

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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District of
Columbia
Official Code*

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To prohibit a person or entity from transmitting commercial electronic mail with false identifying information or false or misleading subject line information, or using a third party's Internet address, domain name, or identity without the third party's consent while attempting to make it appear that the third party was the sender of the message, to provide for civil relief for violating this act, and to authorize the Office of the Attorney General to pursue civil actions to enforce this act in accordance with D.C. Official Code § 28-3909.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Spam Deterrence Act of 2008".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Assist in the transmission" means actions taken by a person to procure, enable, finance, or otherwise actively support the transmission of a commercial electronic mail message by another person, if the person or entity providing the assistance knows or should have known that the initiator of the commercial electronic mail message is engaged, or intends to engage, in any practice that violates this act. The term "assist in the transmission" shall not include activities of any person or entity related to the design, manufacture, or distribution of any technology, product, or component that has a commercially significant use other than to violate or circumvent this act.

(2) "Commercial electronic mail message" means an electronic mail message sent for the purpose of encouraging the purchase, rental of, or investment in, property, goods, intangibles, or services.

(3) "Electronic mail" means an electronic message or computer file containing an image of a message that is transmitted between 2 or more computers, electronic terminals, or cellular telephones, and includes electronic messages that are transmitted within or between computer networks.

(4) "Electronic mail service provider" means any entity that is an intermediary in sending or receiving electronic mail or that provides to end-users of electronic mail services

the ability to send or receive electronic mail.

(5) "Header information" means the source, destination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message.

Sec. 3. Prohibitions.

(a) A person or entity shall not:

(1) Transmit, or assist in the transmission of, a commercial electronic mail message that:

(A) Falsely identifies electronic mail transmission information, including header information, or other routing information; or

(B) Contains false or misleading information in the subject line; or

(2) Transmit, or assist in the transmission of, a commercial electronic mail message using a third party's Internet address, domain name, or identity without the third party's consent for the purpose of transmitting electronic mail in a manner that makes it appear that the third party was the sender of the message or that results in responses to the message being directed to the third party.

(b) The prohibitions contained in this section shall apply to any person or entity who transmits, or who assists in the transmission of, a commercial electronic mail message:

(1) From a computer located in the District of Columbia;

(2) To an electronic mail address held by a resident of the District of Columbia;

(3) To an electronic mail service provider with equipment or its principal place of business in the District of Columbia; or

(4) To a domain name registered to a resident of the District of Columbia.

Sec. 4. Civil relief; damages.

(a)(1) Any person or entity who receives an electronic mail message that violates a provision of this act, whose equipment is used in the transmission or receipt of such a message, or whose property or person is otherwise injured by reason of a violation of a provision of this act may seek recovery for any damages sustained and the costs of suit. For the purposes of this section, damages shall include the loss of profits.

(2) In addition to the relief provided in subsection (a) of this section, a person, other than an electronic mail service provider, shall also recover attorneys' fees and costs, and may recover, in addition to actual damages, liquidated damages of \$500 for each commercial electronic mail message transmitted in violation of this act or \$50,000 per day, whichever is less.

(3) In addition to the relief provided in subsection (a) of this section, an electronic mail service provider may also recover attorneys' fees and costs, and may elect, in addition to actual damages, to recover liquidated damages of \$100 for each commercial

electronic mail message transmitted in violation of this act or \$500,000 per day, whichever is less.

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

(c) Nothing in this act shall be construed to:

(1) Require a provider of Internet access service to block, transmit, route, relay, handle, or store certain types of electronic mail messages;

(2) Prevent or limit, in any way, a provider of Internet access service from adopting a policy regarding commercial or other electronic mail, including a policy of declining to transmit certain types of electronic mail messages, or from enforcing such policy through technical means, through contract, or pursuant to any remedy available under any other provision of federal or District law; or

(3) Render lawful any such policy that is unlawful under any other provision of law.

(d) The Attorney General of the District of Columbia may enforce the provisions of this act pursuant to authority granted in D.C. Official Code § 28-3909.

Sec. 5. Fiscal impact statement.

The Council adopts the June 27, 2008 fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 6. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia