WEST VIRGINIA CODE CHAPTER 46a ARTICLE 6G

WV Legislature

§46A-6G-1. Definitions.

As used in this article:

(1) "Bulk electronic mail message" means an electronic mail message sent in bulk to users of an interactive computer service who have not requested or solicited the message. Unauthorized for purposes of a bulk electronic mail message, means a bulk electronic mail message sent in quantity in contravention of the authorization granted by or in violation of the policies or contractual rights of the electronic mail service provider.

(2) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

(3) "Initiate the transmission" means the action by the original sender of an electronic mail message, not the action by any intervening interactive computer service that may handle or retransmit the message.

(4) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet.

(5) "Internet domain name" means a globally unique, hierarchical reference to an Internet host or service, assigned through centralized Internet naming authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

(6) "Person" means any individual, corporation, partnership, association, limited liability company or any other form or business association.

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§46A-6G-2. Limitations on unauthorized electronic mail.

No person may initiate the transmission of an unauthorized electronic mail message with the intent to deceive and defraud, or a bulk electronic mail message from a computer located in the State of West Virginia or to an electronic mail address that the sender knows, or has reason to know, is held by a West Virginia resident that:

(1) Uses a third party's Internet domain name without the permission of the third party, or otherwise misrepresents any information in identifying the point of origin or the transmission path of a commercial electronic mail message;

(2) Contains false or misleading information in the subject line;

(3) Does not clearly provide the date and time the message is sent, the identity of the person sending the message, and the return electronic mail address of that person; or

(4) Contains "sexually explicit materials" which are defined as a visual depiction, in actual or simulated form, or an explicit description in a predominately sexual context, nudity, human genitalia, or any act of natural or unnatural sexual intercourse.

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§46A-6G-3. Interactive computer service authority; liability.

(1) An interactive computer service may block the receipt or transmission through its service of any bulk electronic mail that it reasonably believes is, or will be, sent in violation of this article.

(2) An interactive computer service may disconnect or terminate the service of any person that is in violation of this article.

(3) No interactive computer service may be held liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any bulk electronic mail which it reasonably believes is, or will be, sent in violation of this article; nor will any interactive computer service be held liable for any action voluntarily taken in good faith to disconnect or terminate the service of any person that is in violation of this article.

(4) No interactive computer service or public utility will be liable for merely transmitting a bulk electronic mail message on its network.

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§46A-6G-4. Sale or possession of enabling software prohibited.

No person may sell, give or otherwise distribute or possess with the intent to sell, give or distribute software that:

(1) Is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information;

(2) Has only a limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission information or other routing information; or

(3) That is marketed by that person or another acting in concert with that person with that person's knowledge for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.

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§46A-6G-5. Violations; right of action for injunction, damages.

(a) No person or organization may initiate an unauthorized bulk electronic mail message in violation of this article.

(b) A recipient of an unauthorized bulk electronic mail message in violation of this article may bring an action to recover actual damages for any injury sustained by the receipt of an unauthorized bulk electronic mail message. In lieu of actual damages, a minimum damage assessment of $1,000 may be recovered for violations of this article. Punitive damages may be awarded for the willful failure to cease initiating unauthorized bulk electronic mail messages. Court costs and reasonable attorney fees may be awarded for violations of this article.

(c) A recipient of an unauthorized bulk electronic mail message initiated in violation of this article may bring an action to enjoin the initiator from sending any further unauthorized bulk electronic mail messages. Any court costs or other costs incident to such action including reasonable attorney fees may be awarded.

(d) Initiating an unauthorized bulk electronic mail message to any computer or computer network located in this state shall constitute an act in the state for the purposes of section thirty-three, article three, chapter fifty-six of this code.

(e) Any interactive computer service provider or public utility whose property or person is injured by any violation of this article may bring an action to recover for any damages sustained, including, but not limited to, loss of profits. In addition, court costs and attorney fees may be recovered. The service provider may elect, in lieu of actual damages, to recover $10 for each and every unauthorized bulk electronic mail message transmitted in violation of this article, or $25,000 per day, whichever is greater.

(f) The provisions of this section shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

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