

# Federal Government Passes New Anti-Spam Law, Partially Preempts Texas State Law



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A new federal law, Controlling the Assault of Non-Solicited Pornography and Marketing Act, went into effect on January 1, 2004. The CAN-SPAM Act gives the Federal Trade Commission (FTC) authority to enforce its provisions and pursue penalties for violations. The Act also gives state attorneys general limited authority to enforce certain provisions of the Act.

Like the Texas anti-spam law that went into effect on September 1, 2003, the new federal law does not make spam illegal. Rather, it sets certain standards for e-mail marketers to follow. Unfortunately, it also supercedes certain aspects of the Texas law and is in some ways less stringent.

Under the CAN-SPAM Act, unsolicited e-mail advertisements must have a functioning return e-mail address, a valid subject line indicating it is an advertisement, the legitimate physical address of the mailer and a way for people to opt-out of future mailings.

The Act makes it a misdemeanor to intentionally send spam with false header information. In certain circum-

stances, violators could face up to five years in jail. It also is a criminal offense to send spam containing sexually oriented material that is not properly identified in the subject line.

The sale or other transfer of an e-mail address obtained through an opt-out request also is now illegal. It has been a common practice for spammers to use a consumer's opt-out request as validation that the e-mail account is active. This often leads to the sale of active e-mail lists, which means more spam for the owner of the e-mail account. This practice is now prohibited.

Spammers also face civil penalties if they use automated means to register multiple e-mail accounts from which to send spam. This practice makes it difficult for Internet Service Providers (ISP) to track down the spammer and to filter out the unsolicited e-mails they send. Civil penalties can also be levied for harvesting e-mail addresses.

Spam is an unbelievably costly and frustrating nuisance to the millions of consumers who use the Internet. It is not a harmless nuisance by any means. Spam e-mails are used to perpetrate devastating frauds and identity crimes, not to mention exposing innocent children to adult materials.

The project of crafting laws, mounting investigations and enforcing the laws is high on the list of any state or federal

prosecutor today. But we should not assume that state or Federal laws will eliminate this problem.

Much of the spam we receive originates in or is routed through foreign countries. And not all of the best technical minds are on our side. As quickly as we can create filters, blocks and junk e-mail management systems, the spammers invent new ways to circumvent them, hijack computers and conceal their whereabouts.

Our office is working with Internet Service Providers and computer industry professionals to identify the most effective methods of enforcement against illegal spam.

At the same time, we urge consumers to take advantage of filters and e-mail blocking services available from their ISPs. Visit our spam page at [www.oag.state.tx.us](http://www.oag.state.tx.us) and keep yourself informed about how to lock the door against these unwanted intrusions.

## POINTS TO REMEMBER

### ANTI-SPAM LAWS

Contact the FTC to report illegal spam at:  
[www.ftc.gov](http://www.ftc.gov)

Ask your Internet Service Provider about e-mail filters to block spam.

To remove your e-mail address from many national direct e-mail lists, visit:  
[www.dmachoice.org/EMPS](http://www.dmachoice.org/EMPS)

Report child pornography to the National Center for Missing and Exploited Children (NCMEC) at:  
[www.cybertipline.com](http://www.cybertipline.com)

Do not respond to "Nigerian Fraud" e-mails or other strange offers to transfer millions of dollars into your bank account. These e-mails are dangerous frauds.

Never provide personal financial information in an e-mail, even if it appears to be from a legitimate or familiar company.

***Protect yourself and your family!***  
Stay abreast of the latest alerts and tips for blocking and filtering spam and pornography.



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Information on this and other topics is available on the Attorney General's Web site at [www.oag.state.tx.us](http://www.oag.state.tx.us).