

1999 DRAFTING REQUEST

Bill

Received: 11/11/1998

Received By: **kunkemd**

Wanted: **As time permits**

Identical to LRB:

For: **Lieutenant Governor 6-3516**

By/Representing: **Chris Wolle**

This file may be shown to any legislator: **NO**

Drafter: **kunkemd**

May Contact:

Alt. Drafters:

Subject: **Public Util. - telco and cable
Trade Regulation
Tax - sales**

Extra Copies: **MES**

Pre Topic:

No specific pre topic given

Topic:

Unsolicited email messages; internet taxation; internet privacy

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	kunkemd 02/25/1999	jgeller 02/25/1999	hhagen 02/26/1999	_____	lrb_docadmin 02/26/1999		S&L Tax
	kunkemd 08/12/1999	jgeller 08/12/1999		_____			
/P2	kunkemd 10/29/1999	jgeller 11/01/1999	jfrantze 08/13/1999	_____	lrb_docadmin 08/13/1999		S&L Tax
/1			jfrantze 11/01/1999	_____	lrb_docadmin 11/01/1999	lrb_docadmin	S&L Tax

FE Sent For:

~~XXXXXXXXXX~~
02-08-00

<END>

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11/01/1999 09:46:17 AM
Page 2

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	kunkemd 08/12/1999	kgeller 08/12/1999		_____			
/P2		<i>1 1/2 kg</i> kgeller	jfrantze 08/13/1999	_____	lrb_docadmin 08/13/1999		S&L Tax

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8/11/99 Jme
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/P1	kunkemd 02/25/99	ygeller 02/25/99	hhagen 02/26/99	_____	lrb_docadmin 02/26/99		S&L Tax

FE Sent For:

/P2 /12 yg *yg 8/13* *yg /mc*
 <END>
 8/13

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1/?	kunkemd	1/25 jg	4/26	4/26			S&L Tax

FE Sent For:

<END>



State of Wisconsin
Lieutenant Governor

- 0812

Scott McCallum
Lieutenant Governor

State Capitol, Room 22 East • Madison, Wisconsin 53702
608/266-3516 Fax 267-3571

TO: Mark D. Kunkel, Attorney
FR: Chris Wolle
DT: August 10, 1998
RE: Drafting Request – Internet Legislation.

Please prepare a bill draft that would create a number of new provisions related to the Internet. The new provisions would apply to unsolicited commercial electronic mail messages ("spam"), misappropriation of Internet domain names, Internet privacy, and the taxation of Internet access and commercial transactions over the Internet. This proposal is intended to accomplish the following:

A. Unsolicited Electronic Mail Messages.

1. Prohibit a registered user of an electronic mail service provider ("ISP") from using or causing to be used an ISP's equipment in violation of the ISP's published policy restricting or prohibiting the use of its equipment for the initiation of spam. Such policy would need to be communicated to all registered users. In other words, spammers would be prohibited from using an ISP's equipment to send unsolicited e-mail advertisements or commercial solicitations to other registered users if such action violated the ISP's published commercial electronic mail policy.

Business
APR 1998

"Electronic mail service provider" means any business or organization that has a mailing address in Wisconsin or whose principal place of business is the state of Wisconsin that provides registered users the ability to send or receive electronic mail, whether their equipment is located in Wisconsin or not, and that is an intermediary in sending or receiving electronic mail.

2. Prohibit any individual, corporation, or other entity from using or causing to be used, by initiating an unsolicited electronic mail advertisement or commercial solicitation, an ISP's equipment to deliver spam to the ISP's registered users in violation of the ISP's published commercial electronic mail policy.
3. Authorize any ISP whose published policy has been violated to bring, in addition to any other action available under law, a civil action to recover damages - \$50 per e-mail message up to a maximum of \$15,000 per day, whichever is greater.

Ch.
1321

DA
for violation

Development and publication of a commercial electronic mail policy would be a prerequisite to pursuing legal action for unauthorized use of ISP equipment. The prevailing party in such an action would be entitled to recover reasonable attorney's fees. Under the California proposal, this action is a species of trespass.

The bill would in no way legally force an ISP to publish a commercial electronic mail policy, however.

4. Make it a crime to knowingly and without permission use the Internet domain name of another individual, corporation, or other entity in connection with the sending of one or more electronic messages. For the first offense, a person violating this provision would be guilty of a Class E felony. For subsequent offenses, the person would be guilty of a Class D felony. See Section 943.45, Wis.Stats.

These provisions are based on California Assembly Bill 1629, attached hereto. Also enclosed for your information is testimony offered by Attorney David H. Kramer in support of AB-1629.

B. Internet Taxation.

1. Wisconsin currently imposes a 5% sales tax on Internet access. Please draft language to eliminate the sales ~~taxes~~ taxes applicable to the access and use of the Internet. This would be similar to Section 2386j of Assembly Amendment 8 to Assembly Substitute Amendment 1 to 1997 Assembly Bill 100 (attached hereto).
2. Place a three (3) year moratorium on state sales taxes applicable to commercial transactions that take place over the Internet. See H.R. 4105 (attached hereto).

per Chris Wolfe
8/27
TC

C. Internet Privacy.

1. Prohibit the unauthorized gathering of financial information, medical records, and ^{mail or fax} "discernible" data on children over the Internet.
 - Require parental permission before collecting information from children under 12 years of age.
 - Prohibit the sale of confidential financial information acquired over the Internet unless the user explicitly agrees to such sale. ^{See AB 230}

increases or additional taxes

broader prohib - see key pal

"DISCLOSURE PROHIBITED. A person may not disclose to another person, for money or anything of value, any financial information or other data about a registered user who is a resident of this state that is obtained by the person from internet transaction records without first obtaining affirmative permission to do so from the registered user to whom the information relates."

should apply to any information - keep broad

HR 4328

SB 442
Moratorium

Study
wis.
extension

97 AB 370

97 AB 230

- production

name
address
phone #
sex
age
occupation

2. Allow consumers to decide what, if any, personal information they provide over the Internet in order to gain access to a website. → public website - free website

- Require that social security number be an "optional" field on any website registration form.

us
memberships

enforcement
- no lawsuit

3. Require commercial websites doing business in Wisconsin to prominently display privacy policies and write them in easy-to-understand language. Further require that commercial websites specifically state what information they collect from visitors and for what purposes, including whether it is being sold to third parties. See privacy policies of Hormel Foods Corporation and the New York Times (attached hereto).

If you have any questions please call Bill Steiger or me at 266-3516. Thank you for your attention to this matter.

1997 ASSEMBLY BILL 230

March 27, 1997 - Introduced by Representatives SCHNEIDER, HASENOHRL, BLACK, MUSSER, R. YOUNG, JOHNSRUD, NOTESTEIN, GROTHMAN, ZIEGELBAUER, VANDER LOOP, RYBA, BAUMGART, MURAT, HAHN, GUNDERSON, GRONEMUS, KREUSER, BOYLE, SERATTI, R. POTTER and PLALE, cosponsored by Senators WIRCH, DECKER, MOEN and HUELSMAN. Referred to Committee on Consumer Affairs.

1 AN ACT *to create* 138.25 of the statutes; **relating to:** credit card records and
2 providing a penalty.

Analysis by the Legislative Reference Bureau

Current law is silent regarding a person's authority to sell information about credit cardholders. Under this bill, a person (which includes a corporation) may not sell information about Wisconsin residents that is obtained from credit card transaction records. The bill provides for certain exceptions from this prohibition. First, the bill excepts disclosures to credit reporting agencies for the purpose of preparing a credit report. The bill also contains certain exceptions for disclosing information to affiliates of the issuer and to contractors or agents of the issuer for the purpose of performing functions for or on behalf of the issuer. Persons violating the disclosure provisions created in the bill are subject to a forfeiture of not more than \$10,000 for each violation. The bill also authorizes the department of justice to bring actions in circuit court to enjoin violations of the disclosure provisions.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 138.25 of the statutes is created to read:
4 **138.25 Credit card records. (1) DEFINITIONS.** In this section:
5 (a) "Cardholder" has the meaning given in s. 943.41 (1) (b).

ASSEMBLY BILL 230

SECTION 1

1 (b) "Consumer report" has the meaning given in 15 USC 1681a (d).

2 (c) "Consumer reporting agency" has the meaning given in 15 USC 1681a (f).

3 (d) "Financial transaction card" has the meaning given in s. 943.41 (1) (em).

4 (1) (2) DISCLOSURE PROHIBITED. ~~Except as provided in sub. (3) a~~ A person may not

5 disclose to another person, for money or anything else of value, any information or ^{fin.} ~~other~~

6 data about a ^{registered user} cardholder who is a resident of this state that is obtained by the person

7 from ^{internet} ~~financial transaction card~~ transaction records. . . .

8 (3) EXCEPTIONS. A person may disclose information about a cardholder if any
9 of the following apply:

10 (a) The disclosure is made to a consumer reporting agency for purposes of a
11 consumer report.

12 (b) The disclosure is made to or by persons that are affiliated with the issuer
13 of the financial transaction card by common ownership or control solely for the
14 purpose of performing functions for or on behalf of the issuer. The affiliated person
15 may not disclose any information received pursuant to this paragraph to a person
16 other than the issuer, unless the issuer could make the disclosure under this section.

17 (c) If the issuer of the financial transaction card is a retailer, to or by contractors
18 or agents of the issuer for the purposes of performing functions for or on behalf of the
19 issuer. The contractor or agent may not disclose any information received pursuant
20 to this paragraph to a person other than the issuer, unless the issuer could make the
21 disclosure under this section.

22 (4) FORFEITURE. A person who violates sub. (2) may be required to forfeit not
23 more than \$10,000 for each violation. Each disclosure of information or data about
24 one cardholder constitutes a separate violation.

**ASSEMBLY AMENDMENT 1,
TO 1997 ASSEMBLY BILL 230**

May 22, 1997 - Offered by COMMITTEE ON CONSUMER AFFAIRS.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 2, line 10: after "to" insert "or by".

3 **2.** Page 2, line 17: after the comma insert "the disclosure is made".

4 (END)

History of Assembly Bill 230

ASSEMBLY BILL 230

An Act to create 138.25 of the statutes; relating to: credit card records and providing a penalty.

1997

- 03-27. A. Introduced by Representatives Schneider, Hasenohrl, Black, Musser, R. Young, Johnsrud, Notestein, Grothman, Ziegelbauer, Vander Loop, Ryba, Baumgart, Murat, Hahn, Gunderson, Gronemus, Kreuser, Boyle, Seratti, R. Potter and Plale; cosponsored by Senators Wirch, Decker, Moen and Huelsman.
- 03-27. A. Read first time and referred to committee on Consumer Affairs 113
- 05-08. A. Public hearing held.
- 05-22. A. Executive action taken.
- 05-22. A. Assembly amendment 1 offered by committee on Consumer Affairs 167
- 05-22. A. Assembly amendment 2 offered by committee on Consumer Affairs 167
- 05-27. A. Report Assembly amendment 1 adoption recommended by committee on Consumer Affairs, Ayes 8, Noes 0 176
- 05-27. A. Report Assembly amendment 2 adoption recommended by committee on Consumer Affairs, Ayes 8, Noes 0 176
- 05-27. A. Report passage as amended recommended by committee on Consumer Affairs, Ayes 5, Noes 3 177
- 05-27. A. Referred to committee on Rules 177
- 11-18. A. Refused to withdraw from committee on Rules and take up, Ayes 46, Noes 50 418

1998

- 03-12. A. Refused to suspend rules to withdraw from committee on Rules and take up, Ayes 46, Noes 50 653
- 04-02. A. Failed to pass pursuant to Senate Joint Resolution 1 .. 786

Text of Assembly Bill 230

Search for another history



[Back to Legislation Page](#)



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99-0812

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>GO TO</i>
Next Hit	Forward	New Bills Search
Prev Hit	Back	HomePage
Hit List	Best Sections	Help
	Doc Contents	

H.R.4105

Internet Tax Freedom Act (Engrossed in House)

105th CONGRESS

2d Session

H. R. 4105

AN ACT

To establish a national policy against State and local interference with interstate commerce on the Internet, to exercise congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce via the Internet, to establish a national policy against Federal and State regulation of Internet access and online services, and for other purposes.

HR 4105 EH

105th CONGRESS

2d Session

H. R. 4105

AN ACT

To establish a national policy against State and local interference with interstate commerce on the Internet, to exercise congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce via the Internet, to establish a national policy against Federal and State regulation of Internet access and online services, and for other purposes.

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 'Internet Tax Freedom Act'.

SEC. 2. MORATORIUM ON CERTAIN TAXES.

(a) AMENDMENT- Title 4 of the United States Code is amended by adding at the end the following:

'CHAPTER 6--MORATORIUM ON CERTAIN TAXES

'Sec.

'151. Moratorium.

'152. Advisory commission on electronic commerce.

'153. Legislative recommendations.

'154. Expedited consideration of legislative recommendations.

'155. Definitions.

'Sec. 151. Moratorium

'(a) MORATORIUM- For a period of 3 years following the date of the enactment of this chapter, neither any State, nor any political subdivision thereof, shall impose, assess, collect, or attempt to collect--

'(1) taxes on Internet access;

'(2) bit taxes; or

'(3) multiple or discriminatory taxes on electronic commerce.

'(b) EXCEPTION TO MORATORIUM- (1) Subject to paragraph (2), the moratorium in subsection (a)(1) shall not apply to the following taxes (as applicable), as in effect on the date of the enactment of this chapter, on Internet access:

'(A) STATE OF CONNECTICUT- Section 12-407(2)(i)(A) of the General Statutes of Connecticut.

'(B) STATE OF WISCONSIN- Section 77.52(2)(a)5 of the Wisconsin Statutes (1995-96).

'(C) STATE OF IOWA- Section 422.43(1) of the Code of Iowa (1997).

'(D) STATE OF NORTH DAKOTA- North Dakota Century Code 57-39.2 and 57-34.

'(E) STATE OF SOUTH DAKOTA- South Dakota Codified Law Annotated 10-45-5.

'(F) STATE OF NEW MEXICO- New Mexico Statutes Annotated 7-9-3.

'(G) STATE OF TENNESSEE- Tennessee Code Annotated 67-6-221, 67-6-102(23)(iii), and 67-6-702(g).

'(H) STATE OF OHIO- Chapter 5739 of the Ohio Revised Code.

'(2)(A) Paragraph (1) shall apply with respect to a tax referred to in such paragraph only if the referenced State enacts, during the 1-year period beginning on the date of the enactment of this chapter, a law to expressly affirm that such tax is imposed on Internet access.

'(B) A State that satisfies the requirement specified in subparagraph (A) shall be deemed to have satisfied such requirement immediately after the enactment of this chapter, except that such State may not impute penalties or interest on any tax accrued during the period beginning on the date of the enactment of this Act and ending on the date such State satisfies such requirement.

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Prev Hit	<u>Back</u>	<u>HomePage</u>
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	<u>Doc Contents</u>	

AMENDED IN SENATE JUNE 29, 1998
AMENDED IN SENATE JUNE 11, 1998
AMENDED IN ASSEMBLY MAY 14, 1998
AMENDED IN ASSEMBLY APRIL 21, 1998
AMENDED IN ASSEMBLY APRIL 14, 1998
AMENDED IN ASSEMBLY MARCH 12, 1998

CALIFORNIA LEGISLATURE—1997-98 REGULAR SESSION

ASSEMBLY BILL

No. 1629

Introduced by Assembly Members Miller and Cunneen
(Coauthors: Assembly Members Alquist, Baldwin,
Bordonaro, Campbell, Frusetta, Leach, Lempert,
Morrissey, and Runner)

January 5, 1998

An act to add Section 17538.45 to the Business and Professions Code, and to amend Section 502 of the Penal Code, relating to electronic mail.

LEGISLATIVE COUNSEL'S DIGEST

AB 1629, as amended, Miller. Electronic mail.

(1) Existing law prohibits a person conducting business in this state from faxing unsolicited advertising material, unless certain conditions are satisfied.

This bill would also prohibit a registered user of an electronic mail service provider, as defined, from using or causing to be used the provider's equipment in violation of the

provider's published policy prohibiting or restricting the use of its equipment for the initiation of unsolicited electronic mail advertisements. It would also prohibit any individual, corporation, or other entity from using or causing to be used, by initiating an unsolicited electronic mail advertisement, an electronic mail service provider's equipment in violation of the provider's published policy prohibiting or restricting the use of its equipment to deliver unsolicited electronic mail advertisements to its registered users. It would authorize any electronic mail service provider whose published policy is violated as provided in these provisions to bring, in addition to any other action available under law, a civil action to recover damages, as specified, and would provide that the prevailing party in that action shall be entitled to recover reasonable attorney's fees, as specified.

(2) Existing law provides for the regulation of advertising and provides that any violation of those provisions is a crime.

This bill, by creating additional prohibitions with regard to advertising, would expand the scope of an existing crime, thereby imposing a state-mandated local program.

(3) Existing law makes it a crime to knowingly and without permission tamper with, interfere with, damage, or gain unlawful access to certain computers, computer systems, and computer data.

This bill would, in addition, make it a crime to knowingly and without permission use the Internet domain name, as defined, of another individual, corporation, or entity in connection with the sending of one or more electronic mail messages. By creating a new crime, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17538.45 is added to the Business
2 and Professions Code, to read:

3 17538.45. (a) For purposes of this section, the
4 following words have the following meanings:

5 (1) "Electronic mail advertisement" means any
6 electronic mail message, the principal purpose of which
7 is to promote, directly or indirectly, the sale or other
8 distribution of goods or services to the recipient.

9 (2) "Unsolicited electronic mail advertisement"
10 means any electronic mail advertisement that meets both
11 of the following requirements:

12 (A) It is addressed to a recipient with whom the
13 initiator does not have an existing business or personal
14 relationship.

15 (B) It is not sent at the request of or with the express
16 consent of the recipient.

17 (3) "Electronic mail service provider" means any
18 business or organization qualified to do business in
19 California that provides registered users the ability to
20 send or receive electronic mail through equipment
21 located in this state and that is an intermediary in sending
22 or receiving electronic mail.

23 (4) "Initiation" of an unsolicited electronic mail
24 advertisement refers to the action by the initial sender of
25 the electronic mail advertisement. It does not refer to the
26 actions of any intervening electronic mail service
27 provider that may handle or retransmit the electronic
28 message.

29 (5) "Publish" means to do both of the following with
30 respect to the electronic mail service provider's policy on
31 unsolicited electronic mail advertisements:

32 (A) Make that policy available upon request in written
33 form, including, but not limited to, digital form, at no
34 charge.

35 (B) Display that policy through an on-line notice on
36 the Internet home page or other initial screen of the
37 electronic mail service provider, or a page or screen
38 accessible through a readily accessible link on the home

→ follow current law for language?

- vague →
"personal"
or
"business"
"relationships"?



1 page or other initial screen of the electronic mail service
2 provider.

3 (6) "Registered user" means any individual,
4 corporation, or other entity that maintains an electronic
5 mail address with an electronic mail service provider.

6 (b) No registered user of an electronic mail service
7 provider shall use or cause to be used that electronic mail
8 service provider's equipment located in this state in
9 violation of that electronic mail service provider's
10 published policy prohibiting or restricting the use of its
11 service or equipment for the initiation of unsolicited
12 electronic mail advertisements.

registered user

13 (c) No individual, corporation, or other entity shall use
14 or cause to be used, by initiating an unsolicited electronic
15 mail advertisement, an electronic mail service provider's
16 equipment located in this state in violation of that
17 electronic mail service provider's published policy
18 prohibiting or restricting the use of its equipment to
19 deliver unsolicited electronic mail advertisements to its
20 registered users.

*any person
- same prohibition*

21 (d) An electronic mail service provider shall not be
22 required to create a policy prohibiting or restricting the
23 use of its equipment for the initiation or delivery of
24 unsolicited electronic mail advertisements.

*not
necy?*

25 (e) Nothing in this section shall be construed to limit
26 or restrict the rights of an electronic mail service provider
27 under Section 230(c)(1) of Title 47 of the United States
28 Code, or any decision of an electronic mail service
29 provider to permit or to restrict access to or use of its
30 system, or any exercise of its editorial function.

not necy?

31 (f) (1) In addition to any other action available under
32 law, any electronic mail service provider whose
33 published policy on unsolicited electronic mail
34 advertisements is violated as provided in this section may
35 bring a civil action to recover the actual monetary loss
36 suffered by that provider by reason of that violation, or
37 liquidated damages of fifty dollars (\$50) for each
38 electronic mail message initiated or delivered in violation
39 of this section, up to a maximum of fifteen thousand
40 dollars (\$15,000) per day, whichever amount is greater.

COA

LD



attorney fees

-30 day rule

1 (2) The prevailing party in any action brought under
2 paragraph (1) shall be entitled to recover reasonable
3 attorney's fees.

4 (3) In any action brought pursuant to paragraph (1),
5 the electronic mail service provider shall be required to
6 establish as an element of its cause of action that its policy
7 on unsolicited electronic mail advertisements had been
8 published for at least 30 days preceding the alleged
9 violation of that policy.

10 SEC. 2. Section 502 of the Penal Code is amended to
11 read:

12 502. (a) It is the intent of the Legislature in enacting
13 this section to expand the degree of protection afforded
14 to individuals, businesses, and governmental agencies
15 from tampering, interference, damage, and
16 unauthorized access to lawfully created computer data
17 and computer systems. The Legislature finds and
18 declares that the proliferation of computer technology
19 has resulted in a concomitant proliferation of computer
20 crime and other forms of unauthorized access to
21 computers, computer systems, and computer data.

22 The Legislature further finds and declares that
23 protection of the integrity of all types and forms of
24 lawfully created computers, computer systems, and
25 computer data is vital to the protection of the privacy of
26 individuals as well as to the well-being of financial
27 institutions, business concerns, governmental agencies,
28 and others within this state that lawfully utilize those
29 computers, computer systems, and data.

30 (b) For the purposes of this section, the following
31 terms have the following meanings:

32 (1) "Access" means to gain entry to, instruct, or
33 communicate with the logical, arithmetical, or memory
34 function resources of a computer, computer system, or
35 computer network.

36 (2) "Computer network" means any system that
37 provides communications between one or more
38 computer systems and input/output devices including,
39 but not limited to, display terminals and printers
40 connected by telecommunication facilities.



1 (3) "Computer program or software" means a set of
2 instructions or statements, and related data, that when
3 executed in actual or modified form, cause a computer,
4 computer system, or computer network to perform
5 specified functions.

6 (4) "Computer services" includes, but is not limited to,
7 computer time, data processing, or storage functions, or
8 other uses of a computer, computer system, or computer
9 network.

10 (5) "Computer system" means a device or collection
11 of devices, including support devices and excluding
12 calculators that are not programmable and capable of
13 being used in conjunction with external files, one or more
14 of which contain computer programs, electronic
15 instructions, input data, and output data, that performs
16 functions including, but not limited to, logic, arithmetic,
17 data storage and retrieval, communication, and control.

18 (6) "Data" means a representation of information,
19 knowledge, facts, concepts, computer software,
20 computer programs or instructions. Data may be in any
21 form, in storage media, or as stored in the memory of the
22 computer or in transit or presented on a display device.

23 (7) "Supporting documentation" includes, but is not
24 limited to, all information, in any form, pertaining to the
25 design, construction, classification, implementation, use,
26 or modification of a computer, computer system,
27 computer network, computer program, or computer
28 software, which information is not generally available to
29 the public and is necessary for the operation of a
30 computer, computer system, computer network,
31 computer program, or computer software.

32 (8) "Injury" means any alteration, deletion, damage,
33 or destruction of a computer system, computer network,
34 computer program, or data caused by the access.

35 (9) "Victim expenditure" means any expenditure
36 reasonably and necessarily incurred by the owner or
37 lessee to verify that a computer system, computer
38 network, computer program, or data was or was not
39 altered, deleted, damaged, or destroyed by the access.

1 (10) "Computer contaminant" means any set of
2 computer instructions that are designed to modify,
3 damage, destroy, record, or transmit information within
4 a computer, computer system, or computer network
5 without the intent or permission of the owner of the
6 information. They include, but are not limited to, a group
7 of computer instructions commonly called viruses or
8 worms, that are self-replicating or self-propagating and
9 are designed to contaminate other computer programs or
10 computer data, consume computer resources, modify,
11 destroy, record, or transmit data, or in some other fashion
12 usurp the normal operation of the computer, computer
13 system, or computer network.

14 (11) "Internet domain name" means a globally
15 unique, hierarchical reference to an Internet host or
16 service, assigned through centralized Internet naming
17 authorities, comprising a series of character strings
18 separated by periods, with the rightmost character string
19 specifying the top of the hierarchy.

20 (c) Except as provided in subdivision (h), any person
21 who commits any of the following acts is guilty of a public
22 offense:

23 (1) Knowingly accesses and without permission alters,
24 damages, deletes, destroys, or otherwise uses any data,
25 computer, computer system, or computer network in
26 order to either (A) devise or execute any scheme or
27 artifice to defraud, deceive, or extort, or (B) wrongfully
28 control or obtain money, property, or data.

29 (2) Knowingly accesses and without permission takes,
30 copies, or makes use of any data from a computer,
31 computer system, or computer network, or takes or
32 copies any supporting documentation, whether existing
33 or residing internal or external to a computer, computer
34 system, or computer network.

35 (3) Knowingly and without permission uses or causes
36 to be used computer services.

37 (4) Knowingly accesses and without permission adds,
38 alters, damages, deletes, or destroys any data, computer
39 software, or computer programs which reside or exist

1 internal or external to a computer, computer system, or
2 computer network.

3 (5) Knowingly and without permission disrupts or
4 causes the disruption of computer services or denies or
5 causes the denial of computer services to an authorized
6 user of a computer, computer system, or computer
7 network.

8 (6) Knowingly and without permission provides or
9 assists in providing a means of accessing a computer,
10 computer system, or computer network in violation of
11 this section.

12 (7) Knowingly and without permission accesses or
13 causes to be accessed any computer, computer system, or
14 computer network.

15 (8) Knowingly introduces any computer contaminant
16 into any computer, computer system, or computer
17 network.

18 (9) Knowingly and without permission uses the
19 Internet domain name of another individual,
20 corporation, or entity in connection with the sending of
21 one or more electronic mail messages.

* see defn of
"Internet
domain
name"

22 (d) (1) Any person who violates any of the provisions
23 of paragraph (1), (2), (4), or (5) of subdivision (c) is
24 punishable by a fine not exceeding ten thousand dollars
25 (\$10,000), or by imprisonment in the state prison for 16
26 months, or two or three years, or by both that fine and
27 imprisonment, or by a fine not exceeding five thousand
28 dollars (\$5,000), or by imprisonment in a county jail not
29 exceeding one year, or by both that fine and
30 imprisonment.

31 (2) Any person who violates paragraph (3) of
32 subdivision (c) is punishable as follows:

33 (A) For the first violation that does not result in injury,
34 and where the value of the computer services used does
35 not exceed four hundred dollars (\$400), by a fine not
36 exceeding five thousand dollars (\$5,000), or by
37 imprisonment in a county jail not exceeding one year, or
38 by both that fine and imprisonment.

39 (B) For any violation that results in a victim
40 expenditure in an amount greater than five thousand



1 dollars (\$5,000) or in an injury, or if the value of the
2 computer services used exceeds four hundred dollars
3 (\$400), or for any second or subsequent violation, by a
4 fine not exceeding ten thousand dollars (\$10,000), or by
5 imprisonment in the state prison for 16 months, or two or
6 three years, or by both that fine and imprisonment, or by
7 a fine not exceeding five thousand dollars (\$5,000), or by
8 imprisonment in a county jail not exceeding one year, or
9 by both that fine and imprisonment.

10 (3) Any person who violates paragraph (6), (7), ~~(8), or~~
11 ~~(9)~~ or (8) of subdivision (c) is punishable as follows:

12 (A) For a first violation that does not result in injury,
13 an infraction punishable by a fine not exceeding two
14 hundred fifty dollars (\$250).

15 (B) For any violation that results in a victim
16 expenditure in an amount not greater than five thousand
17 dollars (\$5,000), or for a second or subsequent violation,
18 by a fine not exceeding five thousand dollars (\$5,000), or
19 by imprisonment in a county jail not exceeding one year,
20 or by both that fine and imprisonment.

21 (C) For any violation that results in a victim
22 expenditure in an amount greater than five thousand
23 dollars (\$5,000), by a fine not exceeding ten thousand
24 dollars (\$10,000), or by imprisonment in the state prison
25 for 16 months, or two or three years, or by both that fine
26 and imprisonment, or by a fine not exceeding five
27 thousand dollars (\$5,000), or by imprisonment in a county
28 jail not exceeding one year, or by both that fine and
29 imprisonment.

30 (4) Any person who violates paragraph (9) of
31 subdivision (c) is punishable as follows:

32 (A) For a first violation that does not result in injury,
33 an infraction punishable by a fine not exceeding two
34 hundred fifty dollars (\$250).

35 (B) For any violation that results in injury, or for a
36 second or subsequent violation, by a fine not exceeding
37 five thousand dollars (\$5,000), or by imprisonment in a
38 county jail not exceeding one year, or by both that fine
39 and imprisonment.

1 (e) (1) In addition to any other civil remedy
2 available, the owner or lessee of the computer, computer
3 system, computer network, computer program, or data
4 may bring a civil action against any person convicted
5 under this section for compensatory damages, including
6 any expenditure reasonably and necessarily incurred by
7 the owner or lessee to verify that a computer system,
8 computer network, computer program, or data was or
9 was not altered, damaged, or deleted by the access. For
10 the purposes of actions authorized by this subdivision, the
11 conduct of an unemancipated minor shall be imputed to
12 the parent or legal guardian having control or custody of
13 the minor, pursuant to the provisions of Section 1714.1 of
14 the Civil Code.

15 (2) In any action brought pursuant to this subdivision
16 the court may award reasonable attorney's fees to a
17 prevailing party.

18 (3) A community college, state university, or
19 academic institution accredited in this state is required to
20 include computer-related crimes as a specific violation of
21 college or university student conduct policies and
22 regulations that may subject a student to disciplinary
23 sanctions up to and including dismissal from the academic
24 institution. This paragraph shall not apply to the
25 University of California unless the Board of Regents
26 adopts a resolution to that effect.

27 (f) This section shall not be construed to preclude the
28 applicability of any other provision of the criminal law of
29 this state which applies or may apply to any transaction,
30 nor shall it make illegal any employee labor relations
31 activities that are within the scope and protection of state
32 or federal labor laws.

33 (g) Any computer, computer system, computer
34 network, or any software or data, owned by the
35 defendant, that is used during the commission of any
36 public offense described in subdivision (c) or any
37 computer, owned by the defendant, which is used as a
38 repository for the storage of software or data illegally
39 obtained in violation of subdivision (c) shall be subject to
40 forfeiture, as specified in Section 502.01.

1 (h) (1) Subdivision (c) does not apply to any person
2 who accesses his or her employer's computer system,
3 computer network, computer program, or data when
4 acting within the scope of his or her lawful employment.

5 (2) Paragraph (3) of subdivision (c) does not apply to
6 any employee who accesses or uses his or her employer's
7 computer system, computer network, computer
8 program, or data when acting outside the scope of his or
9 her lawful employment, so long as the employee's
10 activities do not cause an injury, as defined in paragraph
11 (8) of subdivision (b), to the employer or another, or so
12 long as the value of supplies and computer services, as
13 defined in paragraph (4) of subdivision (b), which are
14 used do not exceed an accumulated total of one hundred
15 dollars (\$100).

16 (i) No activity exempted from prosecution under
17 paragraph (2) of subdivision (h) which incidentally
18 violates paragraph (2), (4), or (7) of subdivision (c) shall
19 be prosecuted under those paragraphs.

20 (j) For purposes of bringing a civil or a criminal action
21 under this section, a person who causes, by any means, the
22 access of a computer, computer system, or computer
23 network in one jurisdiction from another jurisdiction is
24 deemed to have personally accessed the computer,
25 computer system, or computer network in each
26 jurisdiction.

27 (k) In determining the terms and conditions
28 applicable to a person convicted of a violation of this
29 section the court shall consider the following:

30 (1) The court shall consider prohibitions on access to
31 and use of computers.

32 (2) Except as otherwise required by law, the court
33 shall consider alternate sentencing, including community
34 service, if the defendant shows remorse and recognition
35 of the wrongdoing, and an inclination not to repeat the
36 offense.

37 SEC. 3. No reimbursement is required by this act
38 pursuant to Section 6 of Article XIII B of the California
39 Constitution because the only costs that may be incurred
40 by a local agency or school district will be incurred

1 because this act creates a new crime or infraction,
2 eliminates a crime or infraction, or changes the penalty
3 for a crime or infraction, within the meaning of Section
4 17556 of the Government Code, or changes the definition
5 of a crime within the meaning of Section 6 of Article
6 XIII B of the California Constitution.
7 Notwithstanding Section 17580 of the Government
8 Code, unless otherwise specified, the provisions of this act
9 shall become operative on the same date that the act
10 takes effect pursuant to the California Constitution.

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About this Site



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CONTACTING HORMEL FOODS CORPORATION

If you have any questions about the Hormel Foods Privacy Policy, please contact us at:

Hormel Foods Corporation
1 Hormel Place
Austin, MN 55912-3680
Attention: Legal Department

Alternatively, you may call us at 1-800-523-4635, between 7:00 a.m. and 4:00 p.m., central standard time, Monday through Friday.

We would be happy to answer your questions and to address your concerns.

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The New York Times Electronic Media Company

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1. What information does The New York Times Electronic Media Company gather/track about you?

NYTEMC requires that consumers supply personal information, including e-mail address, during a "registration" process prior to using the site. (Some of the personal information we request is voluntary; the word "optional" appears next to

these questions.) On occasion, NYTEMC also collects additional personal information from subscribers in optional contest and survey forms. Demographic information provided by a subscriber may be combined with site usage reports to profile, in aggregate form, users and their preferences in site content and advertising.

Following registration NYTEMC employs "cookies" to recognize a subscriber and his or her access privileges on The New York Times on the Web, as well as to track site usage. For detailed information about our use of cookies see [Frequently Asked Questions About Cookies](#) in the Help Center.

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THIS SEARCH

[Next Hit](#)
[Prev Hit](#)
[Hit List](#)

THIS DOCUMENT

[Forward](#)
[Back](#)
[Best Sections](#)
[Doc Contents](#)

GO TO

[New Bills Search](#)
[HomePage](#)
[Help](#)

H.R.4105

Internet Tax Freedom Act (Engrossed in House)

105th CONGRESS

2d Session

H. R. 4105

AN ACT

To establish a national policy against State and local interference with interstate commerce on the Internet, to exercise congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce via the Internet, to establish a national policy against Federal and State regulation of Internet access and online services, and for other purposes.

HR 4105 EH

105th CONGRESS

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To establish a national policy against State and local interference with interstate commerce on the Internet, to exercise congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce via the Internet, to establish a national policy against Federal and State regulation of Internet access and online services, and for other purposes.

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 'Internet Tax Freedom Act'.

SEC. 2. MORATORIUM ON CERTAIN TAXES.

(a) AMENDMENT- Title 4 of the United States Code is amended by adding at the end the following:

'CHAPTER 6--MORATORIUM ON CERTAIN TAXES

'Sec.

'151. Moratorium.

'152. Advisory commission on electronic commerce.

'153. Legislative recommendations.

'154. Expedited consideration of legislative recommendations.

'155. Definitions.

'Sec. 151. Moratorium

'(a) MORATORIUM- For a period of 3 years following the date of the enactment of this chapter, neither any State, nor any political subdivision thereof, shall impose, assess, collect, or attempt to collect--

'(1) taxes on Internet access;

'(2) bit taxes; or

'(3) multiple or discriminatory taxes on electronic commerce.

'(b) EXCEPTION TO MORATORIUM- (1) Subject to paragraph (2), the moratorium in subsection (a)(1) shall not apply to the following taxes (as applicable), as in effect on the date of the enactment of this chapter, on Internet access:

'(A) STATE OF CONNECTICUT- Section 12-407(2)(i)(A) of the General Statutes of Connecticut.

'(B) STATE OF WISCONSIN- Section 77.52(2)(a)5 of the Wisconsin Statutes (1995-96).

'(C) STATE OF IOWA- Section 422.43(1) of the Code of Iowa (1997).

'(D) STATE OF NORTH DAKOTA- North Dakota Century Code 57-39.2 and 57-34.

'(E) STATE OF SOUTH DAKOTA- South Dakota Codified Law Annotated 10-45-5.

'(F) STATE OF NEW MEXICO- New Mexico Statutes Annotated 7-9-3.

'(G) STATE OF TENNESSEE- Tennessee Code Annotated 67-6-221, 67-6-102(23)(iii), and 67-6-702(g).

'(H) STATE OF OHIO- Chapter 5739 of the Ohio Revised Code.

'(2)(A) Paragraph (1) shall apply with respect to a tax referred to in such paragraph only if the referenced State enacts, during the 1-year period beginning on the date of the enactment of this chapter, a law to expressly affirm that such tax is imposed on Internet access.

'(B) A State that satisfies the requirement specified in subparagraph (A) shall be deemed to have satisfied such requirement immediately after the enactment of this chapter, except that such State may not impute penalties or interest on any tax accrued during the period beginning on the date of the enactment of this Act and ending on the date such State satisfies such requirement.

<i>THIS SEARCH</i>	<i>THIS DOCUMENT</i>	<i>GO TO</i>
Next Hit	Forward	New Bills Search
Prev Hit	Back	HomePage
Hit List	Best Sections	Help
	Doc Contents	

TESTIMONY OF DAVID H. KRAMER IN SUPPORT OF AB 1629
Senate Business & Professions Committee 6/22/98

Mr. Chairman and members of the committee, I practice Internet law with Silicon Valley's largest law firm, Wilson Sonsini Goodrich & Rosati. I am grateful for the invitation to appear here today and more grateful still that you are considering action to redress a problem that has grown to epidemic proportions. The problem of junk e-mail, or "spam."

For almost three years I have represented some of the nation's largest Internet services providers in landmark litigation over the impropriety of junk e-mail. I have counseled countless providers, businesses and individuals on the remedies available to them to combat this costly nuisance. And in the end, my advice to them is to contact their elected representatives to ask their assistance.

I give this advice because the problem of junk e-mail is one that cries out for a legislative solution. The problem stems from the realization by irresponsible mass marketer's that they can foist any unwanted and unwelcome advertising message on millions of consumers at the touch of a button at virtually no cost to themselves. Given that the cost of one hundred messages is the same as one million, a spammer's modus operandi is to send his message to as many e-mail addresses as possible as possible in the hopes of finding someone interested in his miracle cure, multi level marketing scheme or explicit pornography.

The costs to the Internet community are staggering.

Millions of Internet users, businesses and consumers alike, pay for their access to the Internet in increments of time, and many more must pay their phone companies for the toll call necessary to obtain a connection. For these individuals, each unsolicited commercial message they receive is like

a telemarketer's call to their cellular phone. They pay to receive a message they did not ask for and inevitably do not want.¹

While this postage due cost of even a single advertising message to a single person is unacceptable, the same message may be sent to millions of recipients, and people will receive several such messages every day.

These out of pocket costs, however, pale by comparison to the non-monetary costs junk e-mail generates. Unlike direct mail from the post office, junk e-mail arrives throughout the day at home and at work, and there is no effective means of blocking it out.² E-mail systems in the

¹ On a recent business trip I stayed in a hotel that billed long distance service at an operator-assisted rate of a \$.40 per minute. When I dialed into my office computer to check my email, it took me roughly three minutes to retrieve because of a lengthy junk email message advertising credit repair services. That single uninvited and unwanted message cost me at least forty cents.

² Filtering solutions have not been successful in combating the problem of junk e-mail. The reason is simple. In order to filter out e-mail, the recipient has to know where it is coming from. Junk mailers obtain throw-away Internet accounts for one-time usage, bouncing from one ISP to the next, making up an address and launching their messages. While a recipient can add that

workplace automatically alert employees as to the arrival of important work-related correspondence.

As a result, they routinely disrupt employee productivity by announcing the arrival of unsolicited commercial e-mail. When alerted, employees reflexively interrupt their current work project to review the new message only to find an advertisement promoting a "get rich quick" scheme.

Use of the Internet in the home is likewise, repeatedly disrupted on a daily basis by these unwanted mass mailings. Parents and their children have no choice but to accept, pay for and delete these messages. In this sense, Internet users are captive audience for whatever advertising message anyone wishes to send them, at any time, any number of times.

Junk e-mail presents another problem for those who do not immediately review their e-mail. When these individuals do check their electronic mailboxes, they find they must wade through dozens of unsolicited advertising messages in order to find their legitimate e-mail.

Individuals now automatically discard messages from unrecognized senders assuming they are more junk e-mail, in the process perhaps tossing away e-mail from a new customer or a long-lost

address to its filter to prevent future mailings, the spammer will not use that address again.

Some have advocated filtering on specific words commonly found in e-mail advertising such as "free" or "sex." The problem with that solution is it invariably misses messages the recipient would want filtered while filtering out legitimate messages the recipient wishes to receive. Further, filters do not relieve the burden on Internet services providers or businesses whose facilities are commandeered to serve as the engine for these mass marketing campaigns without compensation.

friend. Further, legitimate e-mail may be automatically rejected when an individual's mailbox is filled to capacity with spam.

Once an individual's or a business' e-mail address has been captured by even a single junk e-mailer, a flood of uninvited e-mail advertising is inevitable. Spammers furiously exchange mailing lists, making it useless for an individual to request that the first mailer remove the recipient from his list.

In many cases, the only choice is to abandon an e-mail address that has been shared with customers, friends and relatives and to carefully guard a new address against any public disclosure.

Consumers today are reluctant to give out their e-mail addresses in legitimate commerce for fear it will be added to countless mailing lists, and legitimate businesses are afraid to utilize e-mail for responsible, solicited advertising messages for fear of being branded a spammer.

These costs more than justify the measure you are contemplating today, but equally important are the costs junk e-mail imposes on Internet service providers, educational institutions and businesses that, without compensation, are forced to carry, process and deliver unwanted mass mailings every day. AOL, for example, the nation's largest Internet service provider with 11 million members has stated that junk e-mail comprises up to 30% of the messages it carries, costing it thousands of hours in personnel time and hundreds of thousands of dollars for equipment. Erols Internet, an East coast Internet service provider estimates it spent \$150,000 over the last year in personnel, hardware and software costs to combat spam. Earthlink Networks based in California says it receives 1,000 to 3,000 junk e-mail complaints every day. CompuServe has reported that it was receiving 30 million unsolicited e-mail messages for its roughly two million subscribers or fifteen messages per subscriber per week. Concentric Network, has full-time employees whose

principal responsibility is simply to prevent subscribers from fraudulently using the service to send their mass mailings, and to deal with the consequences when a junk e-mailer slips through.

Concentric, CompuServe and AOL all report that junk e-mail is the leading source of customer dissatisfaction.

Spam clogs the pipelines of the Internet usurping bandwidth that is intended for use by ISP's paying customers. In the last year, at least a dozen major ISPs including Netcom, Concentric and GTE have had their email service disrupted for extended periods by unsolicited mass mailings.

The unscrupulousness of mass e-mailers knows no bounds. They routinely forge the postmarks or "headers" on their messages to disguise the point of origin and thereby deflect hostile responses from recipients. In the process, they make it appear as if the message originates with a legitimate business or Internet service provider. Businesses victimized in this fashion have their names and reputations tarnished before hundreds of thousands or millions of recipients and are inundated with recipient complaints.

To date, ISPs and other businesses have filed at least 40 lawsuits against junk emailers, and courts have uniformly recognized that these mailings are unlawful. But intermittent litigation victories have done nothing to stem the avalanche of unsolicited email advertising.

There are several reasons why.

- First, the cost of such ground breaking litigation is often prohibitive. Victims must not only prove that the conduct occurred but also convince a court that the conduct should be deemed unlawful, based on a novel legal theory without statutory support.
- Second, it is virtually impossible to quantify the damages suffered by an ISP or a business that has its resources stolen or its name tarnished in this fashion. What is the loss to an ISP or a business of having its name associated with a universally despised practice in the minds of millions of Internet users?

Third, even if the damages could be quantified, the spammer would almost certainly be judgment proof. The entities engaged in this practice today are not well known corporations. They are fly-by-night companies peddling highly questionable products and services.

It is for these reasons that a legislative solution to the problem of junk e-mail is called for. The solution before you today takes the right approach. It removes the government from the regulatory process and enables ISPs to effectively decide for themselves whether to permit their equipment to be used for the sending and delivery of unsolicited commercial email. It effectively allows ISPs to tailor their service to meet the needs and desires of their customers.

AB 1629 merely codifies what courts have already recognized: An ISP is entitled to ensure that its property and its subscribers are not abused by unscrupulous third parties. In the groundbreaking decision of CompuServe v. Cyber Promotions, federal Judge John Graham ruled that Cyber Promotions' unsolicited mass mailings directed to CompuServe subscribers constituted a trespass upon CompuServe's property:

In the present case, [CompuServe] is physically the recipient of the defendants' messages and is the owner of the property upon which the transgression is occurring. . . . Defendants' intentional use of plaintiff's proprietary computer equipment exceeds [CompuServe's] consent and, indeed, continued after repeated demands that defendants cease. Such use is an actionable trespass to [CompuServe's] chattel.

CompuServe v. Cyber Promotions, 962 F. Supp. 1015 (S.D. Ohio 1997). Judge Graham's reasoning was recently adopted by a Superior Court here in California in Earthlink v. Cyber Promotions, a case involving precisely the same issue.

AB 1629 simply recognizes the law handed down by these courts. It says that ISPs doing business here in California may, but are not obligated to publish a policy regarding how, if at all, they will permit their system to be used for the sending and delivery of junk email. If someone sends

junk email from or to that ISP in violation of the ISP's policy, the ISP will have a cause of action for trespass, a claim they would have under existing law. AB 1629 affords the ISP a statutory remedy for that trespass of \$50 per message with a daily cap of \$15,000. That provision overcomes the difficulty ISPs have faced in proving the damages they suffer.

That is all the law has to do to protect both ISPs and consumers. If AB 1629 is passed, many ISPs will immediately become spam-free by publishing a policy prohibiting the sending or delivery of junk email. Others may decide that junk email is permissible if the sender pays the ISP's costs of storage and delivery at say \$.01 per message. Still others might permit junk email provided it is not sexually explicit. Consumers could then choose their ISP based on their personal preferences. In this regard, AB 1629 provides for market-based solutions to the problem of junk email.

The Proposed Measure Is Constitutional

Let me turn for a moment to addressing the constitutionality of this measure, and assure you that it does not raise a legitimate First Amendment concern. AB 1629 mandates nothing. The measure simply recognizes the private property interests of those doing business in the state. The decisions about whether and how to regulate junk email are left entirely to ISPs and to the market.

In the CompuServe case, Cyber Promotions argued it had a First Amendment right to send junk email to CompuServe, notwithstanding CompuServe's private property rights. Judge Graham vehemently disagreed. As he put it:

There is no constitutional requirement that the incremental cost of sending massive quantities of unsolicited advertisements must be borne by the recipients. . . [CompuServe] is not a government entity or state actor which seeks to preempt defendants' ability to communicate but is instead a private actor trying to tailor the nuances of its service to provide the maximum utility to its customers. Defendants' intentional use of [CompuServe's] proprietary computer equipment exceeds [CompuServe's] consent and, indeed, continued after repeated

demands that defendants cease. . . . The First Amendment to the United States Constitution provides no defense for such conduct.

Another federal Judge hearing a similar case brought by America Online agreed:

The Court declares that Cyber Promotions, Inc. does not have a right under the First Amendment to the United States Constitution or under the Constitutions of Pennsylvania and Virginia to send unsolicited email advertisements over the Internet to members of America Online, Inc.

AOL v. Cyber Promotions, 948 F. Supp. 436 (E.D. Pa. 1996)

There is little doubt that the government may, consistent with the First Amendment, entirely prohibit unsolicited email advertising in light of the cost-shifting it creates and the intrusion it poses.

But this measure avoids that question altogether. All it does is allow private parties, ISPs, to make the decisions that CompuServe, AOL and other ISPs make on a daily basis -- determining how best to use their property and their service to the benefit of their customers.

In effect, AB 1629 allows ISPs to post a "No Soliciting" sign on their front door. No one would reasonably suggest that the First Amendment prohibits a homeowner from suing if the homeowner's "no solicitation" sign was ignored by vendors. Nor should they suggest the First Amendment has any impact here.

AB 1676

Finally, I would like to note my strong opposition to another junk email measure the legislature is currently considering; AB 1676 authored by Assemblywoman Bowen. While I appreciate the motivations behind it, AB 1676 is at best bad social policy and at worst will exacerbate the problem of junk email.

AB 1676 allows any advertiser to bombard an individual with junk email messages unless and until the individual requests to be removed from the advertiser's mailing list. Unlike direct mail,

the sender of junk email bears no marginal, per-message cost. As a result, I already receive two dozen junk email messages a week, and that number is growing steadily. Under the regime envisioned by AB 1676, I would be forced to spend at least an hour each week getting of dozens of mailing lists I never asked to get put on in the first place.

In addition, as I discussed earlier, the recipient of junk email often bears an out-of-pocket cost for each message he or she receives. It makes no sense to say that consumers will have to endure this postage due advertising unless and until they say "Stop!" If anything we should assume the consumer does not wish to receive it unless they ask for it.

Worst of all, AB 1676 would actually legitimize the practice of spamming. Advertisers who ordinarily would not dream of harassing millions of people with an a disruptive and potentially costly ad, might instead take the view that "it's okay as long as I take people off my list upon request." That is the wrong message to send and it is likely to result in more junk email, not less.³ Junk email is not okay. It's an unconscionable practice that threatens the very utility of electronic mail service. AB 1676 legitimizes it. I hope you will do what you can to prevent its passage in its current form.

Respectfully submitted,

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³ ISPs who can currently sue junk emailers for trespass might find those claims preempted by AB 1676 under the theory that "the legislature said junk email was okay."

1 and 139.31 and the federal motor fuel tax unless the tax is refunded and including
2 also any manufacturers' or importers' excise tax; but not including any tax imposed
3 by the United States, any other tax imposed by this state, or any tax imposed by any
4 municipality of this state upon or with respect to retail sales whether imposed on the
5 retailer or consumer, if that federal, state or municipal tax is measured by a stated
6 percentage of sales price or gross receipts, and not including the federal
7 communications tax imposed upon the services set forth in s. 77.52 (2) (a) 5. For the
8 purpose of this subdivision, a tax shall be deemed "imposed upon or with respect to
9 retail sales" only if the retailer is the person who is required to make the payment
10 of the tax to the governmental unit levying the tax."

11 **828.** Page 1086, line 4: after that line insert:

* 12 "SECTION 2386j. 77.51 (21m) of the statutes is amended to read:

13 77.51 (21m) "Telecommunications services" means sending messages and
14 information transmitted through the use of local, toll and wide-area telephone
15 service; channel services; telegraph services; teletypewriter; computer exchange
16 services; cellular mobile telecommunications service; specialized mobile radio;
17 stationary two-way radio; paging service; or any other form of mobile and portable
18 one-way or two-way communications; or any other transmission of messages or
19 information by electronic or similar means between or among points by wire, cable,
20 fiber optics, laser, microwave, radio, satellite or similar facilities.
21 "Telecommunications services" does not include sending collect telecommunications
22 that are received outside of the state. In this subsection, "computer exchange
23 services" does not include providing access to or use of the internet. In this

1 subsection, "internet" means interconnecting networks that are connected to
2 network access points by telecommunications services."

3 **829.** Page 1086, line 11: after that line insert:

4 "SECTION 2386q. 77.52 (2) (a) 1. of the statutes is amended to read:

5 77.52 (2) (a) 1. The furnishing of rooms or lodging to transients by hotelkeepers,
6 motel operators and other persons furnishing accommodations that are available to
7 the public, irrespective of whether membership is required for use of the
8 accommodations, not including the furnishing of rooms or lodging through the sale
9 of a time-share property, as defined in s. 707.02 (32), ~~if the use of the rooms or lodging~~
10 ~~is not fixed at the time of sale as to the starting day or the lodging unit.~~ In this
11 subdivision, "transient" means any person residing for a continuous period of less
12 than one month in a hotel, motel or other furnished accommodations available to the
13 public. In this subdivision, "hotel" or "motel" means a building or group of buildings
14 in which the public may obtain accommodations for a consideration, including,
15 without limitation, such establishments as inns, motels, tourist homes, tourist
16 houses or courts, lodging houses, rooming houses, summer camps, apartment hotels,
17 resort lodges and cabins and any other building or group of buildings in which
18 accommodations are available to the public, except accommodations, including
19 mobile homes as defined in s. 66.058 (1) (d), rented for a continuous period of more
20 than one month and accommodations furnished by any hospitals, sanatoriums, or
21 nursing homes, or by corporations or associations organized and operated
22 exclusively for religious, charitable or educational purposes provided that no part of
23 the net earnings of such corporations and associations inures to the benefit of any
24 private shareholder or individual."

Anti-Spam

12-21-98



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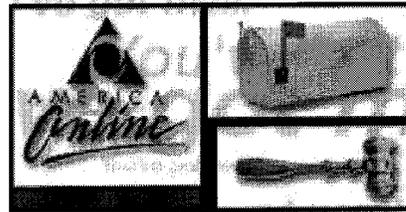


sci-tech > computing > story page

AOL sues group touting cancer cure in new attack on spam mail

December 19, 1998
Web posted at: 3:05 p.m. EST (2005 GMT)

NEW YORK (AP) -- A group that allegedly hawked apricot seeds as a cancer cure in mass e-mails to America Online members has been sued by the online service.



In a lawsuit filed in U.S District Court in Manhattan on Friday, America Online Inc. accused The Christian Brothers and its principal, Jason Vale, of sending millions of e-mail messages to its members.

"Wow. I did not know. That is all news to me," said Vale, who did not want to comment further because he had not seen the lawsuit.

One source involved in the litigation, who spoke on condition of anonymity, said lawsuits were also to be filed in California, Florida and Ohio as part of a fresh assault on those who send unsolicited e-mails. An announcement was expected to be made Monday.

Rich D'Amato, an AOL spokesman, said he could only confirm the filing of the New York lawsuit. But, the Dulles, Va.-based company has consistently used the courts to pursue those who have abused its e-mail system, D'Amato said.

"We have won substantial sums of money against spammers. They have consistently ignored requests to cease sending junk e-mails to members," he said.

"It is all part of a concerted effort to establish the legal precedent, give AOL some power to deal with spammers and let spammers know this won't be tolerated on AOL," he said.

Unsolicited commercial e-mail, known as spam, has led to discussion among legislators across the country of ways to better control the practice.

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In the New York lawsuit, AOL, which has about 14 million subscribers, said the Queens entity put the letters "aol.com" into its messages, infringing on its trademark.

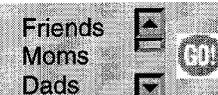
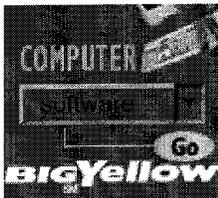
The messages toting a "cancer cure" through the consumption of laetrile or apricot seeds has resulted in thousands of member complaints, led some members to cancel their AOL service and has clogged AOL computer systems, jeopardizing the company's ability to deliver other e-mail, the lawsuit said.

The lawsuit sought unspecified compensatory and punitive damages in an amount to deter the defendants from "similar malicious, oppressive and fraudulent conduct in the future."

James Rogers, a spokesman for the American Cancer Society in a four-state region including Washington, said the cancer society was not aware of anything which supports a claim that apricot seeds can cure cancer.

"We encourage people to eat five helpings of fruits and vegetables each day, but there's no proven evidence that apricot seeds help to cure or even to prevent cancer," Rogers said.

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Law Catches Up with Technology: Putting a Lid on Spam

Salesmen have one mission: Sell, sell, sell. And you can bet they're going to find a way into any communication device.

America Online (AOL) estimates that 10 million unsolicited commercial e-mail messages (spam) are sent over its networks every day. And Internet users aren't the only ones protesting this onslaught of spam—Internet service providers like AOL can incur significant costs when their networks are bogged down by the bulk ads.

Now, a new California law gives providers the power to sue bulk e-

mailers who send unauthorized messages across their networks. The new law also makes it a crime to use fraudulent return addresses in bulk e-mail ads. Spammers often use the names of other companies and misleading subject lines to legitimize and disguise their mail.

"It is time for the law to catch up with technology, especially in the case of spam where families and businesses are forced to receive large amounts of objectionable material over the Internet. This is an issue of consumer protection, privacy and pri-

ate property," says Assemblyman Gary Miller, the law's sponsor.

A related law passed last session makes it easier for Internet users to control the e-mail they receive. Advertisers who send unsolicited commercial e-mail must identify it by including the label "ADV:" in the subject line of the message. Advertisements for sexually explicit materials or other information inappropriate for minors must be labeled "ADV:ADLT." The law also requires spammers to include a toll-free telephone number or a valid e-mail address so recipients can ask to stop receiving junk e-mail.

"The label is the key because it makes it easy for people who aren't technologically savvy to delete spam without downloading or opening the message," says Assemblywoman Debra Bowen, the bill's sponsor. "It also helps parents protect their kids from being exposed to spam promoting sexually explicit Web sites."

The new laws are likely to be challenged in court. Opponents say they will question the constitutionality of the labeling provisions as a form of compelled speech, and both laws may be under attack as unconstitutional for intruding into the interstate, commerce arena.

California is the third state to address the junk e-mail problem. A 1996 Nevada law requires bulk e-mailers to include contact information and a procedure for recipients to remove their names from future mailings. Washington in 1997 prohibited the practice of forging headers, hijacking other e-mail systems or otherwise misrepresenting the point of origin of messages. The Washington law also gives individuals the right to sue spammers for sending unsolicited messages that contain fraudulent information.

Is it Criminal Intent or a Mixed-up Brain?

There's little argument: With the new, get-tough-on-crime laws, jails are getting more and more crowded. However, mixed with the felons are folks who are not hardened criminals, but are suffering from mental illness.

In Alaska, it has become an epidemic. A one-day count on Jan. 15, 1997, found that 29 percent of the 3,091 inmates in Alaska prisons and jails suffered from mental illness. Half of the illnesses (15 percent of all inmates) included such serious disorders as schizophrenia, manic depression and other major maladies.

Nationwide, 2 percent to 3 percent of the population suffers from mental illness, compared to 10 percent in the jails, according to Ron Honberg, director of legal affairs for the National Alliance for the Mentally Ill.

Help, however, is on the horizon—at least in a handful of states. In Alaska, the Mental Health Trust Authority is providing \$130,000 for a program that began last summer for misdemeanor offenders who are mentally ill. Instead of sending them to jail, it puts them in treatment.

The South Carolina Department of Mental Health received a \$128,000 federal grant last fall to help divert the mentally ill from jail to treatment. The grant will be used to launch an education effort aimed at getting law enforcement and mental health counselors to work together. The goal will be to divert the mentally ill into treatment instead of being arrested.

The South Carolina project is modeled on a successful program in Charleston where counselors respond to calls from police, ambulance personnel, emergency rooms, courts, family members and others to offer assistance when those involved in minor crimes appear to need psychiatric evaluation.

