



PGL: Pretty Good Legislation

By David P. McClure ■ *US Internet Industry Association (USIIA)*

In the last few days before wrapping up for the Thanksgiving Holiday, Congress passed the Can-Spam Act (S.877)—giving the nation, after six long years of work and heartbreak, a national policy for unsolicited commercial email.

The ink was barely dry on the paper before critics rushed to condemn the new law. It is, they say, not enough. It doesn't contain enough restrictions. It doesn't permit a private right of action. It is too easy on direct mailers. Worst of all, they say, it will do nothing

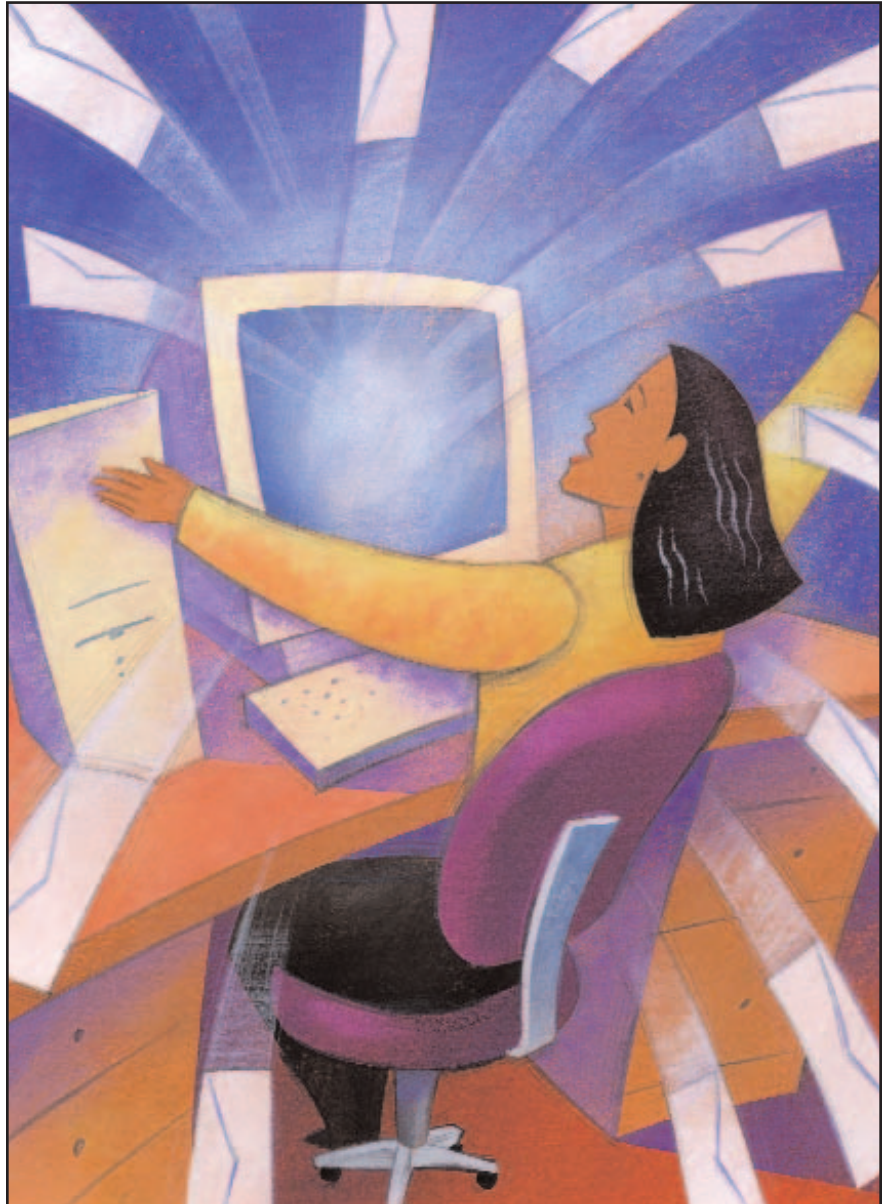
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to solve the torrent of spam and may actually make the situation worse.

Nonsense.

This is a good law. Maybe even a spectacular law. Here's why:

- It replaces a patchwork of 35 largely ineffective state laws with a national law that for the first time sets out how bulk emailers must comport themselves—with stiff penalties for those who abuse the privilege.
- It places enforcement of the law with the people who are charged with protecting consumers in the first place—state attorney gener-



als and the Federal Trade Commission. It also provides Internet Service Providers with the right to sue spammers to recover damages to their subscribers and systems.

- It provides the tools necessary to staunch the flow of spam from overseas. Until now, spammers could act with impunity because their own governments had no incentive to shut them down.

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With a national law in place, we can begin to export spam control in the same way that we force other nations to adopt stronger copyright protections—by building it into our trade agreements and treaties.

- It requires those who send "adult" emails with content children should not see to label what they send accordingly. This should make it easier to filter out the stuff parents find most objectionable.
- And it sets the ground rules for direct marketers who wish to use the Internet to communicate with their customers and prospective customers.

Is the Can-Spam Act a perfect law? Of course not, and I am not sure there is such a thing as a perfect law—from the US Constitution down. This one will likely be subject to some revisions, and further interpretation from the courts.

And if the law proves to be imperfect, we will fix it. If other countries balk at cooperating, we will encourage them. If a spammer tries to run or hide, then we will find them.

It will take a little time for the effects to kick in, and in the interim the level of spam is likely to increase exponentially—spammers will try their best to eke out a quick fortune before the law catches up with them. But at the heart of this bill is one simple concept: consumers really do have the right to say "NO" to spam, and this right will be enforced by the power and fury of the United States government.

All in all, the Can-Spam Act is what we like to call PGL—pretty good legislation.

Behind its passage are a number of people who can't all be listed here, but deserve a lot of praise. Like Senators Ron Wyden, Conrad Burns and John McCain, who had the vision to create the bill and the commitment to see it into law. And Congressmen Wilson, Green, Dingle, Boucher, Tauzin and Sensenbrenner, who authored various house versions, then agreed to compromises to make it all work out.

And, of course, the many members of USIIA who contributed directly and indirectly—Jim Butler, our public policy counsel, Fred Cooke, our policy director and now director emeritus. And the many USIIA members who helped to craft this law over the past five years—wrote language for it, testified for it, rallied support for it, wrote letters for it and agonized over it—kudos to all for securing passage of one of the most important pieces of legislation in the history of the Internet. ■

About the Author

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