

# Calendar No. 288

108TH CONGRESS  
1ST SESSION

# S. 1293

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

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## IN THE SENATE OF THE UNITED STATES

JUNE 19, 2003

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

SEPTEMBER 25, 2003

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

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## A BILL

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

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Criminal Spam Act  
5 of 2003”.

1 **SEC. 2. PROHIBITION AGAINST PREDATORY AND ABUSIVE**  
 2 **COMMERCIAL E-MAIL.**

3 (a) OFFENSE.—

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

7 **“§ 1037. Fraud and related activity in connection**  
 8 **with electronic mail**

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

11 “(1) accesses a protected computer without au-  
 12 thorization, and intentionally initiates the trans-  
 13 mission of multiple commercial electronic mail mes-  
 14 sages from or through such computer;

15 “(2) uses a protected computer to relay or re-  
 16 transmit multiple commercial electronic mail mes-  
 17 sages, with the intent to deceive or mislead recipi-  
 18 ents, or any Internet access service, as to the origin  
 19 of such messages;

20 “(3) falsifies header information in multiple  
 21 commercial electronic mail messages and inten-  
 22 tionally initiates the transmission of such messages;  
 23 or

24 “(4) registers, using information that falsifies  
 25 the identity of the actual registrant, for 5 or more  
 26 electronic mail accounts or online user accounts or

1       2 or more domain names, and intentionally initiates  
2       the transmission of multiple commercial electronic  
3       mail messages from such accounts or domain names;  
4 or conspires to do so, shall be punished as provided in  
5 subsection (b).

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

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

10           “(A) the offense is committed in further-  
11           ance of any felony under the laws of the United  
12           States or of any State; or

13           “(B) the defendant has previously been  
14           convicted under this section or section 1030, or  
15           under the law of any State for conduct involv-  
16           ing the transmission of multiple commercial  
17           electronic mail messages or unauthorized access  
18           to a computer system;

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

21           “(A) the offense is an offense under sub-  
22           section (a)(1);

23           “(B) the offense is an offense under sub-  
24           section (a)(4) and involved 20 or more falsified  
25           electronic mail or online user account registra-

1 tions, or 10 or more falsified domain name reg-  
2 istrations;

3 “(C) the volume of electronic mail mes-  
4 sages transmitted in furtherance of the offense  
5 exceeded 2,500 during any 24-hour period,  
6 25,000 during any 30-day period, or 250,000  
7 during any 1-year period;

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

11 “(E) as a result of the offense any indi-  
12 vidual committing the offense obtained anything  
13 of value aggregating \$5,000 or more during any  
14 1-year period; or

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

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

21 “(e) FORFEITURE.—A person who is convicted of an  
22 offense under this section shall forfeit to the United States  
23 such person’s interest in—

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

4           ~~“(2) any equipment, software, or other tech-~~  
5           ~~nology used or intended to be used to commit or to~~  
6           ~~promote the commission of such offense.~~

7           ~~“(d) CIVIL REMEDIES.—~~

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

18          ~~“(2) ATTORNEY GENERAL ACTION.—In an ac-~~  
19          ~~tion by the Attorney General under paragraph (1),~~  
20          ~~the court may award appropriate relief, including~~  
21          ~~temporary, preliminary, or permanent injunctive re-~~  
22          ~~lief. The court may also assess a civil penalty in an~~  
23          ~~amount not exceeding \$25,000 per day of violation,~~  
24          ~~or not less than \$2 or more than \$8 per electronic~~

1 mail message initiated in violation of subsection (a),  
 2 as the court considers just.

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

8 “(A) the actual damages suffered by the  
 9 Internet access service as a result of the viola-  
 10 tion, and any receipts of the violator that are  
 11 attributable to the violation and are not taken  
 12 into account in computing actual damages; or

13 “(B) statutory damages in the sum of  
 14 \$25,000 per day of violation, or not less than  
 15 \$2 or more than \$8 per electronic mail message  
 16 initiated in violation of subsection (a), as the  
 17 court considers just.

18 “(c) DEFINITIONS.—In this section:

19 “(1) COMMERCIAL ELECTRONIC MAIL MES-  
 20 SAGE.—The term ‘commercial electronic mail mes-  
 21 sage’ means any electronic mail message the primary  
 22 purpose of which is the commercial advertisement or  
 23 promotion of a commercial product or service (in-  
 24 cluding content on an Internet website or online site  
 25 operated for a commercial purpose).

1           “(2) COMPUTER AND PROTECTED COM-  
2           PUTER.—The terms ‘computer’ and ‘protected com-  
3           puter’ have the meaning given those terms in section  
4           1030(e) of this title.

5           “(3) DOMAIN NAME.—The term ‘domain name’  
6           means any alphanumeric designation which is reg-  
7           istered with or assigned by any domain name reg-  
8           istrar, domain name registry, or other domain name  
9           registration authority, and that is included in an  
10          electronic mail message.

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

21          “(5) INITIATE.—The term ‘initiate’ means to  
22          originate an electronic mail message or to procure  
23          the origination of such message, regardless of wheth-  
24          er the message reaches its intended recipients, and  
25          does not include the actions of an Internet access

1 service used by another person for the transmission  
 2 of an electronic mail message for which another per-  
 3 son has provided and selected the recipient electronic  
 4 mail addresses.

5 “(6) INTERNET ACCESS SERVICE.—The term  
 6 ‘Internet access service’ has the meaning given that  
 7 term in section 231(e)(4) of the Communications  
 8 Act of 1934 (47 U.S.C. 231(e)(4)).

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

11 “(8) MESSAGE.—The term ‘message’ means  
 12 each electronic mail message addressed to a discrete  
 13 addressee.

14 “(9) MULTIPLE.—The term ‘multiple’ means  
 15 more than 100 electronic mail messages during a  
 16 24-hour period, more than 1,000 electronic mail  
 17 messages during a 30-day period, or more than  
 18 10,000 electronic mail messages during a 1-year pe-  
 19 riod.”.

20 (2) CONFORMING AMENDMENT.—The chapter  
 21 analysis for chapter 47 of title 18, United States  
 22 Code, is amended by adding at the end the fol-  
 23 lowing:

“Sec.

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

24 (b) UNITED STATES SENTENCING COMMISSION.—

1           (1) ~~DIRECTIVE.~~—Pursuant to its authority  
2 under section 994(p) of title 28, United States Code,  
3 and in accordance with this section, the United  
4 States Sentencing Commission shall review and, as  
5 appropriate, amend the sentencing guidelines and  
6 policy statements to provide appropriate penalties  
7 for violations of section 1037 of title 18, United  
8 States Code, as added by this section.

9           (2) ~~REQUIREMENTS.~~—In carrying out this sub-  
10 section, the Sentencing Commission shall consider  
11 providing sentencing enhancements for those con-  
12 victed under section 1037 of title 18, United States  
13 Code, who—

14           (A) obtained electronic mail addresses  
15 through improper means, including—

16           (i) harvesting electronic mail address-  
17 es of the users of a website, proprietary  
18 service, or other online public forum oper-  
19 ated by another person, without the au-  
20 thorization of such person; and

21           (ii) randomly generating electronic  
22 mail addresses by computer; or

23           (B) knew that the commercial electronic  
24 mail messages involved in the offense contained  
25 or advertised an Internet domain for which the

1 registrant of the domain had provided false reg-  
2 istration information.

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

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

6 (1) The Internet is a global communications  
7 medium.

8 (2) Commercial e-mail sent in violation of this  
9 Act can be sent from virtually anywhere in the  
10 world.

11 (3) As domestic deterrence and enforcement  
12 against predatory and abusive commercial e-mail im-  
13 proves, there is a risk that predatory and abusive  
14 spammers will move their activities abroad and spam  
15 into the United States.

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

19 (b) REPORT.—The Department of Justice and the  
20 Department of State shall report to Congress within 18  
21 months of the date of enactment of this Act regarding the  
22 status of their efforts to achieve international cooperation  
23 in the investigation and prosecution of spammers who en-  
24 gage in conduct that violates this Act, including the juris-  
25 dictions involved and the outcomes of any prosecutions;

1 and any recommendations for addressing predatory and  
 2 abusive spam sent to the United States from other coun-  
 3 tries.

4 (e) SENSE OF CONGRESS.—It is the sense of Con-  
 5 gress that the Department of Justice and the Department  
 6 of State, as part of their efforts to improve investigation  
 7 and prosecution of international cyber-crime, should work  
 8 through international fora for the cooperation of other  
 9 countries in investigating and prosecuting predatory and  
 10 abusive spammers who engage in conduct that violates this  
 11 Act.

12 **SECTION 1. SHORT TITLE.**

13 *This Act may be cited as the “Criminal Spam Act of*  
 14 *2003”.*

15 **SEC. 2. PROHIBITION AGAINST PREDATORY AND ABUSIVE**  
 16 **COMMERCIAL E-MAIL.**

17 (a) OFFENSE.—

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

21 **“§ 1037. Fraud and related activity in connection with**  
 22 **electronic mail**

23 “(a) IN GENERAL.—Whoever, in or affecting interstate  
 24 or foreign commerce, knowingly—

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

5           “(2) uses a protected computer to relay or re-  
6           transmit multiple commercial electronic mail mes-  
7           sages, with the intent to deceive or mislead recipients,  
8           or any Internet access service, as to the origin of such  
9           messages;

10          “(3) falsifies header information in multiple  
11          commercial electronic mail messages and inten-  
12          tionally initiates the transmission of such messages;

13          “(4) registers, using information that falsifies the  
14          identity of the actual registrant, for 5 or more elec-  
15          tronic mail accounts or online user accounts or 2 or  
16          more domain names, and intentionally initiates the  
17          transmission of multiple commercial electronic mail  
18          messages from any combination of such accounts or  
19          domain names; or

20          “(5) falsely represents the right to use 5 or more  
21          Internet protocol addresses, and intentionally initi-  
22          ates the transmission of multiple commercial elec-  
23          tronic mail messages from such addresses;

24          or conspires to do so, shall be punished as provided in sub-  
25          section (b).

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

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

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

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

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

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

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

23                       “(C) *the volume of electronic mail messages*  
24 *transmitted in furtherance of the offense exceeded*  
25 *2,500 during any 24-hour period, 25,000 during*

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

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

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

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

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

16           “(c) *FORFEITURE.—*

17           “(1) *IN GENERAL.—The court, in imposing sen-*  
18           *tence on a person who is convicted of an offense under*  
19           *this section, shall order that the defendant forfeit to*  
20           *the United States—*

21           “(A) *any property, real or personal, consti-*  
22           *tuting or traceable to gross proceeds obtained*  
23           *from such offense; and*

1           “(B) any equipment, software, or other tech-  
2           nology used or intended to be used to commit or  
3           to facilitate the commission of such offense.

4           “(2) PROCEDURES.—The procedures set forth in  
5           section 413 of the Controlled Substances Act (21  
6           U.S.C. 853), other than subsection (d) of that section,  
7           and in Rule 32.2 of the Federal Rules of Criminal  
8           Procedure, shall apply to all stages of a criminal for-  
9           feiture proceeding under this section.

10          “(d) CIVIL REMEDIES.—

11           “(1) IN GENERAL.—The Attorney General, or  
12           any person engaged in the business of providing an  
13           Internet access service to the public aggrieved by rea-  
14           son of a violation of subsection (a), may commence a  
15           civil action against the violator in any appropriate  
16           United States District Court for the relief set forth in  
17           paragraphs (2) and (3). No action may be brought  
18           under this subsection unless such action is begun  
19           within 2 years of the date of the act which is the basis  
20           for the action.

21           “(2) ATTORNEY GENERAL ACTION.—In an action  
22           by the Attorney General under paragraph (1), the  
23           court may award appropriate relief, including tem-  
24           porary, preliminary, or permanent injunctive relief.  
25           The court may also assess a civil penalty in an

1     *amount not exceeding \$25,000 per day of violation, or*  
2     *not less than \$2 or more than \$8 per electronic mail*  
3     *message initiated in violation of subsection (a), as the*  
4     *court considers just.*

5             “(3) *OTHER ACTIONS.*—*In any other action*  
6     *under paragraph (1), the court may award appro-*  
7     *priate relief, including temporary, preliminary, or*  
8     *permanent injunctive relief, and damages in an*  
9     *amount equal to the greater of—*

10            “(A) *the actual damages suffered by the*  
11     *Internet access service as a result of the viola-*  
12     *tion, and any receipts of the violator that are at-*  
13     *tributable to the violation and are not taken into*  
14     *account in computing actual damages; or*

15            “(B) *statutory damages in the sum of*  
16     *\$25,000 per day of violation, or not less than \$2*  
17     *or more than \$8 per electronic mail message ini-*  
18     *tiated in violation of subsection (a), as the court*  
19     *considers just.*

20            “(e) *DEFINITIONS.*—*In this section:*

21            “(1) *COMMERCIAL ELECTRONIC MAIL MES-*  
22     *SAGE.*—*The term ‘commercial electronic mail mes-*  
23     *sage’ means any electronic mail message the primary*  
24     *purpose of which is the commercial advertisement or*  
25     *promotion of a commercial product or service (includ-*

1        *ing content on an Internet website or online site oper-*  
2        *ated for a commercial purpose).*

3            “(2) *COMPUTER AND PROTECTED COMPUTER.*—  
4        *The terms ‘computer’ and ‘protected computer’ have*  
5        *the meaning given those terms in section 1030(e) of*  
6        *this title.*

7            “(3) *DOMAIN NAME.*—*The term ‘domain name’*  
8        *means any alphanumeric designation which is reg-*  
9        *istered with or assigned by any domain name reg-*  
10       *istrar, domain name registry, or other domain name*  
11       *registration authority, and that is included in an*  
12       *electronic mail message.*

13           “(4) *HEADER INFORMATION.*—*The term ‘header*  
14        *information’ means the source, destination, and rout-*  
15        *ing information attached to an electronic mail mes-*  
16        *sage, including the originating domain name, the*  
17        *originating electronic mail address, and technical in-*  
18        *formation that authenticates the sender of an elec-*  
19        *tronic mail message for network security or network*  
20        *management purposes.*

21           “(5) *INITIATE.*—*The term ‘initiate’ means to*  
22        *originate an electronic mail message or to procure the*  
23        *origination of such message, regardless of whether the*  
24        *message reaches its intended recipients, and does not*  
25        *include the actions of an Internet access service used*

1        *by another person for the transmission of an elec-*  
 2        *tronic mail message for which another person has*  
 3        *provided and selected the recipient electronic mail ad-*  
 4        *dresses.*

5            “(6) *INTERNET ACCESS SERVICE.*—*The term*  
 6        *‘Internet access service’ has the meaning given that*  
 7        *term in section 231(e)(4) of the Communications Act*  
 8        *of 1934 (47 U.S.C. 231(e)(4)).*

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

11            “(8) *MESSAGE.*—*The term ‘message’ means each*  
 12        *electronic mail message addressed to a discrete ad-*  
 13        *dressee.*

14            “(9) *MULTIPLE.*—*The term ‘multiple’ means*  
 15        *more than 100 electronic mail messages during a 24-*  
 16        *hour period, more than 1,000 electronic mail messages*  
 17        *during a 30-day period, or more than 10,000 elec-*  
 18        *tronic mail messages during a 1-year period.”.*

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

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

22            (b) *UNITED STATES SENTENCING COMMISSION.*—

23            (1) *DIRECTIVE.*—*Pursuant to its authority*  
 24        *under section 994(p) of title 28, United States Code,*

1       *and in accordance with this section, the United States*  
2       *Sentencing Commission shall review and, as appro-*  
3       *priate, amend the sentencing guidelines and policy*  
4       *statements to provide appropriate penalties for viola-*  
5       *tions of section 1037 of title 18, United States Code,*  
6       *as added by this section.*

7               (2) *REQUIREMENTS.—In carrying out this sub-*  
8       *section, the Sentencing Commission shall consider*  
9       *providing sentencing enhancements for those convicted*  
10       *under section 1037 of title 18, United States Code,*  
11       *who—*

12               (A) *obtained electronic mail addresses*  
13       *through improper means, including—*

14               (i) *harvesting electronic mail addresses*  
15       *of the users of a website, proprietary service,*  
16       *or other online public forum operated by*  
17       *another person, without the authorization of*  
18       *such person; and*

19               (ii) *randomly generating electronic*  
20       *mail addresses by computer; or*

21               (B) *knew that the commercial electronic*  
22       *mail messages involved in the offense contained*  
23       *or advertised an Internet domain for which the*  
24       *registrant of the domain had provided false reg-*  
25       *istration information.*

1 **SEC. 3. REPORT AND SENSE OF CONGRESS REGARDING**  
2 **INTERNATIONAL SPAM.**

3 (a) *FINDINGS.—Congress finds the following:*

4 (1) *The Internet is a global communications me-*  
5 *dium.*

6 (2) *Commercial e-mail sent in violation of this*  
7 *Act can be sent from virtually anywhere in the world.*

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

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

16 (b) *REPORT.—The Department of Justice and the De-*  
17 *partment of State shall report to Congress within 18 months*  
18 *of the date of enactment of this Act regarding the status*  
19 *of their efforts to achieve international cooperation in the*  
20 *investigation and prosecution of spammers who engage in*  
21 *conduct that violates this Act, including the jurisdictions*  
22 *involved and the outcomes of any prosecutions, and any rec-*  
23 *ommendations for addressing predatory and abusive spam*  
24 *sent to the United States from other countries.*

25 (c) *SENSE OF CONGRESS.—It is the sense of Congress*  
26 *that the Department of Justice and the Department of*

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

**Calendar No. 288**

108TH CONGRESS  
1ST SESSION

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**A BILL**

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

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SEPTEMBER 25, 2003

Reported with an amendment