

(C) medically necessary follow up examinations.

(2) Prescriber

The term “prescriber” means, with respect to contact lens prescriptions, an ophthalmologist, optometrist, or other person permitted under State law to issue prescriptions for contact lenses in compliance with any applicable requirements established by the Food and Drug Administration.

(3) Contact lens prescription

The term “contact lens prescription” means a prescription, issued in accordance with State and Federal law, that contains sufficient information for the complete and accurate filling of a prescription, including the following:

- (A) Name of the patient.
- (B) Date of examination.
- (C) Issue date and expiration date of prescription.
- (D) Name, postal address, telephone number, and facsimile telephone number of prescriber.
- (E) Power, material or manufacturer or both.
- (F) Base curve or appropriate designation.
- (G) Diameter, when appropriate.
- (H) In the case of a private label contact lens, name of manufacturer, trade name of private label brand, and, if applicable, trade name of equivalent brand name.

(Pub. L. 108–164, §11, Dec. 6, 2003, 117 Stat. 2027.)

CHAPTER 103—CONTROLLING THE ASSAULT OF NON-SOLICITED PORNOGRAPHY AND MARKETING

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§ 7701. Congressional findings and policy

(a) Findings

The Congress finds the following:

(1) Electronic mail has become an extremely important and popular means of communication, relied on by millions of Americans on a daily basis for personal and commercial purposes. Its low cost and global reach make it extremely convenient and efficient, and offer unique opportunities for the development and growth of frictionless commerce.

(2) The convenience and efficiency of electronic mail are threatened by the extremely

rapid growth in the volume of unsolicited commercial electronic mail. Unsolicited commercial electronic mail is currently estimated to account for over half of all electronic mail traffic, up from an estimated 7 percent in 2001, and the volume continues to rise. Most of these messages are fraudulent or deceptive in one or more respects.

(3) The receipt of unsolicited commercial electronic mail may result in costs to recipients who cannot refuse to accept such mail and who incur costs for the storage of such mail, or for the time spent accessing, reviewing, and discarding such mail, or for both.

(4) The receipt of a large number of unwanted messages also decreases the convenience of electronic mail and creates a risk that wanted electronic mail messages, both commercial and noncommercial, will be lost, overlooked, or discarded amidst the larger volume of unwanted messages, thus reducing the reliability and usefulness of electronic mail to the recipient.

(5) Some commercial electronic mail contains material that many recipients may consider vulgar or pornographic in nature.

(6) The growth in unsolicited commercial electronic mail imposes significant monetary costs on providers of Internet access services, businesses, and educational and nonprofit institutions that carry and receive such mail, as there is a finite volume of mail that such providers, businesses, and institutions can handle without further investment in infrastructure.

(7) Many senders of unsolicited commercial electronic mail purposefully disguise the source of such mail.

(8) Many senders of unsolicited commercial electronic mail purposefully include misleading information in the messages’ subject lines in order to induce the recipients to view the messages.

(9) While some senders of commercial electronic mail messages provide simple and reliable ways for recipients to reject (or “opt-out” of) receipt of commercial electronic mail from such senders in the future, other senders provide no such “opt-out” mechanism, or refuse to honor the requests of recipients not to receive electronic mail from such senders in the future, or both.

(10) Many senders of bulk unsolicited commercial electronic mail use computer programs to gather large numbers of electronic mail addresses on an automated basis from Internet websites or online services where users must post their addresses in order to make full use of the website or service.

(11) Many States have enacted legislation intended to regulate or reduce unsolicited commercial electronic mail, but these statutes impose different standards and requirements. As a result, they do not appear to have been successful in addressing the problems associated with unsolicited commercial electronic mail, in part because, since an electronic mail address does not specify a geographic location, it can be extremely difficult for law-abiding businesses to know with which of these disparate statutes they are required to comply.

(12) The problems associated with the rapid growth and abuse of unsolicited commercial

electronic mail cannot be solved by Federal legislation alone. The development and adoption of technological approaches and the pursuit of cooperative efforts with other countries will be necessary as well.

(b) Congressional determination of public policy

On the basis of the findings in subsection (a), the Congress determines that—

(1) there is a substantial government interest in regulation of commercial electronic mail on a nationwide basis;

(2) senders of commercial electronic mail should not mislead recipients as to the source or content of such mail; and

(3) recipients of commercial electronic mail have a right to decline to receive additional commercial electronic mail from the same source.

(Pub. L. 108-187, § 2, Dec. 16, 2003, 117 Stat. 2699.)

EFFECTIVE DATE

Pub. L. 108-187, § 16, Dec. 16, 2003, 117 Stat. 2719, provided that: “The provisions of this Act [see Short Title note below], other than section 9 [enacting section 7708 of this title], shall take effect on January 1, 2004.”

SHORT TITLE

Pub. L. 108-187, § 1, Dec. 16, 2003, 117 Stat. 2699, provided that: “This Act [enacting this chapter and section 1037 of Title 18, Crimes and Criminal Procedure, amending section 227 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and enacting provisions listed in a table relating to sentencing guidelines set out as a note under section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003’, or the ‘CAN-SPAM Act of 2003’.”

§ 7702. Definitions

In this chapter:

(1) Affirmative consent

The term “affirmative consent”, when used with respect to a commercial electronic mail message, means that—

(A) the recipient expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient’s own initiative; and

(B) if the message is from a party other than the party to which the recipient communicated such consent, the recipient was given clear and conspicuous notice at the time the consent was communicated that the recipient’s electronic mail address could be transferred to such other party for the purpose of initiating commercial electronic mail messages.

(2) Commercial electronic mail message

(A) In general

The term “commercial electronic mail message” means any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose).

(B) Transactional or relationship messages

The term “commercial electronic mail message” does not include a transactional or relationship message.

(C) Regulations regarding primary purpose

Not later than 12 months after December 16, 2003, the Commission shall issue regulations pursuant to section 7711 of this title defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.

(D) Reference to company or website

The inclusion of a reference to a commercial entity or a link to the website of a commercial entity in an electronic mail message does not, by itself, cause such message to be treated as a commercial electronic mail message for purposes of this chapter if the contents or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or service.

(3) Commission

The term “Commission” means the Federal Trade Commission.

(4) Domain name

The term “domain name” means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

(5) Electronic mail address

The term “electronic mail address” means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local part”) and a reference to an Internet domain (commonly referred to as the “domain part”), whether or not displayed, to which an electronic mail message can be sent or delivered.

(6) Electronic mail message

The term “electronic mail message” means a message sent to a unique electronic mail address.

(7) FTC Act

The term “FTC Act” means the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(8) Header information

The term “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.

(9) Initiate

The term “initiate”, when used with respect to a commercial electronic mail message, means to originate or transmit such message or to procure the origination or transmission of such message, but shall not include actions that constitute routine conveyance of such message. For purposes of this paragraph, more than one person may be considered to have initiated a message.