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105<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 771

To regulate the transmission of unsolicited commercial electronic mail, and  
for other purposes.

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IN THE SENATE OF THE UNITED STATES

MAY 21, 1997

Mr. MURKOWSKI introduced the following bill; which was read twice and  
referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To regulate the transmission of unsolicited commercial  
electronic mail, and for other purposes.

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 “Unsolicited Commer-  
5       cial Electronic Mail Choice Act of 1997”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

8               (1) The Internet is a worldwide network of in-  
9       formation that growing numbers of Americans use

1 on a regular basis for educational and personal ac-  
2 tivities.

3 (2) Electronic mail messages transmitted on the  
4 Internet constitute an increasing percentage of com-  
5 munications in the United States.

6 (3) Solicited commercial electronic mail is a  
7 useful and cost-effective means for Americans to re-  
8 ceive information about a business and its products.

9 (4) The number of transmissions of unsolicited  
10 commercial electronic mail advertisements has grown  
11 exponentially over the past several years as the tech-  
12 nology for creating and transmitting such advertise-  
13 ments in bulk has made the costs of distribution of  
14 such advertisements minimal.

15 (5) Individuals have available no effective  
16 means of differentiating between unsolicited com-  
17 mercial electronic mail advertisements and other  
18 Internet communications.

19 (6) The transmitters of unsolicited commercial  
20 electronic mail advertisements can easily move from  
21 State to State.

22 (7) Individuals and businesses that receive un-  
23 solicited commercial electronic mail advertisements  
24 often pay for the costs of such receipt, including the

1 costs of Internet access and long distance telephone  
2 charges.

3 (8) Unsolicited commercial electronic mail can  
4 be used to advertise legitimate services and goods  
5 but is also used for fraudulent and deceptive pur-  
6 poses in violation of Federal and State law.

7 (9) Individuals and companies that use unsolic-  
8 ited commercial electronic mail for fraudulent and  
9 deceptive purposes often use fraudulent identifica-  
10 tion information in such electronic mail, making it  
11 impossible for a recipient to request to be removed  
12 from the mailing list or for law enforcement authori-  
13 ties to identify the sender.

14 (10) The inability of recipients of unsolicited  
15 commercial electronic mail to identify the senders of  
16 such electronic mail or to prevent its receipt impedes  
17 the flow of commerce and communication on the  
18 Internet and threatens the integrity of commerce on  
19 the Internet.

20 (11) Internet service providers are burdened by  
21 the cost of equipment necessary to process unsolic-  
22 ited commercial electronic mail.

23 (12) To facilitate the development of commerce  
24 and communication on the Internet, unsolicited com-  
25 mercial electronic mail should be readily identifiable

1 and filterable by individuals and Internet service  
2 providers.

3 **SEC. 3. REQUIREMENTS RELATING TO TRANSMISSIONS OF**  
4 **UNSOLICITED COMMERCIAL ELECTRONIC**  
5 **MAIL.**

6 (a) INFORMATION ON ADVERTISEMENT.—

7 (1) REQUIREMENT.—Unless otherwise author-  
8 ized pursuant to a provision of section 7, a person  
9 who transmits an electronic mail message as part of  
10 the transmission of unsolicited commercial electronic  
11 mail shall cause to appear in each electronic mail  
12 message transmitted as part of such transmission  
13 the information specified in paragraph (3).

14 (2) PLACEMENT.—

15 (A) ADVERTISEMENT.—The information  
16 specified in subparagraph (A) of paragraph (3)  
17 shall appear as the first word of the subject line  
18 of the electronic mail message without any prior  
19 text or symbol.

20 (B) OTHER INFORMATION.—The informa-  
21 tion specified in subparagraph (B) of that para-  
22 graph shall appear prominently in the body of  
23 the message.

1           (3) COVERED INFORMATION.—The following in-  
2           formation shall appear in an electronic mail message  
3           under paragraph (1):

4                   (A) The term “advertisement”.

5                   (B) The name, physical address, electronic  
6           mail address, and telephone number of the per-  
7           son who initiates transmission of the message.

8           (b) ROUTING INFORMATION.—All Internet routing  
9           information contained within or accompanying an elec-  
10          tronic mail message described in subsection (a) shall be  
11          valid according to the prevailing standards for Internet  
12          protocols.

13          (c) EFFECTIVE DATE.—The requirements in this sec-  
14          tion shall take effect 30 days after the date of enactment  
15          of this Act.

16          **SEC. 4. FEDERAL REGULATION OF UNSOLICITED COMMERCIAL ELECTRONIC MAIL.**

17                   (a) TRANSMISSIONS.—

18                   (1) IN GENERAL.—Upon notice from a person  
19           of the person’s receipt of electronic mail in violation  
20           of a provision of section 3 or 7, the Commission—

21                   (A) may conduct an investigation to deter-  
22           mine whether or not the electronic mail was  
23           transmitted in violation of the provision; and  
24

1 (B) if the Commission determines that the  
2 electronic mail was transmitted in violation of  
3 the provision, may—

4 (i) impose upon the person initiating  
5 the transmission a civil fine in an amount  
6 not to exceed \$11,000;

7 (ii) commence in a district court of  
8 the United States a civil action to recover  
9 a civil penalty in an amount not to exceed  
10 \$11,000 against the person initiating the  
11 transmission; or

12 (iii) both impose a fine under clause  
13 (i) and commence an action under clause  
14 (ii).

15 (2) DEADLINE.—The Commission may not take  
16 action under paragraph (1)(B) with respect to a  
17 transmission of electronic mail more than 2 years  
18 after the date of the transmission.

19 (b) ADMINISTRATION.—

20 (1) NOTICE BY ELECTRONIC MEANS.—The  
21 Commission shall establish an Internet web site with  
22 an electronic mail address for the receipt of notices  
23 under subsection (a).

24 (2) INFORMATION ON ENFORCEMENT.—The  
25 Commission shall make available through the

1 Internet web site established under paragraph (2)  
2 information on the actions taken by the Commission  
3 under subsection (a)(1)(B).

4 (3) ASSISTANCE OF FEDERAL COMMUNICATIONS  
5 COMMISSION.—The Federal Communications Com-  
6 mission may assist the Commission in carrying out  
7 its duties this section.

8 **SEC. 5. ACTIONS BY STATES.**

9 (a) IN GENERAL.—Whenever an attorney general of  
10 any State has reason to believe that the interests of the  
11 residents of that State have been or are being threatened  
12 or adversely affected because any person is engaging in  
13 a pattern or practice of the transmission of electronic mail  
14 in violation of a provision of section 3 or 7, the State,  
15 as *parens patriae*, may bring a civil action on behalf of  
16 its residents to enjoin such transmission, to enforce com-  
17 pliance with the provision, to obtain damages or other  
18 compensation on behalf of its residents, or to obtain such  
19 further and other relief as the court considers appropriate.

20 (b) NOTICE TO COMMISSION.—

21 (1) NOTICE.—The State shall serve prior writ-  
22 ten notice of any civil action under this section upon  
23 the Commission and provide the Commission with a  
24 copy of its complaint, except that if it is not feasible  
25 for the State to provide such prior notice, the State

1 shall serve written notice immediately upon institut-  
2 ing such action.

3 (2) RIGHTS OF COMMISSION.—Upon receiving a  
4 notice with respect to a civil action under paragraph  
5 (1), the Commission shall have the right—

6 (A) to intervene in the action;

7 (B) upon so intervening, to be heard in all  
8 matters arising therein; and

9 (C) to file petitions for appeal.

10 (e) ACTIONS BY COMMISSION.—Whenever a civil ac-  
11 tion has been instituted by or on behalf of the Commission  
12 for violation of a provision of section 3 or 7, no State may,  
13 during the pendency of such action, institute a civil action  
14 under this section against any defendant named in the  
15 complaint in such action for violation of any provision as  
16 alleged in the complaint.

17 (d) CONSTRUCTION.—For purposes of bringing a civil  
18 action under subsection (a), nothing in this section shall  
19 prevent an attorney general from exercising the powers  
20 conferred on the attorney general by the laws of the State  
21 concerned to conduct investigations or to administer oaths  
22 or affirmations or to compel the attendance of witnesses  
23 or the production of documentary or other evidence.

24 (e) VENUE; SERVICE OF PROCESS.—Any civil action  
25 brought under subsection (a) in a district court of the

1 United States may be brought in the district in which the  
2 defendant is found, is an inhabitant, or transacts business  
3 or wherever venue is proper under section 1391 of title  
4 28, United States Code. Process in such an action may  
5 be served in any district in which the defendant is an in-  
6 habitant or in which the defendant may be found.

7 (f) ACTIONS BY OTHER STATE OFFICIALS.—Nothing  
8 in this section may be construed to prohibit an authorized  
9 State official from proceeding in State court on the basis  
10 of an alleged violation of any civil or criminal statute of  
11 the State concerned.

12 (g) DEFINITION.—In this section, the term “attorney  
13 general” means the chief legal officer of a State.

14 **SEC. 6. INTERNET SERVICE PROVIDERS.**

15 (a) EXEMPTION FOR CERTAIN TRANSMISSIONS.—  
16 The provisions of this Act shall not apply to a trans-  
17 mission of electronic mail by an interactive computer serv-  
18 ice provider unless the provider initiates the transmission.

19 (b) NOTICE OF TRANSMISSIONS FROM COMMIS-  
20 SION.—Not later than 72 hours after receipt from the  
21 Commission of notice that its computer equipment may  
22 have been used by another person to initiate a trans-  
23 mission of electronic mail in violation of a provision of sec-  
24 tion 3 or 7, an interactive computer service provider  
25 shall—

1 (1) provide the Commission such information as  
2 the Commission requires in order to determine  
3 whether or not the computer equipment of the pro-  
4 vider was used to initiate the transmission; and

5 (2) if the Commission determines that the com-  
6 puter equipment of the provider was used to initiate  
7 the transmission, take appropriate actions to termi-  
8 nate the use of its computer equipment by that per-  
9 son.

10 (c) NOTICE OF TRANSMISSIONS FROM PRIVATE INDI-  
11 VIDUALS.—

12 (1) IN GENERAL.—Subject to paragraph (2),  
13 not later than 14 days after receipt from a private  
14 person of notice that its computer equipment may  
15 have been used by another person to initiate a trans-  
16 mission of electronic mail in violation of a provision  
17 of section 3 or 7, an interactive computer service  
18 provider shall—

19 (A) transmit the notice to the Commission  
20 together with such information as the Commis-  
21 sion requires in order to determine whether or  
22 not the computer equipment of the provider was  
23 used to initiate the transmission; and

24 (B) if the Commission determines that the  
25 computer equipment of the provider was used to

1 initiate the transmission, take appropriate ac-  
2 tions to terminate the use of its computer  
3 equipment by that person.

4 (2) MINIMUM NOTICE REQUIREMENT.—An  
5 interactive computer service provider shall transmit  
6 a notice under paragraph (1) with respect to a par-  
7 ticular transmission of electronic mail only if the  
8 provider receives notice with respect to the trans-  
9 mission from more than 100 private persons.

10 (d) BLOCKING SYSTEMS.—

11 (1) REQUIREMENT.—Each interactive computer  
12 service provider shall make available to subscribers  
13 to such service a system permitting such subscribers,  
14 upon the affirmative electronic request of such sub-  
15 scribers, to block the receipt through such service of  
16 any electronic mail that contains the term “adver-  
17 tisement” in its subject line.

18 (2) NOTICE OF AVAILABILITY.—Upon the appli-  
19 cability of this subsection to an interactive computer  
20 service provider, the provider shall—

21 (A) notify each current subscriber, if any,  
22 to the service of the blocking system provided  
23 for under paragraph (1); and

24 (B) notify any new subscribers to the serv-  
25 ice of the blocking system.

1           (3) BLOCKING BY PROVIDER.—An interactive  
2 computer service provider may, upon its own initia-  
3 tive, block the receipt through its service of any elec-  
4 tronic mail that contains the term “advertisement”  
5 in its subject line.

6           (4) APPLICABILITY.—The requirements in  
7 paragraphs (1) and (2) shall apply—

8                   (A) beginning 1 year after the date of en-  
9 actment of this Act, in the case of an inter-  
10 active computer service provider having more  
11 than 25,000 or more subscribers; and

12                   (B) beginning 2 years after that date, in  
13 the case of an interactive computer service pro-  
14 vider having less than 25,000 subscribers.

15           (e) RECORDS.—An interactive computer service pro-  
16 vider shall retain records of any action taken on a notice  
17 received under this section for not less than 2 years after  
18 the date of receipt of the notice.

19           (f) CONSTRUCTION.—Nothing in this section may be  
20 construed to require an interactive computer service pro-  
21 vider to transmit or otherwise deliver any electronic mail  
22 message containing the term “advertisement” in its sub-  
23 ject line.

24           (g) DEFINITION.—In this section, the term “inter-  
25 active computer service provider” has the meaning given

1 that term in section 230(e)(2) of the Communications Act  
2 of 1934 (47 U.S.C. 230(e)(2)).

3 **SEC. 7. RECEIPT OF TRANSMISSIONS BY PRIVATE PER-**  
4 **SONS.**

5 (a) **TERMINATION OF TRANSMISSIONS.—**

6 (1) **REQUEST.—**A person who receives a trans-  
7 mission of unsolicited commercial electronic mail not  
8 otherwise authorized under this section may request,  
9 by electronic mail to the same electronic mail ad-  
10 dress from which the transmission originated, the  
11 termination of transmissions of such mail by the  
12 person initiating the transmission.

13 (2) **DEADLINE.—**A person receiving a request  
14 for the termination of transmissions of electronic  
15 mail under this subsection shall cease initiating  
16 transmissions of electronic mail to the person sub-  
17 mitting the request not later than 48 hours after re-  
18 ceipt of the request.

19 (b) **AFFIRMATIVE AUTHORIZATION OF TRANS-**  
20 **MISSIONS WITHOUT INFORMATION.—**

21 (1) **IN GENERAL.—**Subject to paragraph (2), a  
22 person may authorize another person to initiate  
23 transmissions to the person of unsolicited commer-  
24 cial electronic mail without inclusion in such trans-  
25 missions of the information required by section 3.

1 (2) TERMINATION.—

2 (A) NOTICE.—A person initiating trans-  
3 missions of electronic mail under paragraph (1)  
4 shall include, with each transmission of such  
5 mail to a person authorizing the transmission  
6 under that paragraph, notice that the person  
7 authorizing the transmission may request at  
8 any time the recommencement of the inclusion  
9 in such transmissions of the information re-  
10 quired by section 3.

11 (B) DEADLINE.—A person receiving a re-  
12 quest under this paragraph shall include the in-  
13 formation required by section 3 in all trans-  
14 missions of unsolicited commercial electronic  
15 mail to the person making the request begin-  
16 ning not later than 48 hours after receipt of the  
17 request.

18 (c) CONSTRUCTIVE AUTHORIZATION OF TRANS-  
19 MISSIONS WITHOUT INFORMATION.—

20 (1) IN GENERAL.—Subject to paragraph (2), a  
21 person who secures a good or service from, or other-  
22 wise responds electronically to, an offer in a trans-  
23 mission of unsolicited commercial electronic mail  
24 shall be deemed to have authorized transmissions of  
25 such mail without inclusion of the information re-

1       required under section 3 from the person who initiates  
2       the transmission providing the basis for such author-  
3       ization.

4           (2) TERMINATION.—

5               (A) REQUEST.—A person deemed to have  
6               authorized the transmissions of electronic mail  
7               under paragraph (1) may request at any time  
8               the recommencement of the inclusion in such  
9               transmissions of the information required by  
10              section 3.

11             (B) DEADLINE.—A person receiving a re-  
12             quest under this paragraph shall include the in-  
13             formation required by section 3 in all trans-  
14             missions of unsolicited commercial electronic  
15             mail to the person making the request begin-  
16             ning not later than 48 hours after receipt of the  
17             request.

18           (d) EFFECTIVE DATE OF TERMINATION REQUIRE-  
19           MENTS.—Subsections (a), (b)(2), and (c)(2) shall take ef-  
20           fect 30 days after the date of enactment of this Act.

21   **SEC. 8. ACTIONS BY PRIVATE PERSONS.**

22           (a) IN GENERAL.—Any person adversely affected by  
23           a violation of a provision of section 3 or 7, or an author-  
24           ized person acting on such person's behalf, may, within  
25           1 year after discovery of the violation, bring a civil action

1 in a district court of the United States against a person  
2 who has violated the provision. Such an action may be  
3 brought to enjoin the violation, to enforce compliance with  
4 the provision, to obtain damages, or to obtain such further  
5 and other relief as the court considers appropriate.

6 (b) DAMAGES.—

7 (1) IN GENERAL.—The amount of damages in  
8 an action under this section for a violation specified  
9 in subsection (a) may not exceed \$5,000 per viola-  
10 tion.

11 (2) RELATIONSHIP TO OTHER DAMAGES.—  
12 Damages awarded for a violation under this sub-  
13 section are in addition to any other damages  
14 awardable for the violation under any other provi-  
15 sion of law.

16 (c) COST AND FEES.—The court, in issuing any final  
17 order in any action brought under subsection (a), may  
18 award costs of suit and reasonable attorney fees and ex-  
19 pert witness fees for the prevailing party.

20 (d) VENUE; SERVICE OF PROCESS.—Any civil action  
21 brought under subsection (a) in a district court of the  
22 United States may be brought in the district in which the  
23 defendant is found, is an inhabitant, or transacts business  
24 or wherever venue is proper under section 1391 of title  
25 28, United States Code. Process in such an action may

1 be served in any district in which the defendant is an in-  
 2 habitant or in which the defendant may be found.

3 **SEC. 9. RELATION TO STATE LAWS.**

4 (a) STATE LAW APPLICABLE UNLESS INCONSIST-  
 5 ENT.—The provisions of this Act do not annul, alter, or  
 6 affect the applicability to any person, or otherwise exempt  
 7 from the applicability to any person, of the laws of any  
 8 State with respect to the transmission of unsolicited com-  
 9 mercial electronic, except to the extent that those laws are  
 10 inconsistent with any provision of this Act, and then only  
 11 to the extent of the inconsistency.

12 (b) REQUIREMENT RELATING TO DETERMINATION  
 13 OF INCONSISTENCY.—The Commission may not determine  
 14 that a State law is inconsistent with a provision of this  
 15 Act if the Commission determines that such law places  
 16 greater restrictions on the transmission of unsolicited  
 17 commercial electronic mail than are provided for under  
 18 such provision.

19 **SEC. 10. DEFINITIONS.**

20 In this Act:

21 (1) COMMERCIAL ELECTRONIC MAIL.—The  
 22 term “commercial electronic mail” means any elec-  
 23 tronic mail that—

24 (A) contains an advertisement for the sale  
 25 of a product or service;

1           (B) contains a solicitation for the use of a  
2 toll-free telephone number or a telephone num-  
3 ber with a 900 prefix the use of which connects  
4 the user to a person or service that advertises  
5 the sale of or sells a product or service; or

6           (C) contains a list of one or more Internet  
7 sites that contain an advertisement referred to  
8 in subparagraph (A) or a solicitation referred to  
9 in subparagraph (B).

10          (2) COMMISSION.—The term “Commission”  
11 means the Federal Trade Commission.

12          (3) STATE.—The term “State” means any  
13 State of the United States, the District of Columbia,  
14 Puerto Rico, Guam, American Samoa, the United  
15 States Virgin Islands, the Commonwealth of the  
16 Northern Mariana Islands, the Republic of the Mar-  
17 shall Islands, the Federated States of Micronesia,  
18 the Republic of Palau, and any possession of the  
19 United States.

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## **DOCUMENT NO. 28**

