

SB33

Speaking in favor

Sen Risser - himself

Speaking against

John Metcalf - WMC

Registering For - Senator Burke

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/23/99

BILL NO. SB 33

OR  
SUBJECT Regulation of

Commercial

Electronic Mail

(NAME) John Meteroff

501 E. Washington Av.

(Street Address or Route Number)

Madison, WI 53703

(City and Zip Code)

WI mg. & Comm.

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
Room 109-LL One East Main  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 23 Feb 1999

BILL NO. SB 33

OR  
SUBJECT \_\_\_\_\_

Sen Fred Rissler

(NAME) \* 266-1627

(Street Address or Route Number)

PLEASE CALL

(City and Zip Code)

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
Room 109-LL One East Main  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 2/23/99

BILL NO. SB 33

OR  
SUBJECT \_\_\_\_\_

Sen. Burke

(NAME)

(Street Address or Route Number)

m. lawler

(City and Zip Code)

SB 3

(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:

but not speaking:

Registering Against:

but not speaking:

Speaking for information only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
Room 109-LL One East Main  
P.O. Box 7882  
Madison, WI 53707-7882

Hearing 2-23-99

Roll Call

	<u>Present</u>	<u>Absent</u>
Sen Erpenbach	X	
Sen Fitzgerald	X	
Sen Jauch	X	
Sen Plache	X	
Sen Rude	X	

Call  
Fitzgerald

# VOTE SHEET

BILL SB 33 Plache/Jauch

SUBSTITUTE AMENDMENT \_\_\_\_\_

Authored by  
Seconded by

*Withdrawn  
by Plache*

SENATE AMENDMENT \_\_\_\_\_

Authored by  
Seconded by

MOTION ~~Adopt~~ Passage

	YES	NO
SENATOR ERPENBACH		
SENATOR FITZGERALD		
SENATOR JAUCH		
SENATOR PLACHE		
SENATOR RUDE		

## Senate Bill 33

Attached:

- Bill
- Fiscal statement

*Move  
to the bank*

Note: Sen Risser objects to fiscal impact statement

We should exec on this WMC has a problem with the bill but they may be incorrect in their interpretation.

WMC says : if you have previous business contact you cannot solicit unless during eve: Sarah says that if previous business contact it is OK to email unsolicited. You may have to ask questions to clarify that.

*How do internet providers feel about this bill?*

*How does the bill affect business to business email (those w/ previous relationships)*



## 1999 BILL

1 **AN ACT** to renumber 134.72 (1) (a); to amend 134.72 (title), 134.72 (3) (a), 134.72  
2 (3) (b), 767.265 (2r) and 968.01 (1); to repeal and recreate 767.265 (2r); and  
3 to create 134.72 (1) (ag) and 134.72 (2) (c) of the statutes; relating to:  
4 unsolicited messages transmitted by electronic mail.

---

### *Analysis by the Legislative Reference Bureau*

Current law restricts the transmittal of unsolicited documents by facsimile machine that encourage persons to purchase property, goods or services. These restrictions prohibit the transmittal of unsolicited documents that are more than one page to persons with whom the person sending the documents has not had a prior business relationship.

This bill expands this coverage to include the transmittal of unsolicited messages by electronic mail.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

---

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

5 **SECTION 1.** 134.72 (title) of the statutes is amended to read:

**BILL**

1           134.72 (3) (b) *Interstate*. This section applies to any interstate telephone  
2           solicitation, ~~or interstate facsimile solicitation~~, received by a person in this state that  
3           is a telephone solicitation, a facsimile solicitation or an electronic mail solicitation.

4           **SECTION 7.** 767.265 (2r) of the statutes is amended to read:

5           767.265 (2r) Upon entry of each order for child support, maintenance, family  
6           support or support by a spouse and upon approval of each stipulation for child  
7           support, unless the court finds that income withholding is likely to cause the payer  
8           irreparable harm or unless s. 767.267 applies, the court shall provide notice of the  
9           assignment by regular mail or by facsimile machine, as defined in s. 134.72 (1) ~~(a)~~  
10          (am), or other electronic means to the last-known address of the person from whom  
11          the payer receives or will receive money. The notice shall provide that the amount  
12          withheld may not exceed the maximum amount that is subject to garnishment under  
13          15 USC 1673 (b) (2). If the clerk of court or support collection designee, whichever  
14          is appropriate, does not receive the money from the person notified, the court shall  
15          provide notice of the assignment to any other person from whom the payer receives  
16          or will receive money. Notice under this subsection may be a notice of the court, a  
17          copy of the executed assignment or a copy of that part of the court order directing  
18          payment.

19          **SECTION 8.** 767.265 (2r) of the statutes, as affected by 1997 Wisconsin Act 191  
20          and 1999 Wisconsin Act .... (this act), is repealed and recreated to read:

21          767.265 (2r) Upon entry of each order for child support, maintenance, family  
22          support or support by a spouse and upon approval of each stipulation for child  
23          support, unless the court finds that income withholding is likely to cause the payer  
24          irreparable harm or unless s. 767.267 applies, the court, family court commissioner  
25          or county child support agency under s. 59.53 (5) shall provide notice of the

FISCAL ESTIMATE

LRB or Bill No. / Adm. Rule No. LRB 0307/1 SB 33
Amendment No. (If Applicable)

DOA-2048 N(R 10/98)     ORIGINAL     UPDATED  
 CORRECTED     SUPPLEMENTAL

Subject  
 Unsolicited messages received by electronic mail

Fiscal Effect State: <input type="checkbox"/> No State Fiscal Effect Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation  <input type="checkbox"/> Increase Existing Appropriation <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Decrease Existing Appropriation <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Create New Appropriation	<input checked="" type="checkbox"/> Increase Costs - May be possible to Absorb Within Agency's Budget <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No  <input type="checkbox"/> Decrease Costs
---	--

Local: <input checked="" type="checkbox"/> No local government costs 1. <input type="checkbox"/> Increase Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 2. <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	3. <input type="checkbox"/> Increase Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory 4. <input type="checkbox"/> Decrease Revenues <input type="checkbox"/> Permissive <input type="checkbox"/> Mandatory	5. Types of Local Governmental Unit Affected: <input type="checkbox"/> Towns <input type="checkbox"/> Villages <input type="checkbox"/> Cities <input type="checkbox"/> Counties <input type="checkbox"/> Others _____ <input type="checkbox"/> School Districts <input type="checkbox"/> WTCS Districts
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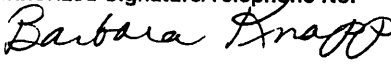
Fund Source Affected <input checked="" type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	Affected Ch. 20 Appropriations 20.115(1) <i>a</i>
--	--

Assumptions Used in Arriving at Fiscal Estimate

The department assumes consumer complaints about unsolicited electronic solicitations to continue to increase in proportionate to the number of consumers using computers.

Enforcing prohibitions against sellers in the electronic marketplace is time consuming given the level of anonymity and ease of identity change afforded by electronic communications. Unlike many consumer crimes where the seller is known, investigations of electronic selling practices generally concentrate on identifying the seller behind the E-Mail/Internet address. The department assumes this additional work will consume 1000 investigator hours (0.5 FTE) annually.

Long - Range Fiscal Implications

Agency/prepared by: (Name & Phone No.) DATCP James Rabbitt 224-4965	Authorized Signature/Telephone No.  Barbara Knapp (608) 224-4746	Date February 12, 1999
--	--	---------------------------



**FISCAL ESTIMATE WORKSHEET**

**1999 SESSION**

Detailed Estimate of Annual Fiscal Effect  
DOA-2047 (R10/94)

ORIGINAL  UPDATED  
 CORRECTED  SUPPLEMENTAL

LRB or Bill No/Adm.Rule No. LRB 0307/1	Amendment No. SB 33
---	------------------------

**Subject**  
Unsolicited messages received by electronic mail

**I. One-time Cost or Revenue Impacts for State and/or Local Government (do not include in annualized fiscal effect):**  
7,650

II. Annualized Cost:	Annualized Fiscal Impact on State funds from:	
A. State Costs by Category	Increased Costs	Decreased Costs
State Operations - Salaries and Fringes	\$ 14,112	\$ -
(FTE Position Changes)	(0.5 FTE)	(- FTE)
State Operations - Other Costs	3,605	-
Local Assistance		-
Aids to Individuals or Organizations		-
<b>TOTAL State Costs by Category</b>	<b>\$</b>	<b>\$ -</b>
B. State Costs by Source of Funds	Increased Costs	Decreased Costs
GPR	\$ 17,717	\$ -
FED		-
PRO/PRS		-
SEG/SEG-S		-
III. State Revenues - <small>Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fee, etc.)</small>	Increased Rev.	Decreased Rev.
GPR Taxes	\$	\$ -
GPR Earned		-
FED		-
PRO/PRS		-
SEG/SEG-S		-
<b>TOTAL State Revenues</b>	<b>\$</b>	<b>\$ -</b>

**NET ANNUALIZED FISCAL IMPACT**

	<u>STATE</u>	<u>LOCAL</u>
NET CHANGE IN COSTS	\$ 17,717	\$ _____
NET CHANGE IN REVENUES	\$ _____	\$ _____

Agency Prepared by: (Name & Phone No.) DATCP James Rabbitt  224-4965	Authorized Signature/Telephone No. <i>Barbara Knapp</i> Barbara Knapp (608) 224-4746	Date 2/12/99
--	--	-----------------

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[www.internetalliance.org](http://www.internetalliance.org)  
**Internet  
Alliance**

February 18, 1999

Senator Jon Erpenbach  
Chairman  
Committee on Privacy Electronic Commerce  
and Financial Institutions  
Room 20 South  
State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882

**FEB 22 1999**

Dear Mr. Chairman:

On behalf of the Internet Alliance, I am writing about SB 33, legislation regarding unsolicited bulk email, commonly referred to as spam that your Committee will hear on February 22nd.

The Internet Alliance, ("IA") is the leading trade association representing the Internet and online industry. Our members provide over 80 percent of the paid Internet access worldwide and include America Online, Bell Atlantic, eBay, Microsoft, NETCOM, Netscape, US West and Prodigy.

IA and our members share your concerns and strongly support a regulatory approach to this problem. Unsolicited bulk and fraudulent e-mail is not simply a nuisance to consumers, but a burden to electronic mail service providers, and a threat to the Internet itself. Consumers hate it; it is damaging to computer networks, and it clogs and slows the delivery of legitimate email, thus devaluing for many one of the most compelling elements of the Internet. For these reasons, the Internet online industry has taken the lead in shutting down junk e-mailers who have abused their systems and violated their terms of service agreements. Our industry spends millions of dollars every year attempting to combat this problem. Please see the attached hard copy of an article from the online newspaper "TechWeb."

Last fall the Internet Alliance worked closely with the Commonwealth of Virginia and its Governor appointed Blue Ribbon Panel on Information Technology. The Commission was composed of legislators and business leaders working together to develop, among other things, recommendations for a legislative approach to combat spam. The gist of the recommendations was that Electronic Mail Service Providers should be empowered with a more powerful arsenal as

Senator Jon Erpenbach  
Committee on Privacy, Electronic Commerce  
and Financial Institutions

Page 2

they continue to do battle with spammers. The recommendations evolved into legislation that has now passed both Houses of the legislature

Three principles can be extracted from the Virginia legislation, which we would respectfully ask that you consider incorporating into your pending legislation so that there is some uniformity amongst the states in this emerging global medium:

(1) Using the framework of existing law prohibiting computer fraud, clarify that the fraudulent transmission techniques used by spammers constitutes a wholly unauthorized use of the Computer Networks of Electronic Mail Service Providers' and is a crime. (Because fraudulent mailing techniques are typically employed by spammers, the prohibition of such practices through anti-fraud legislation provides a targeted means for solving the core of the junk e-mail problem, while leaving to the marketplace and service providers the issue of how non-forged bulk e-mail should be addressed.)

(2) Recognize that the widespread availability of specialized spam software is an important cause of the flood of junk e-mail, and target these products (Junk e-mail software is often unscrupulously marketed as a "legitimate" and "cost-free" means for running a small business, when in reality such tools are deliberately designed to forge or falsify e-mail transmission information, and thus prevent Electronic Mail Service Providers and their users from filtering unwanted e-mail. Prohibiting the sale and distribution of such software, which has no legitimate commercial purpose, is vital to stopping the rising tide of junk e-mail.)

(3) Recognize that Electronic Mail Service Providers are the parties most directly injured by spam and have the most resources to combat it on behalf of their users, and therefore they should be provided with specific civil remedies and statutory penalties (Significant per-message damages for falsified junk e-mail and the potential to recovery attorneys' fees will deter potential senders of junk e-mail and will encourage smaller Electronic Mail Service Providers to file more suits on behalf of their users.)

We support these principles because they address the problem of fraudulent junk e-mail without inadvertently restricting electronic commerce or free speech on the Internet. At the same time it sends a strong message to junk e-mailers who misuse the computer networks of Electronic Mail Service Providers' that their conduct will have serious civil and criminal consequences.

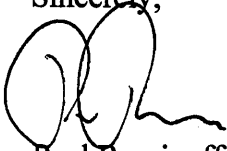
We are eager to work with you on the model legislative approach to unsolicited bulk and fraudulent email outlined above. We believe that such approach will allow us to reach the

Senator Jon Erpenbach  
Committee on Privacy, Electronic Commerce  
and Financial Institutions

Page 3

desired result: protecting consumers from deceptive and truly unwanted junk e-mail. I will contact you shortly to discuss these matters and how we might arrive at a bill in Wisconsin that we could ultimately strongly support. For your reference and as a suggested amendment I am attaching Virginia HB 1714, which we support as a model approach to this problem.

Sincerely,



Paul Russinoff  
State Policy Counsel,  
Internet State Coalition  
Internet Alliance  
202-955-8091

Enclosure



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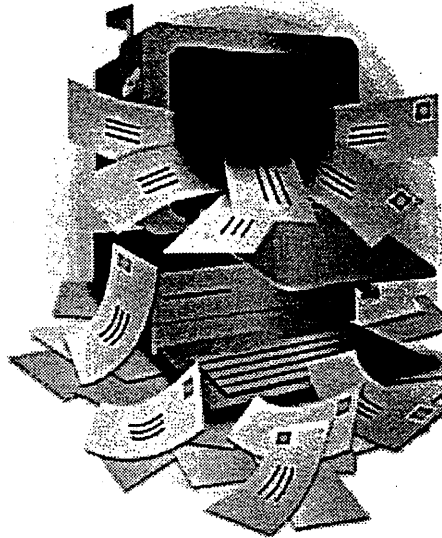
# Spam costs Internet millions every month

By DANIEL P. DERN

May 4, 1998

Spam is costing the Internet services industry tens of millions of dollars a month in bandwidth, customer service and systems administration, according to an informal survey of Internet service providers.

Nearly \$2 of each customer's monthly bill can be attributed to electronic junk mail and other forms of spam, ISPs said. Dodging and removing spam, dealing with customer complaints and pursuing spammers are all costly, labor-intensive efforts, the ISPs said. Money is also lost on wasted bandwidth and server capacity.



But perhaps the biggest cost of all, many said, is that spam is damaging customers' opinion of the Internet and of e-mail.

"It's undermining this entire Internet," said Barry Shein, president of Software Tool & Die's The World, an ISP in Brookline, Mass. "For example, one new user recently closed their account because 'all they were getting was spam.' Now they're turned off to the Internet," he said.

"The biggest cost to the ISP can't be measured in hours or mega-bytes," said Chris Owen, owner of Garden City Net, a small ISP in Garden City, Kan. "The most significant damage done by spam is that it simply degrades our product. When customers' mailboxes fill up with spam, the usefulness of our product is decreased. People cease to use their e-mail addresses in useful ways and stop reading Usenet. These damages far outweigh the cost of all the technical hoops we jump through trying to stop spam."

The Internet services industry has created a number of cures for the spam-burdened (see sidebar). Sometimes, though, the cure for spam is worse than the illness, ISPs said.

"It's creating chaos, in that everybody's got a different set of blocks, filters and so on," The World's Mr. Shein said. "Since we can't always pinpoint what exactly is spam, and everyone's complaining, we have to do the best we can. Sometimes people can't get mail sent to them that they want, or can't send mail to other ISPs, because of blocks and filters. The Internet was founded on the ideas of interoperability, and this is destroying it."

### Where's the spam?

Spam litters two main Internet "spaces"—e-mail and Usenet, the Internet's system of public bulletin boards and newsgroups. Spam includes unsolicited bulk mail sent to individuals, as well as unrequested and inappropriate messages to topical mailing lists.

Bulk mail can come in significant volumes. "A month's worth of mailings from one of the most

http://pubs.cmpnet.com/telepatnz/news.html

nefarious bulk e-mail outfits was estimated at over 134 gigabytes," reported "The E-mail Abuse FAQ."

In March, a sudden surge in bulk mail spam disrupted e-mail service at Pacific Bell Internet Services for several days. To handle the increased load so it could provide service to its customers, Pacific Bell confirmed that it recently had to invest half a million dollars in extra e-mail gateways.

The other major target for spam is Usenet, which replicates messages to the thousands of ISPs, companies, schools and other sites that participate.

Various ISPs report a typical Usenet feed of 6 gigabytes to 15 gigabytes per day, with each ISP determining for itself which newsgroups it will receive. ISPs and other Usenet watchers estimate that spam represents 33 percent to 40 percent-as much as 6 gigabytes per day on a 15 giga-

bytes-per-day feed-of Usenet traffic. A corresponding number of messages are "spam cancels"-messages identifying Usenet spam so that appropriately configured Usenet servers can automatically delete spam articles. Without spam and spam cancels, a Usenet newsgroup would have only one-fifth to one-third the traffic-or only 3 to 5 gigabytes per day.

Usenet spam and associated cancels consume a considerable portion of an ISP's Internet connection-to receive 1 gigabyte per day of spam would take about 100 kilobits per second of bandwidth. Processing and storage capacities are also drained.

The ever-growing volume of unsolicited e-mail and inappropriate Usenet postings translates into non-trivial costs to ISPs in bandwidth consumption, server loads and administrative labor.

The cost levels differ, depending on an ISP's size and other factors. Among these factors is its traffic mix: whether an ISP provides dial-up, consumer, business or wholesale services.

Here are reports from 11 ISPs:

- **Netcom On-Line Communication Services Inc., San Jose, Calif.:** Spam is increasing Netcom's costs in the following amounts: support, about 15 percent to 20 percent; additional systems administration costs, about 20 percent; outgoing mail server capacity, 40 percent; incoming delivery, 10 percent; disk space, 15 percent; overall equipment costs, an average of 10 percent to 15 percent.  
  
"A conservative estimate of the cost to our customers to support spam is approximately 10 percent of their monthly bill," stated a spokeswoman for this midsize ISP. That makes the cost of spam to Netcom close to \$1 million per month, she said.
- **Shore.Net, Lynn, Mass.:** About five percent of Shore.Net's e-mail-or 150 megabytes per day-is spam. That translates into costs of \$40,000 a year for labor alone. In total, about \$1 to \$2 per customer per month goes toward fighting spam, said Andy Laurie, marketing director for this small ISP.
- **Software Tool & Die's The World, Brookline, Mass.:** Ten percent to 20 percent of this small ISP's 500,000 to 1 million e-mail messages per day are spam, Mr. Shein said. About half are successfully blocked by automatic spam filters, though the rest get through.
- **Uunet Technologies Inc., Fairfax, Va.:** Uunet has a full-time staff of six doing what it calls "abuse investigations" of mass mail and spam complaints, according to Harris Schwartz, team leader for Internet abuse investigation at Uunet. The cost of employing the abuse investigators, plus several security investigators, amounts to \$1 million a year. While this figure is large, it is relatively small in context, Mr. Schwartz said. An ISP as large as Uunet spends that much per day on network upgrades, he said.
- **EarthLink Network Inc., Pasadena, Calif.:** Spam accounts for about 3 percent of EarthLink's overall e-mail, a spokesman for this large ISP said. The figure is down significantly, he said, thanks to various spam-fighting measures. EarthLink has three people on staff who do nothing but handle spam. "The cost is pretty high," the spokesman said. An indication of how high is EarthLink's recent \$2 million settlement in a lawsuit against Cyber Promotions Inc., Philadelphia. The basis for that amount was the damage done to EarthLink's profitability by the extra load and traffic caused by Cyber

Promotions' spam.

- **Public Access Networks Corp. (Panix), New York:** Victoria Fike, abuse coordinator at this small ISP, estimated she spends about two hours a day dealing with matters pertaining to incoming e-mail spam (complaining to the source ISP, updating filters, etc.), six hours per month on other spam-related matters, plus another five hours a month in staff meetings about spam.

In addition to these ongoing activities, it took three months of programming to create Panix's News Gizmo, which prevents the ISP's customers from spamming to Usenet. It also took more than 30 hours for Panix founder and president Alexis Rosen to plug holes found by spammers.

- **MindSpring Enterprises Inc., Atlanta:** Twenty percent to 25 percent of the incoming e-mail at this midsize ISP is spam, said Harry Smoak, MindSpring's director of Net abuse and terms of service policy. To support Usenet activity, MindSpring currently has about \$500,000 in equipment. "If there was no spam, we could probably do with one-third to one-half this equipment," Mr. Smoak said. E-mail and Usenet spam consume about one to two T1s (1.5 megabits per second to 3 Mbps) of bandwidth between MindSpring and its upstream Internet backbone. Also used up is the time spent by one-and-a-half engineers on spam-related abuse issues.
- **Erols Internet Services, Springfield, Va.:** This midsize ISP spends \$75,000 in salaries for three full-time employees whose sole responsibility is to deal with e-mail abuse issues. "I would say it's among the reasons we recently had to up our prices," said an Erols system administrator. "Fully 10 percent to 15 percent of our e-mail disk space is taken up by incoming spam sent to Erols' customers. I estimate that probably 5 percent of the total traffic through Erols' networks is spam being bounced off our servers onto the rest of the Internet."
- **GTE Internetworking, Cambridge, Mass.:** "There are typically two to four people working full time on spam," said a spokeswoman at this ISP. "GTE has to deal both with spammers and spam itself."
- **America Online Inc., Dulles, Va.:** Of the average of 14 million e-mail messages coming from the Internet to AOL daily, five percent to 30 percent are spam, an AOL spokeswoman said. "We have to scale the network to handle this," she said. "This costs the members, especially those who pay hourly rates." She declined to elaborate.
- **Pennsylvania Online Inc., Harrisburg, Pa.:** Spam costs constitute about 5 percent of Pennsylvania Online's support load, said company owner George Peace. Spam consumes about 10 percent of this small ISP's 3-Mbps connection to the Internet, which costs about \$2,500 per month.

#### How will it all end?

For these ISPs, "there is no single solution to spam at present," said Barbara Dooley, executive director of the Commercial Internet eXchange Association (CIX). "It will likely require a combination of technical, self-regulatory and legal measures to effectively combat its pernicious effects on both users and networks." CIX is working on a comprehensive "cost of spam" study and is expected to release findings next month.

*Daniel P. Dern is a Newton Centre, Mass.-based free-lance writer. He can be reached at [ddern@world.std.com](mailto:ddern@world.std.com) or via the Web at [www.dern.com](http://www.dern.com).*

[See additional chart](#)

.....  
[Return to headlines](#)

993198445

HOUSE BILL NO. 1714  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Science & Technology  
on January 29, 1999)

(Patron Prior to Substitute—Delegate Rust)

A BILL to amend and reenact §§ 8.01-328.1, 18.2-152.2, 18.2-152.4, and 18.2-152.12 of the Code of Virginia, relating to personal jurisdiction; Virginia Computer Crimes Act; unsolicited bulk electronic mail.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-328.1, 18.2-152.2, 18.2-152.4, and 18.2-152.12 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-328.1. When personal jurisdiction over person may be exercised.

A. A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's:

- 1. Transacting any business in this Commonwealth;
- 2. Contracting to supply services or things in this Commonwealth;
- 3. Causing tortious injury by an act or omission in this Commonwealth;
- 4. Causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this Commonwealth;
- 5. Causing injury in this Commonwealth to any person by breach of warranty expressly or impliedly made in the sale of goods outside this Commonwealth when he might reasonably have expected such person to use, consume, or be affected by the goods in this Commonwealth, provided that he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth;
- 6. Having an interest in, using, or possessing real property in this Commonwealth;
- 7. Contracting to insure any person, property, or risk located within this Commonwealth at the time of contracting;
- 8. Having (i) executed an agreement in this Commonwealth which obligates the person to pay spousal support or child support to a domiciliary of this Commonwealth, or to a person who has satisfied the residency requirements in suits for annulments or divorce for members of the armed forces pursuant to § 20-97 provided proof of service of process on a nonresident party is made by a law-enforcement officer or other person authorized to serve process in the jurisdiction where the nonresident party is located, (ii) been ordered to pay spousal support or child support pursuant to an order entered by any court of competent jurisdiction in this Commonwealth having in personam jurisdiction over such person, or (iii) shown by personal conduct in this Commonwealth, as alleged by affidavit, that the person conceived or fathered a child in this Commonwealth; or
- 9. Having maintained within this Commonwealth a matrimonial domicile at the time of separation of the parties upon which grounds for divorce or separate maintenance is based, or at the time a cause of action arose for divorce or separate maintenance or at the time of commencement of such suit, if the other party to the matrimonial relationship resides herein.

Jurisdiction in subdivision 9 of this subsection is valid only upon proof of service of process pursuant to § 8.01-296 on the nonresident party by a person authorized under the provisions of § 8.01-320. Jurisdiction under subdivision 8 (iii) of this subsection is valid only upon proof of personal service on a nonresident pursuant to § 8.01-320.

B. Transmitting or causing the transmission of unsolicited bulk electronic mail to or through an electronic mail service provider's computer network located in this Commonwealth shall constitute an act in the Commonwealth. For purposes of this subsection, "computer network" and "electronic mail service provider" shall have the same meanings as those contained in § 18.2-152.2.

B. C. When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him; however, nothing contained in this chapter shall limit, restrict or otherwise affect the jurisdiction of any court of this

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1 Commonwealth over foreign corporations which are subject to service of process pursuant to the  
2 provisions of any other statute.

3 § 18.2-152.2. Definitions.

4 For purposes of this article:

5 "Computer" means an electronic, magnetic, optical, hydraulic or organic device or group of devices  
6 which, pursuant to a computer program, to human instruction, or to permanent instructions contained  
7 in the device or group of devices, can automatically perform computer operations with or on computer  
8 data and can communicate the results to another computer or to a person. The term "computer"  
9 includes any connected or directly related device, equipment, or facility which enables the computer  
10 to store, retrieve or communicate computer programs, computer data or the results of computer  
11 operations to or from a person, another computer or another device.

12 "Computer data" means any representation of information, knowledge, facts, concepts, or  
13 instructions which is being prepared or has been prepared and is intended to be processed, is being  
14 processed, or has been processed in a computer or computer network. "Computer data" may be in any  
15 form, whether readable only by a computer or only by a human or by either, including, but not  
16 limited to, computer printouts, magnetic storage media, punched cards, or stored internally in the  
17 memory of the computer.

18 "Computer network" means a set of related, remotely connected devices and any communications  
19 facilities including more than one computer with the capability to transmit data among them through  
20 the communications facilities.

21 "Computer operation" means arithmetic, logical, monitoring, storage or retrieval functions and any  
22 combination thereof, and includes, but is not limited to, communication with, storage of data to, or  
23 retrieval of data from any device or human hand manipulation of electronic or magnetic impulses. A  
24 "computer operation" for a particular computer may also be any function for which that computer was  
25 generally designed.

26 "Computer program" means an ordered set of data representing coded instructions or statements  
27 that, when executed by a computer, causes the computer to perform one or more computer operations.

28 "Computer services" ~~includes~~ means computer time or services ~~or~~, including data processing  
29 services, *Internet services, electronic mail services, electronic message services*, or information or data  
30 stored in connection therewith.

31 "Computer software" means a set of computer programs, procedures and associated documentation  
32 concerned with computer data or with the operation of a computer, computer program, or computer  
33 network.

34 "*Electronic mail service provider*" means any person who (i) is an intermediary in sending or  
35 receiving electronic mail and (ii) provides to end-users of electronic mail services the ability to send  
36 or receive electronic mail.

37 "Financial instrument" includes, but is not limited to, any check, draft, warrant, money order, note,  
38 certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization  
39 mechanism, marketable security, or any computerized representation thereof.

40 "Owner" means an owner or lessee of a computer or a computer network or an owner, lessee, or  
41 licensee of computer data, computer programs, or computer software.

42 "Person" shall include any individual, partnership, association, corporation or joint venture.

43 "Property" shall include:

- 44 1. Real property;
- 45 2. Computers and computer networks;
- 46 3. Financial instruments, computer data, computer programs, computer software and all other  
47 personal property regardless of whether they are:
  - 48 a. Tangible or intangible;
  - 49 b. In a format readable by humans or by a computer;
  - 50 c. In transit between computers or within a computer network or between any devices which  
51 comprise a computer; or
  - 52 d. Located on any paper or in any device on which it is stored by a computer or by a human; and
- 53 4. Computer services.

54 A person "uses" a computer or computer network when he:

1 1. Attempts to cause or causes a computer or computer network to perform or to stop performing  
2 computer operations;

3 2. Attempts to cause or causes the withholding or denial of the use of a computer, computer  
4 network, computer program, computer data or computer software to another user; or

5 3. Attempts to cause or causes another person to put false information into a computer.

6 A person is "without authority" when (i) he has no right or permission of the owner to use a  
7 computer; or, he uses a computer in a manner exceeding such right or permission or (ii) he uses a  
8 computer, a computer network, or the computer services of an electronic mail service provider in  
9 contravention of the authority granted by or in violation of the policies set by the electronic mail  
10 service provider.

11 § 18.2-152.4. Computer trespass; penalty.

12 A. A person shall be guilty of the crime of computer trespass if he uses *It shall be unlawful for*  
13 any person to use a computer or computer network without authority and with the intent to:

14 1. Temporarily or permanently remove, halt, or otherwise disable any computer data, computer  
15 programs, or computer software from a computer or computer network;

16 2. Cause a computer to malfunction, regardless of how long the malfunction persists;

17 3. Alter or erase any computer data, computer programs, or computer software;

18 4. Effect the creation or alteration of a financial instrument or of an electronic transfer of funds;

19 5. Cause physical injury to the property of another; or

20 6. Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any  
21 printed or electronic form of computer data, computer programs, or computer software residing in,  
22 communicated by, or produced by a computer or computer network; or

23 7. *Falsify or forge electronic mail transmission information or other routing information in any*  
24 *manner in connection with the transmission of unsolicited bulk electronic mail through or into the*  
25 *computer network of an electronic mail service provider or its subscribers.*

26 B. *It shall be unlawful for any person to sell, give or otherwise distribute or possess with the*  
27 *intent to sell, give or distribute software which (i) is primarily designed or produced for the purpose*  
28 *of facilitating or enabling the falsification of electronic mail transmission information or other routing*  
29 *information; (ii) has only limited commercially significant purpose or use other than to facilitate or*  
30 *enable the falsification of electronic mail transmission information or other routing information; or*  
31 *(iii) is marketed by that person or another acting in concert with that person with that person's*  
32 *knowledge for use in facilitating or enabling the falsification of electronic mail transmission*  
33 *information or other routing information.*

34 ~~Computer trespass~~ C. *Any person who violates this section shall be guilty of computer trespass,*  
35 *which offense shall be punishable as a Class 3 misdemeanor. If there is damage to the property of*  
36 *another valued at \$2,500 or more caused by such person's reckless disregard for the consequences of*  
37 *his act in violation of this section, the offense shall be punished as a Class 1 misdemeanor. If there is*  
38 *damage to the property of another valued at \$2,500 or more caused by such person's malicious act in*  
39 *violation of this section, the offense shall be punishable as a Class 6 felony.*

40 B D. *Nothing in this section shall be construed to interfere with or prohibit terms or conditions in*  
41 *a contract or license related to computers, computer data, computer networks, computer operations,*  
42 *computer programs, computer services, or computer software or to create any liability by reason of*  
43 *terms or conditions adopted by, or technical measures implemented by, a Virginia-based electronic*  
44 *mail service provider to prevent the transmission of unsolicited electronic mail in violation of this*  
45 *article.*

46 § 18.2-152.12. Civil relief; damages.

47 A. Any person whose property or person is injured by reason of a violation of any provision of  
48 this article may sue therefor and recover for any damages sustained, and the costs of suit. Without  
49 limiting the generality of the term, "damages" shall include loss of profits.

50 B. *If the injury arises from the transmission of unsolicited bulk electronic mail, the injured person,*  
51 *other than an electronic mail service provider, may also recover attorneys' fees and costs, and may*  
52 *elect, in lieu of actual damages, to recover the lesser of ten dollars for each and every unsolicited*  
53 *bulk electronic mail message transmitted in violation of this article, or \$25,000 per day. The injured*  
54 *person shall not have a cause of action against the electronic mail service provider which merely*

1 transmits the unsolicited bulk electronic mail over its computer network.

2 C. If the injury arises from the transmission of unsolicited bulk electronic mail, an injured  
3 electronic mail service provider may also recover attorneys' fees and costs, and may elect, in lieu of  
4 actual damages, to recover the greater of ten dollars for each and every unsolicited bulk electronic  
5 mail message transmitted in violation of this article, or \$25,000 per day.

6 B- D. At the request of any party to an action brought pursuant to this section, the court may, in  
7 its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the  
8 computer, computer network, computer data, computer program and computer software involved in  
9 order to prevent possible recurrence of the same or a similar act by another person and to protect any  
10 trade secrets of any party.

11 C- E. The provisions of this article shall not be construed to limit any person's right to pursue any  
12 additional civil remedy otherwise allowed by law.

13 D- F. A civil action under this section must be commenced before expiration of the time period  
14 prescribed in § 8.01-40.1. In actions alleging injury arising from the transmission of unsolicited bulk  
15 electronic mail, personal jurisdiction may be exercised pursuant to § 8.01-328.1.

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with amendment <input type="checkbox"/>	with amendment <input type="checkbox"/>
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# Internet Alliance

February 18, 1999

Senator Jon Erpenbach  
Chairman  
Committee on Privacy Electronic Commerce  
and Financial Institutions  
Room 20 South  
State Capitol  
P.O. Box 7882  
Madison, WI 53707-7882

FEB 22 1999

Dear Mr. Chairman:

On behalf of the Internet Alliance, I am writing about SB 33, legislation regarding unsolicited bulk email, commonly referred to as spam that your Committee will hear on February 22nd.

The Internet Alliance, ("IA") is the leading trade association representing the Internet and online industry. Our members provide over 80 percent of the paid Internet access worldwide and include America Online, Bell Atlantic, eBay, Microsoft, NETCOM, Netscape, US West and Prodigy.

IA and our members share your concerns and strongly support a regulatory approach to this problem. Unsolicited bulk and fraudulent e-mail is not simply a nuisance to consumers, but a burden to electronic mail service providers, and a threat to the Internet itself. Consumers hate it; it is damaging to computer networks, and it clogs and slows the delivery of legitimate email, thus devaluing for many one of the most compelling elements of the Internet. For these reasons, the Internet online industry has taken the lead in shutting down junk e-mailers who have abused their systems and violated their terms of service agreements. Our industry spends millions of dollars every year attempting to combat this problem. Please see the attached hard copy of an article from the online newspaper "TechWeb."

Last fall the Internet Alliance worked closely with the Commonwealth of Virginia and its Governor appointed Blue Ribbon Panel on Information Technology. The Commission was composed of legislators and business leaders working together to develop, among other things, recommendations for a legislative approach to combat spam. The gist of the recommendations was that Electronic Mail Service Providers should be empowered with a more powerful arsenal as

Senator Jon Erpenbach  
Committee on Privacy, Electronic Commerce  
and Financial Institutions  
Page 2

they continue to do battle with spammers. The recommendations evolved into legislation that has now passed both Houses of the legislature

Three principles can be extracted from the Virginia legislation, which we would respectfully ask that you consider incorporating into your pending legislation so that there is some uniformity amongst the states in this emerging global medium:

(1) Using the framework of existing law prohibiting computer fraud, clarify that the fraudulent transmission techniques used by spammers constitutes a wholly unauthorized use of the Computer Networks of Electronic Mail Service Providers' and is a crime. (Because fraudulent mailing techniques are typically employed by spammers, the prohibition of such practices through anti-fraud legislation provides a targeted means for solving the core of the junk e-mail problem, while leaving to the marketplace and service providers the issue of how non-forged bulk e-mail should be addressed.)

(2) Recognize that the widespread availability of specialized spam software is an important cause of the flood of junk e-mail, and target these products (Junk e-mail software is often unscrupulously marketed as a "legitimate" and "cost-free" means for running a small business, when in reality such tools are deliberately designed to forge or falsify e-mail transmission information, and thus prevent Electronic Mail Service Providers and their users from filtering unwanted e-mail. Prohibiting the sale and distribution of such software, which has no legitimate commercial purpose, is vital to stopping the rising tide of junk e-mail.)

(3) Recognize that Electronic Mail Service Providers are the parties most directly injured by spam and have the most resources to combat it on behalf of their users, and therefore they should be provided with specific civil remedies and statutory penalties (Significant per-message damages for falsified junk e-mail and the potential to recovery attorneys' fees will deter potential senders of junk e-mail and will encourage smaller Electronic Mail Service Providers to file more suits on behalf of their users.)

We support these principles because they address the problem of fraudulent junk e-mail without inadvertently restricting electronic commerce or free speech on the Internet. At the same time it sends a strong message to junk e-mailers who misuse the computer networks of Electronic Mail Service Providers' that their conduct will have serious civil and criminal consequences.

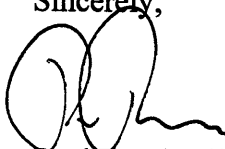
We are eager to work with you on the model legislative approach to unsolicited bulk and fraudulent email outlined above. We believe that such approach will allow us to reach the

Senator Jon Erpenbach  
Committee on Privacy, Electronic Commerce  
and Financial Institutions

Page 3

desired result: protecting consumers from deceptive and truly unwanted junk e-mail. I will contact you shortly to discuss these matters and how we might arrive at a bill in Wisconsin that we could ultimately strongly support. For your reference and as a suggested amendment I am attaching Virginia HB 1714, which we support as a model approach to this problem.

Sincerely,



Paul Russinoff  
State Policy Counsel,  
Internet State Coalition  
Internet Alliance  
202-955-8091

Enclosure

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## Spam costs Internet millions every month

By DANIEL P. DERN

May 4, 1998

Spam is costing the Internet services industry tens of millions of dollars a month in bandwidth, customer service and systems administration, according to an informal survey of Internet service providers.

Nearly \$2 of each customer's monthly bill can be attributed to electronic junk mail and other forms of spam, ISPs said. Dodging and removing spam, dealing with customer complaints and pursuing spammers are all costly, labor-intensive efforts, the ISPs said. Money is also lost on wasted bandwidth and server capacity.

But perhaps the biggest cost of all, many said, is that spam is damaging customers' opinion of the Internet and of e-mail.

"It's undermining this entire Internet," said Barry Shein, president of Software Tool & Die's The World, an ISP in Brookline, Mass. "For example, one new user recently closed their account because 'all they were getting was spam.' Now they're turned off to the Internet," he said.

"The biggest cost to the ISP can't be measured in hours or mega-bytes," said Chris Owen, owner of Garden City Net, a small ISP in Garden City, Kan. "The most significant damage done by spam is that it simply degrades our product. When customers' mailboxes fill up with spam, the usefulness of our product is decreased. People cease to use their e-mail addresses in useful ways and stop reading Usenet. These damages far outweigh the cost of all the technical hoops we jump through trying to stop spam."

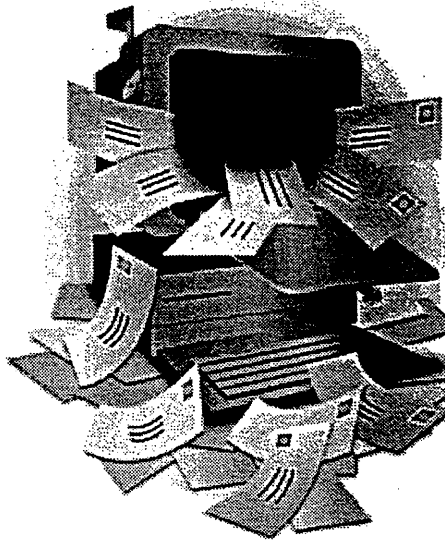
The Internet services industry has created a number of cures for the spam-burdened (see sidebar). Sometimes, though, the cure for spam is worse than the illness, ISPs said.

"It's creating chaos, in that everybody's got a different set of blocks, filters and so on," The World's Mr. Shein said. "Since we can't always pinpoint what exactly is spam, and everyone's complaining, we have to do the best we can. Sometimes people can't get mail sent to them that they want, or can't send mail to other ISPs, because of blocks and filters. The Internet was founded on the ideas of interoperability, and this is destroying it."

### Where's the spam?

Spam litters two main Internet "spaces"—e-mail and Usenet, the Internet's system of public bulletin boards and newsgroups. Spam includes unsolicited bulk mail sent to individuals, as well as unrequested and inappropriate messages to topical mailing lists.

Bulk mail can come in significant volumes. "A month's worth of mailings from one of the most



http://www.comptel.com/telepat/2/mwz.html

nefarious bulk e-mail outfits was estimated at over 134 gigabytes," reported "The E-mail Abuse FAQ."

In March, a sudden surge in bulk mail spam disrupted e-mail service at Pacific Bell Internet Services for several days. To handle the increased load so it could provide service to its customers, Pacific Bell confirmed that it recently had to invest half a million dollars in extra e-mail gateways.

The other major target for spam is Usenet, which replicates messages to the thousands of ISPs, companies, schools and other sites that participate.

Various ISPs report a typical Usenet feed of 6 gigabytes to 15 gigabytes per day, with each ISP determining for itself which newsgroups it will receive. ISPs and other Usenet watchers estimate that spam represents 33 percent to 40 percent-as much as 6 gigabytes per day on a 15 giga-

bytes-per-day feed-of Usenet traffic. A corresponding number of messages are "spam cancels"-messages identifying Usenet spam so that appropriately configured Usenet servers can automatically delete spam articles. Without spam and spam cancels, a Usenet newsgroup would have only one-fifth to one-third the traffic-or only 3 to 5 gigabytes per day.

Usenet spam and associated cancels consume a considerable portion of an ISP's Internet connection-to receive 1 gigabyte per day of spam would take about 100 kilobits per second of bandwidth. Processing and storage capacities are also drained.

The ever-growing volume of unsolicited e-mail and inappropriate Usenet postings translates into non-trivial costs to ISPs in bandwidth consumption, server loads and administrative labor.

The cost levels differ, depending on an ISP's size and other factors. Among these factors is its traffic mix: whether an ISP provides dial-up, consumer, business or wholesale services.

Here are reports from 11 ISPs:

- **Netcom On-Line Communication Services Inc., San Jose, Calif.:** Spam is increasing Netcom's costs in the following amounts: support, about 15 percent to 20 percent; additional systems administration costs, about 20 percent; outgoing mail server capacity, 40 percent; incoming delivery, 10 percent; disk space, 15 percent; overall equipment costs, an average of 10 percent to 15 percent.  
  
"A conservative estimate of the cost to our customers to support spam is approximately 10 percent of their monthly bill," stated a spokeswoman for this midsize ISP. That makes the cost of spam to Netcom close to \$1 million per month, she said.
- **Shore.Net, Lynn, Mass.:** About five percent of Shore.Net's e-mail-or 150 megabytes per day-is spam. That translates into costs of \$40,000 a year for labor alone. In total, about \$1 to \$2 per customer per month goes toward fighting spam, said Andy Laurie, marketing director for this small ISP.
- **Software Tool & Die's The World, Brookline, Mass.:** Ten percent to 20 percent of this small ISP's 500,000 to 1 million e-mail messages per day are spam, Mr. Shein said. About half are successfully blocked by automatic spam filters, though the rest get through.
- **UUNET Technologies Inc., Fairfax, Va.:** UUNET has a full-time staff of six doing what it calls "abuse investigations" of mass mail and spam complaints, according to Harris Schwartz, team leader for Internet abuse investigation at UUNET. The cost of employing the abuse investigators, plus several security investigators, amounts to \$1 million a year. While this figure is large, it is relatively small in context, Mr. Schwartz said. An ISP as large as UUNET spends that much per day on network upgrades, he said.
- **EarthLink Network Inc., Pasadena, Calif.:** Spam accounts for about 3 percent of EarthLink's overall e-mail, a spokesman for this large ISP said. The figure is down significantly, he said, thanks to various spam-fighting measures. EarthLink has three people on staff who do nothing but handle spam. "The cost is pretty high," the spokesman said. An indication of how high is EarthLink's recent \$2 million settlement in a lawsuit against Cyber Promotions Inc., Philadelphia. The basis for that amount was the damage done to EarthLink's profitability by the extra load and traffic caused by Cyber



Promotions' spam.

- **Public Access Networks Corp. (Panix), New York:** Victoria Fike, abuse coordinator at this small ISP, estimated she spends about two hours a day dealing with matters pertaining to incoming e-mail spam (complaining to the source ISP, updating filters, etc.), six hours per month on other spam-related matters, plus another five hours a month in staff meetings about spam.

In addition to these ongoing activities, it took three months of programming to create Panix's News Gizmo, which prevents the ISP's customers from spamming to Usenet. It also took more than 30 hours for Panix founder and president Alexis Rosen to plug holes found by spammers.

- **MindSpring Enterprises Inc., Atlanta:** Twenty percent to 25 percent of the incoming e-mail at this midsize ISP is spam, said Harry Smoak, MindSpring's director of Net abuse and terms of service policy. To support Usenet activity, MindSpring currently has about \$500,000 in equipment. "If there was no spam, we could probably do with one-third to one-half this equipment," Mr. Smoak said. E-mail and Usenet spam consume about one to two T1s (1.5 megabits per second to 3 Mbps) of bandwidth between MindSpring and its upstream Internet backbone. Also used up is the time spent by one-and-a-half engineers on spam-related abuse issues.
- **Erols Internet Services, Springfield, Va.:** This midsize ISP spends \$75,000 in salaries for three full-time employees whose sole responsibility is to deal with e-mail abuse issues. "I would say it's among the reasons we recently had to up our prices," said an Erols system administrator. "Fully 10 percent to 15 percent of our e-mail disk space is taken up by incoming spam sent to Erols' customers. I estimate that probably 5 percent of the total traffic through Erols' networks is spam being bounced off our servers onto the rest of the Internet."
- **GTE Internetworking, Cambridge, Mass.:** "There are typically two to four people working full time on spam," said a spokeswoman at this ISP. "GTE has to deal both with spammers and spam itself."
- **America Online Inc., Dulles, Va.:** Of the average of 14 million e-mail messages coming from the Internet to AOL daily, five percent to 30 percent are spam, an AOL spokeswoman said. "We have to scale the network to handle this," she said. "This costs the members, especially those who pay hourly rates." She declined to elaborate.
- **Pennsylvania Online Inc., Harrisburg, Pa.:** Spam costs constitute about 5 percent of Pennsylvania Online's support load, said company owner George Peace. Spam consumes about 10 percent of this small ISP's 3-Mbps connection to the Internet, which costs about \$2,500 per month.

**How will it all end?**

For these ISPs, "there is no single solution to spam at present," said Barbara Dooley, executive director of the Commercial Internet eXchange Association (CIX). "It will likely require a combination of technical, self-regulatory and legal measures to effectively combat its pernicious effects on both users and networks." CIX is working on a comprehensive "cost of spam" study and is expected to release findings next month.

*Daniel P. Dern is a Newton Centre, Mass.-based free-lance writer. He can be reached at [ddern@world.std.com](mailto:ddern@world.std.com) or via the Web at [www.dern.com](http://www.dern.com).*

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993198445

HOUSE BILL NO. 1714  
AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Science & Technology  
on January 29, 1999)

(Patron Prior to Substitute—Delegate Rust)

A BILL to amend and reenact §§ 8.01-328.1, 18.2-152.2, 18.2-152.4, and 18.2-152.12 of the Code of Virginia, relating to personal jurisdiction; Virginia Computer Crimes Act; unsolicited bulk electronic mail.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-328.1, 18.2-152.2, 18.2-152.4, and 18.2-152.12 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-328.1. When personal jurisdiction over person may be exercised.

A. A court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a cause of action arising from the person's:

- 1. Transacting any business in this Commonwealth;
- 2. Contracting to supply services or things in this Commonwealth;
- 3. Causing tortious injury by an act or omission in this Commonwealth;
- 4. Causing tortious injury in this Commonwealth by an act or omission outside this Commonwealth if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in this Commonwealth;
- 5. Causing injury in this Commonwealth to any person by breach of warranty expressly or impliedly made in the sale of goods outside this Commonwealth when he might reasonably have expected such person to use, consume, or be affected by the goods in this Commonwealth, provided that he also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this Commonwealth;

6. Having an interest in, using, or possessing real property in this Commonwealth;

7. Contracting to insure any person, property, or risk located within this Commonwealth at the time of contracting;

8. Having (i) executed an agreement in this Commonwealth which obligates the person to pay spousal support or child support to a domiciliary of this Commonwealth, or to a person who has satisfied the residency requirements in suits for annulments or divorce for members of the armed forces pursuant to § 20-97 provided proof of service of process on a nonresident party is made by a law-enforcement officer or other person authorized to serve process in the jurisdiction where the nonresident party is located, (ii) been ordered to pay spousal support or child support pursuant to an order entered by any court of competent jurisdiction in this Commonwealth having in personam jurisdiction over such person, or (iii) shown by personal conduct in this Commonwealth, as alleged by affidavit, that the person conceived or fathered a child in this Commonwealth; or

9. Having maintained within this Commonwealth a matrimonial domicile at the time of separation of the parties upon which grounds for divorce or separate maintenance is based, or at the time a cause of action arose for divorce or separate maintenance or at the time of commencement of such suit, if the other party to the matrimonial relationship resides herein.

Jurisdiction in subdivision 9 of this subsection is valid only upon proof of service of process pursuant to § 8.01-296 on the nonresident party by a person authorized under the provisions of § 8.01-320. Jurisdiction under subdivision 8 (iii) of this subsection is valid only upon proof of personal service on a nonresident pursuant to § 8.01-320.

B. Transmitting or causing the transmission of unsolicited bulk electronic mail to or through an electronic mail service provider's computer network located in this Commonwealth shall constitute an act in the Commonwealth. For purposes of this subsection, "computer network" and "electronic mail service provider" shall have the same meanings as those contained in § 18.2-152.2.

C. When jurisdiction over a person is based solely upon this section, only a cause of action arising from acts enumerated in this section may be asserted against him; however, nothing contained in this chapter shall limit, restrict or otherwise affect the jurisdiction of any court of this

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1 Commonwealth over foreign corporations which are subject to service of process pursuant to the  
2 provisions of any other statute.

3 § 18.2-152.2. Definitions.

4 For purposes of this article:

5 "Computer" means an electronic, magnetic, optical, hydraulic or organic device or group of devices  
6 which, pursuant to a computer program, to human instruction, or to permanent instructions contained  
7 in the device or group of devices, can automatically perform computer operations with or on computer  
8 data and can communicate the results to another computer or to a person. The term "computer"  
9 includes any connected or directly related device, equipment, or facility which enables the computer  
10 to store, retrieve or communicate computer programs, computer data or the results of computer  
11 operations to or from a person, another computer or another device.

12 "Computer data" means any representation of information, knowledge, facts, concepts, or  
13 instructions which is being prepared or has been prepared and is intended to be processed, is being  
14 processed, or has been processed in a computer or computer network. "Computer data" may be in any  
15 form, whether readable only by a computer or only by a human or by either, including, but not  
16 limited to, computer printouts, magnetic storage media, punched cards, or stored internally in the  
17 memory of the computer.

18 "Computer network" means a set of related, remotely connected devices and any communications  
19 facilities including more than one computer with the capability to transmit data among them through  
20 the communications facilities.

21 "Computer operation" means arithmetic, logical, monitoring, storage or retrieval functions and any  
22 combination thereof, and includes, but is not limited to, communication with, storage of data to, or  
23 retrieval of data from any device or human hand manipulation of electronic or magnetic impulses. A  
24 "computer operation" for a particular computer may also be any function for which that computer was  
25 generally designed.

26 "Computer program" means an ordered set of data representing coded instructions or statements  
27 that, when executed by a computer, causes the computer to perform one or more computer operations.

28 "Computer services" ~~includes~~ means computer time or services ~~or~~, including data processing  
29 services, *Internet services, electronic mail services, electronic message services*, or information or data  
30 stored in connection therewith.

31 "Computer software" means a set of computer programs, procedures and associated documentation  
32 concerned with computer data or with the operation of a computer, computer program, or computer  
33 network.

34 "*Electronic mail service provider*" means any person who (i) is an intermediary in sending or  
35 receiving electronic mail and (ii) provides to end-users of electronic mail services the ability to send  
36 or receive electronic mail.

37 "Financial instrument" includes, but is not limited to, any check, draft, warrant, money order, note,  
38 certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization  
39 mechanism, marketable security, or any computerized representation thereof.

40 "Owner" means an owner or lessee of a computer or a computer network or an owner, lessee, or  
41 licensee of computer data, computer programs, or computer software.

42 "Person" shall include any individual, partnership, association, corporation or joint venture.

43 "Property" shall include:

- 44 1. Real property;
- 45 2. Computers and computer networks;
- 46 3. Financial instruments, computer data, computer programs, computer software and all other  
47 personal property regardless of whether they are:
  - 48 a. Tangible or intangible;
  - 49 b. In a format readable by humans or by a computer;
  - 50 c. In transit between computers or within a computer network or between any devices which  
51 comprise a computer; or
  - 52 d. Located on any paper or in any device on which it is stored by a computer or by a human; and
- 53 4. Computer services.

54 A person "uses" a computer or computer network when he:

1 1. Attempts to cause or causes a computer or computer network to perform or to stop performing  
2 computer operations;

3 2. Attempts to cause or causes the withholding or denial of the use of a computer, computer  
4 network, computer program, computer data or computer software to another user; or

5 3. Attempts to cause or causes another person to put false information into a computer.

6 A person is "without authority" when (i) he has no right or permission of the owner to use a  
7 computer; or; he uses a computer in a manner exceeding such right or permission or (ii) *he uses a*  
8 *computer, a computer network, or the computer services of an electronic mail service provider in*  
9 *contravention of the authority granted by or in violation of the policies set by the electronic mail*  
10 *service provider.*

11 § 18.2-152.4. Computer trespass; penalty.

12 A. A person shall be guilty of the crime of computer trespass if he uses *It shall be unlawful for*  
13 *any person to use* a computer or computer network without authority and with the intent to:

14 1. Temporarily or permanently remove, halt, or otherwise disable any computer data, computer  
15 programs, or computer software from a computer or computer network;

16 2. Cause a computer to malfunction, regardless of how long the malfunction persists;

17 3. Alter or erase any computer data, computer programs, or computer software;

18 4. Effect the creation or alteration of a financial instrument or of an electronic transfer of funds;

19 5. Cause physical injury to the property of another; or

20 6. Make or cause to be made an unauthorized copy, in any form, including, but not limited to, any  
21 printed or electronic form of computer data, computer programs, or computer software residing in,  
22 communicated by, or produced by a computer or computer network; or

23 7. *Falsify or forge electronic mail transmission information or other routing information in any*  
24 *manner in connection with the transmission of unsolicited bulk electronic mail through or into the*  
25 *computer network of an electronic mail service provider or its subscribers.*

26 B. *It shall be unlawful for any person to sell, give or otherwise distribute or possess with the*  
27 *intent to sell, give or distribute software which (i) is primarily designed or produced for the purpose*  
28 *of facilitating or enabling the falsification of electronic mail transmission information or other routing*  
29 *information; (ii) has only limited commercially significant purpose or use other than to facilitate or*  
30 *enable the falsification of electronic mail transmission information or other routing information; or*  
31 *(iii) is marketed by that person or another acting in concert with that person with that person's*  
32 *knowledge for use in facilitating or enabling the falsification of electronic mail transmission*  
33 *information or other routing information.*

34 ~~Computer trespass~~ C. *Any person who violates this section shall be guilty of computer trespass,*  
35 *which offense shall be punishable as a Class 3 misdemeanor. If there is damage to the property of*  
36 *another valued at \$2,500 or more caused by such person's reckless disregard for the consequences of*  
37 *his act in violation of this section, the offense shall be punished as a Class 1 misdemeanor. If there is*  
38 *damage to the property of another valued at \$2,500 or more caused by such person's malicious act in*  
39 *violation of this section, the offense shall be punishable as a Class 6 felony.*

40 B D. Nothing in this section shall be construed to interfere with or prohibit terms or conditions in  
41 a contract or license related to computers, computer data, computer networks, computer operations,  
42 computer programs, computer services, or computer software *or to create any liability by reason of*  
43 *terms or conditions adopted by, or technical measures implemented by, a Virginia-based electronic*  
44 *mail service provider to prevent the transmission of unsolicited electronic mail in violation of this*  
45 *article.*

46 § 18.2-152.12. Civil relief; damages.

47 A. Any person whose property or person is injured by reason of a violation of any provision of  
48 this article may sue therefor and recover for any damages sustained, and the costs of suit. Without  
49 limiting the generality of the term, "damages" shall include loss of profits.

50 B. *If the injury arises from the transmission of unsolicited bulk electronic mail, the injured person,*  
51 *other than an electronic mail service provider, may also recover attorneys' fees and costs, and may*  
52 *elect, in lieu of actual damages, to recover the lesser of ten dollars for each and every unsolicited*  
53 *bulk electronic mail message transmitted in violation of this article, or \$25,000 per day. The injured*  
54 *person shall not have a cause of action against the electronic mail service provider which merely*

1 transmits the unsolicited bulk electronic mail over its computer network.

2 C. If the injury arises from the transmission of unsolicited bulk electronic mail, an injured  
3 electronic mail service provider may also recover attorneys' fees and costs, and may elect, in lieu of  
4 actual damages, to recover the greater of ten dollars for each and every unsolicited bulk electronic  
5 mail message transmitted in violation of this article, or \$25,000 per day.

6 B. D. At the request of any party to an action brought pursuant to this section, the court may, in  
7 its discretion, conduct all legal proceedings in such a way as to protect the secrecy and security of the  
8 computer, computer network, computer data, computer program and computer software involved in  
9 order to prevent possible recurrence of the same or a similar act by another person and to protect any  
10 trade secrets of any party.

11 C. E. The provisions of this article shall not be construed to limit any person's right to pursue any  
12 additional civil remedy otherwise allowed by law.

13 D. F. A civil action under this section must be commenced before expiration of the time period  
14 prescribed in § 8.01-40.1. In actions alleging injury arising from the transmission of unsolicited bulk  
15 electronic mail, personal jurisdiction may be exercised pursuant to § 8.01-328.1.

Passed By The House of Delegates		Passed By The Senate	
without amendment	<input type="checkbox"/>	without amendment	<input type="checkbox"/>
with amendment	<input type="checkbox"/>	with amendment	<input type="checkbox"/>
substitute	<input type="checkbox"/>	substitute	<input type="checkbox"/>
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Date: _____		Date: _____	
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Clerk of the House of Delegates		Clerk of the Senate	