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Citation: 1 Controlling the Assault of Non-Solicited Pornography Marketing CAN-SPAM Act of 2003 A Legislative History H. Manz ed. v 2004

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INTRODUCTION

CONTROLLING THE ASSAULT OF NON-SOLICITED PORNOGRAPHY AND MARKETING (CAN-SPAM) ACT OF 2003

The CAN-SPAM Act of 2003 represents Congress's attempt to deal with the latest plague inflicted on American society, the deluge of unsolicited junk commercial e-mail messages, popularly known as spam. Advocates had been working for such legislation since the 105th Congress, but with over half of all e-mail reportedly now characterized as spam, and threatening the utility of this new means of communication, the issue had become an increasingly urgent one. Passed by Congress and signed by President George W. Bush in December 2003, the new law bars many spamming practices and provides criminal penalties for violators.

The new law, which took effect on January 1, 2004, bans the sending of bulk commercial e-mail using false identities and misleading subject lines. It also requires that all commercial e-mail messages include a valid postal address and give recipients the opportunity to "opt out" of receiving more messages. Other provisions ban sending spam to protected computers, require the identification of spam messages as advertisements, and require warning labels on electronic messages containing sexually oriented material. In addition, the Federal Trade Commission has been authorized to study the feasibility of a "do not spam" list that would be similar to the "do not call" lists that now apply to telemarketers.

The Federal Trade Commission and other federal agencies, state attorneys general and Internet service providers are all permitted to take spammers to court, but individual recipients have not been granted a private cause of action against spammers. Violators will be liable for up to $250 per e-mail violation, up to a cap of $2 million, except in extreme circumstances when the fine could be tripled. Violators could also face up to five years in prison.

Not all those who have long advocated anti-spamming legislation are

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necessarily satisfied with the new law. This includes consumer groups which have lobbied for a national anti-spam law for six years. Critics say the anti-spam registry may not be technologically feasible and complain that the measure preempts stronger state legislation. They also note that although the new law requires spammers to honor requests to be removed from a mailing list, answering an e-mail validates the address and makes the receipt of more spam highly likely. Others complain that instead of banning spam, the new law just regulates it. Supporters of the new law do concede that legislation is not the entire answer. They maintain that the solution to the problem also requires improved technology such as better e-mail filters, a better educated public, and the cooperation of the major Internet service providers.

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April 2004

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