



**Comments of the
Internet Commerce Coalition
To the Federal Trade Commission
Regarding
Proposed Mark for Sexually Oriented Spam
Project No. P044405**

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Comments of the Internet Commerce Coalition

The Internet Commerce Coalition ("ICC") submits these comments in response to the Commission's request for comment regarding this proceeding under Section 5(d) of the CAN-SPAM Act, P.L. 108-187. ICC members include leading Internet and e-commerce companies and trade associations, including AT&T, BellSouth, eBay, MCI, SBC Communications Inc., TimeWarner, Verizon, the U.S. Telecomm Association, CompTel, and the Information Technology Association of America.

Our members work very hard to protect consumers from spam, suing well over 100 spammers, using a wide range of spam filtering technologies, working on more secure email systems of the future and, in many cases, offering consumers flexible self-help filters to combat spam.

Sexually explicit spam is a particular concern of Internet users. Email subject line labeling requirements have proven ineffective and, for this reason, the ICC normally opposes them. However, Congress has spoken clearly in the CAN-SPAM Act, and, understanding that the Commission must implement this labeling rule, in this limited context, we express support for the general approach in the Commission's NPRM, and provide the following answers to the Commission's questions (by order of the question):

Question 1. There is no technical reason that we can identify why the Proposed Mark cannot be included in the subject line of emails that contain sexually explicit material.

Question 2. For practical and technical reasons, we believe that the proposed rule will be only partially effective. As a practical matter, spammers routinely flouted state “ADV” and “ADV-ADLT” labeling requirements, and routinely concealed their identities to avoid detection. Moreover, at present there is no technical barrier to spammers continuing to send porn spam that does not contain the mark prescribed in this proceeding. For this reason, we believe that the best means for the Commission and others to make a meaningful dent in the spam problem is through strong enforcement. In particular, prosecutors will need to bring cases under both this provision and 18 U.S.C. § 1037, which directly prohibits falsification methods used to hide spammer identities.

Question 5. The proposed rule does satisfy the statutory requirement to inform recipients that an email may contain objectionable sexually explicit content.

Question 7. The inclusion of the proposed mark in either the subject line or the x-header of an email would assist in filtering out objectionable content. However, requiring labeling in the subject line is preferable as a matter of policy because, where senders comply with the requirement, recipients will be informed of the nature of the email before they decide whether to open it.

Question 11. Because the principal challenge with regard to the effectiveness of the proposed rule will be whether spammers will use the mark or simply flout the statutory labeling requirement, the best measures of effectiveness can only come after the rule is in place and some prosecutions have occurred to determine whether the threat of prosecution serves as a deterrent to noncompliance.

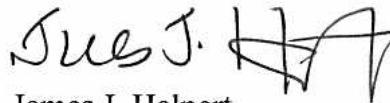
Question 15. The requirements in the proposed rule may overlap and conflict with state porn spam labeling requirements. Presumably, these requirements are preempted by Section 8(b)

of the CAN-SPAM Act, but it may be helpful if the Commission clarifies this point in the final rule.

Question 16. In order to educate spammers as to the requirements of the rule, it may be worth importing the definitions into the final rule. Moreover, to provide clarity and be sure to defeat a First Amendment vagueness challenge, the Commission may want to define the word “depicts” found in section 5(a)(6) of the CAN-SPAM Act.

We thank you for considering our views, and would be pleased to answer any questions you may have.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James J. Halpert", with a stylized flourish at the end.

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