operates through separate lines of business or divisions and holds itself out to the recipient, both at the time of the transaction described in subparagraph (A) and at the time the notice under subparagraph (B) was provided to the recipient, 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 for purposes of this paragraph.

[(10) INITIATE.- The term "initiate", when used with respect to a commercial electronic mail message, means to originate such message or to procure the origination of such message, but shall not include actions that constitute routine conveyance of such message.

[(11) INTERNET.- The term "Internet" has the meaning given that term in the Internet Tax Freedom Act (47 U.S.C. 151 nt).

[(12) INTERNET ACCESS SERVICE.- The term "Internet access service" has the meaning given that term in section 231(e)(4) of the Communications Act of 1934 (47 U.S.C. 231(e)(4)).

[(13) PROTECTED COMPUTER.- The term "protected computer" has the meaning given that term in section 1030(e)(2) of title 18, United States Code.

[(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 1 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 provided and selected the recipient addresses.

[(16) SENDER.- 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.

[(17) TRANSACTIONAL OR RELATIONSHIP MESSAGES.- The term "transactional or relationship message" means an electronic mail message the primary purpose of which is to facilitate, complete, confirm, provide, or request information concerning-

[(A) a commercial transaction that the recipient has previously agreed to enter into with the sender;

[(B) an existing commercial relationship, formed with or without an exchange of consideration, involving the ongoing purchase or use by the recipient of products or services offered by the sender; or

[(C) an existing employment relationship or related benefit plan.

[(18) UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE.- The term "unsolicited commercial electronic mail message" means any commercial electronic mail message that-

[(A) is not a transactional or relationship message; and

[(B) is sent to a recipient without the recipient's prior affirmative or implied consent.

[SEC. 4. CRIMINAL PENALTY FOR UNSOLICITED COMMERCIAL ELECTRONIC MAIL CONTAINING FRAUDULENT ROUTING INFORMATION.

[(a) IN GENERAL.- Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

["§ 1351. Unsolicited commercial electronic mail containing fraudulent transmission information

["(a) IN GENERAL.- Any person who initiates the transmission, to a protected computer in the United States, of an unsolicited commercial electronic mail message, with knowledge and intent that the message contains or is accompanied by header information that is materially false or materially misleading shall be fined or imprisoned for not more than 1 year, or both, under this title. For purposes of this subsection, header information that is technically accurate but includes an originating electronic mail 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) DEFINITIONS.- Any term used in subsection (a) that is defined in section 3 of the CAN-SPAM Act of 2003 has the meaning given it in that section.".

[(b) CONFORMING AMENDMENT.- The chapter analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

["1351. Unsolicited commercial electronic mail containing fraudulent routing information".

[SEC. 5. OTHER PROTECTIONS AGAINST UNSOLICITED 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 that contains, or is accompanied by, header information that is materially or intentionally false or materially or intentionally misleading. For purposes of this paragraph, header information that is technically accurate but includes an originating electronic mail 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.

[(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 with a subject heading that such person knows 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.

[(3) INCLUSION OF RETURN ADDRESS OR COMPARABLE MECHANISM IN UNSOLICITED COMMERCIAL ELECTRONIC MAIL.-

[(A) IN GENERAL.- It is unlawful for any person to initiate the transmission to a protected computer of an unsolicited commercial electronic mail message that does not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that-

[(i) a recipient may use to submit, in a manner specified by the sender, a reply electronic mail message or other form of Internet-based communication requesting not to receive any future unsolicited commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

[(ii) remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.

[(B) MORE DETAILED OPTIONS POSSIBLE.- The sender of an unsolicited commercial electronic mail message may comply with subparagraph (A)(i) by providing the recipient a list or menu from which the recipient may choose the specific types of commercial electronic mail messages the recipient wants to receive or does not want to receive from the sender, if the list or menu includes an option under which the recipient may choose not to receive any unsolicited commercial electronic mail messages from the sender.

[(C) TEMPORARY INABILITY TO RECEIVE MESSAGES OR PROCESS REQUESTS.- A return electronic mail address or other mechanism does not fail to satisfy the requirements of subparagraph (A) if it is unexpectedly and temporarily unable to receive messages or process requests due to technical or capacity problems, if the problem with receiving messages or processing requests is corrected within a reasonable time period.

[(4) PROHIBITION OF TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL AFTER OBJECTION.- If a recipient makes a request to a sender, using a mechanism provided pursuant to paragraph (3), not to receive some or any unsolicited commercial electronic mail messages from such sender, then it is unlawful-

[(A) for the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of an unsolicited commercial electronic mail message that falls within the scope of the request;

[(B) for any person acting on behalf of the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of an unsolicited commercial electronic mail message that such person knows or consciously avoids knowing falls within the scope of the request; or

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

[(5) INCLUSION OF IDENTIFIER, OPT-OUT, AND PHYSICAL ADDRESS IN UNSOLICITED COMMERCIAL ELECTRONIC MAIL.- It is unlawful for any person to initiate the transmission of any unsolicited commercial electronic mail message to a protected computer unless the message provides-

[(A) clear and conspicuous identification that the message is an advertisement or solicitation;

[(B) clear and conspicuous notice of the opportunity under paragraph (3) to decline to receive further unsolicited commercial electronic mail messages from the sender; and

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

[(b) PROHIBITION OF TRANSMISSION OF UNLAWFUL UNSOLICITED COMMERCIAL ELECTRONIC MAIL TO CERTAIN HARVESTED ELECTRONIC MAIL ADDRESSES.-

[(1) IN GENERAL.- It is unlawful for any person to initiate the transmission, to a protected computer, of an unsolicited commercial electronic mail message that is unlawful under subsection (a), or to assist in the origination of such a message through the provision or selection of addresses to which the message will be sent, if such person knows

that, or acts with reckless disregard as to whether-

[(A) the electronic mail address of the recipient was obtained, using an automated means, from an Internet website or proprietary online service operated by another person; or

[(B) the website or proprietary online service from which the address was obtained included, at the time the address was obtained, a notice stating that the operator of such a website or proprietary online service will not give, sell, or otherwise transfer addresses maintained by such site or service to any other party for the purpose of initiating, or enabling others to initiate, unsolicited electronic mail messages.

[(2) DISCLAIMER.- Nothing in this subsection creates an ownership or proprietary interest in such electronic mail addresses.

[(c) COMPLIANCE PROCEDURES.- An action for violation of paragraph (2), (3), (4), or (5) of subsection (a) may not proceed if the person against whom the action is brought demonstrates that-

[(1) the person has established and implemented, with due care, reasonable practices and procedures to effectively prevent violations of such paragraph; and

[(2) the violation occurred despite good faith efforts to maintain compliance with such practices and procedures.

[SEC. 6. ENFORCEMENT BY FEDERAL TRADE COMMISSION.

[(a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR PRACTICE.- Except as provided in subsection (b), this Act shall be enforced by the Commission as if the violation of this Act were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

[(b) ENFORCEMENT BY CERTAIN OTHER AGENCIES.- Compliance with this Act shall be enforced-

[(1) under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of-

[(A) national banks, and Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Office of the Comptroller of the Currency;

[(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 and 611), and bank holding companies and their nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Board;

[(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Board of Directors of the Federal Deposit Insurance Corporation; and

[(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Director of the Office of Thrift Supervision;

[(2) under the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the Board of the National Credit Union Administration with respect to any Federally insured credit union, and any subsidiaries of such a credit union;

[(3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) by the Securities and Exchange Commission with respect to any broker or dealer;

[(4) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) by the Securities and Exchange Commission with respect to investment companies;

[(5) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) by the Securities and Exchange Commission with respect to investment advisers registered under that Act;

[(6) under State insurance law in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 104 of the Gramm-Bliley-Leach Act (15 U.S.C. 6701);

[(7) under part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

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

[(9) under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association; and

[(10) under the Communications Act of 1934 (47 U.S.C. 151 et seq.) by the Federal Communications Commission with respect to any person subject to the provisions of that Act.

[(c) EXERCISE OF CERTAIN POWERS.- For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of this Act is deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

[(d) ACTIONS BY THE COMMISSION.- The Commission shall prevent any person from violating this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any entity that violates any provision of that subtitle is subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of that subtitle.

[(e) ENFORCEMENT BY STATES.-

[(1) CIVIL ACTION.- In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person engaging in a practice that violates section 5 of this Act, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction or in any other court of competent jurisdiction-

[(A) to enjoin further violation of section 5 of this Act by the defendant; or

[(B) to obtain damages on behalf of residents of the State, in an amount equal to the greater of-

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

[(ii) the amount determined under paragraph (2).

[(2) STATUTORY DAMAGES.-

[(A) IN GENERAL.- For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of willful, knowing, or negligent violations by an amount, in the discretion of the court, of up to $10 (with each separately addressed unlawful message received by such residents treated as a separate violation). In determining the per-violation penalty under this subparagraph, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, the extent of economic gain resulting from the violation, and such other matters as justice may require.

[(B) LIMITATION.- For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed $500,000, except that if the court finds that the defendant committed the violation willfully and knowingly, the court may increase the limitation established by this paragraph from $500,000 to an amount not to exceed $1,500,000.

[(3) ATTORNEY FEES.- In the case of any successful action under paragraph (1), the State shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

[(4) RIGHTS OF FEDERAL REGULATORS.- The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) and provide the Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right-

[(A) to intervene in the action;

[(B) upon so intervening, to be heard on all matters arising therein;

[(C) to remove the action to the appropriate United States district court; and

[(D) to file petitions for appeal.

[(5) CONSTRUCTION.- For purposes of bringing any civil action under paragraph (1), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to-

[(A) conduct investigations;

[(B) administer oaths or affirmations; or

[(C) compel the attendance of witnesses or the production of documentary and other evidence.

[(6) VENUE; SERVICE OF PROCESS.-

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

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

[(i) is an inhabitant; or

[(ii) maintains a physical place of business.

[(7) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.- If the Commission or other appropriate Federal agency under subsection (b) has instituted a civil action or an administrative action for violation of this Act, no State attorney general may bring an action under this subsection during the pendency of that action against

any defendant named in the complaint of the Commission or the other agency for any violation of this Act alleged in the complaint.

[(f) ACTION BY PROVIDER OF INTERNET ACCESS SERVICE.-

[(1) ACTION AUTHORIZED.- A provider of Internet access service adversely affected by a violation of section 5 may bring a civil action in any district court of the United States with jurisdiction over the defendant, or in any other court of competent jurisdiction, to-

[(A) enjoin further violation by the defendant; or

[(B) recover damages in an amount equal to the greater of-

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

[(ii) the amount determined under paragraph (2).

[(2) STATUTORY DAMAGES.-

[(A) IN GENERAL.- For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of willful, knowing, or negligent violations by an amount, in the discretion of the court, of up to $10 (with each separately addressed unlawful message carried over the facilities of the provider of Internet access service or sent to an electronic mail address obtained from the provider of Internet access service in violation of section 5(b) treated as a separate violation). In determining the per-violation penalty under this subparagraph, the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, the extent of economic gain resulting from the violation, and such other matters as justice may require.

[(B) LIMITATION.- For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed $500,000, except that if the court finds that the defendant committed the violation willfully and knowingly, the court may increase the limitation established by this paragraph from $500,000 to an amount not to exceed $1,500,000.

[(3) ATTORNEY FEES.- In any action brought pursuant to paragraph (1), the court may, in its discretion, require an undertaking for the payment of the costs of such action, and assess reasonable costs, including reasonable attorneys' fees, against any party.

[SEC. 7. EFFECT ON OTHER LAWS.

[(a) FEDERAL LAW.-

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

[(2) Nothing in this Act shall be construed to affect in any way the Commission's authority to bring enforcement actions under FTC Act for materially false or deceptive representations in commercial electronic mail messages.

[(b) STATE LAW.-

[(1) IN GENERAL.- This Act supersedes any State or local government statute, regulation, or rule regulating the use of electronic mail to send commercial messages.

[(2) EXCEPTIONS.- Except as provided in paragraph (3), this Act does not supersede or pre-empt-

[(A) State trespass, contract, or tort law or any civil action thereunder; or

[(B) any provision of Federal, State, or local criminal law or any civil remedy available under such law that relates to acts of fraud or theft perpetrated by means of the unauthorized transmission of commercial electronic mail messages.

[(3) LIMITATION ON EXCEPTIONS.- Paragraph (2) does not apply to a State or local government statute, regulation, or rule that directly regulates unsolicited commercial electronic mail and that treats the mere sending of unsolicited commercial electronic mail in a manner that complies with this Act as sufficient to constitute a violation of such statute, regulation, or rule or to create a cause of action thereunder.

[(c) NO EFFECT ON POLICIES OF PROVIDERS OF INTERNET ACCESS SERVICE.- Nothing in this Act shall be construed to have any effect on the lawfulness or unlawfulness, under any other provision of law, of the adoption, implementation, or enforcement by a provider of Internet access service of a policy of declining to transmit, route, relay, handle, or store certain types of electronic mail messages.

[SEC. 8. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL.

[(a) IN GENERAL.- Not later than 24 months after the date of the enactment of this Act, the Commission, in consultation with the Department of Justice and other appropriate agencies, shall submit a report to the Congress that provides a detailed analysis of the effectiveness and enforcement of the provisions of this Act and the need (if any) for the Congress to modify such provisions.

[(b) REQUIRED ANALYSIS.- The Commission shall include in the report required by subsection (a) an analysis of the extent to which technological and marketplace developments, including changes in the nature of the devices through which consumers access their electronic mail messages, may affect the practicality and effectiveness of the provisions of this Act.

[SEC. 9. SEPARABILITY.

[If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

[SEC. 10. EFFECTIVE DATE.

[The provisions of this Act shall take effect 120 days after the date of the enactment of this Act.]

SECTION 1. SHORT TITLE.

This Act may be cited as the "Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003", or the "CAN-SPAM Act of 2003".

SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.

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

(1) Electronic mail has become an extremely important and popular means of communication, relied on by millions of Americans on a daily basis for personal and commercial purposes. Its low cost and global reach make it extremely convenient and efficient, and offer unique opportunities for the development and growth of frictionless commerce.

(2) The convenience and efficiency of electronic mail are threatened by the extremely rapid growth in the volume of unsolicited commercial electronic mail. Unsolicited commercial electronic mail is currently estimated to account for over 45 percent of all electronic mail traffic, up from an estimated 7 percent in 2001, and the volume continues to rise. Most of these unsolicited commercial electronic mail messages are fraudulent or deceptive in one or more respects.

(3) The receipt of unsolicited commercial electronic mail may result in costs to recipients who cannot refuse to accept such mail and who incur costs for the storage of such mail, or for the time spent accessing, reviewing, and discarding such mail, or for both.

(4) The receipt of a large number of unsolicited messages also decreases the convenience of electronic mail and creates a risk that wanted electronic mail messages, both commercial and noncommercial, will be lost, overlooked, or discarded amidst the larger volume of unwanted messages, thus reducing the reliability and usefulness of electronic mail to the recipient.

(5) Some unsolicited commercial electronic mail contains material that many recipients may consider vulgar or pornographic in nature.

(6) The growth in unsolicited commercial electronic mail imposes significant monetary costs on providers of Internet access services, businesses, and educational and nonprofit institutions that carry and receive such mail, as there is a finite volume of mail that such providers, businesses, and institutions can handle without further investment in infrastructure.

(7) Many senders of unsolicited commercial electronic mail purposefully disguise the source of such mail.

(8) Many senders of unsolicited commercial electronic mail purposefully include misleading information in the message's subject lines in order to induce the recipients to view the messages.

(9) While some senders of unsolicited commercial electronic mail messages provide simple and reliable ways for recipients to reject (or "opt-out" of) receipt of unsolicited commercial electronic mail from such senders in the future, other senders provide no such "opt-out" mechanism, or refuse to honor the requests of recipients not to receive electronic mail from such senders in the future, or both.

(10) Many senders of bulk unsolicited commercial electronic mail use computer programs to gather large numbers of electronic mail addresses on an automated basis from Internet websites or online services where users must post their addresses in order to make full use of the website or service.

(11) Many States have enacted legislation intended to regulate or reduce unsolicited commercial electronic mail, but these statutes impose different standards and requirements. As a result, they do not appear to have been successful in addressing the problems associated with unsolicited commercial electronic mail, in part because, since an electronic mail address does not specify a geographic location, it can be extremely difficult for law-abiding businesses to know with which of these disparate statutes they are required to comply.

(12) The problems associated with the rapid growth and abuse of unsolicited commercial electronic mail cannot be solved by Federal legislation alone. The development and adoption of technological approaches and the pursuit of cooperative efforts with other countries will be necessary as well.

(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 unsolicited commercial electronic mail on a nationwide basis;

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

(3) recipients of unsolicited commercial electronic mail have a right to decline to receive additional unsolicited commercial electronic mail from the same source.

SEC. 3. DEFINITIONS.

In this Act:

(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) 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 Act 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"), 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) IMPLIED CONSENT.—

(A) IN GENERAL.—The term "implied consent", when used with respect to a commercial electronic mail message, means that—

(i) within the 3-year period ending upon receipt of such message, there has been a business transaction between the sender and the recipient (including a transaction involving the provision, free of charge, of information, goods, or services requested by the recipient); and

(ii) the recipient was, at the time of such transaction or thereafter in the first electronic mail message received from the sender after the effective date of this Act, provided a clear and conspicuous notice of an opportunity not to receive unsolicited commercial electronic mail messages from the sender and has not exercised such opportunity.

(B) MERE VISITATION.—A visit by a recipient to a publicly available website shall not be treated as a transaction for purposes of subparagraph (A)(i) if the recipient did not knowingly submit the recipient's electronic mail address to the operator of the website.

(C) SEPARATE LINES OF BUSINESS OR DIVISIONS.—If a sender operates through separate lines of business or divisions and holds itself out to the recipient, both at the time of the transaction described in subparagraph (A)(i) and at the time the notice under subparagraph (A)(ii) was provided to the recipient, 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 for purposes of this paragraph.

(10) 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 1 person may be considered to have initiated a message.

(11) INTERNET.—The term "Internet" has the meaning given that term in the Internet Tax Freedom Act (47 U.S.C. 151 nt).

(12) INTERNET ACCESS SERVICE.—The term "Internet access service" has the meaning given that term in section 231(e)(4) of the Communications Act of 1934 (47 U.S.C. 231(e)(4)).

(13) 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, knowing, or consciously avoiding knowing, the extent to which that person intends to comply with the requirements of this Act.

(14) PROTECTED COMPUTER.—The term "protected computer" has the meaning given that term in section 1030(e)(2)(B) of title 18, United States Code.

(15) 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 1 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.

(16) 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.

(17) SENDER.—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.

(18) TRANSACTIONAL OR RELATIONSHIP MESSAGE.—The term "transactional or relationship message" means an electronic mail message the primary purpose of which is—

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

(B) 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;

(C) 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;

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

(E) 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.

(19) UNSOLICITED COMMERCIAL ELECTRONIC MAIL MESSAGE.—The term "unsolicited commercial electronic mail message" means any commercial electronic mail message that—

(A) is not a transactional or relationship message; and

(B) is sent to a recipient without the recipient's prior affirmative or implied consent.

SEC. 4. CRIMINAL PENALTY FOR COMMERCIAL ELECTRONIC MAIL CONTAINING FRAUDULENT ROUTING INFORMATION.

(a) IN GENERAL.—Chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"§ 1351. Commercial electronic mail containing fraudulent transmission information.

"(a) IN GENERAL.—Any person who initiates the transmission, to a protected computer in the United States, of a commercial electronic mail message, with knowledge and intent that the message contains or is accompanied by header information that is materially false or materially misleading shall be fined or imprisoned for not more than 1 year, or both, under this title. For purposes of this subsection, header information that is technically accurate but includes an originating electronic mail 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) DEFINITIONS.—Any term used in subsection (a) that is defined in section 3 of the CAN-SPAM Act of 2003 has the meaning given it in that section.".

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 63 of title 18, United States Code, is amended by adding at the end the following:

"1351. Commercial electronic mail containing fraudulent routing information.".

SEC. 5. 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 that contains, or is accompanied by, header information that is false or misleading. For purposes of this paragraph—

(A) header information that is technically accurate but includes an originating electronic mail 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 misleading; and

(B) a "from" line that accurately identifies any person who initiated the message shall not be considered false or misleading.

(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 with a subject heading that such person knows 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.

(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—

(i) a recipient may use to submit, in a manner specified in the message, a reply electronic mail

message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(ii) remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.

(B) MORE DETAILED OPTIONS POSSIBLE.—The person initiating a commercial electronic mail message may comply with subparagraph (A)(i) by providing the recipient a list or menu from which the recipient may choose the specific types of commercial electronic mail messages the recipient wants to receive or does not want to receive from the sender, if the list or menu includes an option under which the recipient may choose not to receive any unsolicited commercial electronic mail messages from the sender.

(C) TEMPORARY INABILITY TO RECEIVE MESSAGES OR PROCESS REQUESTS.—A return electronic mail address or other mechanism does not fail to satisfy the requirements of subparagraph (A) if it is unexpectedly and temporarily unable to receive messages or process requests due to technical or capacity problems, if the technical or capacity problems were not reasonably foreseeable in light of the potential volume of response messages or requests, and if the problem with receiving messages or processing requests is corrected within a reasonable time period.

(D) EXCEPTION.—The requirements of this paragraph shall not apply to a message that is a transactional or relationship message.

(4) PROHIBITION OF TRANSMISSION OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL AFTER OBJECTION.—If a recipient makes a request using a mechanism provided pursuant to paragraph (3) not to receive some or any unsolicited commercial electronic mail messages from such sender, then it is unlawful—

(A) for the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of an unsolicited commercial electronic mail message that falls within the scope of the request;

(B) for any person acting on behalf of the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of an unsolicited commercial electronic mail message that such person knows or consciously avoids knowing falls within the scope of the request;

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

(D) for the sender, or any other person who knows that the recipient has made such a request, to sell, lease, exchange, or otherwise transfer or release the electronic mail address of the recipient (including through any transaction or other transfer involving mailing lists bearing the electronic mail address of the recipient) for any purpose other than compliance with this Act or other provision of law.

(5) INCLUSION OF IDENTIFIER, OPT-OUT, AND PHYSICAL ADDRESS IN UNSOLICITED COMMERCIAL ELECTRONIC MAIL.—It is unlawful for any person to initiate the transmission of any unsolicited commercial electronic mail message to a protected computer unless the message provides—

(A) clear and conspicuous identification that the message is an advertisement or solicitation;

(B) clear and conspicuous notice of the opportunity under paragraph (3) to decline to receive further unsolicited commercial electronic mail messages from the sender; and

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

(b) AGGRAVATED VIOLATIONS RELATING TO UNSOLICITED COMMERCIAL ELECTRONIC MAIL.—

(1) ADDRESS HARVESTING AND DICTIONARY ATTACKS.—

(A) IN GENERAL.—It is unlawful for any person to initiate the transmission, to a protected computer, of an unsolicited commercial electronic mail message that is unlawful under subsection (a), or to assist in the origination of such message through the provision or selection of addresses to which the message will be transmitted, if such person knows, should have known, or consciously avoids knowing that—

(i) the electronic mail address of the recipient was obtained using an automated means from an Internet website or proprietary online service operated by another person, and such website or online service included, at the time the address was obtained, a notice stating that the operator of such website or online service will not give, sell, or otherwise transfer addresses maintained by such website or online service to any other party for the purposes of initiating, or enabling others to initiate, unsolicited electronic mail messages; or

(ii) the electronic mail address of the recipient was obtained using an automated means that generates possible electronic mail addresses by combining names, letters, or numbers into numerous permutations.

(B) DISCLAIMER.—Nothing in this paragraph creates an ownership or proprietary interest in such electronic mail addresses.

(2) AUTOMATED CREATION OF MULTIPLE ELECTRONIC MAIL ACCOUNTS.—It is unlawful for any person to use scripts or other automated means to establish multiple electronic mail accounts or online user accounts from which to transmit to a protected computer, or enable another person to transmit to a protected computer, an unsolicited commercial electronic mail message that is unlawful under subsection (a).

(3) RELAY OR RETRANSMISSION THROUGH UNAUTHORIZED ACCESS.—It is unlawful for any person knowingly to relay or retransmit an unsolicited commercial electronic mail message that is unlawful under subsection (a) from a protected computer or computer network that such person has accessed without authorization.

(c) COMPLIANCE PROCEDURES.—An action for violation of paragraph (2), (3), (4), or (5) of subsection (a) may not proceed if the person against whom the action is brought demonstrates that —

(1) the person has established and implemented, with due care, reasonable practices and procedures to effectively prevent violations of such paragraph; and

(2) the violation occurred despite good faith efforts to maintain compliance with such practices and procedures.

SEC. 6. BUSINESSES KNOWINGLY PROMOTED BY ELECTRONIC MAIL WITH FALSE OR MISLEADING TRANSMISSION INFORMATION.

(a) IN GENERAL.—It is unlawful for a person to promote, or allow the promotion of, that person's trade or business, or goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business, in a commercial electronic mail message the transmission of which is in violation of section 5(a)(1) if that person—

(1) knows, or should have known in ordinary course of that person's trade or business, that the goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business were being promoted in such a message;

(2) received or expected to receive an economic benefit from such promotion; and

(3) took no reasonable action—

(A) to prevent the transmission; or

(B) to detect the transmission and report it to the Commission.

(b) LIMITED ENFORCEMENT AGAINST THIRD PARTIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), a person (hereinafter referred to as the "third party") that provides goods, products, property, or services to another person that violates subsection (a) shall not be held liable for such violation.

(2) EXCEPTION.—Liability for a violation of subsection (a) shall be imputed to a third party that provides goods, products, property, or services to another person that violates subsection (a) if that third party—

(A) owns, or has a greater than 50 percent ownership or economic interest in, the trade or business of the person that violated subsection (a); or

(B)(i) has actual knowledge that goods, products, property, or services are promoted in a commercial electronic mail message the transmission of which is in violation of section 5(a)(1); and

(ii) receives, or expects to receive, an economic benefit from such promotion.

(c) EXCLUSIVE ENFORCEMENT BY FTC.—Subsections (e) and (f) of section 7 do not apply to violations of this section.

SEC. 7. ENFORCEMENT BY FEDERAL TRADE COMMISSION.

(a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR PRACTICE.—Except as provided in subsection (b), this Act shall be enforced by the Commission as if the violation of this Act were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) ENFORCEMENT BY CERTAIN OTHER AGENCIES.—Compliance with this Act shall be enforced—

(1) under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 and 611), and bank holding companies and their nonbank subsidiaries or affiliates (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Board;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) insured State branches of foreign banks, and any subsidiaries of such entities (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Board of Directors of the Federal Deposit Insurance Corporation; and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, and any subsidiaries of such savings associations (except brokers, dealers, persons providing insurance, investment companies, and investment advisers), by the Director of the Office of Thrift Supervision;

(2) under the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the Board of the National Credit Union Administration with respect to any Federally insured credit union, and any subsidiaries of such a credit union;

(3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) by the Securities and Exchange Commission with respect to any broker or dealer;

(4) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) by the Securities and Exchange Commission with respect to investment companies;

(5) under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) by the Securities and Exchange Commission with respect to investment advisers registered under that Act;

(6) under State insurance law in the case of any person engaged in providing insurance, by

the applicable State insurance authority of the State in which the person is domiciled, subject to section 104 of the Gramm-Bliley-Leach Act (15 U.S.C. 6701);

(7) under part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;

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

(9) under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association; and

(10) under the Communications Act of 1934 (47 U.S.C. 151 et seq.) by the Federal Communications Commission with respect to any person subject to the provisions of that Act.

(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of this Act is deemed to be a violation of a Federal Trade Commission trade regulation rule. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.

(d) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any entity that violates any provision of that subtitle is subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of that subtitle.

(e) ENFORCEMENT BY STATES.—

(1) CIVIL ACTION.—In any case in which the attorney general of a State has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person engaging in a practice that violates section 5 of this Act, the State, as parens patriae, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction or in any other court of competent jurisdiction—

(A) to enjoin further violation of section 5 of this Act by the defendant; or

(B) to obtain damages on behalf of residents of the State, in an amount equal to the greater of—

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

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

(2) STATUTORY DAMAGES.—

(A) IN GENERAL.—For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of violations (with each separately addressed unlawful message received by or addressed to such residents treated as a separate violation) by—

(i) up to $100, in the case of a violation of section 5(a)(1); or

(ii) $25, in the case of any other violation of section 5.

(B) LIMITATION.—For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed $1,000,000.

(C) AGGRAVATED DAMAGES.—The court may increase a damage award to an amount equal to not more than three times the amount otherwise available under this paragraph if—

(i) the court determines that the defendant committed the violation willfully and knowingly; or

(ii) the defendant's unlawful activity included one or more of the aggravating violations set forth in section 5(b).

(3) ATTORNEY FEES.—In the case of any successful action under paragraph (1), the State shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

(4) RIGHTS OF FEDERAL REGULATORS.—The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) and provide the Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right—

(A) to intervene in the action;

(B) upon so intervening, to be heard on all matters arising therein;

(C) to remove the action to the appropriate United States district court; and

(D) to file petitions for appeal.

(5) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(A) conduct investigations;

(B) administer oaths or affirmations; or

(C) compel the attendance of witnesses or the production of documentary and other evidence.

(6) VENUE; SERVICE OF PROCESS.—

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

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

(i) is an inhabitant; or

(ii) maintains a physical place of business.

(7) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission or other appropriate Federal agency under subsection (b) has instituted a civil action or an administrative action for violation of this Act, no State attorney general may bring an action under this subsection during the pendency of that action against any defendant named in the complaint of the Commission or the other agency for any violation of this Act alleged in the complaint.

(f) ACTION BY PROVIDER OF INTERNET ACCESS SERVICE.—

(1) ACTION AUTHORIZED.—A provider of Internet access service adversely affected by a violation of section 5 may bring a civil action in any district court of the United States with jurisdiction over the defendant, or in any other court of competent jurisdiction, to—

(A) enjoin further violation by the defendant; or

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

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

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

(2) STATUTORY DAMAGES.—

(A) IN GENERAL.—For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of violations (with each separately addressed unlawful message that is transmitted or attempted to be transmitted over the facilities of the provider of Internet access service, or that is transmitted or attempted to be transmitted to an electronic mail address obtained from the provider of Internet access service in violation of section 5(b)(1)(A)(i), treated as a separate violation) by—

(i) up to $100, in the case of a violation of section 5(a)(1); or

(ii) $25, in the case of any other violation of section 5.

(B) LIMITATION.—For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed $1,000,000.

(C) AGGRAVATED DAMAGES.—The court may increase a damage award to an amount equal to not more than three times the amount otherwise available under this paragraph if—

(i) the court determines that the defendant committed the violation willfully and knowingly; or

(ii) the defendant's unlawful activity included one or more of the aggravated violations set forth in section 5(b).

(3) ATTORNEY FEES.—In any action brought pursuant to paragraph (1), the court may, in its discretion, require an undertaking for the payment of the costs of such action, and assess reasonable costs, including reasonable attorneys' fees, against any party.

SEC. 8. EFFECT ON OTHER LAWS.

(a) FEDERAL LAW.—

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

(2) Nothing in this Act shall be construed to affect in any way the Commission's authority to bring enforcement actions under FTC Act for materially false or deceptive representations or unfair practices in commercial electronic mail messages.

(b) STATE LAW.—

(1) IN GENERAL.—This Act supersedes any statute, regulation, or rule of a State or political subdivision of a State that expressly regulates the use of electronic mail to send commercial messages, except for any such statute, regulation, or rule that prohibits falsity or deception in any portion of a commercial electronic mail message or information attached thereto.

(2) STATE LAW NOT SPECIFIC TO ELECTRONIC MAIL.—This Act shall not be construed to preempt the applicability of State laws that are not specific to electronic mail, including State trespass, contract, or tort law, and State laws relating to acts of fraud or computer crime.

(c) NO EFFECT ON POLICIES OF PROVIDERS OF INTERNET ACCESS SERVICE.—Nothing in this Act shall be construed to have any effect on the lawfulness or unlawfulness, under any other provision of law, of the adoption, implementation, or enforcement by a provider of Internet access service of a policy of declining to transmit, route, relay, handle, or store certain types of electronic mail messages.

SEC. 9. RECOMMENDATIONS CONCERNING DO-NOT-EMAIL REGISTRY.

Not later than 6 months after the Federal Trade Commission has completed implementation of its national telemarketing Do-Not-Call list, the Commission shall transmit to the Congress recommendations for a workable plan and timetable for creating a nationwide marketing Do-Not-Email list modeled on the Do-Not-Call list, or an explanation of any practical, technical, security, or privacy-related issues that cause the Commission to recommend against creating such a list.

SEC. 10. STUDY OF EFFECTS OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL.

(a) IN GENERAL.—Not later than 24 months after the date of the enactment of this Act, the

Commission, in consultation with the Department of Justice and other appropriate agencies, shall submit a report to the Congress that provides a detailed analysis of the effectiveness and enforcement of the provisions of this Act and the need (if any) for the Congress to modify such provisions.

(b) REQUIRED ANALYSIS.—The Commission shall include in the report required by subsection (a)—

(1) an analysis of the extent to which technological and marketplace developments, including changes in the nature of the devices through which consumers access their electronic mail messages, may affect the practicality and effectiveness of the provisions of this Act;

(2) analysis and recommendations concerning how to address unsolicited commercial electronic mail that originates in or is transmitted through or to facilities or computers in other nations, including initiatives or policy positions that the Federal government could pursue through international negotiations, fora, organizations, or institutions; and

(3) analysis and recommendations concerning options for protecting consumers, including children, from the receipt and viewing of unsolicited commercial electronic mail that is obscene or pornographic.

SEC. 11 SEPARABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

SEC. 12. EFFECTIVE DATE.

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

The committee amendment in the nature of a substitute was agreed to.

Mr. MCCAIN. Madam President, this bill was introduced in April by Senators BURNS and WYDEN, and the substitute version was approved by the Senate Commerce Committee on June 19.

Also, we have had intensive negotiations with the Senator from New York, Mr. SCHUMER, who is now on the floor, concerning a "do not spam" aspect of this legislation.

First of all, I wish to thank, of course, Senator HOLLINGS, the ranking member of the committee, for all of his effort, but I particularly acknowledge my two colleagues who are on the floor, Senators BURNS and WYDEN. Around here, we have a tendency to take credit for a lot of things that may not necessarily be true, although I am not sure that is true in my case, but the fact is, Senator BURNS and Senator WYDEN have worked for, I believe, 3 years on this issue. It is complex. It is difficult. It has a lot to do with technology. The issues are very technical in nature in some respects. They have responded to what I think is a major concern of every young American and every American who uses a computer, and that is this issue of unwanted spam.

I again tell my colleagues that without the efforts Senator BURNS and Senator WYDEN have made on this bill, we would not be here today, and I am very grateful for their participation.

I believe the ranking member, Senator HOLLINGS, wishes to make an opening comment, and then I would like to be recognized after Senator HOLLINGS.

I yield the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from South Carolina.

Mr. HOLLINGS. Madam President, I thank our distinguished chairman, Senator MCCAIN, for getting this bill to the floor. Actually, we started 4 years ago under the leadership of Senator WYDEN. In the last Congress, we had a bill reported from the committee but we could not get it up. We have learned lessons now from the Do Not Call effort, where we had to forgo committee and floor procedures to finally get it up. In this sense, I thank Senator MCCAIN for getting this bill to the floor for its consideration, as well as Senator WYDEN and Senator BURNS for their leadership, and particularly my colleague from New York, Senator SCHUMER. He has a very important amendment. He has been driving forward for the expedition of this particular procedure, where the Federal Trade Commission is given some 6 months, although I think it can be done in a much shorter period.

We will be riding herd on the Federal Trade Commission to see if we can congeal that time, get that list ready, and report it to the committee so we can act. Other than that, if there is a need for a Do Not Call list, there certainly is a need for a Do Not Spam list.

I again thank Senator BURNS, Senator DAYTON, and Senator SCHUMER for their particular amendment and efforts on this case, and particularly my colleague, Senator WYDEN, for his leadership over the past 4 years. It is under his drive that we have gotten it here.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I will mention Senator SCHUMER's amendment which we have agreed to, which as soon as opening statements are completed we will propose, and I believe it will be without objection. It does do several things. I will mention it now because Senator SCHUMER has worked so hard on this amendment.

This amendment says that not later than 6 months after the date of enactment of the act, the Commission will transmit to the Senate Committee on Commerce, Science, and Transportation, and to the House of Representatives Committee on Energy and Commerce a report that sets forth a plan and timetable for establishing a nationwide market Do Not E-mail Registry. It includes an explanation of any practical, technical, security, privacy, enforceability, or other concerns the Commission has regarding such a registry and includes an explanation of how the registry would be applied with respect to children with e-mail accounts.

Finally, it says the Commission may establish and implement the plan, but not earlier than 9 months after the date of enactment of this act.

I say to my friend, Senator SCHUMER, that I will do everything in my power to make sure that this is enacted and this plan, not earlier than 9 months, should be implemented. I hope that is satisfactory.

Again, I thank Senator SCHUMER. If we can implement a Do Not Spam provision which is clearly modeled after the Do Not Call list, I think it will have enormous benefit to all Americans.

I will make a few comments about the bill and then yield to my colleagues and to Senator SCHUMER for their remarks.

If passed into law by Congress and signed by the President, the CAN-SPAM Act would be the first Federal law to regulate senders of commercial e-mail.

The bill would prohibit senders of commercial e-mail from falsifying or disguising the following: their identity; the return address or routing information of an e-mail; and the subject matters of their messages. Violations of these provisions would result in both criminal and civil penalties.

The bill would also require senders of commercial e-mail to give their recipients an opportunity to opt out of receiving future messages and to honor those requests. Except for e-mail that is transactional in nature, such as purchase receipts or airlines ticket confirmations, every commercial e-mail sent over the Internet to American consumers would be required to provide this valid, working opt-out or unsubscribe mechanism. These rules represent current industry best practices regarding commercial e-mail messages.

For unsolicited commercial e-mail, however, the bill would require more disclosures from the sender of the message, such as providing recipients with instructions on how to operate the opt-out mechanism, a valid physical address of the sender, and a clear notice in the body of the message that it is an advertisement or solicitation.

In an amendment I offered in committee, this bill would also prohibit businesses from knowingly promoting or permitting the promotion of their business through e-mail transmitted with false or misleading identity or routing information. Those that benefit the most from sending fraudulent spam, the companies advertised in those messages, should be held accountable, and they will.

As my colleagues, Senators BURNS and WYDEN, will explain in more detail, the bill would also target many of the insidious mechanisms used by today's spammers, including e-mail harvesting, dictionary attacks, and the hijacking of consumer e-mail accounts in order to send spam.

In addition to setting strict rules of the road for senders of commercial e-mail, the CAN-SPAM Act would provide tough criminal and civil penalties for offenders, and a multilayered approach to enforcement. This bill provides for enforcement actions by the FTC, State attorneys general, Internet service providers, and if Senator

HATCH's proposed criminal amendment is passed which I assume it will, the Department of Justice.

I strongly support this bill and I urge my colleagues to join me, Senators BURNS, WYDEN, HOLLINGS, HATCH, and others, in passing this bill as a first step toward giving consumers back some control of their e-mail in-boxes.

I would like to make a few general observations about this issue that I have come to learn over the years that the Commerce Committee has examined it.

According to the Pew Internet & American Life Project, approximately 140 million Americans, nearly half of all U.S. citizens and 63 percent of full-time or part-time workers regularly use e-mail. E-mail messaging has fundamentally changed the way we communicate with family, friends, coworkers and business partners; the way consumers communicate with businesses that provide goods and services; and the way that businesses may legitimately market products to consumers. The growing affliction of spam, however, may threaten all of this.

We must keep in mind the tremendous promise that the Internet and more specifically e-mail, holds for consumers and businesses alike. We must recognize that the word "spam" means different things to different people.

The Federal Trade Commission defines spam generally as "unsolicited commercial e-mail." and some Americans do not want any of it. Other consumers like to receive unsolicited offers by e-mail; to these consumers, spam means only the unwanted fraudulent or pornographic e-mail that also floods their inbox.

Many American businesses view e-mail over the Internet as a new medium through which to market or communicate more efficiently with consumers. To them, this type of communication is not spam, but commercial speech protected by the first amendment. The Direct Marketing Association reports that 37 percent of consumers it surveyed have bought something as a result of receiving unsolicited e-mail from marketers.

Internet service provider are the businesses caught in the middle, forced every day to draw distinctions between what they perceive as legitimate e-mail and what is spam. In this environment, the risk of ISPs blocking legitimate mail that consumers depend on, such as purchase receipts or healthcare communications, is as much a concern as the prospect of failing to block as much spam as possible in the face of consumer demand. Often, the filters used by ISPs fail to meet their subscribers' expectations on both accounts, failing to block the spam and sometimes blocking legitimate e-mail from coming through, leaving consumers, legitimate businesses and the ISPs themselves frustrated.

I think Senator BURNS and Senator WYDEN remember, as well as I do, a professional spammer who came and testified before our committee. I mentioned in passing that it took him approximately 4 hours to break through a filter that had recently been in place, and he immediately began his work again of spamming millions of people every day. He was a man who was proud of his work, by the way. He was a very interesting witness and, I might say in an otherwise dull hearing, a very entertaining one.

We must be mindful that in our quest to stop spam, we may impose e-mail restrictions that go too far and actually prohibit or effectively prevent e-mail that customers want to receive and that legitimate businesses depend on to service their customers.

I believe this bill strikes the proper balance, thanks to the efforts of Senator WYDEN, Senator BURNS, Senator SCHUMER, and others, by carefully targeting the spam that consumers reject while preserving the fundamental benefits of e-mail to all Americans.

Regardless of whether we call all solicited commercial e-mail spam, one fact is clear: Spam is rapidly on the rise. Its sheer volume is significantly affecting how consumers and businesses use e-mail. Less than 2 years ago, spam made up only 8 percent of all e-mail. In a hearing before the Commerce Committee in May, my colleagues and I learned that spam accounted for more than 45 percent of all global e-mail traffic and, worse, it would probably exceed the 50 percent mark by year's end.

In the committee's hearing, America Online- our Nation's largest Internet service provider with roughly 30 million subscribers- testified that it blocks 80 percent of all its inbound e-mail- nearly 2.4 billion out of 3 billion messages it receives each day. Not surprisingly, this number of blocked messages was nearly 2.5 times larger than the 1 billion messages AOL blocked per day only 2 months prior to that hearing, and nearly 5 times larger than the 500 million messages it blocked per day in December 2002.

It's not just AOL. Our Nation's second and third largest e-mail providers, Microsoft and Earthlink, have also reported a tremendous surge in spam. Microsoft, the provider of MSN mail and the free Hotmail service, reported in May that both services combined block up to 2.4 billion spam messages each day. Earthlink, the third largest ISP in the United States, also reported a 500 percent increase in its inbound spam over the past 18 months.

I realize that these numbers may not mean as much to those who do not follow e-commerce closely, so let me put it in perspective to what nearly all Americans are familiar with- junk mail. The USA Today recently reported that more than 2 trillion spam messages are expected to be sent over the Internet this year, or 100 times the amount of direct mail advertising pieces delivered by U.S. mail last year.

Managing this influx adds real monetary costs to consumers and businesses.

A 2001 European Union study found that spam cost Internet subscribers wouldwide $9.4 billion each year, and USA Today reported in April that research organizations estimate fighting spam adds an average of $2 per month to an individual's Internet bill.

Costs to businesses are also on the rise. Ferris Research currently estimates that costs to U.S. businesses from spam in lost productivity, network system upgrades, unrecoverable data, and increased personnel costs, combined will top $10 billion in 2003. Of that total, Ferris estimates that employee productivity losses from sifting through and deleting spam account for nearly 40 percent of that- or $4 billion alone.

There are other costs to our society besides monetary costs. All of us are deeply concerned about the risks to our children who use e-mail and may be victimized by the nearly 20 percent of spam that contains pornographic material, including graphic sexual images.

Parents encourage their children to use the Internet to play and do schoolwork, and to use e-mail to reach distant relatives. Yet, parents today spend more and more of their time worrying that their children may open up an e-mail, disguised to look like it's from a friend or loved one, only to find pornography.

This greatly concerns me as a parent, as a legislator and as an American citizen. First and foremost, parents should not have to think twice before encouraging their children to use the computer at home.

In addition to pornography, the FTC also tells us that two-thirds of all spam contains deceptive information, much of it peddling get-rich-quick schemes, dubious financial or healthcare offers, and questionable products and services.

Spam is a serious and rapidly growing problem that the Senate must act on, but we must also be mindful of the complexity of the problem we face. While I agree with my colleagues in the Senate who believe that passing legislation is a necessary step, I also believe that legislation alone will not solve the problem of spam.

Spammers today disregard our laws and are winning the technological arms race with Internet service providers who try to block the spam they send. The New York Times recently reported just one example of how unscrupulous spammers were using technology to stay one step ahead of the law- in this instance, by highjacking a local Virginia school's computers to send out untraceable spam.

I repeat: A local Virginia schools computers. The same day, in the Commerce Committee's hearing, Mr. Ronald Scelson- who is popularly known by his moniker "The Cajun Spammer"- testified that it took him only 12 hours to "crack" the latest technology filter supplied by the company of another witness at the table. Not only did he hack into their filter and figure out how to defeat it, the

Cajun Spammer had distributed the keys to unlocking the filter to all of his fellow spammers so that they too could send spam past the filters to the ISP's subscribers.

Keeping up with resourceful spammers' latest technology is not the only challenge. Jurisdictional barriers also complicate enforcement, and as we heard in our hearing, nearly 90 percent of all spam is untraceable and may be passing through mail servers outside of the United States.

I mention these things only to emphasize the complexity of this problem and to remind my colleagues that the odds of us defeating spam by legislation alone are extremely low. The fact that there may be no silver bullet to the problem of spam, however, does not mean that we should stand idly by and do nothing at all about it.

The CAN-SPAM Act is a good first step, and one we should take today.

It is clear this Congress must act, but we should make no mistake- unless we can effectively enforce the laws we write, those laws will have little meaning or deterrent effect on any would-be purveyor of spam.

At the Commerce Committee's executive session where we considered this bill, I introduced an amendment that would empower the FTC to take action against businesses that financially benefit from the sending of spam with deliberately falisifed sender information. This amendment passed unanimously and I would like to take a moment here to briefly comment on it because it goes to the heart of this enforcement matter.

In two hearings before the Commerce Committee this past spring, the chairman and Commissioners of the FTC testified to the Commission's tremendous difficulty in tracking and finding spammers who send out spam with fraudulent and often untraceable transmission information.

The chairman advised us, however, that their investigations are usually most effective when "following the money" to track down spammers. By this, they mean following the Web link or phone number in the spam message that consumers follow with their money to purchase the product or service promoted in the spam. From there, the FTC attempts to prove a connection between the business and a spammer who sent it out on their behalf. In essence, they spend significant time and effort attempting to follow the money trail all the way back to the spammer- if they can find them.

As an alternative to the inefficient and often slow moving process, the amendment I proposed which is now section 6 of the bill was designed to help the FTC enforce the law against those businesses at the front end of the money trail that are promoted in the spam consumers receive. They need to go further, and here is why.

Many unremarkable businesses employ sophisticated spammers to send e-mail to consumers in large volumes with deliberately falsified identity and routing information in order to get past the ISP's spam filters. These businesses often escape liability because enforcement efforts are too often focused on catching the spammer rather than the unscrupulous businesses that hire them in the first place.

Section 6, however, would make it easier for the FTC to enforce the law against businesses knowingly complicit in the use of spam to promote their businesses with deliberately falsified routing information. I urge my colleagues to support this principle of holding businesses that benefit from spam messages accountable for the acts of those they knowingly hire to fraudulently send spam to consumers on their behalf.

I ask unanimous consent to have printed in the RECORD a number of letters I have received in support of this provision.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

CONSUMERS UNION,
June 18, 2003.

Subject: McCain FTC Enforcement Amendment to Burns-Wyden Spam bill.

U.S. SENATE,
Washington, DC.

DEAR SENATOR:

Consumers Union urges you to support the McCain Amendment to the Burns-Wyden CAN-SPAM bill. This amendment is an important improvement on the underlying bill. The amendment would provide additional FTC enforcement authority to help consumers curb spam. With this amendment, the bill would hold businesses that use spam to advertise their products and services accountable for actions by spammers who falsify information regarding the origins of the e-mail in order to evade spam filters.

However, we still have significant reservations about the Burns-Wyden bill, because we believe that consumers will not see a significant reduction in spam without a guarantee that spam is disallowed unless the consumer opts to receive such materials (an "opt-in"), as well as an appropriate legal remedy for consumers who have been harmed by spammers that circumvent the anti-spam safeguards established in this legislation (a private right of action).

Consumers Union hopes the Committee will address these substantial consumer concerns before bringing this legislation to the Senate floor.

Sincerely,

CHRIS MURRAY,
Legislative Counsel.

BUSINESS SOFTWARE ALLIANCE,
Washington, DC, June 18, 2003.

Hon. JOHN MCCAIN,
Chairman, Senate Commerce Committee,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN MCCAIN: On behalf of the member companies of the Business Software Alliance, I write in support of your efforts to amend and report favorably S. 877 to address the ability of the FTC to pursue those who use third parties to send unsolicited commercial email, spam, on their behalf. As the Committee is aware, spam continues to grow at an exponential rate, clogging inboxes, diverting network resources, damaging reputations and brands of responsible companies, and discouraging the use of email as a communications tool.

Those who deliberately engage third parties to send spam with false or misleading transmission information should be held as accountable as those who click on the send button. By taking away the financial incentive to send spam, the potential interest of a responsible company to utilize such a deceptive form of marketing to reach customers now or in the future would evaporate.

As you finalize the language of your amendment and proceed to consideration on the Senate floor prior to markup, we look forward to working with you and your staff on ways to further pursue spammers. BSA believes that a combination of legislation, technology, and enforcement is the right approach. A copy of our principles regarding spam is attached for your review.

Please contact me or Joe Keeley in BSA's office at (202) 872-5500 should you have any questions about the BSA position on spam.

Sincerely,

ROBERT HOLLEYMAN,
President and CEO.

DEAR SENATOR MCCAIN: We would like to thank you for scheduling this markup of S. 877, the Burns-Wyden CANSPAM Act. Senators Burns and Wyden have been true leaders in the effort to address the spam problem working with industry and public interest groups to refine their legislation over the last two sessions.

CDT is conducting a consultative study on the most effective ways to prevent spam while still protecting privacy and free expression. At this time, we have not endorsed any specific bill. We look forward to continue working with you and Senators Burns and Wyden on this important issue as the legislative process unfolds.

In this context, we have reviewed your amendment to extend FTC enforcement authority to businesses knowingly promoted through electronic mail with false or misleading transmission. We believe that this amendment will help the FTC take action against wrongdoers. CDT supports its inclusion in this bill and into the larger discussion on preventing unsolicited commercial email. We hope that this provision- in concert with effective baseline federal legislation, new anti-spam technologies and industry efforts- will help to begin to turn the rising tide of unwanted email.

Sincerely,

ARI SCHWARTZ,
Associate Director,
Center for Democracy and Technology.

JUNE 18, 2003.

Hon. JOHN MCCAIN,
Chairman, Commerce, Science and Transportation Committee, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: I am writing on behalf of the U.S. Chamber of Commerce, the world's largest business federation, representing more than three million businesses of every size, sector and region, regarding S. 877, the CAN SPAM Act.

Spam has become more than a nuisance- it has become so overwhelming that all aspects of the business community, from ISPs who have to invest millions of dollars in bandwidth, to retailers who have seen their opt-in emails deleted along with the spam and pornography, and everyone in between, would like to see this problem eradicated. We believe that stopping spam is going to take a multi-pronged effort, including technology, increased FTC enforcement, and enhanced ability of ISPs to go after the bad actors.

Therefore, I would like to commend Senators Burns and Wyden for their relentless pursuit of legislation to fill in a key piece of the puzzle regarding this issue. The CAN

SPAM Act has been improved significantly, although it still requires some modifications, mostly related to liability issues that could potentially subject even legitimate companies who communicate with their customers through opt-in communications to potential frivolous, but expensive, liability.

I would also like to specifically commend Chairman McCain, and to offer our strong support for his amendment. There are two principal issues that the Committee's educational hearing on spam helped to clarify: the extent to which businesses, whose products are promoted by the deluge of spam, are in realty responsible for the amount of spam that permeates the Internet; and the difficulty of finding actual "spammers." The Chairman's amendment addresses both of these concerns, and does so in a way that specifically targets those underlying problems. In particular, the amendment empowers the FTC, who has the expertise to find and stop the promoted businesses, to go after those who actually benefit from increased volume of spam- the "companies" that hire spammers to sell their products and attract consumers to their web sites.

Therefore, the Chamber urges the Committee to approve this important component of the fight against spam, including the McCain amendment, and we look forward to working with the Committee to further improve the legislation as it moves to the floor.

Sincerely,

R. BRUCE JOSTEN.

YAHOO!,
June 18, 2003.

Hon. JOHN MCCAIN,
Chairman, Senate Commerce, Science and Transportation Committee, Senate Russell Building, Washington, DC.

DEAR CHAIRMAN MCCAIN: Yahoo! supports your amendment to S. 877, the CAN Spam Act of 2003, to hold the owners of websites who knowingly employ spammers using fraudulent means to deliver their advertisements.

The hearing on spam held by your committee revealed significant changes in the marketplace. The volume of spam has grown in exponential terms, and it is extremely difficult to track down spammers who use fraud to conceal themselves. Your amendment takes a new approach to finding these spammers- getting at their revenue source. When a website owner know the person advertising its website is using fraud to get its message out, it must be held responsible. The FTC will be empowered to pursue those who allow such techniques to be used. This has the potential to put fraudulent spammers out of business, as their customers refuse to work with them. This, in turn, has potential to dramatically affect the volume of spam crossing the networks of email service providers. We are encouraged by this creative approach to get at spammers from a new direction.

We also commend you for being absolutely true to your word to bring before your committee legislation to address the problem of spam early in this session. We look forward to working with you and other members of the committee to bring anti-spam legislation to the floor of the Senate before the August recess.

Sincerely,

JOHN SCHEIBEL,
Vice President, Public Policy.

Mr. MCCAIN. Madam President, the House will adopt a similar provision in any House spam bill. I have received support for the provision from every sector involved in the spam debate-consumers' groups, e-mail providers, marketers, advertisers, online and offline retailers, technology companies and the U.S. Chamber of Commerce.

I urge my colleagues to join me in responding to the demands of millions of American consumers in doing all that we can to try to stop spam. I urge them to support passage of the CAN-SPAM Act.

My comments were a little lengthy, and I apologize. This is a very serious and important and complex issue, as I stated at the beginning of my remarks. That is why my two colleagues have spent 4 years working on this issue. I think they would be the first to agree that this may not stop spam.

There are some very smart people out there who will do everything they can for avoidance, including this issue I mention of organizations outside the United States. For us to do nothing would be a great disservice to millions of Americans, including the young ones, the majority of whom in America are regular users of computers.

I thank my colleagues, Senator WYDEN and Senator BURNS, For the benefit of my colleagues, we have three or four amendments. Maybe one or two might require a vote. I hope we can dispose of this legislation in a fairly short period of time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Madam President, I thank Senator MCCAIN, the chairman of the full Committee on Commerce, for his diligence and insight on this, and the ranking member, Senator HOLLINGS. He laid out the facts. I will not rehash everything he said because his numbers are right.

Also I thank my good friend from Oregon, Senator WYDEN. We have worked on this bill for 4 years. It is not an easy piece of legislation to put together.

The simplest piece of legislation we ever put together, I say to Senator WYDEN, was the E 9-1-1 which is probably the best public safety piece of legislation we have ever passed. It sounded like a no-brainer, and it only took 2 years, so this must have been really complicated. I thank you for your efforts. It was a pleasure working with you.

Also, two Senators not on the floor who have not been mentioned are Senator HATCH and Senator LEAHY. We appreciate their cooperation incorporating a significantly expanded criminal package in this law.

The extent of bipartisan cooperation on this issue is no surprise, of course, given the deluge of spam to the consumers and what they face in their inbox each day. The cost of business, the cost to individuals, is escalating and wide ranging.

The chairman asked a valid question: Does this piece of legislation protect us from spam? It can have an effect on people thinking twice before they send it. That is the answer. I have contended all along, as my colleagues on the Commerce Committee have contended, that industry is going to have to come along and get together, talk about the technologies it takes to keep out unwanted mail or some organization or technology that ferrets out the bad people but allows some in the industry to be able to send some messages of what would be considered spam today.

This especially affects people in rural areas. In Montana we have people using the Internet who have to incur long-distance charges to their ISPs. Servers all over the country have difficulty in blocking spam. They are saying the systems are jammed up. The CAN-SPAM bill empowers consumers and grants additional enforcement authority to the Federal Trade Commission to take action against spammers and allows State attorneys general to take action if they see fit.

The bill also provides additional tools to end this online harassment, allowing users to remove themselves from mass email lists and imposing steep fines up to $3 million on spammers. In cases where outright deception is involved, penalties will be unlimited. That is a big point.

The chairman also brings up another point: unwanted and pornographic mail. In my State of Montana, something else is emerging regarding protection of our children: sexual predators. This has to do with how they work in our homes with our children. There are a couple of amendments we will deal with as they come up.

I have a constituent in Montana. If you do not think it does not cost companies money, Jeff Smith, who built a cutting-edge fiber hotel in Missoula, MT, says unwanted spam costs his business about $300,000 a year. His company is worth $2.5 million, so his costs are real.

Not only do we pass legislation, but I will participate in an I-SAFE conference in Billings on Friday at Castle Rock School on how to deal with this unwanted and pornographic mail that comes into our homes on the Internet.

I thank my chairman, Senator MCCAIN, for his patience. I have worn him out a couple of times. He yells back, though, pretty well.

I thank my friend from Oregon, too, who has worked very hard on this issue.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Madam President, kingpin spammers who send out emails by the millions are threatening to drown the Internet in a sea of trash. The American people want it stopped. Every single day the Senate delays, these big-time spammers, the ones who are trying to take advantage of the open and low-cost nature of the Internet, gives them another opportunity to crank up their operations to even more dizzying levels of volumes.

Every Member of the Senate is hearing from citizens. This is a consumer abuse that is visited on millions of people every day. It is now time to put in

place strong enforcement tools to protect the public.

Many are asking, what is the role of Federal legislation? My colleagues have talked a bit about there not being a silver bullet. The key is to pass this bill and come down on the violators with hobnail boots. It is fair to say a lot of the big-time abusers are not exactly quaking today about the prospect of Senate action. They are not technological simpletons. They are very savvy and they figure any law that is passed by the Senate they can get out in front of.

What is going to be important is for those who are charged with enforcement- the Federal Trade Commission, the criminal authorities, we give a role to the State attorneys general, the Internet service providers- when this bill is signed into law, to bring a handful of actions very quickly to establish that for the first time there is a real deterrent, there will be real consequences when those big-time spammers try to exploit our citizens. When the bill takes effect, for the first time those violators are going to risk criminal prosecution, Federal Trade Commission enforcement, and million-dollar lawsuits by the State attorneys general and Internet service providers.

The reason that is the case is because big-time spammers have to violate this bill in order for their sleazy business to work. If they do not hide their identities, their messages end up getting filtered out by the Internet service providers. If they do not use misleading subject lines, people are going to click the messages straight into the trash, unread. It is costly to deal with thousands of demands for consumers to be removed from the lists. The day this bipartisan legislation becomes law, for the first time big-time spamming will become an outlaw business.

It is worth noting when Senator BURNS and I started this effort nearly 4 years ago, we had the strong support of Senator MCCAIN. Senator HOLLINGS has been tremendous to me. I got involved in this shortly after joining the Commerce Committee. A lot of people asked, why in the world would CONRAD BURNS and I be spending our time on something like this. They essentially intimated this was not the kind of issue important enough for the Senate. They said, Senators deal with key matters. They deal with war and peace and entitlement programs. Why in the world would the Senate get involved with something like spam. It was only 6 to 8 percent when we started in 2000. Why is the Senate spending its time on that kind of concern? Suffice it to say, nobody is saying any longer spam is just a minor annoyance. Nobody is saying the delete key is now going to be a sufficient solution to the problem.

This is now something that threatens this medium. Spam, in the view of experts, and in my view, stunts the growth of e-commerce. And if it continues at the rate of growth we have seen in the last few years, I think it will engulf the entire medium.

So something the American people use every day, something that is considered a vibrant, exciting tool, that has empowered millions of people to learn, to be part of cultural activities, to start small businesses- if nothing is done, if somehow this legislation goes by the board or the Senate and House cannot agree, I think what we are seeing in the days ahead is a genuine threat to the entire medium.

So with respect to the specifics of the bill, I think there are a number of key provisions. One I have stressed is the question of misleading identities because I think that goes right to the heart of how you set in place a strong enforcement regime.

But I also emphasize the role of the States here this afternoon. At this point, over half the States have enacted State-level spam legislation. It is pretty easy to see why the States have acted. They are frustrated that the Congress has not moved.

But I believe a State-by-State approach cannot work in this area. The numerous State laws to date certainly have not put in place a coordinated effort against spam. Neither the Internet nor the big-time spammers is sitting around saying: Let's tip our hat to State jurisdictions. And certainly an e-mail address, unlike a phone number, does not reveal the State in which the holder of the address is located. So compliance with a patchwork of inconsistent State laws is virtually impossible, and spammers do not even go through the motions of trying.

What is needed is a uniform, nationwide spam standard to put the spammers on notice and to empower the consumers to have an enforcement regime consistent with their reasonable expectations.

Having emphasized the importance of a nationwide, uniform standard in this area, the legislation does preserve an important role for the States.

First, the State laws that address deception in spam- deception in spam- would be preserved. Second, general consumer protection fraud and computer abuse laws would remain enforceable as well. And third, the bill authorizes States' attorneys general to use the Federal statute to prosecute spammers.

The bottom line is, our States, which have done so much important and innovative work in the area of consumer protection, are going to remain active and important partners in the battle against spam.

Shortly, we will be talking about the Do Not E-mail Registry. I commend Senators SCHUMER and DAYTON. Both of them have introduced legislation in this area. They deserve a great deal of credit with respect to their patience on this legislation. And we know it is a challenge. The telephone Do Not Call list is certainly facing a lot of battles.

But I think this is an important idea. I think it is an idea that makes a genuine contribution. It certainly is one that the American consumer wants. We are going to work with the sponsors, Senator SCHUMER and Senator DAYTON, and others who have been so interested in this to address the various questions that have been brought up with respect to feasibility.

I also commend Senator NELSON of Florida. These big-time spammers- there are only a few hundred of them. I think Senator MCCAIN and I were struck, as we listened to the debate, at the fact that we are talking about a few hundred big-time violators. They seem to have gravitated to a couple States, particularly Florida and Texas.

Senator NELSON has been very interested in ensuring that there are tough enforcement provisions in this legislation. I share his view that we ought to use all of the enforcement tools, including measures such as the RICO statute, against these particularly reprehensible violators. I commend Senator NELSON for this effort as well.

Finally, as we put together a coordinated game plan against the spammers, I would also like to emphasize that we expect our trading partners, and the many countries that look to do business with the United States, to play a more activist role in this area. As sure as night follows day, some of these kingpin spammers are going to just move offshore and set up shop.

So as we look to the future, I have stressed enforcement. I think we need to see aggressive enforcement action the day this bill is signed into law. Then we have to push our trading partners around the world to work with us to ensure that, as part of a coordinated strategy, we are preventing the big-time violators from simply closing down in the United States and moving offshore.

I have tried to specialize in technology issues in my time in the Senate. My State cares greatly about this issue. I have been fortunate to have a chairman in Senator MCCAIN who has always encouraged these efforts, to deal with Internet taxes, digital signatures, Y2K liability- and the list goes on and on. And Senator HOLLINGS, who is not in the Chamber, has been extraordinarily supportive of my involvement in these issues.

But I think it is fair to say that this spam question- of all the technology issues we have tackled in the last few years in the Commerce Committee, I cannot think of another one that has inflamed consumers more, has been emphasized more to me at townhall meetings.

I can tell the Senate, at the time when we were all concerned about the well-being of our troops and the conflict in Iraq, folks would also say, in addition to standing up for our troops: Make sure you do something about spam as well. I think it is indicative of how much concern there is in the country with respect to these kingpin spammers who really do put at risk- I do not say this lightly- an entire medium that has made such a difference and been so important for millions of Americans.

We are going to deal expeditiously with the amendments. A number of colleagues have already asked of the managers what we thought the timetable of this bill would be. My guess is, we can deal with this legislation certainly within the next couple of hours, at most.

We urge Senators who have an interest in this matter to come to the floor. This is an opportunity for the Senate to stand up for the consumer.

We are not going to overpromise. We are not going to say that the day this bill is signed, spam will magically vanish into the vapor. But this legislation, coupled with an enforcement strategy that has the Federal Trade Commission, criminal authorities, pushing spam as it relates to these big-time violators up the priority list of the tasks that they face- that kind of strategy can make a difference.

Madam President, with that, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I believe the Senator from Oregon has a technical amendment and maybe would like to propose that at this time. It is my understanding that the Senator from New York, Mr. SCHUMER, is on his way over to propose his Do Not Spam amendment.

It is also my understanding that Senator HATCH, Senator SANTORUM, and Senator CORZINE are the ones who have amendments. I would urge them to come forward when it is convenient so we can dispense with those amendments in a timely fashion.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

AMENDMENT NO. 1891

Mr. WYDEN. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. WYDEN], for himself and Mr. BURNS, proposes an amendment numbered 1891.

The amendment is as follows:

(Purpose: To clarify the provision prohibiting false or misleading transmission information, and for other purposes)

On page 37, lines 12, after the comma, insert "whether or not not displayed,".

On page 44, line 20, strike "false or misleading," and insert "materially false or materially misleading,".

On page 45, line 2, strike "misleading; and" and insert "materially misleading;".

On page 45, line 5, strike "false or misleading," and insert "materially false or materially misleading; and".

On page 45, between 5 and 6, insert the following:

"(C) if header information attached to a message fails to identify 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, then such header information shall be considered materially misleading.".

On page 49, between lines 11 and 12, insert the following:

(6) MATERIALITY DEFINED.- For purposes of paragraph (1), an inaccuracy or omission in header information is material if it would materially impede the ability of a party seeking to allege a violation of this Act to locate the person who initiated the message or to investigate the alleged violation.

On page 50, beginning in line 24, strike "establish" and insert "register for".

On page 51, after line 22, insert the following:

"(d) SUPPLEMENTARY RULEMAKING AUTHORITY.- The Commission may be rule-

"(1) modify the 10-business-day period under subsection (a)(4)(A) or subsection (a)(4)(B), or both, if the Commission determines that a different period would be more reasonable after taking into account-

"(A) the purposes of subsection (a);

"(B) the interests of recipients of commercial electronic mail; and

"(C) the burdens imposed on senders of lawful commercial electronic mail; and

"(2) specify additional activities or practices to which subsection (b) applies if the Commission determines that those activities or practices are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under subsection (a).".

On page 58, beginning in line 16, strike "jurisdiction or in any other court of competent".

On page 62, beginning in line 14, strike "defendant, or in any other court of competent jurisdiction, to- " and insert "defendant- ".

On page 65, beginning in line 7, strike "for any such statute, regulation, or rule that" and insert "to the extent that any such statute, regulation, or rule".

On page 65, line 16, strike "State laws" and insert "other State laws to the extent that those laws relate".

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Madam President, I offer this amendment on behalf of myself and Senator BURNS. It is technical in nature. I know of no opposition.

It clarifies that header information that is technically false, but in such a minor way as to be nonmaterial, will not be actionable under the legislation.

It clarifies that spammers who knowingly route messages through what are called open relays in order to erase the message's originating information- which is a technique used by these big-time spammers- will be treated as having used false or misleading header information.

It permits the Federal Trade Commission to modify the bill's deadline for how quickly "opt-out requests" must be processed. Currently, the bill says that 10 business days after receiving a consumer's opt-out request, any further e-mails from the sender become punishable.

The amendment permits the Federal Trade Commission to modify that time period if it finds that a different period would be appropriate. It permits the Federal Trade Commission, if it identifies new and particularly nefarious techniques used by spammers, to add those techniques to the list of what are called aggravated violations so that spammers who use those techniques would be subject to higher penalties.

Finally, this amendment, which has the support of Chairman MCCAIN and Senator HOLLINGS, would clarify that any lawsuits for violations of Federal spam rules should be brought in Federal court. It is noncontroversial in nature. I urge its passage.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, we support the amendment. It is helpful to the legislation. I urge its adoption.

The PRESIDING OFFICER. Is there further debate?

If not, the question is on agreeing to amendment No. 1891.

The amendment was agreed to.

Mr. MCCAIN. Madam President, I move to reconsider the vote.

Mr. WYDEN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1892

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Madam President, I have an amendment at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER], for himself, Mr. MCCAIN, Mr. HOLLINGS, and Mr. GRAHAM of South Carolina, proposes an amendment numbered 1892.

Mr. SCHUMER. I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To authorize the Commission to implement a nationwide "Do Not E-mail" registry)

On page 66, strike lines 1 through 11 and insert the following:

SEC. 9. DO-NOT-E-MAIL REGISTRY.

(a) IN GENERAL.- Not later than 6 months after the date of enactment of this Act, the Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce a report that-

(1) sets forth a plan and timetable for establishing a nationwide marketing Do-Not-E-mail registry;

(2) includes an explanation of any practical, technical, security, privacy, enforceability, or other concerns that the Commission has regarding such a registry; and

(3) includes an explanation of how the registry would be applied with respect to children with e-mail accounts.

(b) AUTHORIZATION TO IMPLEMENT.- The Commission may establish and implement the plan, but not earlier than 9 months after the date of enactment of this Act.

Mr. SCHUMER. Madam President, I offer this amendment on behalf of myself, Senator GRAHAM of South Carolina, Senator MCCAIN, and Senator HOLLINGS. I thank my good friend, Senator LINDSEY GRAHAM, who worked long and hard on this issue with me. Senator GRAHAM and I have been working on quite a few pieces of legislation together. He is a good legislator and a fighter for the things in which he believes. We do not agree on everything, to say the least, but it is a pleasure to work with him.

I thank my colleagues, Senator BURNS and Senator WYDEN, both of whom have worked long and hard on this legislation for many years. They both were willing to work with me and accommodate some changes which I hope make the legislation better. I believe they do. But the foundation of this bill is their hard work. This is a good day for both of them because they have spent a long time and they deserve a great deal of accolades for their hard work on this important legislation which, hopefully, will pass today.

I thank my colleague, Senator HOLLINGS, ranking member of the Commerce Committee, who offers this amendment along with myself, Senator GRAHAM, and Senator MCCAIN. We are all going to miss FRITZ HOLLINGS. He is one of the true gems of the Senate. He is a forthright man and a direct man. He is a smart man. He is a principled man. I, for one, know that my amendment might not have happened, certainly wouldn't be in the form it is now, without his intervention. I thank him for that.

Finally, Senator MCCAIN and I have worked on a whole number of things together. It is a pleasure to work with him. Again, he is a man of his word. He is able to bring different people together to produce good legislation. He cares about the average person. He never lets any of the special interests get in his way. We wouldn't be here today without the Senator's leadership. I thank him very much.

Let me begin by saying how important this whole bill is to the continued vitality of e-mail and the Internet itself. Unsolicited e-mail has grown at astronomical rates over the past months. It is safe to say we are now under siege. Armies of online marketers have overrun e-mail inboxes across the country with advertisements for herbal remedies, get-rich-quick schemes, and, unfortunately, pornography. What was a simple annoyance last year has become a major concern this year and could cripple one of the greatest inventions of the 20th century next year if nothing is done.

Way back in 1999, the average e-mail user received just 40 pieces of unsolicited commercial e-mail, spam, each year. This year the number is expected to pass 2,500. I know that I am lucky if I don't get 40 pieces of spam every day. As a result, a revolution against spam is brewing as the epidemic against junk e-mail exacts an ever-increasing toll on families, businesses, and the economy.

Let me illustrate this point with a story. My wife and I have two wonderful daughters, one of whom is about to complete her first year at college; the other, a 14-year-old, is an absolute whiz on the Internet. She loves sending and receiving e-mails. As parents, we do our best to make sure she has good values and that the Internet is a positive experience for her, a device to help her with her school work or learn about events taking place around the world, and maybe even a way to order the latest In Sync CD, although I think she likes other groups better.

You can imagine my anger and dismay when I saw my daughter on e-mail. I would say: Great, she is not watching television. And then you can imagine my dismay when I discovered that not only was she a victim of spam like myself, but like all e-mail users, much of the junk mail she was receiving advertised pornographic Web sites. Some of the things that crossed her e-mail were things I would not want to see, let alone my 14-year-old daughter. I was and remain virtually powerless to prevent such garbage from reaching my daughter's inbox.

Recent surveys unambiguously show that the public shares my concern about spam infested with pornography and how it impacts their children. The bottom line is, if parents can control what their kids watch on TV, they should be able to control what their children are exposed to on the Internet. We have parental advisory notices on music, as well as ratings for TV shows and movies to ensure that parents are able to keep their children from being exposed to what they consider inappropriate. So it makes you scratch your head about why there is no safeguard in place to enable parents to protect their kids from vulgar e-mail. The e-mailing public has been at the mercy of spammers for long enough. They want to take back the Internet.

A recent survey conducted by UnSpam, one of the ardent foes of spam and backer of my legislation, and InSightExpress, a research group, backs that view. Here is a quick rundown of some of the highlights of the survey:

Almost 9 in 10 parents say they are seriously concerned about their children receiving inappropriate e-mail versus 5 percent who don't care. Ninety-six percent of parents want the ability to block pornography from their children's inboxes. A paltry 2 percent don't want that right. Ninety-five percent think children should be given extra protection under any anti-spam law, 3 percent undecided. And 93 percent think spammers should face enhanced penalties for sending inappropriate messages to children.

Our amendment is a solution that will give parents- the only solution- the ability to protect their children from offensive and obscene e-mail spam by registering their children's e-mail address. Parents across the country are increasingly worried about this problem, and we should do the right thing by giving them a registry. Parents and children are not the only ones who will benefit from a no e-mail registry. Business owners and ISPs across the Nation can identify with the frustration many of us feel in the battle against spam. With surveys showing that nearly 50 percent of e-mail traffic qualifies as spam, businesses spend millions of dollars each year on research-filtering software and new servers to deal with the ever expanding volume of junk e-mail being sent through the pipes.

According to Ferris Research, spam costs businesses in the United States $10 billion each year in lost productivity, consumption of information technology resources, and help desk time.

That is $10 billion that should be spent on growing American businesses and jobs instead of fighting spam.

The Do Not E-mail Registry created by the FTC would allow businesses to cut costs and improve productivity in the workplace by giving them the ability to register their entire domain names. Very important to businesses.

Some have expressed concern about creating a list of e-mail addresses that spammers could exploit. The FTC has already said it is technologically possible to create and secure the list. This is no longer a worry and one of the breakthroughs we made in the last few months that are allowing this legislation to come to the Senate floor.

In fact, we know that the database of addresses can be protected by military-caliber encryption so that its valuable contents will not fall into the wrong hands.

I want to take a few minutes to talk about the underlying bill and other amendments, and then I will get into mine.

First, I commend Senators BURNS and WYDEN for their long efforts on this bill. The bill will, for the first time, set minimum standards for all commercial e-mail. It will require all commercial mail to include valid return e-mail addresses and physical addresses of the sender. It must provide accurate header and router information. And most messages will be required to have an opt-out system.

It does not stop there. In addition to these provisions, it will take aim at the mass collection of e-mail addresses and the rampant fraud which, according to a report released by the FTC, is present in 66 percent of junk e-mail.

I am hopeful that we can add important criminal provisions to these civil measures. I know both my colleagues, including Senators MCCAIN and HOLLINGS, want to do that. I worked in the Judiciary Committee with Senators HATCH and LEAHY on a bill that makes it clear that fraud and deception in e-mail will not be tolerated. And those who do not heed the warnings in this bill will face stiff punishment. These criminal provisions will outlaw some of the spammers' favorite tricks.

About our legislation as well, let me just say it is really important that we put in the registry, which, in my judgment, is the best way to get at spam. No system is foolproof and, as Mr. Morris of the FTC has said, no bill will solve all of the problems. But the registry is the most complete, comprehensive way to do it, combined with the criminal penalties that we are adding in the Hatch-Leahy-Schumer amendment.

The minute somebody spams someone on the Do Not Call list, there will be an immediate cause of action and criminal prosecution.

The good news is that since we know that a large amount of spam comes from a small amount of people, we can get after these few people. This legislation, as you know, gives the FTC 6 months to come back with a comprehensive proposal. We then get 3 months here to examine it to see if we want to change it, and then the FTC may implement it. I have received-and they have both verbalized this on the Senate floor- assurances from Senators MCCAIN and HOLLINGS that if the FTC should decide they don't want to implement it, or come up with something that is unworkable, they will use their clout with the FTC to straighten things out and get this done. Otherwise, we in the Congress can respond.

I believe this amendment will allow, without any further action by Congress, as long as the House passes it and it stays in the bill- and I thank Senator MCCAIN for assuring me that he will not even sign a conference report that doesn't have this amendment in it, and I know all of my colleagues are for this legislation. But once it passes the House and is signed into law, we set the road for a no-call registry. It is all downhill after that.

Within a year, it is my belief we will have that registry and, just as the no-call registry was a great success, I believe the no-spam registry will be a great success. It will take a little longer, it will be a little more difficult, but the same basic popularity and support that the American people have given the no-call registry, they will give, for sure, to the no-spam registry, and the combination of a good proposal that the FTC will have to send to us in 6 months and vigilant enforcement, plus the no-spam registry, plus the underlying base of the bill, will put a crimp, a real dent in spam.

Are we ever going to eliminate all spam? For sure not. But is this legislation, along with the amendment I am adding, going to be the toughest, best approach, and greatly curtail spam? Indeed. It is my belief that when we enter these portals a year from now, spam will have greatly decreased.

One of the great inventions of the 20th century, which is now sick and ailing, will be healthy and going full steam ahead. The bottom line is that this is a very fine day for those who use computers and e-mail and for American technology in general. It shows that we can all work together and get something done- get something done that the American people want.

I ask my colleagues to support this amendment and the underlying legislation. Let's finally do something about one of the greatest technological problems that we face right now in this country, the proliferation of spam.

With that, I yield the floor.

Mr. WYDEN. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SCHUMER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHUMER. Madam President, I ask unanimous consent that we adopt the amendment and add it to the legislation.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the amendment.

The amendment (No. 1892) was agreed to.

AMENDMENT NO. 1891, AS MODIFIED

Mr. WYDEN. Madam President, at this time, I ask unanimous consent that the previously agreed-to Burns-Wyden technical amendment, No. 1891, be modified with the change I now send to the desk.

The PRESIDING OFFICER. Is there objection?

Without objection, the amendment is so modified.

The amendment (No. 1891), as modified is as follows:

On page 67, line 20, strike "act" and insert "act, other than section 9,".

Mr. WYDEN. Madam President, this is also a very modest technical amendment. This amendment simply ensures that the Do Not E-mail Registry proposed would be considered on the timetable that all of the parties who have worked on this had intended. It is very noncontroversial.

The PRESIDING OFFICER. The Senator from Florida is recognized.

Mr. NELSON of Florida. Madam President, I rise to commend the Senators who have brought this legislation forward and say how gracious they have been to me in working to address the seriousness of this issue of spam. Later on, when Senator LEAHY comes to the floor, I will have a colloquy with him about some of the provisions that are going to be submitted in the Hatch-Leahy-Nelson amendment.

In the meantime, I wanted to commend the Senator from Oregon for his leadership. I commend Senator CONRAD BURNS from Montana for his leadership. I commend the Senators for how they saw the problem. They saw it years ago, and they have been so persistent. Senator WYDEN and Senator BURNS kept after it. It is an idea whose time has come simply by virtue of the fact that people can hardly even use their e-mail now it is so cluttered up with unwanted messages.

Mr. WYDEN. Will the Senator yield?

Mr. NELSON of Florida. I will be happy to yield.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Madam President, I will be very short.

Without turning this into a bouquet-tossing contest, let me thank my friend from Florida. Of course, many of the worst violators are people I call kingpin spammers who are located in his home State. The Senator from Florida brought it to the attention of Senator BURNS and I that to have an effective enforcement strategy, we had to have in place tools that would deal with the kind of shady operators who are present in his home State.

The Senator from Florida has hammered on that message. I think by the time we are done this afternoon and have Senator LEAHY on the floor as well, Senator NELSON'S contribution will be especially helpful, not just in Florida but in terms of dealing with these kingpin spammers, the people who send out millions of e-mail now without consequences.

I thank my colleague for yielding, and I thank him for keeping this issue on the radar.

Mr. NELSON of Florida. Madam President, I thank Senator HATCH and Senator LEAHY for working with me in their capacity as leaders of the Judiciary Committee in attaching some strong penalties on the most egregious kinds of spam.

Spam is clearly a nuisance, and it impedes the course of commerce. When you can't even use your computer because it is so cluttered up, that is one thing, but when spam is used for illicit purposes, such as child pornography, then that is another thing. That needs to be dealt with swiftly and severely.

By Senator WYDEN and Senator BURNS working with Senator HATCH and Senator LEAHY, we have, as part of their amendment- and I think it is worth reading. This is a part of the amendment they will offer:

It is the sense of Congress that spam has become the method of choice for those who distribute pornography and perpetrate fraudulent schemes and also offers fertile ground for deceptive trade practices;

And it is the sense of Congress that 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-

And it lists several chapters of the United States Code, one relating to fraud and false statements; another relating to obscenity; another relating to the sexual exploitation of children; and another relating to racketeering.

By the adoption of this amendment, we will strengthen the penalties and also give a directive to the United States Sentencing Commission, which is the normal course of action, that they shall consider sentencing enhancements for those convicted of other offenses, including offenses involving fraud, identity theft, obscenity, child pornography, and sexual exploitation of children, if those offenses involve the sending of large quantities of unsolicited e-mail.

Why is this so egregious? We know what a nuisance it is. One day, I went in my Tampa office to check the e-mail. We had a list of single-spaced e-mail over the last evening filling up-single space, one sheet of paper, all unsolicited. That was bad enough. But to a Senate office, two of them were pornographic. If that is happening to my Tampa Senate office, we can imagine

what is happening to the e-mail receipt of every consumer in America on their computer. It has to stop. This is an attempt to stop it.

Under the old laws, when we tried to protect against activities such as child pornography or taking advantage of senior citizens by some extortion or deceptive scheme to bilk them out of money, before we had e-mail, the criminal would send out 100, 150 letters to the unsuspecting victims on whom they were preying on child pornography or on fleecing senior citizens of their assets. That was 100, 150 letters. Now with the punch of a button, they can send out 150 million. So we see the insidious ability of a criminal mind to prey upon millions of people by the use of this very new and fantastic tool that we ought to be using for good, not for ill, and that is e-mail.

This Senator is very happy that this legislation is being considered, and we are now going to attach some tough penalties to it for these egregious types of activities.

I also commend the Senator from Arizona, the chairman of our committee, and the Senator from South Carolina, the ranking member of our committee, for being so vigilant in bringing this legislation to the floor.

Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, we would like to, obviously, finish the bill as expeditiously as possible and yet offer all Members the opportunity to propose amendments. As I understand it right now, we have pending amendments by Senators CORZINE, SANTORUM, and HATCH.

As Members know, there is a briefing at 4 p.m. by the Secretary of Defense for all Members in room 407. Shortly before 4, I would like to propose a unanimous consent agreement to lock in all amendments with no time agreements agreed to. I ask my colleagues who may have additional amendments to let us know between now and shortly before the hour of 4, which is over a half an hour.

I will also say we are asking Senators HATCH, SANTORUM, and CORZINE to come over to offer their amendments so we can dispose of those amendments.

AMENDMENT NO. 1892

Mr. MCCAIN. Madam President, I wish to make a few comments about Senator SCHUMER's amendment regarding the Do Not Spam list. As Senator SCHUMER pointed out, it authorizes the Federal Trade Commission to develop a Do Not Spam list similar to the Do Not Call list which has been widely supported by Americans across the country.

The Senator from New York and I remember when apparently perhaps, in the view of some, a misguided member of the judiciary stayed the Do Not Call list and the reaction that followed was certainly extraordinary. If we are able technologically to develop a Do Not Spam list, I think it would be of great assistance to many Americans. So I think the Senator from New York has a remarkable idea here.

As a first step, the FTC, which has testified they have some technological reservations about creating such a list, although I am sure the FTC would not object to it in principle, but they have some reservations, Senator SCHUMER has modified his amendment so that the FTC would be required to submit a report to the Congress within 6 months. It contains a plan for implementing the Do Not Spam list. The FTC would be authorized to implement the list 3 months later, and I would certainly urge them to do so.

As everyone is aware by now, there has been a tremendous amount of discussion about this issue. I believe it is a good one and one that provides the FTC with the authority to establish such a registry if they believe it is the proper mechanism to stop the onslaught of spam to consumers.

I think we have given them the flexibility to come back and show us if there are serious problems. If there are serious problems, we would be glad to look at them and help resolve those problems through any kind of legislative or other assistance we can provide.

The Schumer amendment also absolutely emphasizes this is an idea that has worked in the Do Not Call area and is a concept that should be pursued to the fullest extent of our capabilities. So I thank the Senator. I also thank Senator NELSON, a valued member of the committee, for his involvement in this issue.

Again, I hope Senators who have amendments will come to the floor and let us know about them.

Mr. SCHUMER. Will my colleague yield?

Mr. MCCAIN. I am glad to yield.

Mr. SCHUMER. I once again thank my colleague from Arizona for helping us with this list and his commitment in terms of keeping this in the conference and then making sure the FTC moves forward with this in every technological way possible. I very much appreciate it. As I mentioned before, the Senator is a true gentleman, a man of his word. We would not be here today without his good work.

Mr. WYDEN. Will the Senator yield?

Mr. SCHUMER. I think the Senator from Arizona has the floor.

Mr. MCCAIN. I am glad to yield, but first, to add to my remarks, I believe Senator ENZI may have an amendment as well.

I thank my friend from New York for his comments and I yield to the Senator from Oregon.

Mr. WYDEN. I say to the Senator from New York, I appreciate his patience on this. I think he knows from the outset my concern was not with the nature of this, because clearly empowering consumers to make these kinds of choices is essential. What is important is to try to figure out how to do this right.

The Senator from New York knows people change their e-mail addresses constantly. In that sense, this is different than a telephone. We all understand that if a bad spammer, for example, one of these kingpin operators, was to hack into this, what a gold mine for an evil person who wanted to exploit our citizens. The Senator from New York has been acutely aware of it and that is why he has worked with me, Senator BURNS, and all of those on the Commerce Committee. I commend him for his patience.

This is an important contribution. We have a lot of work to do, because we have seen with the Do Not Call list what the challenge is. I personally believe in the telecommunications area we ought to establish, as kind of a bedrock principle, that there is a First Amendment right to communicate, but there also is a right of the consumer to say, I have had it. In effect, that is what the Senator from New York is allowing us to do in the spam area, and to do it in a responsible way.

I thank my colleague from Arizona for giving me this time. With a little luck, we will be able to dispose of the additional spam amendments and send this bill on its way.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Madam President, I again urge my colleagues, particularly Senators SANTORUM, HATCH, CORZINE, and ENZI, to come to the floor to give us their amendments so we can move expeditiously.

I also intend to propose a unanimous consent agreement in about 15 minutes that there be no further amendments in order at that time.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HATCH. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1893

Mr. HATCH. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Utah (Mr. HATCH), for himself, Mr. LEAHY, Mr. NELSON of Florida, and Mr. SCHUMER proposes an amendment numbered 1893.

Mr. HATCH. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To revise the criminal penalty provisions of the bill as reported, and for other purposes)

On page 43, beginning with line 11, strike through the matter appearing between lines 10 and 11 on page 44 and insert the following:

SEC. 4. PROHIBITION AGAINST PREDATORY AND ABUSIVE COMMERCIAL E-MAIL.

(a) OFFENSE.-

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

"§1037. Fraud and related activity in connection with electronic mail

"(a) IN GENERAL.- Whoever, in or affecting interstate or foreign commerce, knowingly-

"(1) accesses a protected computer without authorization, and intentionally initiates the transmission of multiple commercial electronic mail messages from or through such computer,

"(2) uses a protected computer to relay or retransmit multiple commercial electronic mail messages, with the intent to deceive or mislead recipients, or any Internet access service, as to the origin of such messages,

"(3) falsifies header information in multiple commercial electronic mail messages and intentionally initiates the transmission of such messages,

"(4) registers, using information that falsifies the identity of the actual registrant, for 5 or more electronic mail accounts or online user accounts or 2 or more domain names, and intentionally initiates the transmission of multiple commercial electronic mail messages from any combination of such accounts or domain names, or

"(5) falsely represents the right to use 5 or more Internet protocol addresses, and intentionally initiates the transmission of multiple commercial electronic mail messages from such addresses,

or conspires to do so, shall be punished as provided in subsection (b).

"(b) PENALTIES.- The punishment for an offense under subsection (a) is-

"(1) a fine under this title, imprisonment for not more than 5 years, or both, if-

"(A) the offense is committed in furtherance of any felony under the laws of the United States or

"(B) the defendant has previously been convicted under this section or section 1030, or under the law of any State for conduct involving the transmission of multiple commercial electronic mail messages or unauthorized access to a computer system;

"(2) a fine under this title, imprisonment for not more than 3 years, or both, if-

"(A) the offense is an offense under subsection (a)(1);

"(B) the offense is an offense under subsection (a)(4) and involved 20 or more falsified electronic mail or online user account registrations, or 10 or more falsified domain name registrations;

"(C) the volume of electronic mail messages transmitted in furtherance of the offense exceeded 2,500 during any 24-hour period, 25,000 during any 30-day period, or 250,000 during any 1-year period;

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

"(E) as a result of the offense any individual committing the offense obtained anything of value aggregating $5,000 or more during any 1-year period; or

"(F) the offense was undertaken by the defendant in concert with 3 or more other persons with respect to whom the defendant occupied a position of organizer or leader; and

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

"(c) FORFEITURE.-

"(1) IN GENERAL.- The court, in imposing sentence on a person who is convicted of an offense under this section, shall order that the defendant forfeit to the United States-

"(A) any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

"(B) any equipment, software, or other technology used or intended to be used to commit or to facilitate the commission of such offense.

"(2) PROCEDURES.- The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section, and in Rule 32.2 of the Federal Rules of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.

"(d) DEFINITIONS.- In this section:

"(1) LOSS.- The term 'loss' has the meaning given that term in section 1030(e) of this title.

"(2) MULTIPLE.- The term 'multiple' means more than 100 electronic mail messages during a 24-hour period, more than 1,000 electronic mail messages during a 30-day period, or more than 10,000 electronic mail messages during a 1-year period.

"(3) OTHER TERMS.- Any other term has the meaning given that term by section 3 of the CAN-SPAM Act of 2003.".

(2) CONFORMING AMENDMENT.- The chapter analysis for chapter 47 of title 18, United States Code, is amended by adding at the end the following:

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

(b) UNITED STATES SENTENCING COMMISSION.-

(1) DIRECTIVE.- Pursuant to its authority under section 994(p) of title 28, United States Code, 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, United States Code, as added by this section, and other offenses that may be facilitated by the sending of large quantities of unsolicited electronic mail.

REQUIREMENTS.- In carrying out this subsection, the Sentencing Commission shall consider providing sentencing enhancements for-

(A) those convicted under section 1037 of title 18, United States Code, who-

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

(I) harvesting electronic mail addresses of the users of a Web site, 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 unsolicited 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, United States Code (relating to fraud and false statements); chapter 71 of title 18, United States code (relating to obscenity); chapter 110 of title 18, United States Code (relating to the sexual exploitation of children); and chapter 95 of title 18, United States Code (relating to racketeering), as appropriate.

Mr. HATCH. Madam President, I rise today with Senator LEAHY, Senator NELSON of Florida, and Senator SCHUMER to offer an amendment to the CAN SPAM Act of 2003. This amendment strengthens the act's criminal provisions by incorporating key provisions of the Criminal Spam Act of 2003, which I worked closely with Senators LEAHY, GRASSLEY, SCHUMER, NELSON of Florida and others to draft earlier this year and which was favorably reported out of the Judiciary Committee. To send an effective and adequate message of deterrence to the most egregious spammers, stiff criminal penalties must be an element of any comprehensive anti-spam legislative package.

Over the course of the past several Congresses we have become more and more aware of the problems associated with unsolicited commercial e-mail, or spam. Rarely a minute passes that American consumers and their children are not bombarded with e-mail messages that promote pornographic web sites, illegally pirated software, bogus charities, pyramid schemes and other "get rich quick" or "make money fast" scams.

The rapid increase in the volume of spam has imposed enormous costs on our economy- potentially $10 billion in 2003 alone- as well as unprecedented risks on our children and other vulnerable components of our society. Spam has become the tool of choice for those who distribute pornography and indulge in fraud schemes. We all know of children who have opened unsolicited e-mail messages with benign subject lines only to be exposed to sexually explicit images. We have heard of seniors using their hard earned savings to buy fraudulent health care products advertised on-line or of being duped into sharing sensitive personal information to later find themselves victims of identity and credit card theft.

We cannot afford to stand idle and continue to allow sophisticated spammers to use abusive tactics to send millions of e-mail messages quickly, at an extremely low cost, with no repercussions. The sheer volume of spam, which is growing at an exponential rate, is overwhelming entire network systems, as well as consumers' in-boxes. By year end, it is estimated that 50 percent of all e-mail traffic will be spam. It is no exaggeration to say that spam is threatening the future viability of all e-commerce. The time has come to curb the growth of spam on all fronts- through aggressive civil and criminal enforcement actions, as well as innovative technological solutions.

The criminal provisions that make up this amendment are intended to target those who use fraudulent and deceptive means to send unwanted e-mail messages. A recent study conducted by the Federal Trade Commission demonstrates that this is no small number. According to the FTC, 66 percent of

spam contains some kind of false, fraudulent, or misleading information, and one-third of all spam contains a fraudulent return e-mail address that is included in the routing information, or header, of the e-mail message. By concealing their identities, spammers succeed in evading Internet filters, luring consumers into opening messages, and preventing consumers, ISPs and investigators from tracking them down to stop their unwelcomed messages.

This amendment significantly strengthens the criminal penalties contained in the CAN SPAM Act by striking its misdemeanor false header offense and replacing it with five new felony offenses. The amendment makes it a crime to hack into a computer, or to use a computer system that the owner has made available for other purposes, as a conduit for bulk commercial e-mail. It prohibits sending bulk commercial e-mail that conceals the true source, destination, routing or authentication information of the e-mail, or is generated from multiple e-mail accounts or domain names that falsify the identity of the actual registrant. It also prohibits sending bulk commercial e-mail that is generated from multiple e-mail accounts or domain names that falsify the identity of the actual registrant, or from Internet Protocol, IP, addresses that have been hijacked from their true assignees.

The amendment includes stiff penalties intended to deter the most abusive spammers. Recidivists and those who send spam to commit another felony face a sentence of up to 5 years' imprisonment. Those who hack into another's computer system to send spam, those who send large numbers of spam, and spam kingpins who direct others in their spam operations, face up to 3 years' imprisonment. Other illegal spammers face up to a year in prison. The amendment provides additional deterrence with criminal forfeiture provisions and the potential for sentencing enhancements for those who generate e-mail addresses through harvesting and dictionary attacks.

I commend Senators BURNS, WYDEN, MCCAIN, and HOLLINGS for their hard work over the course of the past several Congresses on the CAN SPAM Act. They have worked diligently to enhance the privacy of consumers without unnecessarily burdening legitimate electronic commerce. The balance is a difficult one to strike. I compliment these fine Senators for being able to strike that balance and get it done.

I believe enactment of the CAN SPAM Act is an important first step toward curbing predatory and abusive commercial e-mail, but it is certainly not the end. We all recognize that there is no single solution to the spam problem. While we must critically and continually monitor the effectiveness of any legislative solution we enact, we must pursue other avenues as well. Technological fixes, education and international enforcement are integral components to any effective solution. To this end, we will need the assistance of private industry and our international partners.

I look forward to working with my colleagues in both Houses as we attempt to confront the spam problem on all fronts. I urge my colleagues to support this amendment which will strengthen the comprehensive legislative package that is before us today.

Mr. WYDEN. Madam President, will the Senator from Utah yield?

Mr. HATCH. I am happy to do that.

Mr. WYDEN. I commend the Senator from Utah for his efforts in this area. The contribution the Senator from Utah makes is not just useful but it is absolutely critical. We can write bills to fight spam until we run out of paper, but unless we have the kind of enforcement the Senator from Utah envisions, we are not going to get the job right.

I am particularly interested in working with the distinguished chairman of the Judiciary Committee in making sure we have some vigorous oversight after this bill is enacted into law. If after this bill is passed we have the prosecutors, the Federal Trade Commission, and others bring some tough enforcement actions, that will be a tremendously valuable deterrent.

I would like to work with the distinguished chairman of the committee to have some vigorous oversight hearings after this bill has gone into effect. That is what it is going to take to make sure we have the teeth in this legislation to make a difference. I thank my colleague.

Mr. HATCH. I thank my colleague for those kind remarks and thank him and Senator MCCAIN for their leadership in the Senate.

I ask unanimous consent to add Senator GRASSLEY as a cosponsor of this amendment, No. 1893. Senator GRASSLEY has worked with me and Senator LEAHY every step of the way and deserves a lot of credit.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Arizona.

Mr. MCCAIN. I thank Senator HATCH and Senator LEAHY for their work to improve the criminal provisions and strengthen the Burns-Wyden CAN-SPAM Act. The active participation of Senator HATCH and his committee on this issue has been extremely valuable.

I join my friend from Oregon in urging Senator HATCH to have oversight on how this law is enforced and that it is properly done. We face challenges in enforcement of this act, particularly in light of the changes in technology that will inevitably occur which will make this legislation even harder to enforce than it is today. I thank Senator HATCH, and I urge adoption of the amendment.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. I encourage the adoption of this amendment. I am one of the cosponsors along with Senator HATCH and Senator LEAHY. Let me state for the RECORD the essence of part of a colloquy between myself and Senator LEAHY.

We have all been stunned by how pervasive spam has become in e-mail traffic. We have experienced the way the clogged inboxes, the unwanted solicitations, and the unwelcome pornographic material make a session on the computer less productive and less enjoyable.

I detailed earlier in my remarks the innumerable pornographic messages that come into my Senate office computer in my offices back in Florida. It is one of the top complaints I receive from my constituents. I am very pleased to be working with the Senators from Utah and Vermont to impose tough penalties on those who impose this garbage on others.

I am always concerned with the type of spam that goes beyond the mere nuisance variety. It is becoming clear with each passing month that many criminal enterprises have adopted spam as their method of choice for perpetrating criminal schemes. Spammers are now frequently perpetrating fraud to cheat people out of their savings, stealing people's identities, or trafficking in child pornography. What spam allows them to do is to conduct these criminal activities on a much broader scale at dramatically reduced costs. They can literally reach millions of people at the push of a button.

I have given the example in the old days that someone would use the mail to send out 100 or 150 letters. They would have nefarious schemes such as bilking senior citizens out of money or perpetrating child pornography. Now they do not send out 150 letters to do it. They punch a button and they are sending out 150 million e-mail messages perpetrating their schemes of fleecing senior citizens or perpetrating child pornography.

The colloquy I propose with Senator LEAHY at his convenience would be to reinforce a ban- which is why I had originally introduced S. 1052- in the Deceptive Unsolicited Bulk Electronic Mail Act. I introduced that with Senator PRYOR. That is why I have sought, with the help of the Senator from Vermont and the Senator from Utah, to include provisions in this legislation that make it clear our intent to treat the use of spam to commit large-scale criminal activity as the organized crime that it is.

We do it in two ways. First, by working with the United States Sentencing Commission in the amendment being offered by the Senators toward enhanced sentences for those who use spam or other unsolicited bulk e-mail to commit fraud, identity theft, obscenity, child pornography, or the sexual exploitation of children.

Second, we make the seriousness of our intentions clear in this amendment by urging prosecutors to use all the tools at their disposal, including RICO, to bring down the criminal enterprises that are facilitated by the use of spam.

Specifically, we are talking about the RICO statute which not only comes

with some of the stiffest penalties in the Criminal Code but it allows for the seizure of assets of criminal organizations, it allows the prosecutors to go after the criminal enterprise, and it allows for civil suits brought by injured parties. It is tough enforcement like this that will help bring the worst of the spammers to their knees.

Mr. MCCAIN. Madam President, I ask consent that the following amendments be the only first-degree amendments in order to the bill and that they be subject to second-degrees which would be relevant to the first degree to which they are offered: Corzine amendment, Santorum amendment, Enzi amendment, Landrieu amendment, and Boxer amendment.

Mr. LEAHY. Reserving the right to object.

Mr. WYDEN. I ask unanimous consent to add Senator HARKIN's name to that list and then I support the unanimous consent.

The PRESIDING OFFICER. Does the Senator so modify his request?

Mr. LEAHY. Reserving the right to object.

The PRESIDING OFFICER. Does the Senator from Arizona so modify his request?

Mr. MCCAIN. I do modify my request.

Mr. LEAHY. Where is the Hatch-Leahy amendment?

Mr. MCCAIN. Pending and about to be adopted.

Mr. LEAHY. It is not precluded by the unanimous consent request.

The PRESIDING OFFICER (Mr. CHAMBLISS). It would not be precluded.

Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I thank Senator LEAHY for his work on this amendment, along with Senator HATCH, who lends and contributes a great deal of teeth to this bill. I know they have worked very hard.

As I mentioned to Senator HATCH, as did the Senator from Oregon, we know that the Senator and his committee will be involved in the oversight of the enforcement of this legislation. We thank you for his valuable contribution.

I urge the sponsors of those amendments, Senators CORZINE, SANTORUM, ENZI, LANDRIEU, BOXER, and HARKIN, to please come to the floor in courtesy to their colleagues so we can take up and dispose of these amendments. Please show some courtesy to your colleagues. If you have amendments pending, please come. We are ready for them.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, when the Senator from Arizona asked to make his unanimous consent request, I was in the process of answering the question of the Senator from Florida, who has spoken to me many times about his interest in these areas.

I appreciate what he has done to strengthen this legislation.

We keep the authority to set sentences where it belongs, with the Sentencing Commission, while remaining deferential, to the discretion of prosecutors.

The provisions from the Senator from Florida make it unmistakably clear that Congress expects this legislation to be used not just to punish spammers but also to dismantle criminal operations that are carried out with spam and other unsolicited bulk e-mail.

I also would note that the Senator from Florida has spoken about spam evolving from being just a nuisance. He is absolutely right. Serious crimes are being committed using this medium, which reaches a large number of people. Senior citizens are more and more often targeted to being bilked out of millions of dollars, and with very little effort on the part of the spammers.

Mr. President, I will engage in a colloquy with Senator NELSON because I think it is important for the purposes of the RECORD. With all the work the Senator from Florida has done, I want the RECORD to be very clear.

Mr. NELSON of Florida. Mr. President, would the Senator from Vermont be willing to engage me in a colloquy?

Mr. LEAHY. I would be pleased to engage in a colloquy with the Senator from Florida.

Mr. NELSON of Florida. Mr. President, I have been stunned, as have so many of my colleagues, by how pervasive spam has become in email traffic. We have all experienced the way clogged in-boxes, unwanted solicitations, and unwelcome pornographic material make a session on the computer less productive and less enjoyable. It is one of the top complaints that I receive from my constituents, and I am very pleased to be working with the Senators from Vermont and Utah to impose tough penalties on those who impose this garbage on others.

But I am also concerned with a type of spam that goes beyond the mere nuisance variety. It is becoming clearer with each passing month that many criminal enterprises have adopted spam as their method of choice for perpetrating their criminal schemes. Spammers are now frequently perpetrating fraud to cheat people out of their savings, stealing people's identities, or trafficking in child pornography. What spam allows them to do is to conduct these criminal activities on a much broader scale at dramatically reduced costs- they can literally reach millions of people at the push of a button.

Mr. LEAHY. The Senator from Florida is correct. Nowadays, we see that spam has moved far beyond being just a nuisance to people trying to use email on their personal computers. Serious crimes are being committed using this medium, which can reach large numbers of people in a matter of seconds. For example, if a person or organization seeks to commit fraud to bilk senior citizens out of their money, with spam they can reach millions of potential victims at very low, even negligible costs. With such low costs, and such wide reach, even a small rate of success can make for a very profitable criminal enterprise.

Mr. NELSON of Florida. The Senator from Vermont has provided an excellent example of the problem that we are trying to address. And that is why I have sought, with the help of the Senator from Vermont and the Senator from Utah, to include provisions in this legislation that make clear our intent to treat the use of spam to commit large-scale criminal activity as the organized crime that it is.

We do this in two ways: First, by working with the U.S. Sentencing Commission toward enhanced sentences for those who use spam or other unsolicited bulk email to commit fraud, identity theft, obscenity, child pornography, or the sexual exploitation of children.

Second, we make the seriousness of our intentions clear by urging prosecutors to use all tools at their disposal to bring down the criminal enterprises that are facilitated by the use of spam. Among other things, we are talking about the RICO statute, which not only comes with some of the stiffest penalties in the criminal code, but also allows for the seizure of the assets of criminal organizations, and for civil suits brought by injured parties. It is tough enforcement like this that will help bring the worst of the spammers to their knees.

Mr. LEAHY. The Senator from Florida has made me aware of his interest in these provisions on several occasions, and I appreciate his contributions to this effort. They strengthen the legislation in important ways. While keeping the authority to set sentences where it belongs- with the Sentencing Commission- and while remaining deferential to the discretion of prosecutors, these provisions makes unmistakably clear that Congress expects this legislation to be used not just to punish spammers, but also to dismantle the criminal enterprises that are carried out with spam and other unsolicited bulk e-mail.

Mr. NELSON of Florida. I thank the Senator from Vermont for his outstanding leadership on this issue, and for his cooperation in including my amendments in the legislation.

Mr. LEAHY. Mr. President, it is increasingly obvious that unwanted commercial e-mail is more than just a nuisance. Businesses and individuals sometimes have to wade through hours of spam. It makes it impossible for them to do their work. It slows down whole enterprises.

In my home State of Vermont, one legislator logged on to his server and found that two-thirds of the e-mails in his inbox were spam. Our legislator is a citizen or legislature. He does not have staff or anything else. This was after the legislator had installed spam-blocking software. His computer stopped about 80 percent of it. But even

after he blocked 80 percent, two-thirds of the e-mail he had was spam.

The e-mail users are having the online equivalent of the experience of the woman in the classic Monty Python skit. She wanted to order a Spam-free breakfast at a restaurant. Try as she might, she cannot get the waitress to bring her the meal she wants. Every dish in the restaurant comes with Spam; it is just a matter of how much. There is eggs, bacon, and Spam; eggs, bacon, sausage, and Spam; Spam, bacon, sausage, and Spam; Spam, egg, Spam, Spam, bacon, and Spam; Spam, sausage, Spam, Spam, Spam, bacon, Spam, tomato, and Spam, and so on. Finally, the customer said: I don't like Spam. I don't want Spam. I hate Spam.

Now, I repeat that with apologies to John Cleese and everybody else in the Monty Python skit.

Mr. President, anybody who goes on e-mail, including every member of my family down to my 5-year-old grandchild, knows how annoying spam can be.

A Harris poll taken last year found that 80 percent of the respondents viewed spam as "very annoying" and 74 percent wanted to make it illegal.

Some 30 States now have anti-spam laws but it is difficult to enforce them.

There are actually billions of unwanted e-mails that are blocked by ISPs every day. Hundreds of millions of spam e-mails get through just the same.

Now, we have to be very careful when we regulate in cyberspace. We must not forget that spam, like more traditional forms of commercial speech, is protected by the first amendment. We cannot allow spam to result in the "virtual death" of the Internet, as one Vermont newspaper put it.

So what Senator HATCH and I have offered and is being accepted- the Hatch-Leahy-Nelson-Schumer amendment- would, first, prohibit hacking into another person's computer system and sending bulk spam from or through that system.

Second, it would prohibit using a computer system that the owner makes available for other purposes as a conduit for bulk spam, with the intent to deceive the recipient as to where the spam came from.

The third prohibition targets another way that outlaw spammers evade ISP filters: falsifying the "header information" that accompanies every e-mail and sending bulk spam containing that fake header information. The amendment prohibits forging information regarding the origin of the e-mail message.

Fourth, the Hatch-Leahy-Nelson-Schumer amendment prohibits registering for multiple e-mail accounts or Internet domain names and sending bulk mail from those accounts or domains.

Fifth, and finally, our amendment addresses a major hacker spammer technique for hiding identity that is a common and pernicious alternative to domain name registration- that is, hijacking unused expanses of Internet address space and using them to launch junk mail.

Now, penalties under the amendment are tough, but they are measured. Recidivists and those who send spam in furtherance of another felon may be imprisoned for up to 5 years. The sound of a jail cell closing for 5 years should focus their attention.

Large-volume spammers, those who hack into another person's computer system to send bulk spam, and spam "kingpins" who use others to operate their spamming operations may be imprisoned for up to 3 years, and so on.

Then, of course, we direct the Sentencing Commission to look at other areas.

So, Mr. President, I see my colleagues on the floor, Senator BURNS and Senator WYDEN, who have done yeoman work on this legislation. I compliment all those who worked together. I certainly compliment the two of them, as well as Senator HATCH, Senator NELSON, and Senator SCHUMER. I think we are putting together something that is worth passing.

Mr. WYDEN. Will the Senator yield?

Mr. LEAHY. Sure.

Mr. WYDEN. Mr. President, just before he leaves the floor, I thank the distinguished Senator from Vermont for all his help. I have already told Senator HATCH how incredibly important the enforcement provision is. You can write bills forever, but without the enforcement to which the Senator from Vermont and the Senator from Utah are committed, those bills are not going to get the job done.

Suffice it to say, when there were a lot of people in public life who thought their computers were somehow a TV screen, the Senator from Vermont was already leading the Senate and those who work in the public policy arena to understand the implications of the medium.

There is nobody in public life whose counsel I value more on telecommunications and Internet policy than the distinguished Senator from Vermont. I appreciate his giving me this opportunity to work with him on the enforcement provisions. It will be the lifeblood of making this bill work.

Mr. LEAHY. Mr. President, I thank my dear friend from Oregon for his far too generous words. I have enjoyed working with him. He has carried over from his service in the other body. He has a strong interest in this. Just as important as his strong interest is the fact he has extraordinary expertise in this area. That is very helpful.

If you would allow me one quick personal story. This sort of humbles you. I like to think I am very knowledgeable on this. My 5-year-old grandson climbed in my lap and asked me to log on to a particular interactive site for children. It is something he could do himself, but we don't let him log on himself because of the problems with some sites that appear to be for children, and are anything but.

So I log on for him, and he climbs up on my lap, takes the mouse out of my hand and says: I better take over now because it gets very complicated.

In some ways we are protecting those 5-year-olds because they are the next generation using this technology. I thank my friend from Oregon and good friend from Montana for the enormous amount of work they have done here.

I yield the floor.

Mr. BURNS. Mr. President, I might add, Senator LEAHY and I serve as cochairs on the Internet caucus. We understand the ramifications of this new medium that has come upon us, its importance, and all it has to offer. Of course, getting rid of spam is one of those things that if we don't do it, then I am afraid it will be the one that chokes this very new way of communicating and brings us not only information but new services.

I appreciate the work of the Senator from Vermont and thank him for it.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I have been watching. Everybody is pretty much congratulating everybody else. Let me add my congratulations. This is an important issue. There are some serious people who have done serious work on this matter.

I don't know where the word spam came from. I suspect someone has described that today. It is a luncheon meat in northern Minnesota in our region of the country. But spam is a term used to describe those unsolicited messages that are sent into your computer. It has become much more than just a nuisance. It was not too long ago, perhaps even a year or two, these unsolicited notices you receive through e-mail and other devices were a nuisance. Now it is a very serious problem. Log on to your computer and see what happens. You have intruders in that computer, and they are flagging for you gambling sites and dating sites and pornography, virtually everything. Go to your e-mail and find out how many unsolicited e-mails you have had. You have more friends than you thought you had. Dozens and dozens of people and groups are writing to you. Most of them, of course, are pornographic, and they are unsolicited kinds of messages you wouldn't want to explore, nor would you want your family to explore.

If this afternoon someone drove up in front of your house with a truck and knocked on the front door and said: I have some actors in the back of this truck of mine, and we want to come into your home because we know you have a 10-year-old and a 12-year-old child, we would like to put on a show for you, it is going to be a pornographic sex show, you would go to the phone and call the police. The police would come and arrest them, and they would be prosecuted. Yet there are people who come into our homes and put on these pornographic sex shows through the computer- yes, to

unsuspecting children. Yes, it happens all the time. We know it. That is why we are trying to determine what can we do to stop it.

There is a right of free speech, but no stranger has a right to entertain 10-year-old kids in your home or our home with pornography. No stranger has that right. That does not exist as a right of free speech.

The question is, what kind of legislation can we craft that addresses this in a serious way. There is so much spam on the Internet. I am describing pornography, but there are so many commercial and other devices with unsolicited messages that it almost completely overwhelms the use of e-mail. It clogs the arteries of commerce for which the Internet and e-mail have been very valuable.

In the last couple of years, we have a circumstance where 46 percent of all e-mail traffic in the month of April this year was spam. It was only 18 percent in April of 2002, more than double in just a year. It does clog the arteries of commerce. It exposes children to things that are harmful and inappropriate. The question is, what can we do about it.

This legislation is an attempt to try to address it. We will best congratulate ourselves if and after the legislation is passed, in force, and we determine it works. If and when that is the case, then we all should say congratulations for having done something useful. We have, of course, tried this before. The Supreme Court struck down legislation that came from the Commerce Committee dealing with this issue. I think this is a better way to approach it. It is more serious, more thoughtful, and more likely to be able to meet the test of being constitutional.

We in the Commerce Committee have worked on other issues similar to this, not so much dealing with spam but especially protecting children.

Senator ENSIGN and I coauthored legislation dealing with a new domain name. We are creating a new domain in this country called dot U.S., just like there is a domain dot U.K. We will have a new one called dot U.S. We decided by legislation we would attach to that domain a condition that they must also create a domain within dot U.S. called dot kids dot U.S. That will be a domain in which parents know that when their children are in dot kids dot U.S., any site in dot kids dot U.S., they are going to be seeing things that are only appropriate for children. That is going to be a big help to parents.

If you restrict the child to dot kids dot U.S. and you know that child is not going to be exposed to things children should not be exposed to, that is legislation that is going to be very helpful.

Let me also say this piece of legislation dealing with spam is similarly helpful. We have a circumstance where what shows up on the computers of virtually every American is not only unsolicited messages but messages that come from anonymous sources all over the world, messages that contain things you don't have any interest in, that are grotesque, unwanted, and pornographic. You can't determine where they come from.

This legislation, along with the amendments being offered, moves exactly in the right direction to prohibit false and misleading transmission of information. It prohibits the knowing use of deceptive subject headings, requires a return address or comparable reply message so you can figure out who sent it, requires the UCE be self-identified as an advertisement or a solicitation. All of these things are very important. At the end of time, when we have passed this legislation, it is in force, and we determine it is workable, then we will know we have done something very significant.

Let me make one additional point. I think computers and the Internet are quite remarkable. It is difficult to find words to describe how wonderful it can be. To be in a town like my hometown of nearly 300 people and have access through the Internet to the biggest library in the world, have access on the Internet to the great museums of the world. I grew up in a small town, with a high school senior class of nine. We had a library the size of a coat closet. With the Internet, that school now has a library the size of the largest library in the world, the largest repository of human knowledge existing anywhere on Earth- the Library of Congress. Yes, that exists in my hometown by virtue of the Internet.

The Internet is remarkable, wonderful, and breathtaking. It opens vistas of new opportunities for all Americans. We are dealing with the other side of the Internet because there are two sides to this issue. The other side contains some very serious issues and problems. We can continue to ignore them at our peril, at the peril of our children, and at the peril of business and commerce, which relies on the Internet as an artery of commerce. We can ignore them or we can address them, as my colleagues, Senators WYDEN and BURNS, chose to do with their leadership in the Commerce Committee. I thank them and I also thank the Senator from Arizona, Mr. MCCAIN, and Senator HOLLINGS.

We have a great committee, one on which I am proud to serve. We do a lot of work and address a lot of issues. This is but one, but it is a very important one and it is a timely piece of legislation to bring to the floor. It appears that, based on the unanimous consent request, this will now move and, with some amendments being offered, I think we will get to final passage. I expect to have a very strong vote by the entire Senate because it is a good piece of legislation. The time to do this is now and this is the right thing to do.

I yield the floor.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BURNS. Mr. President, I thank my friend from North Dakota for his kind words. I tell all Senators, both here and watching, that the Boxer amendment has been withdrawn. That gets us down to where we could get this bill passed tonight.

I believe the pending business is the Hatch-Leahy amendment No. 1893. I call for its adoption.

The PRESIDING OFFICER. Is there further debate?

The question is on agreeing to the amendment.

The amendment (No. 1893) was agreed to.

Mr. BURNS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, we are very close to being able to pass this bill tonight. This is an extraordinarily important consumer measure, a measure that literally touches the lives of millions of people every single day. At this point, we have only three amendments left. The Senator from New Jersey, Mr. CORZINE, has an amendment; the Senator from Wyoming, Mr. ENZI, is to offer an amendment with Senator SANTORUM; and then Senator LANDRIEU has an amendment.

I am very hopeful we will be able to finish this bill fairly shortly. I urge those Senators who have their amendments in order to come to the floor at this point. This is legislation that has been worked on for more than 4 years. During that time, this problem has grown exponentially. A number of Senators have spoken about it, and the Senate ought to move ahead.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALEXANDER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALEXANDER. I ask unanimous consent that I be allowed to speak as in morning business for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE INTERNET TAX FREEDOM ACT

Mr. ALEXANDER. Mr. President, in our political speeches, Senators, especially we Republicans, have a lot to say in defense of the Tenth Amendment, that all powers not expressly given to the central government are reserved to the States. We are big talkers about local control, about State responsibilities, and about State rights.

Somehow, when we get to Washington and away from home, a lot of that goes up in smoke. We start thinking of grand ideas and sending State and local governments the bill to pay for our grand ideas. Special education for children with disabilities, but we say to the State and local governments, you pay the bill. New construction to stop storm water runoff, but we

say to the cities, you pay the bill. Higher standards for roads, we say to the States, you pay the bill. New standards for highly qualified teachers, you pay the bill. We call these unfunded mandates.

What I want to talk about today is the worst kind of unfunded mandate. Not only do we have grand ideas and are telling State and local governments that they have to pay for them, we now want to tell them how to pay for them. The latest such example is to tell State and local governments that a tax on Internet access or telephones is somehow a worse tax, a bad tax they should not be allowed to pursue, than a tax on medicine, food, or an income tax.

I supported a moratorium for 7 years on State and local access to the Internet so the Internet could get up and get going, but now it is up and going. It ought to be absolutely on its own with other commercial activity. Yet our friends in the House of Representatives and some in the Senate would not only extend the moratorium on State and local taxes on Internet access, they would broaden it.

This is none of the Congress's business. It is a State and local responsibility to decide how to pay the bill to fund State parks, local schools, roads, prisons, colleges, and universities. That is what Governors do. That is what legislators do. That is what mayors do. That is what county commissioners and city council men and women do.

The inevitable result of such unfunded mandates from Washington, DC, telling States what taxes they can and cannot use, is to transfer more government to Washington, DC, because here we can print money to pay for it. It sounds awfully good to say we are banning a tax, but what we are actually doing is favoring one tax over another tax with the decision made in Washington, DC.

For example, if Tennessee's ability to have a broad-based sales tax is limited, then the chances that Tennessee will have an income tax are higher, or a higher tax on medicine or food, or higher college tuition for families to pay. The same goes for Florida, Texas, Washington State, or any other State.

Some say this interference in State prerogatives and local prerogatives is justified by the interstate commerce clause of the Constitution, and that the Internet is too important to carry its fair share of the taxes. I ask: Is access to the Internet more important than food? If not, then why not limit the State sales tax on food, medicine, electricity, natural gas, water, corporations generally, car tags, telephones, cable TV? They are all in interstate commerce. Let us limit the tax on all of them from Washington, DC.

Unless we want to get rid of State and local governments and transfer all responsibilities for local schools, colleges, prisons, State parks, and roads to Washington, DC, and claim all wisdom resides here, then we have no business telling State and local governments how they pay the bill for legitimate services.

We should read the Tenth Amendment to the Constitution and get back to our basic job of funding war, welfare, Social Security, Medicare, and debt. And leave decisions about what services to provide and what taxes to impose to State and local governments and to State and locally elected officials.

Under the rules of the Senate, because this bill imposes costs on States without paying for them, it is an unfunded mandate and subject to a point of order to pass this bill that would extend the moratorium on State and local ability to tax access to the Internet.

In its cost estimate of September 9, 2003, the Congressional Budget Office determined that S. 150, as reported by the Commerce Committee, would impose direct costs on State and local governments of lost revenues of $80 million to $120 million per year beginning in 2007. Because the estimate exceeds the threshold of $64 million for 2007, this is an intergovernmental mandate, subject to a point of order. According to the Multi-state Tax Commission, the bill has the potential to exempt telephone and cable companies from a broad array of State and local taxes that could amount to an unfunded mandate on State and local governments of up to $9 billion a year. Every Senator who votes to overturn the point of order to this bill would be voting for an unfunded mandate, which most of us have promised not to do. Let the moratorium on access to the Internet die a well-deserved and natural death when it expires on November 1 and let us remember the Republican Congress 10 years ago promised to end unfunded mandates.

I ask unanimous consent that certain information from the Congressional Budget Act describing unfunded mandates and the point of order that is possible to be raised in opposition to such mandates be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[Congressional Budget Office Cost Estimate]

S. 150- INTERNET TAX NONDISCRIMINATION ACT

AS ORDERED REPORTED BY THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION ON JULY 31, 2003.

SUMMARY

S. 150 would permanently extend a moratorium on certain state and local taxation of online services and electronic commerce, and after October 1, 2006, would eliminate an exception to that prohibition for certain states. Under current law, the moratorium is set to expire on November 1, 2003. CBO estimates that enacting S. 150 would have no impact on the federal budget, but beginning in 2007, it would impose significant annual costs on some state and local governments.

By extending and expanding the moratorium on certain types of state and local taxes, S. 150 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the mandate would cause state and local governments to lose revenue beginning in October 2006; those losses would exceed the threshold established in UMRA ($64 million in 2007, adjusted annually for inflation) by 2007. While there is some uncertainty about the number of states affected, CBO estimates that the direct costs to states and local governments would probably total between $80 million and $120 million annually, beginning in 2007. The bill contains no new private-sector mandates as defined in UMRA.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

CBO estimates that enacting S. 150 would have no impact on the federal budget.

INTERGOVERNMENTAL MANDATES CONTAINED IN THE BILL

The Internet Tax Freedom Act (ITFA) currently prohibits state and local governments from imposing taxes on Internet access until November 1, 2003. The ITFA, enacted as Public Law 105-277 on October 21, 1998, also contains an exception to this moratorium, sometimes referred to as the "grandfather clause," which allows certain state and local governments to tax Internet access if such tax was generally imposed and actually enforced prior to October 1, 1998.

S. 150 would make the moratorium permanent and, after October 1, 2006, would eliminate the grandfather clause. The bill also would state that the term "Internet access" or "Internet access services" as defined in ITFA would not include telecommunications services except to the extent that such services are used to provide Internet access (known as "aggregating" or "bundling" of services). These extensions and expansions of the moratorium constitute intergovernmental mandates as defined in UMRA because they would prohibit states from collecting taxes that they otherwise could collect.

ESTIMATED DIRECT COSTS OF MANDATES TO STATE AND LOCAL GOVERNMENTS

CBO estimates that repealing the grandfather clause would result in revenue losses for as many as 10 states for several local governments totaling between $80 million and $120 million annually, beginning in 2007. We also estimate that the change in the definition of Internet access could affect tax revenues for many states and local governments, but we cannot estimate the magnitude or the timing of any such additional impacts at this time.

UMRA includes in its definition of the direct costs of a mandate the amounts that state and local governments would be prohibited from raising in revenues to comply with the mandate. The direct costs of eliminating the grandfather clause would be the tax revenues that state and local governments are currently collecting but would be precluded from collecting under S. 150. States also could lose revenues that they currently collect on certain services, if those services are redefined as Internet access under the bill.

Over the next five years there will likely be changes in the technology and the market for Internet access. Such changes are likely to affect, at minimum, the price for access to the Internet as well as the demand for and the methods of such access. How these technological and market changes will ultimately affect state and local tax revenues is unclear, but for the purposes of this estimate, CBO assumes that over the next five years, these effects will largely offset each other, keeping revenues from taxes on Internet access within the current range.

THE GRANDFATHER CLAUSE

The primary budget impact of this bill would be the revenue losses- starting in October 2006- resulting from eliminating the grandfather clause that currently allows some state and local governments to collect taxes on Internet access. While there is some uncertainty about the number of jurisdictions currently collecting such taxes- and the precise amount of those collections- CBO believes that as many as 10 states (Hawaii, New Hampshire, New Mexico, North Dakota, Ohio, South Dakota, Tennessee, Texas, Washington, Wisconsin) and several local jurisdictions in Colorado, Ohio, South Dakota, Texas, Washington, and Wisconsin are currently collecting such taxes and that these taxes total between $80 million and $120 million annually. The estimate is based on information from the states involved, from industry sources, and from the Department of Commerce. In arriving at this estimate, CBO took into account the fact that some companies are challenging the applicability of the tax to the service they provide and thus may not be collecting or remitting the taxes even though the states feel they are obligated to do so. So potential liabilities are not included in the estimate.

It is possible that if the moratorium were allowed to expire as scheduled under current law, some state and local governments would enact new taxes or decide to apply existing taxes to Internet access during the next five years. It is also possible that some governments would repeal existing taxes or preclude their application to these services. Because such changes are difficult to predict, for the purposes of estimating the direct costs of the mandate, CBO considered only the revenues from taxes that are currently in place and actually being collected.

DEFINITION OF INTERNET ACCESS

Depending on how the language altering the definition of what telecommunications services are taxable is interpreted, that language also could result in substantial revenue losses for states and local governments. It is possible that states could lose revenue if services that are currently taxes are redefined as Internet "access" under the definition in S. 150. Revenues could also be lost if Internet access providers choose to bundle products and call the product Internet access. Such changes would reduce state and local revenues from telecommunications taxes and possibly revenues from content currently subject to sales and use taxes. However, CBO cannot estimate the magnitude of these losses.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

This bill would impose no new private-sector mandates as defined in UMRA.

PREVIOUS CBO ESTIMATE

On July 21, 2003, CBO transmitted a cost estimate for H.R. 49, the Internet Tax Nondiscrimination Act, as ordered reported by the House Committee on the Judiciary on July 16, 2003. Unlike H.R. 49, which would eliminate the grandfather clause upon passage, S. 150 would allow the grandfather clause to remain in effect until October 2006. Thus, while both bills contain an intergovernmental mandate with costs above the threshold, the enactment of S. 150 would not result in revenue losses to states until October 2006.

ESTIMATE PREPARED BY:

Impact on State, Local, and Tribal Governments: Sarah Puro
Federal Costs: Melissa Zimmerman
Impact on the Private Sector: Paige Piper/Bach

ESTIMATE APPROVED BY:

Peter H. Fontaine
Deputy Assistant Director for Budget Analysis

SEC. 424. [2 U.S.C. 658c] DUTIES OF THE DIRECTOR; STATEMENTS ON BILLS AND JOINT RESOLUTIONS OTHER THAN APPROPRIATIONS BILLS AND JOINT RESOLUTIONS.

(a) FEDERAL INTERGOVERNMENTAL MANDATES IN REPORTED BILLS AND RESOLUTIONS.- For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

(1) CONTENTS.- If the Director estimates that the direct cost of all Federal intergovernmental mandates in the bill or joint resolution will equal or exceed $50,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal intergovernmental mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

(2) ESTIMATES.- Estimates required under paragraph (1) shall include estimates (and brief explanations of the basis of the estimates) of-

(A) the total amount of direct cost of complying with the Federal intergovernmental mandates in the bill or joint resolution;

(B) if the bill or resolution contains an authorization of appropriations under section 425(a)(2)(B), the amount of new budget authority for each fiscal year for a period not to exceed 10 years beyond the effective date necessary for the direct cost of the intergovernmental mandate; and

(C) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution and usable by State, local or tribal governments for activities subject of the Federal intergovernmental mandates.

(3) ADDITIONAL FLEXIBILITY INFORMATION.- The Director shall include in the statement submitted under this subsection, in the case of legislation that makes changes as described in section 421(5)(B)(i)(II)-

(A) if no additional flexibility is provided in the legislation, a description of whether and how the States can offset the reduction under existing law; or

(B) if additional flexibility is provided in the legislation, whether the resulting savings would offset the reductions in that program assuming the States fully implement that additional flexibility.

(4) ESTIMATE NOT FEASIBLE.- If the Director determines that it is not feasible to make a reasonable estimate that would be required under paragraphs (1) and (2), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement. If such determination is made by the Director, a point of order under this part shall lie only under section 425(a)(1) and as if the requirement of section 425(a)(1) had not been met.

(b) FEDERAL PRIVATE SECTOR MANDATES IN REPORTED BILLS AND JOINT RESOLUTIONS.- For each bill or joint resolution of a public character reported by any committee of authorization of the Senate or the House of Representatives, the Director of the Congressional Budget Office shall prepare and submit to the committee a statement as follows:

(1) CONTENTS.- If the Director estimates that the direct cost of all Federal private sector mandates in the bill or joint resolution will equal or exceed $100,000,000 (adjusted annually for inflation) in the fiscal year in which any Federal private sector mandate in the bill or joint resolution (or in any necessary implementing regulation) would first be effective or in any of the 4 fiscal years following such fiscal year, the Director shall so state, specify the estimate, and briefly explain the basis of the estimate.

(2) ESTIMATES.- Estimates required under paragraph (1) shall include estimates (and a brief explanation of the basis of the estimates) of-

(A) the total amount of direct costs of complying with the Federal private sector mandates in the bill or joint resolution; and

(B) the amount, if any, of increase in authorization of appropriations under existing Federal financial assistance programs, or of authorization of appropriations for new Federal financial assistance, provided by the bill or joint resolution usable by the private sector for the activities subject to the Federal private sector mandates.

(3) ESTIMATE NOT FEASIBLE.- If the Director determines that it is not feasible to make a reasonable estimate that would be required under paragraphs (1) and (2), the Director shall not make the estimate, but shall report in the statement that the reasonable estimate cannot be made and shall include the reasons for that determination in the statement.

(c) LEGISLATION FALLING BELOW THE DIRECT COSTS THRESHOLDS.- If the Director estimates that the direct costs of a Federal mandate will not equal or exceed the thresholds specified in subsections (a) and (b), the Director shall so state and shall briefly explain the basis of the estimate.

(d) AMENDED BILLS AND JOINT RESOLUTIONS; CONFERENCE REPORTS.- If a bill or joint resolution is passed in an amended form (including if passed by one House as an amendment in the nature of a substitute for the text of a bill or joint resolution from the other House) or is reported by a committee of conference in amended form, and the amended form contains a Federal mandate not previously considered by either House or which contains an increase in the direct cost of a previously considered Federal mandate, then the committee of conference shall ensure, to the greatest extent practicable, that the Director shall prepare a statement as provided in this subsection or a supplemental statement for the bill or joint resolution in that amended form.

SEC. 425. [2 U.S.C. 658d] LEGISLATION SUBJECT TO POINT OF ORDER

(a) IN GENERAL.- It shall not be in order in the Senate or the House of Representatives to consider-

(1) any bill or joint resolution that is reported by a committee unless the committee has published a statement of the Director on the direct costs of Federal mandates in accordance with section 423(f) before such consideration, except this paragraph shall not apply to any supplemental statement prepared by the Director under section 424(d); and

(2) any bill, joint resolution, amendment, motion, or conference report that would increase the direct costs of Federal intergovernmental mandates by an amount that causes the thresholds specified in section 424(a)(1) to be exceeded, unless-

(A) the bill, joint resolution, amendment, motion, or conference report provides new budget authority or new entitlement authority in the House of Representatives or direct spending authority in the Senate for each fiscal year for such mandates included in the bill, joint resolution, amendment, motion, or conference report in an amount equal to or exceeding the direct costs of such mandate; or

(B) the bill, joint resolution, amendment, motion, or conference report includes an authorization for appropriations in an amount equal to or exceeding the direct cost of such mandate, and-

(i) identifies a specific dollar amount of the direct costs of such mandate for each year up to 10 years during which such mandate shall be in effect under the bill, joint resolution, amendment, motion or conference report, and such estimate is consistent with the estimate determined under subsection (e) for each fiscal year;

(ii) identifies any appropriations bill that is expected to provide for Federal funding of the direct cost referred to under clause (i); and

(iii)(I) provides that for any fiscal year the responsible Federal agency shall determine whether there are insufficient appropriation for that fiscal year to provide for the direct costs under clause (i) of such mandate, and shall (no later than 30 days after the beginning of the fiscal year) notify the appropriate authorizing committees of Congress of the determination and submit either-

(aa) a statement that the agency has determined, based on a re-estimate of the direct costs of such mandate, after consultation with State, local, and tribal governments, that the amount appropriated is sufficient to pay for the direct costs of such mandate; or

(bb) legislative recommendations for either implementing a less costly mandate or making such mandate ineffective for the fiscal year;

(II) provides for expedited procedures for the consideration of the statement or legislative recommendations referred to in subclause (I) by Congress no later than 30 days after the statement or recommendations are submitted to Congress; and

(III) provides that such mandate shall-

(aa) in the case of a statement referred to in subclause (I)(aa), cease to be effective 60 days after the statement is submitted unless Congress has approved the agency's determination by joint resolution during the 60-day period;

(bb) cease to be effective 60 days after the date the legislative recommendations of the responsible Federal agency are submitted to Congress under subclause (I)(bb) unless Congress provides otherwise by law; or

(cc) in the case that such mandate that has not yet taken effect, continue not to be effective unless Congress provides otherwise by law.

(b) RULE OF CONSTRUCTION.- The provisions of subsection (a)(2)(B)(iii) shall not be construed to prohibit or otherwise restrict a State, local, or tribal government from voluntarily electing to remain subject to the original Federal intergovernmental mandate, complying with the programmatic or financial responsibilities of the original Federal intergovernmental mandate and providing the funding necessary consistent with the costs of Federal agency assistance, monitoring, and enforcement.

(c) COMMITTEE ON APPROPRIATIONS.-

(1) APPLICATION.- The provisions of subsection (a)-

(A) shall not apply to any bill or resolution reported by the Committee on Appropriations of the Senate or the House of Representatives; except

(B) shall apply to-

(i) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives;

(ii) any legislative provision increasing direct costs of a Federal intergovernmental mandate contained in any amendment offered to a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives;

(iii) any legislative provision increasing direct costs of a Federal intergovernmental mandate in a conference report accompanying a bill or resolution reported by the Committee on Appropriations of the Senate or House of Representatives; and

* * *

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Before the Senator from Tennessee leaves the floor, I say to him I have my hands full today with spam so I am not going to get into the substance of the Internet Tax Freedom Act that, as my friend knows, I have been a sponsor of in the Senate with Congressman COX in the other body. I am always anxious to work with my colleague from Tennessee.

Essentially, the arguments being made today against the Internet Tax Freedom Act are identical to the ones that were made 5 years ago. If we were to look at the transcript 5 years ago before the Senate Commerce Committee, we were told the States and localities would be stripped of the revenue they needed. We were pretty much told western civilization was going to end at that time.

Ever since then, as we have gone through 5 years of experience, we have not seen that to be the case. States and localities have not been stripped of the revenue they need. Internet sales are still perhaps only 2 percent of the economy. No jurisdiction has shown that they have been hurt by their inability to discriminate against the Internet, and that is all this law stands for is technological neutrality, treating the online world like the offline world is treated.

As I said to my good friend, I have my hands full today with spam so we will debate the Internet Tax Freedom Act another day. I am anxious to work with my colleague. I would only point out the reauthorization of the Internet Tax Freedom Act passed the Commerce Committee unanimously. It is the first time since we have been at this that it has been passed unanimously. I think it is going to be an important debate I will certainly be anxious to talk with my colleague about at that time.

Again, we are hoping those with the amendments that have been made in order to the spam bill will come to the floor. We could finish this legislation in perhaps half an hour, pass a very important proconsumer measure by pretty close to a unanimous vote in the Senate. Senator BURNS and I are certainly hoping that will be the case and hope in particular that Senator CORZINE, Senator ENZI, and Senator SANTORUM will come to the floor and we could be done very quickly.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. COLLINS). Without objection, it is so ordered.

AMENDMENT NO. 1894

Mr. MCCAIN. Madam President, I send an amendment to the desk on behalf of Senators SANTORUM and ENZI, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for Mr. ENZI and Mr. SANTORUM, proposes an amendment numbered 1894.

Mr. MCCAIN. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require warning labels on sexually explicit commercial e-mail)

On page 51, after line 22, insert the following:

(d) REQUIREMENT TO PLACE WARNING LABELS ON COMMERCIAL ELECTRONIC MAIL CONTAINING SEXUALLY ORIENTED MATERIAL.-

(1) IN GENERAL.- No person may initiate in or affecting interstate commerce the transmission, to a protected computer, of any unsolicited commercial electronic mail message that includes sexually oriented material and-

(A) fail to include in subject heading for the electronic mail message the marks or notices prescribed by the Commission under this subsection; or

(B) fail to provide that the matter in the message that is initially viewable to the recipient, when the message is opened by any recipient and absent any further actions by the recipient, includes only-

(i) to the extent required or authorized pursuant to paragraph (2), any such marks or notices;

(ii) the information required to be included in the message pursuant to subsection (a)(5); and

(iii) instructions on how to access, or a mechanism to access, the sexually oriented material.

(2) PRESCRIPTION OF MARKS AND NOTICES.- Not later than 120 days after the date of the enactment of this Act, the Commission in consultation with the Attorney General shall prescribe clearly identifiable marks or notices to be included in or associated with unsolicited commercial electronic mail that contains sexually oriented material, in order to inform the recipient of that fact and to facilitate filtering of such electronic mail. The Commission shall publish in the Federal Register and provide notice to the public of the marks or notices prescribed under this paragraph.

(3) DEFINITION.- In this subsection, the term "sexually oriented material" means any material that depicts sexually explicit conduct (as that term is defined in section 2256 of title 18, United States Code), unless the depiction constitutes a small and insignificant part of the whole, the remainder of which is not primarily devoted to sexual matters.

(4) PENALTY.- A violation of paragraph (1) is punishable as if it were a violation of section 1037(a) of title 18, United States Code.

Mr. ENZI. Madam President, today I introduce an amendment to the CAN-SPAM Act. As some of my colleagues have already expressed, unsolicited commercial e-mail, also known as

spam, aggravates many computer users. Not only can it be a nuisance, but its cost may be passed on to consumers in the form of wasted time, energy and money spent to handle and filter out unwanted spam e-mails. Also, e-mail service providers incur substantial costs when they are forced to upgrade their equipment to process the millions of spam e-mails that they receive every day. Spam e-mail is a time and money vacuum. I support the CAN-SPAM Act because it empowers us to stop these unwanted and unwelcome e-mails.

A recent study conducted by the Federal Trade Commission found that 66 percent of spam contains false or misleading claims. Another 18 percent contains pornographic or adult content. My amendment mandates stronger restrictions that would prevent the increasing amount of spam e-mail containing explicit content from reaching unintended recipients. There is clearly a need to address this in the CAN-SPAM Act because it is potentially the most offensive type of spam on the Internet today. There are sorely misguided individuals- spamers- whose sole mission is to e-mail as many people as possible, regardless of age, indecent material. Internet users, especially minors, should not be involuntarily exposed to explicit content by simply checking their e-mail inbox. My amendment would protect these people in two ways:

First, it would place a notice, approved by the FTC, in the subject header of spam e-mail that contains explicit content. Usually, a subject header is a title line noting the content of the message that has arrived in your inbox. However, in a virtual world already saturated with millions of pieces of spam e-mail, spammers often title e-mails with catchy phrases and whatever they think will get the most people to open the message and read their advertisements. Now spam e-mail with explicit and offensive material is often camouflaged by an inviting and completely misleading subject heading. This is a common way that many e-mail users end up being involuntarily exposed to offensive sexual content. Adding a notice in the subject heading would immediately alert the computer user that the message contained within has explicit and possibly offensive content and should not be viewed by minors. This notice would alert the e-mail recipient and allow him or her to organize and filter their mail for any unwanted material.

Second, my amendment would require that all spam e-mail with explicit content add an opening page to all copies of their e-mail being sent to unknown recipients. This opening page would not contain any explicit images or text, but instead have a link that would link users to that content if they wished. This valuable provision would protect minors and other e-mail users by requiring that the recipient purposefully act and "click" in order to get to the explicit images or text. Adding this firewall allows users to opt out of spam e-mail lists and delete offensive e-mails from their inbox without ever being exposed to their content.

As a Senator from the rural State of Wyoming, I fully appreciate the value that the Internet holds for electronic communication and business across long distances. This amendment would allow both communication and business to continue and prosper. However, it also takes an important step in protecting Internet and e-mails users, especially minors, from receiving sexually explicit, offensive and unwanted content in their e-mails. Most people check their inboxes without an idea of what might have landed there or who might have sent it. This amendment makes that process more transparent and gives control back to the Internet user who doesn't want to be exposed to indecent, offensive or explicit content.

Mr. MCCAIN. Madam President, this amendment by Senators SANTORUM and ENZI requires warning labels on sexually explicit commercial e-mail to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

Basically, this amendment says no person may initiate or affect interstate commerce the transmission, to a protected computer, of any unsolicited commercial electronic mail message that includes sexually oriented material and fail to include in the subject heading for the electronic mail message the marks or notices prescribed by the Commission, or fail to provide that the matter in the message that is initially viewable to the recipient, when the message is opened by any recipient, and absent any further actions by the recipient, includes only to the extent required or authorized pursuant to any such marks or notices; the information required to be included in the message is clear.

This amendment also prescribes that not later than 120 days after the date of the enactment of this act, the Commission, the Federal Trade Commission, in consultation with the Attorney General, shall prescribe clearly identifiable marks or notices to be included in or associated with unsolicited commercial electronic mail that contains sexually oriented material, in order to inform the recipient of this message, of the material, of that fact to facilitate filtering of such electronic mail.

As all of us have discussed in consideration of this bill, one of the great concerns all of us have is pornographic material that is transmitted in the form of spam. According to several experts, 20 percent of unsolicited spam is pornography. This is an effort on the part of Senators ENZI and SANTORUM to try to at least begin addressing this issue. It is a valuable and important contribution in the form of trying to identify it and to bring it under control. It would make it a crime to send unsolicited e-mail that contains sexually oriented material unless they labeled it as prescribed by the FTC. The criminal penalties for this section would be the same as those contained in the Hatch-Leahy amendment.

I strongly support the amendment and urge its adoption.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Madam President, let me associate myself with the remarks of the distinguished chairman of the committee. Every Member understands that pornography being transmitted through spam is a scourge. There is no question about it. What we have done, because we have just seen this, is we have asked the minority on the Judiciary Committee, under the leadership of Senator LEAHY, to take a look at this. We are very hopeful that we will be able to approve this language in just a few minutes. Again, we are hoping that this bill will be passed, certainly within 20, 25 minutes, and we will have a comment from the Democrats on the Judiciary Committee very shortly.

I share Chairman MCCAIN's view that this is an extremely important issue. When you think about spam, the first thing parents all over this country think about is the flood that is being targeted at families from coast to coast. I am hopeful we will get this approved in a matter of minutes.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCAIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Madam President, for the benefit of my colleagues, we have a Landrieu amendment which the Senator from Louisiana has been kind enough to withdraw, but we need to discuss what we need to do in the form of sending a letter to the Federal Trade Commission instructing them to take certain actions which I will discuss in a minute; a Corzine amendment which has two parts to it, which both sides have agreed to; and then I don't believe there will be any further amendments, although that is not completely clear. We could expect a vote on final passage relatively soon.

Senator LANDRIEU was going to offer an amendment that would have required the Consumer Product Safety Commission to undertake a rulemaking to have manufacturers create a database for consumers to be notified of certain product recalls. I have committed to Senator LANDRIEU to work with the CPSC to solicit these views on her legislation and ask how best to accomplish her worthy goals of better informing consumers about product recalls.

Senator LANDRIEU has hit on a very important issue. Unless you happen to see it by accident mentioned on television, the recalls are very seldom

known by at least a majority of those who would be affected by it. I commit to Senator LANDRIEU to see how we can best accomplish that. I appreciate her forbearance at this time in withdrawing the amendment. I hope we can satisfy her concerns by asking for rapid action on the part of the Consumer Product Safety Commission.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Madam President, on behalf of the minority, Senator HOLLINGS believes that Senator LANDRIEU is raising a very important issue for consumers and kids. We do want to work closely with her and move ahead on her initiative. It is an important one for families.

Mr. MCCAIN. Madam President, as we are nearing the end, I am waiting for the Corzine amendment that we will discuss and adopt. Then I believe we will be able to move to final passage. I am not positive, but I think we will be able to. I would like to again express my appreciation to the Senator from Montana, Mr. BURNS, and Senator WYDEN. Four years is a long time to work on a single issue. When these two Senators began work on this issue, spam was minuscule as compared to what it is today. I must admit, I didn't pay much attention to it then, nor did the members of the Commerce Committee, nor the oversight agencies. Both Senators had the foresight to see the incredible proportions that this spamming would reach and the effect that it would have not only on our ability to use e-commerce and e-communications but also on our ability to improve productivity.

The costs involved in the spamming issue are pretty incredible when you count it all up according to certain experts.

So I thank our staffs who have worked on this for so long. Without the leadership of the Senator from Montana, Mr. BURNS, and that of Senator WYDEN, we would not have been able to move this, after several hearings in the Commerce Committee, to the floor of the Senate. I have some confidence that our friends on the other side of the Capitol will act with some dispatch since they are as wary as we are of the gravity of this problem. As soon as we get the Corzine amendment, we will move forward.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. BURNS. Madam President, I associate myself with the words of the chairman of the committee. Four years ago we started on this, and it has blossomed. I think it was pretty obvious to a lot of us what the impact of the Internet would be on our everyday communications and the technologies and services and information it provides. But also starting then was this unwanted mail that would show up in your mailbox. It didn't mean much at first, but it was obvious to a lot of us, who have been working on this legislation for 4 years, that this was something that was going to be picked up by a lot of people- the good, the bad, and the ugly, so to speak.

So we went to work on it then and we have been working on it ever since. We thought we had a chance last year to pass it. I would say we had not really done all of our homework, and we didn't get it passed.

I appreciate the leadership of both the chairman and ranking member of the Commerce Committee and also my good friend from Oregon. We have worked hard on this legislation.

I really believe, with the debate going on in the House now, that the time has come. I don't go to a townhall meeting or meet a friend who doesn't say: Take care of that spam. I tell my friends also that this will not do it totally. The industry is going to have to come together using new technologies in order to get it done, and I think the industry will now because they know we are serious about criminal charges, fines, the result of violations of this law.

So I think we send a very strong message to those people who would use the Internet to do what is not acceptable to the American public.

I thank my friends and I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. Madam President, I think we are about ready to actually move to final passage. We have the Corzine amendment and another one coming from the Senator from Iowa. I think we are very close to being able to move ahead.

I wish to express my thanks to the leadership of the committee and my partner for over 4 years, Senator BURNS, on this legislation.

The bottom line here is that when this bill becomes law, big-time spamming, in effect, becomes an outlaw business. For the first time, the kingpin spammers are going to be at risk of Federal prosecution, Federal Trade Commission enforcement, million-dollar lawsuits by State attorneys general and Internet service providers. The reason that is the case is that big-time spammers would have to violate this bill in order for their sleazy operations to continue. If they don't hide their identity, their messages will get filtered out. If they don't use misleading subject lines, people are going to go click and these garbage messages will go straight into the trash unread.

It seems to me there is a chance now, recognizing that we still need international cooperation and tough enforcement, to make a very significant step forward for consumers all across the country.

I will conclude by way of saying that, again, I think enforcement is going to be the key to making this legislation work. When this bill is signed into law, I have been saying that the enforcers- the Justice Department, State attorneys general, Internet service providers, and others- have to be prepared to come down on those 200 or 300 big-time spammers with hobnail boots. A lot of them are not exactly quaking tonight at the prospect of Senate action. They are not convinced that the Senate is really going to insist on strong oversight. We saw today, because of what was said by Senator HATCH and Senator LEAHY, that they are committed to strong enforcement and vigorous oversight.

I believe as a result of the attention the Senate has given to this issue, when this bill is signed into law, we are going to see very quickly a handful of very tough, significant enforcement actions with real penalties and the prospect of spammers going to jail and paying million-dollar fines. That is the kind of deterrence we need.

The text of this law is very important, but it is only as good a law as we see backed up by enforcement. We have a commitment today from Chairman HATCH and Senator LEAHY to follow up and ensure that that kind of enforcement takes place. With that, I think we take a very significant step forward in terms of protecting the rights of consumers who right now find a blizzard of spam every single time they turn on their computer.

I yield the floor and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCAIN. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Madam President, I ask unanimous consent that we lay aside the pending amendment so Senator HARKIN may be recognized.

AMENDMENT NO. 1895

Mr. HARKIN. Madam President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself, and Mr. GRASSLEY, proposes an amendment numbered 1895.

Mr. HARKIN. Madam President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(To provide competitive grants for training court reporters and closed captioners to meet requirements for realtime writers under the Telecommunications Act of 1996, and for other purposes)

At the appropriate place add the following:

SECTION 1. SHORT TITLE.

This title may be cited as the "Training for Realtime Writers Act of 2003".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) As directed by Congress in section 723 of the Communications Act of 1934 (47 U.S.C.

613), as added by section 305 of the Telecommunications Act of 1996 (Public Law 104-104; 110 Stat. 126), the Federal Communications Commission adopted rules requiring closed captioning of most television programming, which gradually require new video programming to be fully captioned beginning in 2006.

(2) More than 28,000,000 Americans, or 8 percent of the population, are considered deaf or hard of hearing, and many require captioning services to participate in mainstream activities.

(3) More than 24,000 children are born in the United States each year with some form of hearing loss.

(4) According to the Department of Health and Human Services and a study done by the National Council on Aging-

(A) 25 percent of Americans over 65 years old are hearing impaired;

(B) 33 percent of Americans over 70 years old are hearing impaired; and

(C) 41 percent of Americans over 75 years old are hearing impaired.

(5) The National Council on Aging study also found that depression in older adults may be directly related to hearing loss and disconnection with the spoken word.

(6) Empirical research demonstrates that captions improve the performance of individuals learning to read English and, according to numerous Federal agency statistics, could benefit-

(A) 3,700,000 remedial readers;

(B) 12,000,000 young children learning to read;

(C) 27,000,000 illiterate adults; and

(D) 30,000,000 people for whom English is a second language.

(7) Over the past 5 years, student enrollment in programs that train court reporters to become realtime writers has decreased significantly, causing such programs to close on many campuses.

SEC. 3. AUTHORIZATION OF GRANT PROGRAM TO PROMOTE TRAINING AND JOB PLACEMENT OF REALTIME WRITERS.

(a) IN GENERAL.- The National Telecommunications and Information Administration shall make competitive grants to eligible entities under subsection (b) to promote training and placement of individuals, including individuals who have completed a court reporting training program, as realtime writers in order to meet the requirements for closed captioning of video programming set forth in section 723 of the Communications Act of 1934 (47 U.S.C. 613) and the rules prescribed thereunder.

(b) ELIGIBLE ENTITIES.- For purposes of this Act, an eligible entity is a court reporting program that-

(1) can document and demonstrate to the Secretary of Commerce that it meets minimum standards of educational and financial accountability, with a curriculum capable of training realtime writers qualified to provide captioning services;

(2) is accredited by an accrediting agency recognized by the Department of Education; and

(3) is participating in student aid programs under title IV of the Higher Education Act of 1965.

(c) PRIORITY IN GRANTS.- In determining whether to make grants under this section, the Secretary of Commerce shall give a priority to eligible entities that, as determined by the Secretary of Commerce-

(1) possess the most substantial capability to increase their capacity to train realtime writers;

(2) demonstrate the most promising collaboration with local educational institutions, businesses, labor organizations, or other community groups having the potential to train or provide job placement assistance to realtime writers; or

(3) propose the most promising and innovative approaches for initiating or expanding training and job placement assistance efforts with respect to realtime writers.

(d) DURATION OF GRANT.- A grant under this section shall be for a period of two years.

(e) MAXIMUM AMOUNT OF GRANT.- The amount of a grant provided under subsection (a) to an entity eligible may not exceed $1,500,000 for the two-year period of the grant under subsection (d).

SEC. 4. APPLICATION.

(a) IN GENERAL.- To receive a grant under section 3, an eligible entity shall submit an application to the National Telecommunications and Information Administration at such time and in such manner as the Administration may require. The application shall contain the information set forth under subsection (b).

(b) INFORMATION.- Information in the application of an eligible entity under subsection (a) for a grant under section 3 shall include the following:

(1) A description of the training and assistance to be funded using the grant amount, including how such training and assistance will increase the number of realtime writers.

(2) A description of performance measures to be utilized to evaluate the progress of individuals receiving such training and assistance in matters relating to enrollment, completion of training, and job placement and retention.

(3) A description of the manner in which the eligible entity will ensure that recipients of scholarships, if any, funded by the grant will be employed and retained as realtime writers.

(4) A description of the manner in which the eligible entity intends to continue providing the training and assistance to be funded by the grant after the end of the grant period, including any partnerships or arrangements established for that purpose.

(5) A description of how the eligible entity will work with local workforce investment boards to ensure that training and assistance to be funded with the grant will further local workforce goals, including the creation of educational opportunities for individuals who are from economically disadvantaged backgrounds or are displaced workers.

(6) Additional information, if any, of the eligibility of the eligible entity for priority in the making of grants under section 3(c).

(7) Such other information as the Administration may require.

SEC. 5. USE OF FUNDS.

(a) IN GENERAL.- An eligible entity receiving a grant under section 3 shall use the grant amount for purposes relating to the recruitment, training and assistance, and job placement of individuals, including individuals who have completed a court reporting training program, as realtime writers, including-

(1) recruitment;

(2) subject to subsection (b), the provision of scholarships;

(3) distance learning;

(4) development of curriculum to more effectively train realtime writing skills, and education in the knowledge necessary for the delivery of high-quality closed captioning services;

(5) assistance in job placement for upcoming and recent graduates with all types of captioning employers;

(6) encouragement of individuals with disabilities to pursue a career in realtime writing; and

(7) the employment and payment of personnel for such purposes.

(b) SCHOLARSHIPS.-

(1) AMOUNT.- The amount of a scholarship under subsection (a)(2) shall be based on the amount of need of the recipient of the scholarship for financial assistance, as determined in accordance with part F of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087kk).

(2) AGREEMENT.- Each recipient of a scholarship under subsection (a)(2) shall enter into an agreement with the National Telecommunications and Information Administration to provide realtime writing services for a period of time (as determined by the Administration) that is appropriate (as so determined) for the amount of the scholarship received.

(3) COURSEWORK AND EMPLOYMENT.- The Administration shall establish requirements for coursework and employment for recipients of scholarships under subsection (a)(2), including requirements for repayment of scholarship amounts in the event of failure to meet such requirements for coursework and employment. Requirements for repayment of scholarship amounts shall take into account the effect of economic conditions on the capacity of scholarship recipients to find work as realtime writers.

(c) ADMINISTRATIVE COSTS.- The recipient of a grant under section 3 may not use more than 5 percent of the grant amount to pay administrative costs associated with activities funded by the grant.

(d) SUPPLEMENT NOT SUPPLANT.- Grants amounts under this Act shall supplement and not supplement other Federal or non-Federal funds of the grant recipient for purposes of promoting the training and placement of individuals as realtime writers.

SEC. 6. REPORTS.

(a) ANNUAL REPORTS.- Each eligible entity receiving a grant under section 3 shall submit to the National Telecommunications and Information Administration, at the end of each year of the grant period, a report on the activities of such entity with respect to the use of grant amounts during such year.

(b) REPORT INFORMATION.-

(1) IN GENERAL.- Each report of an entity for a year under subsection (a) shall include a description of the use of grant amounts by the entity during such year, including an assessment by the entity of the effectiveness of activities carried out using such funds in increasing the number of realtime writers. The assessment shall utilize the performance measures submitted by the entity in the application for the grant under section 4(b).

(2) FINAL REPORT.- The final report of an entity on a grant under subsection (a) shall include a description of the best practices identified by the entity as a result of the grant for increasing the number of individuals who are trained, employed, and retained in employment as realtime writers.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act, amounts as follows:

(1) $20,000,000 for each of fiscal years 2004, 2005, and 2006.

(2) Such sums as may be necessary for fiscal year 2007.

Mr. HARKIN. Madam President, today I am offering an amendment, a bill I introduced earlier this year, S. 480, the Training for Realtime Writers Act of 2003, on behalf of myself and Senator GRASSLEY. The 1996 Telecom Act requires that all television broadcasts were to be captioned by 2006. This was a much-needed reform that has helped millions of deaf and hard-of-hearing Americans to be able to take full advantage of television programming. As of today, it is estimated that

3,000 captioners will be needed to fulfill this requirement, and that number continues to increase as more and more broadband stations come online. Unfortunately, the United States only has 300 captioners. If our country expects to have media fully captioned by 2006, something must be done.

This is an issue that I feel very strongly about because my late brother Frank was deaf. I know personally that access to culture, news, and other media was important to him and to others in achieving a better quality of life. More than 28 million Americans, or 8 percent of the population, are considered deaf or hard of hearing and many require captioning services to participate in mainstream activities. In 1990, I authored legislation that required all television sets to be equipped with a computer chip to decode closed captioning. This bill completes the promise of that technology, affording deaf and hard of hearing Americans the same equality and access that captioning provides.

Though we do not necessarily think about it, the morning of September 11 was a perfect example of the need for captioners. Holli Miller of Ankeny, IA, was captioning for Fox News. She was supposed to do her three and a half hour shift ending at 8 a.m. but, as we all know, disaster struck. Despite the fact that she had already worked most of her shift and had two small children to care for, Holli Miller stayed right where she was and for nearly 5 more hours continued to caption. Without even the ability to take bathroom breaks, Holli Miller made sure that deaf and hard of hearing people got the same news the rest of us got on September 11. I want to personally say thank you to Holli Miller and all the many captioners and other people across the country that made sure all Americans were alert and informed on that tragic day.

But let me emphasize that the deaf and hard of hearing population is only one of a number of groups that will benefit from this legislation. The audience for captioning also includes individuals seeking to acquire or improve literacy skills, including approximately 27 million functionally illiterate adults, 3 to 4 million immigrants learning English as a second language, and 18 million children learning to read in grades kindergarten through 3. In addition, I see people using closed captioning to stay informed everywhere-from the gym to the airport. Captioning helps people educate themselves and helps all of us stay informed and entertained when audio isn't the most appropriate medium.

Madam President, although we have two years to go until the deadline given by the 1996 Telecom Act, our Nation is facing a serious shortage of captioners. Over the past five years, student enrollment in programs that train court reporters to become realtime writers has decreased significantly, causing such programs to close on many campuses. Yet, the need for these skills continues to rise. That is why I thank the chairman and ranking member for giving me this opportunity to present this vital amendment, and, hopefully, it can be accepted.

To reiterate, in 1990 I authored a bill, that became legislation, that required that all television sets that have a size 13-inch screen or larger have incorporated into that set a chip that would automatically decode for closed captioning. That went into effect in 1996, and all television sets now have a chip in them. If you have a remote, you can punch it and closed captions will come up.

Then in 1996, Congress passed legislation that said that, by the year 2006, we would have a policy that all television programming would be real-time captioned. Right now if you watch the Senate in debate, you will see real-time captioning coming across the screen. You see that on news programs and sports programs. So it is engaging.

But we wanted real-time captioners so that deaf and hard-of-hearing people around the country could watch television in a real-time setting and have real-time captioning. So again, we said that by 2006 we wanted to have this done. Real-time captioning is a highly trained skill that people have to have, and it is estimated that it is going to take about 3,000 captioners nationwide to do this.

Madam President, right now there are only about 300 captioners nationally. We only have 2 years to go before the congressionally mandated deadline of meeting this requirement. So, earlier this year, I introduced a bill, S. 480, along with 40 cosponsors on both sides of the aisle, providing for competitive grants. These grants would go to authorize entities, accredited by their State education agencies, that could then use these grants to fund programs to get scholarships for recruitment, training, and job placement to get this pipeline filled as soon as possible with these real-time captioners over the next couple of years.

That is the amendment I have sent to the desk. As I said, it has broad support. It is basically in the Commerce Committee jurisdiction. I know with the press of time, it wasn't acted on this year. I thought this might be an appropriate place to put it. I think it will be widely supported by everybody.

I thank the ranking member and others for their positive reception of this amendment on this bill.

The PRESIDING OFFICER (Mr. ALEXANDER). The Senator from Arizona.

Mr. MCCAIN. Mr. President, I ask unanimous consent that Senator HATCH be added as a cosponsor to the Enzi-Santorum amendment No. 1894, and I ask unanimous consent that I be added as a cosponsor of S. 877.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. Mr. President, I think the amendment of the Senator from Iowa is a worthy cause. We appreciate very much Senator HARKIN's continued commitment to those who are hearing impaired in America. He has been a consistent and longtime advocate of this group of Americans. I thank him for his other contributions.

I urge adoption of the amendment.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, on behalf of Senator HOLLINGS, this is what we think Government ought to be about: going to bat for these people. I encourage the Senate to adopt the Harkin amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, without objection, the amendment is agreed to.

The amendment (No. 1895) was agreed to.

Mr. HARKIN. Mr. President, I ask unanimous consent to print in the RECORD the cosponsors of the amendment.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

COSPONSORS

Senators Max Baucus [MT], Jeff Bingaman [NM], Jim Bunning [KY], Saxby Chambliss [GA], Thad Cochran [MS], Michael D. Crapo [ID], Christopher J. Dodd [CT], Russell D. Feingold [WI], Charles E. Grassley [IA], Tim Johnson [SD], John F. Kerry [MA], Mary L. Landrieu [LA], Patrick J. Leahy [VT], Blanche Lincoln [AR], Richard G. Lugar [IN], Bill Nelson [FL], Harry M. Reid [NV], Charles E. Schumer [NY], Gordon Smith [OR], Debbie Stabenow [MI], Evan Bayh [IN], John B. Breaux [LA], Conrad R. Burns [MT], Hillary Rodham Clinton [NY], Larry E. Craig [ID], Michael DeWine [OH], John Edwards [NC], Lindsey O. Graham [SC], James M. Jeffords [VT], Edward M. Kennedy [MA], Herb Kohl [WI], Frank R. Lautenberg [NJ], Joseph I. Lieberman [CT], Trent Lott [MS], Patty Murray [WA], Mark Lunsford Pryor [AR], Rick Santorum [PA], Jeff Sessions [AL], Olympia J. Snowe [ME], Ron Wyden [OR].

Mr. REID. I move to reconsider the vote.

Mr. MCCAIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. MCCAIN. Mr. President, Senator SANTORUM would like to speak about the Santorum-Enzi amendment, and then we will have the Corzine amendment, which I will propose, and then we will be ready, I believe, for final passage.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

AMENDMENT NO. 1894

Mr. SANTORUM. I thank the Chair. Mr. President, I say to the Senator from Arizona that I appreciate he and the ranking member accepting this amendment that Senator ENZI and I have proposed. As a father of six little children who spend some time- not a lot of time- but some time on the Internet, just viewing the amount of spam, the pornographic spam that comes into my 10-year-old's site, in

some cases, is just absolutely frightening.

Senator ENZI and I had been working on separate tracks, and those tracks came together today in proposing an amendment which would provide a warning label on those kinds of materials that will be in the subject line of the e-mail so young people, as well as old, do not have to subject themselves to this rather disgusting attempt at advertising, if you want to call it that. This is an important piece of legislation.

I ask the Senator from Arizona, if I can get his attention for a moment.

Mr. WYDEN. Will the Senator yield?

Mr. SANTORUM. I am happy to yield to the Senator from Oregon.

Mr. WYDEN. Mr. President, very briefly, I think the Senator from Pennsylvania is trying to address a very important issue. We have asked for the Democrats on the Senate Judiciary Committee, under Senator LEAHY's leadership, to take a look at it. I think we will have that answer quickly.

As the Senator knows, some of the definitions in this area can get fairly technical. We also understand that pornography, which is conveyed through spam across the Internet, is a real public scourge. We are interested in getting the Senator's amendment adopted. I am hopeful we will be able to support it.

Mr. SANTORUM. Mr. President, I say to both the Senator from Oregon and the Senator from Arizona, I hear their words of encouragement. I encourage them and would like their assurance that this amendment, as it is adopted, will be held in conference. This is an important issue that we need to deal with, and I hope they will fight to make sure this amendment- the House has a similar amendment, but I would argue it is not as strong as this one, and I hope they will fight for the stronger language of the Senate amendment in conference.

Mr. MCCAIN. Mr. President, I assure the Senator from Pennsylvania that we will do everything we can to hold it. I have to tell my friend from Pennsylvania that probably the greatest single aspect of this spamming that is so disturbing to families all over America is the issue the Senator from Pennsylvania raises, and that is this graphic pornography that pops into view when children are trying to do their homework, much less other entertaining aspects of using the computer.

I want to work with the Senator from Pennsylvania in every way we can to see if we can enact whatever safeguards to prevent this pollution of young Americans' minds.

Mr. SANTORUM. I thank the Senator from Arizona. My 10-year-old John takes cyberclasses on the Internet. I am appalled by the filth he has to go through every day, whether it is e-mails or pop-ups, in trying to get his work done.

We have to do something about this. I am as much for free speech and free advertising as anybody else, but it reaches a point where it is intruding upon the American family and doing real damage to young people, and we have to take a stand.

I appreciate the support of the Senator from Oregon and the Senator from Arizona. I speak on behalf of Senator ENZI; we appreciate their consideration and adoption of this amendment.

Mr. MCCAIN. Mr. President, as we await the completion of the Corzine amendment, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCAIN. I believe the pending amendment is the Santorum-Enzi amendment.

The PRESIDING OFFICER. That is correct.

Mr. MCCAIN. Mr. President, we have discussed this amendment and we have now received clearance from both sides of the aisle and I urge its adoption.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to amendment No. 1894.

The amendment (No. 1894) was agreed to.

Mr. MCCAIN. I am told by the staff that we will commence this vote at 6:30. I hope by that time we would have the final writing of the Corzine amendment, which I could propose at that time and have adopted since it is agreed to by both sides. We are waiting for that. Is that correct?

Mr. LOTT. Mr. President, will the Senator yield?

Mr. MCCAIN. I am glad to yield.

Mr. LOTT. Is the vote going to be at 6:30? Was the Senator asking consent that the final passage be at 6:30?

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, it is my understanding the only amendment in order that has not been resolved is the Corzine amendment. Is that correct?

Mr. MCCAIN. It has been resolved. We are just waiting for the language to be done. We may have to fire some staff people, I am afraid. Senator WYDEN was writing them before.

Mr. REID. So it is my understanding the vote on this matter would occur at 6:30, is that what is being requested?

Mr. MCCAIN. Let me put it this way: I ask unanimous consent that after the adoption of the Corzine amendment, the bill be read a third time and a final vote be taken at 6:30, with the understanding that if the Corzine amendment is not adopted that would not happen.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. MCCAIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MCCAIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 1896

Mr. MCCAIN. On behalf of Senator CORZINE, I have an amendment at the desk. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN], for Mr. CORZINE, for himself, and Mr. GRAHAM of South Carolina, proposes an amendment numbered 1896.

The amendment is as follows:

(Purpose: To direct the FTC to develop a system for rewarding those who supply information about violations of this Act and a system for requiring ADV labeling on unsolicited commercial electronic mail)

At the appropriate place, insert the following:

SEC. ___. IMPROVING ENFORCEMENT BY PROVIDING REWARDS FOR INFORMATION ABOUT VIOLATIONS; LABELING.

(a) IN GENERAL.- The Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce-

(1) A report within 9 months after the date of enactment of this Act, that sets forth a system for rewarding those who supply information about violations of this Act, including-

(A) procedures for the Commission to grant a reward of not less than 20 percent of the total civil penalty collected for a violation of this Act to the first person that-

(i) identifies the person in violation of this Act; and

(ii) supplies information that leads to the successful collection of a civil penalty by the Commission; and

(B) procedures to minimize the burden of submitting a complaint to the Commission concerning violations of this Act, including procedures to allow the electronic submission of complaints to the Commission; and

(2) A report, within 18 months after the date of enactment of this Act, that sets forth a plan for requiring unsolicited commercial electronic mail to be identifiable from its subject line, by means of compliance with Internet Engineering Task Force standards, the use of the characters "ADV" in the subject line, or other comparable identifier, or an explanation of any concerns the Commission has that cause the Commission to recommend against the plan.

(b) IMPLEMENTATION OF REWARD SYSTEMS.- The Commission may establish and implement the plan under subsection (a)(1), but not earlier than 12 months after the date of enactment of this Act.

Mr. CORZINE. Mr. President, this amendment is based on legislation I introduced earlier this year, S. 1327, which proposed an innovative way to improve anti-spam laws. The amendment would move us toward a system that creates an incentive for individuals to assist the FTC in identifying spammers, by giving them a portion of

any collections resulting from information provided to the Commission. It also calls for the FTC to set forth a plan for requiring all unsolicited commercial e-mail to be identifiable from its subject line by means of the use of the characters "ADV" or other comparable identifier. If the Commission recommends against such a plan, it will have to provide Congress with a full explanation.

The fundamental problem in dealing with spam is enforcement. It is one thing to propose rules governing e-mails. But it is often hard for Government officials to track down those who violate those standards. Spammers typically use multiple e-mail addresses or disguised routing information to avoid being identified. As a result, finding spammers can take not just real expertise, but persistence, time, energy and commitment.

The concept of requiring the FTC to pay a bounty to those who track down spammers actually isn't my idea. It was originally proposed by one of the leading thinkers about the Internet, Professor Lawrence Lessig of Stanford Law School, and introduced in the House of Representatives by Congresswoman ZOE LOFGREN. The proposal would invite anyone who uses the Internet to hunt down these law-violating spammers. These would include people who send fraudulent e-mail, e-mail with inaccurate routing information, and e-mail that fails to include the required opt-out. The FTC would then fine the spammer and pay a portion of that fine as a reward to the person who provided the information.

Creating incentives for private individuals to help track down spammers is likely to substantially strengthen the enforcement of anti-spam laws. It promises to create an army of computer geeks who seek out spammers for their and the public's- benefit. Those who share my belief in the efficiency of entrepreneurial capitalism should understand the potential value of this free market approach to enforcement.

At the request of the managers, I have modified the original proposal I introduced earlier this year. This amendment calls for the FTC to develop a plan to implement a bounty hunting system and issue a report to the Congress within 9 months of enactment. The Commission then could implement the plan, but not before 12 months after the date of enactment. While this doesn't go quite as far as I proposed originally, I think it is an important step forward. And I am pleased that the managers have committed to me that they will secure inclusion of the proposal in any related conference report.

I also am pleased that the amendment calls on the FTC to investigate another proposal that I actually believe is very important in the reduction of spam, and that also was included in legislation I introduced earlier this year: a requirement that the subject line of unsolicited commercial e-mails include a so-called "ADV" label. In my view, such an approach would give individuals and ISPs considerable power to keep spam out of their in boxes, and I am hopeful that we will return to this proposal before long. In fact, I understand that some members of the House of Representatives will be pursuing this on a related bill, and I hope there will be a way to include an enforceable labeling requirement in a conference report on anti-spam legislation.

Mr. MCCAIN. Mr. President, I support the amendment by Senator CORZINE. I thank my colleagues for reaching a compromise at this time. I thank those who rapidly wrote this amendment on short notice so we could complete work on this legislation.

The amendment has two components. The first part addresses labeling of unsolicited commercial e-mail with the term ADV and also addresses the possibility of industry self-regulation. The Federal Trade Commission has raised serious concerns with both of these proposals with respect to ADV labeling. The FTC has written to me in opposition to labeling:

> First, consumer groups, ISPs, and emailers at the SPAM Forum roundly criticized the mandatory use of an "ADV" label. Labeling requirements could harm legitimate marketers, while illegitimate marketers are likely to ignore the requirement. Indeed, although several States require "ADV" labels on unsolicited commercial email, in its recent study on False Claims in SPAM, Commission staff found that only 2 percent of email messages analyzed contained such a label.

In lieu of Senator CORZINE's original proposal to make ADV labeling an industry self-regulation, the amendment has been modified to require the Federal Trade Commission to report to Congress on whether the ADV labeling and industry self-regulation should be implemented.

So I think this is a sensible solution in light of the Federal Trade Commission's concerns as I just read from their report to Congress.

The second part of the amendment would authorize the Federal Trade Commission to adopt a bounty hunter proposal to give people a portion of the fines collected from spammers that they hope to catch. As with the Do Not Spam Registry, the FTC would be authorized to act after first sending a report to Congress.

I support the amendment.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I also support the amendment. This is a compromise. Both of these topics are topics about which we really have not heard a lot. We have not had a chance to discuss them in hearings. Senator CORZINE has been working constructively with us. I urge the passage of it.

The bounty issue essentially comes from Professor Lessig at Stanford, looking at innovative ways to create incentives to deal with the problem. It is certainly one the Federal Trade Commission should look at. The question about making sure every unsolicited e-mail has ADV has been contentious among a number of small business groups, ones that have really been burdened by these costs. But I think this is a fair compromise. It gives the Federal Trade Commission ample opportunity to study this and look at the feasibility of it. I urge our colleagues to support it.

As soon as we agree to the Corzine amendment, I believe Senator HARKIN has a unanimous consent request he needs to make, and then we are ready to go to final passage. I urge my colleagues now to support the Corzine amendment.

The PRESIDING OFFICER. If there is no further debate, without objection, the amendment is agreed to.

The amendment (No. 1896) was agreed to.

Mr. PRYOR. Mr. President, last month, this body overwhelmingly voted to stop unwanted phone calls from telemarketers. We put our foot down and stopped these uninvited guests from barging into our home, interrupting our family time and invading our privacy. I would like to think that families can enjoy a peaceful dinner now that we have allowed the Do-Not-Call list to move forward.

Today we address a similar problem-America's e-mail inboxes have been invaded by unwanted and deceptive e-mail solicitations. Not only is this practice annoying and frustrating to our constituents, but the practice is costing consumers and businesses valuable time and resources.

In a report dated January 22, 2003, the Federal Trade Commission indicated that at least 40 percent of all e-mail is spam, with more than half considered to contain false and deceptive information. This has been a problem in my State of Arkansas. The FTC recorded 2,048 fraud and identity theft complaints from Arkansas consumers who reported having lost $1.3 million to these scams.

In addition, businesses are losing money as employees spend time wading through unsolicited e-mail messages and are forced to continuously update their servers and software in an attempt to avoid spam and prevent worms and viruses that are submitted through spam.

One thing I have learned as Senator is that this body does not agree often on the root of a problem. But I know for sure that each of us can agree that we have better things to do with our time than delete dozens of emails about the latest diet craze or money scheme. Even more, I know none of the mothers and fathers in this body want their children to receive emails that contain inappropriate sexual material. Neither do the mothers and fathers in Arkansas.

Now is the time to crack down on deceptive and unsolicited spam once and for all.

This bill which I support has two strong elements:

First, it would require anyone sending unsolicited bulk e-mail directly, or through an intermediary, to provide each recipient with a valid "opt-out" process for declining any future spam.

Second, it would outlaw transmitting high-volume unsolicited e-mail sources if they contain false, misleading or deceptive routing information, or forged e-mail addresses.

I am pleased that this bill has been made even stronger with the inclusion of Senator BILL NELSON's RICO statute amendment. I am proud to be named as the provision's original cosponsor.

This amendment encourages the prosecution of those people who use spam to seek money illegally or who engage in other illegal acts by making use of the civil Federal Racketeer Influenced and Corrupt Organizations Act, commonly known as RICO.

RICO makes it illegal to acquire or maintain a business through a pattern of racketeering activity. This law lets authorities seize the assets of such an operation and allows victims grounds for recovery in civil court.

By adopting the amendment, this body has given the overall bill teeth, which will go along way toward punishing those scam artists who prey on the everyday trusting, law-abiding citizens of our land.

As Attorney General I fought to curtail mail fraud and I think some of the spam being sent to Arkansans online is in that same category. The only difference is that this type of fraud reaches many more victims in a shorter period of time.

I look forward to the completion of this bill, and I am pleased that we have again been able to work in a bipartisan matter to carry out the will of the populace.

Mr. LEAHY. Mr. President, it is increasingly apparent that unwanted commercial e-mail, commonly known as "spam," is more than just a nuisance. In the past few years, it has become a serious and growing problem that threatens to undermine the vast potential of the Internet.

Businesses and individuals currently wade through tremendous amounts of spam in order to access e-mail that is of relevance to them- and this is after ISPs, businesses, and individuals have spent time and money blocking a large percentage of spam from reaching its intended recipients.

In my home State of Vermont, one legislator recently found that two-thirds of the 96 e-mails in his inbox were spam. And this occurred after the legislature had installed new spam-blocking software on its computer system that seemed to be catching 80 percent of the spam. The assistant attorney general in Vermont was forced to suggest to computer users the following means to avoid these unsolicited commercial e-mails: "It's very bad to reply, even to say don't send anymore. It tells the spammer they have a live address . . . The best thing you can do is just keep deleting them. If it gets really bad, you may have to change your address." This experience is echoed nationwide.

E-mail users are having the online equivalent of the experience of the woman in the Monty Python skit, who seeks to order a Spam-free breakfast at a restaurant. Try as she might, she cannot get the waitress to bring her the meal she desires. Every dish in the restaurant comes with Spam; it's just a matter of how much. There's "egg, bacon and Spam"; "egg, bacon, sausage and Spam"; "Spam, bacon, sausage and Spam"; "Spam, egg, Spam, Spam, bacon and Spam"; "Spam, sausage, Spam, Spam, Spam, bacon, Spam, tomato and Spam"; and so on. Exasperated, the woman finally cries out: "I don't like Spam! . . . I don't want ANY Spam!"

Individuals and businesses are reacting similarly to electronic spam. A Harris poll taken late last year found that 80 percent of respondents view spam as "very annoying," and fully 74 percent of respondents favor making mass spamming illegal. Earlier this month, more than 3 out of 4 people surveyed by Yahoo! Mail said it was "less aggravating to clean a toilet" than to sort through spam. Americans are fed up.

Some 30 States now have antispam laws, but the globe-hopping nature of e-mail makes these laws difficult to enforce. Technology will undoubtedly play a key role in fighting spam, but a technological solution to the problem is not likely in the foreseeable future. ISPs block billions of unwanted e-mails each day, but spammers are winning the battle.

Millions of unwanted, unsolicited commercial e-mails are received by American businesses and individuals each day, despite their own, additional filtering efforts. A recent study by Ferris Research estimates that spam costs U.S. firms $8.9 billion annually in lost worker productivity, consumption of bandwidth, and the use of technical support to configure and run spam filters and provide helpdesk support for spam recipients.

The costs of spam are significant to individuals as well, including time spent identifying and deleting spam, inadvertently opening spam, installing and maintaining antispam filters, tracking down legitimate messages mistakenly deleted by spam filters, and paying for the ISP's blocking efforts.

And there are other prominent and equally important costs of spam. It may introduce viruses, worms, and Trojan horses into personal and business computer systems, including those that support our national infrastructure.

The public has recently witnessed the potentially staggering effects of a virus, not only through the Blaster case I discussed earlier, but with the appearance of the SoBigF virus just 8 days after Blaster began chewing its way through the Internet. This variant also infected Windows machines via e-mail, then sent out dozens of copies of itself. Antivirus experts say one of the main reasons virus writers continue to modify and re-release this particular piece of "malware" is that it downloads a Trojan horse to infected computers, which are then used to send spam.

Spammers are constantly in need of new machines through which to route their garbage e-mail, and a virus makes a perfect delivery mechanism for the engine they use for their mass mailings. Some analysts said the SoBigF virus may have been created with a more malicious intent than most viruses, and may even be linked to spam e-mail schemes that could be a source of cash for those involved in the scheme.

The interconnection between computer viruses and spam is readily apparent: Both flood the Internet in an attempt to force a message on people who would not otherwise choose to receive it. Criminal laws I wrote prohibiting the former have been invoked and enforced from the time they were passed it is the latter dilemma we must now confront headon.

Spam is also fertile ground for deceptive trade practices. The FTC has estimated that 96 percent of the spam involving investment and business opportunities, and nearly half of the spam advertising health services and products, and travel and leisure, contains false or misleading information.

This rampant deception has the potential to undermine Americans' trust of valid information on the Internet. Indeed, it has already caused some Americans to refrain from using the Internet to the extent they otherwise would. For example, some have chosen not to participate in public discussion forums, and are hesitant to provide their addresses in legitimate business transactions, for fear that their e-mail addresses will be harvested for junk e-mail lists. And they are right to be concerned. The FTC found spam arriving at its computer system just 9 minutes after posting an e-mail address in an online chat room.

I have often said that Congress must exercise great caution when regulating in cyberspace. Any legislative solution to spam must tread carefully to ensure that we do not impede or stifle the free flow of information on the Internet. The United States is the birthplace of the Internet, and the whole world watches whenever we decide to regulate it. Whenever we choose to intervene in the Internet with government action, we must act carefully, prudently, and knowledgeably, keeping in mind the implications of what we do and how we do it. And we must not forget that spam, like more traditional forms of commercial speech, is protected by the first amendment.

At the same time, we must not allow spam to result in the "virtual death" of the Internet, as one Vermont newspaper put it.

The Internet is a valuable asset to our Nation, to our economy, and to the lives of Americans, and we should act prudently to secure its continued viability and vitality.

On June 19 of this year, Senator HATCH and I introduced S.1293, the Criminal Spam Act, together with several of our colleagues on the Judiciary Committee. On September 25, the committee unanimously voted to report the bill to the floor. Today, Senators HATCH, NELSON, SCHUMER, GRASSLEY and I offered the criminal provisions of S. 1293 as an amendment to S. 877, the CAN SPAM Act. The amendment was adopted by voice vote.

I thank the lead cosponsors of S. 877 for working with us on this amendment, and for their support and cosponsorship of the Criminal Spam Act. I also thank Senator BILL NELSON for his contribution to the amendment.

The Hatch-Leahy amendment prohibits five principal techniques that spammers use to evade filtering software and hide their trails.

First, our amendment prohibits hacking into another person's computer system and sending bulk spam from or through that system. This criminalizes the common spammer technique of obtaining access to other people's e-mail accounts on an ISP's e-mail network, whether by password theft or by inserting a "Trojan horse" program- that is, a program that unsuspecting users download onto their computers and that then takes control of those computers- to send bulk spam.

Second, our amendment prohibits using a computer system that the owner makes available for other purposes as a conduit for bulk spam, with the intent of deceiving recipients as to the spam's origins. This prohibition criminalizes another common spammer technique- the abuse of third parties' "open" servers, such as e-mail servers that have the capability to relay mail, or Web proxy servers that have the ability to generate "form" mail. Spammers commandeer these servers to send bulk commercial e-mail without the server owner's knowledge, either by "relaying" their e-mail through an "open" e-mail server, or by abusing an "open" Web proxy server's capability to generate form e-mails as a means to originate spam, thereby exceeding the owner's authorization for use of that e-mail or Web server. In some instances the hijacked servers are even completely shut down as a result of tens of thousands of undeliverable messages generated from the spammer's e-mail list.

The amendment's third prohibition targets another way that outlaw spammers evade ISP filters: falsifying the "header information" that accompanies every e-mail, and sending bulk spam containing that fake header information. More specifically, the amendment prohibits forging information regarding the origin of the e-mail message, and the route through which the message attempted to penetrate the ISP filters.

Fourth, the Hatch-Leahy amendment prohibits registering for multiple e-mail accounts or Internet domain names, and sending bulk e-mail from those accounts or domains. This provision targets deceptive "account churning," a common outlaw spammer technique that works as follows. The spammer registers- usually by means of an automatic computer program- for large numbers of e-mail accounts or domain names, using false registration information, then sends bulk spam from one account or domain after another. This technique stays ahead of ISP filters by hiding the source, size, and scope of the sender's mailings, and prevents the e-mail account provider or domain name registrar from identifying the registrant as a spammer and denying his registration request. Falsifying registration information for domain names also violates a basic contractual requirement for domain name registration falsification.

Fifth and finally, our amendment addresses a major hacker spammer technique for hiding identity that is a common and pernicious alternative to domain name registration- hijacking unused expanses of Internet address space and using them as launch pads for junk e-mail. Hijacking Internet Protocol-*IP*- addresses is not difficult: Spammers simply falsely assert that they have the right to use a block of IP addresses, and obtain an Internet connection for those addresses. Hiding behind those addresses, they can then send vast amounts of spam that is extremely difficult to trace.

Penalties for violations of these new criminal prohibitions are tough but measured. Recidivists and those who send spam in furtherance of another felony may be imprisoned for up to 5 years. Large-volume spammers, those who hack into another person's computer system to send bulk spam, and spam "kingpins" who use others to operate their spamming operations may be imprisoned for up to 3 years. Other offenders may be fined and imprisoned for no more than one year. Convicted offenders are also subject to forfeiture of proceeds and instrumentalities of the offense.

In addition to these penalties, the Hatch-Leahy amendment directs the Sentencing Commission to consider providing sentencing enhancements for those convicted of the new criminal provisions who obtained e-mail addresses through improper means, such as harvesting, and those who knowingly sent spam containing or advertising a falsely registered Internet domain name. We have also worked with Senator NELSON on language directing the Sentencing Commission to consider enhancements for those who commit other crimes that are facilitated by the sending of spam.

I should note that the Criminal Spam Act, from which the amendment is taken, enjoys broad support from ISPs, direct marketers, consumer groups, and civil liberties groups alike. It is also supported by the administration: In its September 11, 2003, views letter regarding the CAN SPAM Act, the administration advocated the addition to CAN SPAM of felony triggers similar to those proposed in the Criminal Spam Act. The administration further supported our proposal, advanced in the Hatch-Leahy amendment, to direct the Sentencing Commission to consider sentencing enhancements for convicted spammers that have additionally obtained e-mail addresses by harvesting.

Again, the purpose of the Hatch-Leahy amendment is to deter the most pernicious and unscrupulous types of spammers- those who use trickery and deception to induce others to relay and view their messages. Ridding America's inboxes of deceptively delivered spam will significantly advance our fight against junk e-mail. But it is not a cure-all for the spam pandemic.

The fundamental problem inherent to spam- its sheer volume- may well persist even in the absence of fraudulent routing information and false identities. In a recent survey, 82 percent of respondents considered unsolicited bulk e-mail, even from legitimate businesses, to be unwelcome spam. Given this public opinion, and in light of the fact that spam is, in essence, cost-shifted advertising, we need to take a more comprehensive approach to our fight against spam.

While I am generally supportive of the CAN SPAM Act, and will vote in favor of passage, it does raise some concerns. The bill takes an "opt out" approach to spam- that is, it requires all commercial e-mail to include an "opt out" mechanism, by which e-mail recipients may opt out of receiving further unwanted spam. My concern is that this approach permits spammers to send at least one piece of spam to each e-mail address in their database, while placing the burden on e-mail recipients to respond. People who receive dozens, even hundreds, of unwanted e-mails each day may have little time or energy for anything other than opting-out from unwanted spam.

According to one organization's calculations, if just one percent of the approximately 24 million small businesses in the U.S. sent every American just one spam a year, that would amount to over 600 pieces of spam for each person to sift through and opt out of each day. And this figure may be conservative, as it does not include the large businesses that also engage in online advertising.

I am also troubled by the labeling requirement in the CAN SPAM Act, which makes it unlawful to send an unsolicited commercial e-mail message unless it provides, among other things, "clear and conspicuous identification that the message is an advertisement or solicitation," and "a valid physical postal address of the sender". While we all want to curb spam, we must be mindful of its status as protected commercial speech, and ensure that any restrictions we impose on it are as narrowly tailored as possible.

Reducing the volume of junk commercial e-mail, and so protecting legitimate Internet communications, is not an easy matter. There are important First Amendment interests to consider, as well as the need to preserve the ability of legitimate marketers to use e-mail responsibly. We must be sure we get this right, so as not to exacerbate an already terribly vexing problem. This is especially important given the preemption provisions of the CAN SPAM Act, which will override many of the tough anti-spamming laws already enacted by the States.

My distinguished colleagues from Wyoming and Pennsylvania offered an amendment requiring "warning labels" on certain commercial electronic mail. While I appreciate my colleagues' efforts to protect our children from the on-line assault of internet pornography- an important goal that we all share- I fear the amendment has been drafted in haste and raises significant constitutional issues that require further analysis.

First, the amendment incorporates broad and vague phrases such as "devoted to sexual matters" that are not otherwise defined in the law. I expressed similar concerns during debate on the Communications Decency Act, CDA, which the Supreme Court struck down as unconstitutional in 1996. The CDA also punished as a felony anyone who transmitted "obscene" or "indecent" material over the Internet. The CDA was deemed too vague as to what was "indecent" or "obscene." Some of the terms and phrases used in the Enzi-Santorum amendment may be deemed equally vague when subjected to judicial scrutiny.

There are also first amendment concerns to regulating commercial electronic mail in ways that require specific labels on protected speech. Such requirements inhibit both the speaker's right to express and the listener's right to access constitutionally protected material.

More importantly, existing laws already ban obscenity, harassment, child pornography and enticing minors into sexual activity.

As a father and a grandfather, I well appreciate the challenge of limiting a child's exposure to sexually inappropriate material. Yet, no legislation we could pass would be an effective substitute for parental involvement. We must be vigilant about feel-good efforts to involve government, either directly or indirectly, in regulating the content of the Internet.

For these reasons, the Enzi-Santorum amendment raises serious legal issues that mandate further exploration before a determination can be made on the proposed law's constitutional viability.

I look forward to continuing to work with the sponsors of the CAN SPAM Act on these issues as the bill proceeds to conference.

Ms. CANTWELL. Mr. President, I rise today in support of the Burns-Wyden CAN-SPAM Act, which would impose limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet.

I would like to thank my colleagues, Senators WYDEN and BURNS, for their leadership in tackling this problem which affects so many consumers in my State of Washington. Unsolicited commercial email or "spam" is a major irritant to consumers and businesses alike. Spam exposes computer users- often young children- to pornography, sexual predators, fraudulent schemes, and other unwanted or harmful messages. In addition, spam costs American business close to $10 billion each year in lost productivity, additional infrastructure costs, and legal fees- costs that are ultimately borne by consumers. By clogging our computers, spam threatens to deprive us of the tremendous benefits provided by the Internet.

This bill represents a crucial first step in combating the exponential increase in the volume of spam, which today accounts for half of all email messages. Because of the global nature of this problem and the anonymity that the Internet affords spammers, it is impossible for states or individuals alone to take meaningful steps to reduce the impact of this nuisance, and self-regulation is simply not an option. The overwhelming volume of sleazy and fraudulent solicitations originating from criminal organizations demands a tough response that imposes both civil and criminal penalties.

That is precisely why this bill is so necessary. To protect computer users in my State and across the country, we must take immediate steps to stem the mountain of spam hitting email inboxes every day.

The Burns-Wyden bill is a long-awaited step in the right direction. The bill has been carefully negotiated and improved. By allowing enforcement by State attorneys general and by Internet service providers, we have increased the odds of successful enforcement against the worst spammers. By prohibiting harvesting of email addresses, the use of technology to send thousands of spammed messages, and by prohibiting false and misleading message headers, the bill will send a clear message to the most abusive spammers that their practices will no longer be tolerated.

But enforcement will remain a challenge. Spammers have every incentive to increase the volume of their messages because the marginal cost of sending another message is virtually nothing. And because of the anonymity and global nature of the internet, spammers can hide their identity and move their operations offshore.

While the bill before us will finally put in place a Federal approach to the global problem of spam, there is no single solution to this complex problem. I am pleased that the bill will require the Federal Trade Commission to develop legislation to establish a national Do Not Email registry modeled on the Do Not Call registry, but I believe there may come a point at which additional protections are necessary to protect consumers and to protect the growth of the information economy.

I think we all recognize that we have much more work to do to solve this problem, but the Burns-Wyden bill is an excellent first step in addressing the problem, and I am pleased to help pass this important legislation.

Mr. MCCAIN. Mr. President, I suggest the absence of a quorum. Under the previous order, I believe the vote will start at 6:30.

The PRESIDING OFFICER. That is correct. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BURNS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Under the previous order, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The bill having been read the third time, the question is, Shall it pass?

Mr. BURNS. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Hawaii (Mr. INOUYE), and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote "yea."

The PRESIDING OFFICER (Mr. TALENT). Are there any other Senators in the Chamber desiring to vote?

The result was announced- yeas 97, nays 0, as follows:

[Rollcall Vote No. 404 Leg.]

YEAS- 97

Akaka	Conrad	Hatch
Alexander	Cornyn	Hollings
Allard	Corzine	Hutchison
Allen	Craig	Inhofe
Baucus	Crapo	Jeffords
Bayh	Daschle	Johnson
Bennett	Dayton	Kennedy
Biden	DeWine	Kohl
Bingaman	Dodd	Kyl
Bond	Dole	Landrieu
Boxer	Domenici	Lautenberg
Breaux	Dorgan	Leahy
Brownback	Durbin	Levin
Bunning	Ensign	Lieberman
Burns	Enzi	Lincoln
Byrd	Feingold	Lott
Campbell	Feinstein	Lugar
Cantwell	Fitzgerald	McCain
Carper	Frist	McConnell
Chafee	Graham (FL)	Mikulski
Chambliss	Graham (SC)	Miller
Clinton	Grassley	Murkowski
Cochran	Gregg	Murray
Coleman	Hagel	Nelson (FL)
Collins	Harkin	Nelson (NE)

Nickles	Schumer	Sununu
Pryor	Sessions	Talent
Reed	Shelby	Thomas
Reid	Smith	Voinovich
Roberts	Snowe	Warner
Rockefeller	Specter	Wyden
Santorum	Stabenow	
Sarbanes	Stevens	

NOT VOTING- 3

Edwards	Inouye	Kerry

The bill (S. 877), as amended, was passed, as follows:

Mr. DASCHLE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask that there now be a period for morning business, with Senators speaking for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

NOMINATION OF THOMAS M. HARDIMAN

Mr. SPECTER. Mr. President, it is my understanding that the Senate will soon take up in executive session the nomination of Thomas M. Hardiman to be a judge on the U.S. District Court for the Western District of Pennsylvania, and I recommend to my colleagues that he be confirmed. He has an outstanding academic record.

Mr. Hardiman received his bachelor's degree, cum laude, from the University of Notre Dame in 1987. He received his law degree, cum laude again, from Georgetown University Law Center. He was notes and comments editor of the Georgetown Law Journal, which is an indication of academic achievement and legal excellence in writing. He has been admitted to the bars of Massachusetts, the District of Columbia, and the Commonwealth of Pennsylvania. He has been in the active practice of law since 1990. He currently is a partner in the prestigious Pittsburgh firm of Reed Smith.

He has been very active with professional affiliations as a Pennsylvania Young Lawyers Division delegate to the American Bar Association's House of Delegates. He served as a hearing officer for the Pennsylvania Disciplinary Board. He has been active in community affairs, president of Big Brothers Big Sisters of Greater Pittsburgh, and he currently serves as director of that organization. He was formerly an adjunct faculty member of LaRoche College.

As suggested by the dates of graduation, Mr. Hardiman is a young man, in his late thirties. I think he brings an element of diversity to the court, tempering some of the judges who are older. But starting at the age of 38 affords an opportunity to develop skills and expertise on the district court as a trial judge.

From what I know about him, and I have observed him over the better part of the past decade, he has the capability perhaps to become an appellate judge. That will depend upon the development of his skills and his professional accomplishments as a judge.

He was recommended by the nonpartisan nominating panel which Senator SANTORUM and I have. He is a vigorous young man. He has a family, a wife and three children, residing in Fox Chapel. I think he will make an outstanding addition to the United States District Court for the Western District of Pennsylvania.

IN MEMORY OF IRA PAULL

Mr. DODD. Mr. President, I rise to speak in memory of Ira Paull, who passed away suddenly on September 28 at the age of 52.

I was very fortunate to work with Ira during the 7 years he spent on Capitol Hill as a staff member on the Senate Banking Committee. He worked on the staff of Senators John Heinz, Jake Garn, and Alfonse D'Amato. Ira was an integral part of virtually every critical piece of legislation that came out of the Banking Committee. His knowledge was vast and his counsel well-respected by Senators on both sides of the aisle. I personally had the privilege of working with Ira in my capacity as chairman of the Securities Subcommittee. In particular, I have fond memories of Ira as he accompanied me, Senator Heinz, and my staff on a congressional delegation to Europe in 1990 looking into European Community Financial Services issues.

Ira's reputation on the Hill was that of a bright and talented lawyer, and also of an individual with a quick wit and a tremendous sense of humor. He became well-known for writing opening statements for committee hearings that were not only well-informed and comprehensive, but would even, on occasion, incorporate rhyme or poetry that would bring a smile to everyone's face.

Though his job on the committee was to provide counsel to Republican Senators, he earned a great deal of respect from Democrats as well. He formed deep and lasting friendships with staff members from both sides of the aisle, including my own staff, who valued his advice and counsel and cherished his friendship.

Ira Paull was a hard worker, a dedicated public servant, and a wonderful person who was taken from us far too soon. He will be greatly missed by everyone who had the opportunity to know him.

I offer my deepest sympathies to his brother Gerson, to his sisters, Susan, Leah, and Linda, and to his entire family.

I ask unanimous consent to print in the RECORD statements on Ira's passing submitted by former Senators Garn and D'Amato.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

ON THE PASSING OF IRA PAULL

Senator Jake Garn

I first met Ira Paull in 1988 when he joined the staff of Senator John Heinz as his legislative assistant specializing in securities issues. A year later he joined the Banking Committee staff and I saw first hand how Ira's expertise in banking, securities and accounting made an invaluable contribution to the work of the Committee. Ira played a key role in all of the key significant legislation addressed by the Committee during my tenure as ranking member. Many of these laws were of critical importance to the financial stability of the United States, such as the legislation that resolved the savings and loan crisis and the law that restored the financial strength of the Federal Deposit Insurance Corporation. Ira's knowledge of accounting was especially crucial to the Committee's work on these measures, and the legislation adopted by the Congress reflects much of the input and advice we received from him.

Ira's intellect and technical expertise alone would have made him a wonderful asset to the Banking Committee staff. But Ira's contribution went well beyond that. Ira took it upon himself to share his knowledge and become an adviser to senior staff and a mentor to younger staff. He was universally respected for his personal integrity and strength of convictions. Ira had strong beliefs about Aright and wrong- and to his credit, never feared to express his views. He also had a remarkable sense of humor, and members of the Committee on both sides of the aisle enjoyed the statements Ira prepared. His sense of humor also served to keep staff morale high during the periods of high stress when staff was required to work long hours due to the press of the legislative schedule.

The passing of Ira Paull is a loss for all of us. He was a bright light that shone on many people, including myself. He will be missed by many, but forgotten by no one.

IN MEMORY OF IRA PAULL

Senator Alfonse M. D'Amato

It is with deep sadness that I submit this statement about the passing of former Senate Banking Committee staff person, Ira Paull.

Ira was a strong presence on the Committee staff for a number of years, staffing first Senator Heinz, then Senator Garn and finally me when he became the Deputy Staff Director under my Chairmanship.

No matter who Ira worked for at the time, though, we all looked to him for his quick and concise explanations- Ira could always cut to the chase. If any of us wanted something more than that, Ira could also spend days on the details. He was one of the few staff people that could actually do both. Whether the explanation was a few minutes or a few hours though, he was always passionate about whatever the Committee was doing.

In fact, few could show such passion as Ira about the Public Utility Holding Company Act of 1935 or the minutiae of thrift regulation. Ira's passion for the law showed no mercy for lobbyists or staff representing members with contrary positions to Ira's successive bosses. He was a strong advocate for his member and very effective at getting what his boss needed.

I remember one particular situation back when Congress passed FDICIA in 1991. It was

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