

## 濫發商業電子郵件管理條例草案相關議題參考資料

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第一條 立法目的

法制比較	內 容
我 國	<p><b>通訊傳播基本法</b> 第一條 為因應科技匯流，促進通訊傳播健全發展，維護國民權利，保障消費者利益，提升多元文化，特制定本法。</p> <p><b>電信法</b> 第一條 為健全電信發展，增進公共福利，保障通信安全及維護使用者權益，特制定本法；本法未規定者，依其他法律之規定。</p> <p><b>電腦處理個人資料保護法</b> 第一條 為規範電腦處理個人資料，以避免人格權受侵害，並促進個人資料之合理利用，特制定本法。</p> <p><b>公平交易法</b> 第一條 為維護交易秩序與消費者利益，確保公平競爭，促進經濟之安定與繁榮，特制定本法；本法未規定者，適用其他有關法律之規定。</p> <p><b>消費者保護法</b> 第一條 為保護消費者權益，促進國民消費生活安全，提昇國民消費生活品質，特制定本法。 有關消費者之保護，依本法之規定，本法未規定者，適用其他法律。</p> <p><b>釋字四一四號</b> 藥物廣告係為獲得財產而從事之經濟活動，涉及財產權之保障，並具商業上意見表達之性質，惟因與國民健康有重大關係，基於公共利益之維護，應受較嚴格之規範。藥事法第六十六條第一項規定：藥商刊播藥物廣告時，應於刊播前將所有文字、圖畫或言詞，申請省（市）衛生主管機關核准，指在確保藥物廣告之真實，維護國民健康，為增進公共利益所必要，與憲法第十一條及第十五條尚屬相符。又藥事法施行細則第四十七條第二款規定：藥物廣告之內容，利用容器包裝換獎或使用獎勵方法，有助長濫用藥物之虞者，主管機關應予刪除或不予核准，係依藥事法第一百零五條之授權，就同法第六十六條相關事宜為具體之規定，符合立法意旨，並未逾越母法之授權範圍，與憲法亦無抵觸。</p>

	<p><b>釋字五七七號</b></p> <p>憲法第十一條保障人民有積極表意之自由，及消極不表意之自由，其保障之內容包括主觀意見之表達及客觀事實之陳述。商品標示為提供商品客觀資訊之方式，應受言論自由之保障，惟為重大公益目的所必要，仍得立法採取合理而適當之限制。國家為增進國民健康，應普遍推行衛生保健事業，重視醫療保健等社會福利工作。菸害防制法第八條第一項規定：「菸品所含之尼古丁及焦油含量，應以中文標示於菸品容器上。」另同法第二十一條對違反者處以罰鍰，對於菸品業者就特定商品資訊不為表述之自由有所限制，係為提供消費者必要商品資訊與維護國民健康等重大公共利益，並未逾越必要之程度，與憲法第十一條保障人民言論自由及第二十三條比例原則之規定均無違背。又於菸品容器上應為上述之一定標示，縱屬對於菸品業者財產權有所限制，但該項標示因攸關國民健康，乃菸品財產權所具有之社會義務，且所受限制尚屬輕微，未逾越社會義務所應忍受之範圍，與憲法保障人民財產權之規定，並無違背。另上開規定之菸品標示義務及責任，其時間適用之範圍，以該法公布施行後之菸品標示事件為限，並無法律溯及適用情形，難謂因法律溯及適用，而侵害人民之財產權。至菸害防制法第八條第一項規定，與同法第二十一條合併觀察，足知其規範對象、規範行為及法律效果，難謂其規範內容不明確而違反法治國家法律明確性原則。另各類食品、菸品、酒類等商品對於人體健康之影響層面有異，難有比較基礎，立法者對於不同事物之處理，有先後優先順序之選擇權限，相關法律或有不同規定，與平等原則尚無違背。</p>
美 國	<p><b>CAN-SPAM ACT, Sec.2</b></p> <p>(b) CONGRESSIONAL DETERMINATION OF PUBLIC POLICY.—On the basis of the findings in subsection (a), the Congress determines that—</p> <ol style="list-style-type: none"> <li>(1) there is a substantial government interest in regulation of commercial electronic mail on a nationwide basis;</li> <li>(2) senders of commercial electronic mail should not mislead recipients as to the source or content of such mail; and</li> <li>(3) recipients of commercial electronic mail have a right to decline to receive additional commercial electronic mail from the same source.</li> </ol>
日 本	<p><b>特定電子郵件適正發送法 第一條</b></p> <p>為防止同一時間對於多數人發送特定電子郵件所造成電子郵件傳送接收障礙之必要，進而制定有關發送特定電子郵件之措施，以建構電子郵件之良好利用環境，並促進高度資訊通信社會之健全發展，特制定本法。</p>
澳 洲	<p><b>Spam Act, Sec. 3 Simplified outline</b></p> <p>The following is a simplified outline of this Act:</p> <ul style="list-style-type: none"> <li>• This Act sets up a scheme for regulating commercial e-mail and other types of commercial electronic messages.</li> <li>• Unsolicited commercial electronic messages must not be sent.</li> <li>• Commercial electronic messages must include information about the individual or organisation who authorised the sending of the message.</li> <li>• Commercial electronic messages must contain a functional unsubscribe facility.</li> <li>• Address-harvesting software must not be supplied, acquired or used.</li> <li>• An electronic address list produced using address-harvesting software must not be supplied, acquired or used.</li> <li>• The main remedies for breaches of this Act are civil penalties and injunctions.</li> </ul> <p>Note: The <i>Telecommunications Act 1997</i> contains additional provisions about commercial electronic messages. Those provisions include Part 6 (industry codes and standards), Part 26 (investigations), Part 27 (information-gathering powers) and Part 28 (enforcement).</p>

歐 盟	<p>歐盟隱私與電子通訊指令（DIRECTIVE 2002/58/EC） article 1</p> <p>1. This Directive harmonises the provisions of the Member States required to ensure an equivalent level of protection of fundamental rights and freedoms, and in particular the right to privacy, with respect to the processing of personal data in the electronic communication sector and to ensure the free movement of such data and of electronic communication equipment and services in the Community.</p>
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## 第二條 定義

比較法制	內 容
我 國	<p>電信法</p> <p>第二十條之一 第一項 電信網路使用之編碼、用戶號碼、識別碼等電信號碼，由電信總局統籌規劃及管理；統籌規劃之電信網路編碼計畫，由電信總局公告之。</p> <p>電腦處理個人資料保護法</p> <p>第三條 本法用詞定義如左：</p> <ul style="list-style-type: none"> <li>一、個人資料：指自然人之姓名、出生年月日、身分證統一編號、特徵、指紋、婚姻、家庭、教育、職業、健康、病歷、財務情況、社會活動及其他足資識別該個人之資料。</li> <li>二、個人資料檔案：指基於特定目的儲存於電磁紀錄物或其他類似媒體之個人資料之集合。</li> <li>三、電腦處理：指使用電腦或自動化機器為資料之輸入、儲存、編輯、更正、檢索、刪除、輸出、傳遞或其他處理。</li> <li>四、蒐集：指為建立個人資料檔案而取得個人資料。</li> <li>五、利用：指公務機關或非公務機關將其保有之個人資料檔案為內部使用或提供當事人以外之第三人。</li> <li>六、公務機關：指依法行使公權力之中央或地方機關。</li> <li>七、非公務機關：指前款以外之左列事業、團體或個人： <ul style="list-style-type: none"> <li>（一）徵信業及以蒐集或電腦處理個人資料為主要業務之團體或個人。</li> <li>（二）醫院、學校、電信業、金融業、證券業、保險業及大眾傳播業。</li> <li>（三）其他經法務部會同中央目的事業主管機關指定之事業、團體或個人。</li> </ul> </li> <li>八、當事人：指個人資料之本人。</li> <li>九、特定目的：指由法務部會同中央目的事業主管機關指定者。</li> </ul>

## SEC. 3. DEFINITIONS.

In this Act:

- (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 the date of the enactment of this Act, the Commission shall issue regulations pursuant to section 13 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 Act 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.

(10) INTERNET.—The term “Internet” has the meaning given that term in the Internet Tax Freedom Act (47 U.S.C. 151 nt).

(11) INTERNET ACCESS SERVICE.—The term “Internet access service” has the meaning given that term in section 231(e)(4) of the Communications Act of 1934 (47 U.S.C. 231(e)(4)).

(12) PROCURE.—The term “procure”, when used with respect to the initiation of a commercial electronic mail message, means intentionally to pay or provide other consideration to, or induce, another person to initiate such a message on one’s behalf.

(13) PROTECTED COMPUTER.—The term “protected computer” has the meaning given that term in section 1030(e)(2)(B) of title 18, United States Code.

(14) RECIPIENT.—The term “recipient”, when used with respect to a commercial electronic mail message, means an authorized user of the electronic mail address to which the message was sent or delivered. If a recipient of a commercial electronic mail message has one or more electronic mail addresses in addition to the address to which the message was sent or delivered, the recipient shall be treated as a separate recipient with respect to each such address. If an electronic mail address is reassigned to a new user, the new user shall not be treated as a recipient of any commercial electronic mail message sent or delivered to that address before it was reassigned.

(15) ROUTINE CONVEYANCE.—The term “routine conveyance” means the transmission, routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message for which another person has identified the recipients or provided the recipient addresses.

(16) SENDER.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term “sender”, when used with respect to a commercial electronic mail message, means a person who initiates such a message and whose product, service, or Internet web site is advertised or promoted by the message.

(B) SEPARATE LINES OF BUSINESS OR DIVISIONS.—If an entity operates through separate lines of business or divisions and holds itself out to the recipient throughout the message as that particular line of business or division rather than as the entity of which such line of business or division is a part, then the line of business or the division shall be treated as the sender of such message for purposes of this Act.

(17) TRANSACTIONAL OR RELATIONSHIP MESSAGE.—

(A) IN GENERAL.—The term “transactional or relationship message” means an electronic mail message the primary purpose of which is—

- (i) to facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender;
- (ii) to provide warranty information, product recall information, or safety or security information with respect to a commercial product or service used or purchased by the recipient;
- ) notification of a change in the recipient’s standing or status with respect to;
- or
- (iii) at regular periodic intervals, account balance information or other type of account statement with respect to, a subscription, membership, account, loan,

	<p>or comparable ongoing commercial relationship involving the ongoing purchase or use by the recipient of products or services offered by the sender;</p> <p>(iv) to provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled; or</p> <p>(v) to deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.</p> <p>(B) <b>MODIFICATION OF DEFINITION.</b>—The Commission by regulation pursuant to section 13 may modify the definition in subparagraph (A) to expand or contract the categories of messages that are treated as transactional or relationship messages for purposes of this Act to the extent that such modification is necessary to accommodate changes in electronic mail technology or practices and accomplish the purposes of this Act.</p>
日 本	<p><b>第二條 本法之用語定義如下：</b></p> <p>一、電子郵件：使用總務省所定的通信方式，使通信文書或其他資訊顯示於特定人所使用的通信終端機器（包含輸出入裝置）的影像輸出裝置所傳送的電信（即電信事業法（昭和 59 年法律第 86 號）第二條第一款規定之電信）。</p> <p>二、特定電子郵件：係指下列各目以外的個人（為經營事業而接收電子郵件之個人除外）為對象，且發送電子郵件之人藉此（以營利為目的之團體及從事營業之個人為限。以下簡稱「發送者」。）作為自己或他人之營業相關廣告或宣傳之手段，所發送之電子郵件。</p> <p>（一）已對於發送者為請求或同意送信之通知之人（但為前述通知後再為拒絕送信通知者除外。）</p> <p>（二）廣告或宣傳為營業者及其交易對象。</p> <p>（三）其他另有規定者。</p> <p>三、電子郵件地址：得以識別電子郵件使用者的文字、號碼、記號或其他符號。</p>
澳 洲	<p><b>4 Definitions</b></p> <p><i>In this Act, unless the contrary intention appears: <b>ACA</b> means the Australian Communications Authority.</i></p> <p><b>account</b> includes:</p> <p>(a) a free account; and</p> <p>(b) a pre-paid account; and</p> <p>(c) anything that may reasonably be regarded as the equivalent of an account.</p> <p><b>acquire</b>, when used in relation to goods or services, has the same meaning as in the Trade Practices Act 1974.</p> <p><b>address-harvesting software</b> means software that is specifically designed or marketed for use for:</p> <p>(a) searching the Internet for electronic addresses; and</p> <p>(b) collecting, compiling, capturing or otherwise harvesting those electronic addresses.</p> <p><b>agency</b> includes:</p> <p>(a) an armed force; and</p> <p>(b) a police force.</p> <p><b>Australia</b>, when used in a geographical sense, includes the external Territories.</p> <p><b>Australian link</b> has the meaning given by section 7.</p> <p><b>authorise</b>, when used in relation to the sending of an electronic message, has a meaning affected by section 8.</p> <p><b>business</b> includes a venture or concern in trade or commerce, whether or not conducted on a regular, repetitive or continuous basis.</p>

**carriage service** has the same meaning as in the Telecommunications Act 1997.

**civil penalty provision** means any of the following provisions:

- (a) subsections 16(1), (6) and (9);
- (b) subsections 17(1) and (5);
- (c) subsections 18(1) and (6);
- (d) subsections 20(1) and (5);
- (e) subsections 21(1) and (3);
- (f) subsections 22(1) and (3);
- (g) a provision of the regulations that is declared to be a civil penalty provision in accordance with paragraph 45(2)(c).

**commercial electronic message** has the meaning given by section 6.

**consent**, when used in relation to the sending of an electronic message, has the meaning given by Schedule 2.

**data processing device** has the same meaning as in the Telecommunications Act 1997.

**dealing with**, when used in relation to a commercial electronic message, includes:

- (a) accessing the message; and
- (b) responding to the message; and
- (c) filtering the message.

**designated commercial electronic message** has the meaning given by Schedule 1.

**director** includes a member of the governing body of an organisation.

**educational institution** includes:

- (a) a pre-school; and
- (b) a school; and
- (c) a college; and
- (d) a university.

**electronic message** has the meaning given by section 5.

**employee** includes an individual who is in the service of an armed force, a police force or a religious organisation.

**evidential burden**, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

**Federal Court** means the Federal Court of Australia.

**goods** has the same meaning as in the Trade Practices Act 1974.

**government body** means:

- (a) a department of the Commonwealth, a State or a Territory; or
- (b) an agency, authority or instrumentality of the Commonwealth, a State or a Territory; or
- (c) a department of the government of a foreign country; or
- (d) an agency, authority or instrumentality of the government of a foreign country; or
- (e) a department of the government of a part of a foreign country; or
- (f) an agency, authority or instrumentality of the government of a part of a foreign country.

**harvested-address list** means:

- (a) a list of electronic addresses; or
- (b) a collection of electronic addresses; or
- (c) a compilation of electronic addresses;

where the production of the list, collection or compilation is, to any extent, directly or indirectly attributable to the use of address-harvesting software.

**international convention** means:

- (a) a convention to which Australia is a party; or
- (b) an agreement between Australia and a foreign country.

**Internet carriage service** means a listed carriage service that enables end-users to access the Internet.

**investment** means any mode of application of money or other property for the purpose of gaining a return (whether by way of income, capital gain or any other form of return).

**listed carriage service** has the same meaning as in the Telecommunications Act 1997.

**logo** includes a trade mark.

**message** means information:

- (a) whether in the form of text; or
- (b) whether in the form of data; or
- (c) whether in the form of speech, music or other sounds; or
- (d) whether in the form of visual images (animated or otherwise); or
- (e) whether in any other form; or
- (f) whether in any combination of forms.

**mistake** means reasonable mistake of fact.

**organisation** includes:

- (a) a body corporate; and
- (b) a partnership; and
- (c) a government body; and
- (d) a court or tribunal; and
- (e) an unincorporated body or association.

Express references in this Act to organisations do not imply that references in this Act to persons do not include bodies politic or corporate.

Note: Paragraph 22(1)(a) of the Acts Interpretation Act 1901 provides that **person** includes a body politic or corporate as well as an individual.

**penalty unit** has the meaning given by section 4AA of the Crimes Act 1914.

**person** includes a partnership.

Note: For treatment of partnerships, see section 585 of the Telecommunications Act 1997.

**publish** includes:

- (a) publish on the Internet; and
- (b) publish to the public or a section of the public.

**registered political party** means a political party, or a branch or division of a political party, that is registered under:

- (a) the Commonwealth Electoral Act 1918; or
- (b) a law of a State or Territory that deals with electoral matters.

**relevant electronic account-holder**, in relation to the sending of an electronic message to an electronic address, means:

- (a) if the electronic address is an e-mail address—the individual or organisation who is responsible for the relevant e-mail account; or
- (b) if the message is sent to an electronic address in connection with an instant messaging service—the individual or organisation who is responsible for the relevant instant messaging account; or
- (c) if the electronic address is a telephone number—the individual or organisation who is responsible for the relevant telephone account; or
- (d) in any other case—the individual or organisation who is responsible for the relevant account.

**send** includes attempt to send.

Note: See also section 9.

**services** has the same meaning as in the Trade Practices Act 1974.

**software** includes a combination of software and associated data.

**standard telephone service** has the same meaning as in the Telecommunications (Consumer Protection and Service Standards) Act 1999.

**supply**:

- (a) when used in relation to goods or services—has the same meaning as in the Trade Practices Act 1974; or
- (b) when used in relation to land—includes transfer; or
- (c) when used in relation to an interest in land—includes transfer or create.

**use** has a meaning affected by section 11.

**voice call** means:

- (a) a voice call within the ordinary meaning of that expression; or
- (b) a call that involves a recorded or synthetic voice; or
- (c) if a call covered by paragraph (a) or (b) is not practical for a particular customer

with a disability (for example, because the customer has a hearing impairment)—a call that is equivalent to a call covered by either of those paragraphs; whether or not the customer responds by way of pressing buttons on a telephone handset or similar thing.

#### 5 Electronic messages

##### Basic definition

(1) For the purposes of this Act, an **electronic message** is a message sent:

- (a) using:
  - (i) an Internet carriage service; or
  - (ii) any other listed carriage service; and
- (b) to an electronic address in connection with:
  - (i) an e-mail account; or
  - (ii) an instant messaging account; or
  - (iii) a telephone account; or
  - (iv) a similar account.

Note: E-mail addresses and telephone numbers are examples of electronic addresses.

(2) For the purposes of subsection (1), it is immaterial whether the electronic address exists.

(3) For the purposes of subsection (1), it is immaterial whether the message reaches its intended destination.

**(4) Subsection (1) has effect subject to subsection (5).**

##### Excluded messages—voice calls

(5) If a message is sent by way of a voice call made using a standard telephone service, the message is not an **electronic message** for the purposes of this Act.

#### 6 Commercial electronic messages

##### Basic definition

(1) For the purposes of this Act, a **commercial electronic message** is an electronic message, where, having regard to:

- (a) the content of the message; and
- (b) the way in which the message is presented; and
- (c) the content that can be located using the links, telephone numbers or contact information (if any) set out in the message; it would be concluded that the purpose, or one of the purposes, of the message is:
  - (d) to offer to supply goods or services; or
  - (e) to advertise or promote goods or services; or
  - (f) to advertise or promote a supplier, or prospective supplier, of goods or services; or
  - (g) to offer to supply land or an interest in land; or
  - (h) to advertise or promote land or an interest in land; or
  - (i) to advertise or promote a supplier, or prospective supplier, of land or an interest in land; or
  - (j) to offer to provide a business opportunity or investment opportunity; or
  - (k) to advertise or promote a business opportunity or investment opportunity; or
  - (l) to advertise or promote a provider, or prospective provider, of a business opportunity or investment opportunity; or
  - (m) to assist or enable a person, by a deception, to dishonestly obtain property belonging to another person; or
  - (n) to assist or enable a person, by a deception, to dishonestly obtain a financial advantage from another person; or
  - (o) to assist or enable a person to dishonestly obtain a gain from another person; or
  - (p) a purpose specified in the regulations.

(2) For the purposes of paragraphs (1)(d) to (l), it is immaterial whether the goods, services, land, interest or opportunity exists.

(3) For the purposes of paragraphs (1)(d) to (l), it is immaterial whether it is lawful to acquire the goods, services, land or interest or take up the opportunity.

(4) Any of the following:

	<p>(a) the supplier or prospective supplier mentioned in paragraph (1)(f) or (i);</p> <p>(b) the provider or prospective provider mentioned in paragraph (1)(l);</p> <p>(c) the person first mentioned in paragraph (1)(m), (n) or (o);</p> <p>may be the individual or organisation who sent the message or authorised the sending of the message.</p> <p>(5) Paragraphs (1)(d) to (p) are to be read independently of each other.</p> <p>(6) Subsection (1) has effect subject to subsection (7).</p> <p><i>Excluded messages—regulations</i></p> <p>(7) The regulations may provide that a specified kind of electronic message is not a <b>commercial electronic message</b> for the purposes of this Act.</p> <p><i>Interpretation</i></p> <p>(8) An expression used in paragraph (1)(m) of this section and in section 134.1 of the Criminal Code has the same meaning in that paragraph as it has in that section.</p> <p>(9) An expression used in paragraph (1)(n) of this section and in section 134.2 of the Criminal Code has the same meaning in that paragraph as it has in that section.</p> <p>(10) An expression used in paragraph (1)(o) of this section and in section 135.1 of the Criminal Code has the same meaning in that paragraph as it has in that section.</p> <p><i>9 Sending of electronic messages—carriage service providers</i></p> <p>(1) For the purposes of this Act, a person does not <b>send</b> an electronic message, or cause an electronic message to be sent, merely because the person supplies a carriage service that enables the message to be sent.</p> <p>(2) Subsection (1) is enacted for the avoidance of doubt.</p>
英 國	<p><b>The Privacy and Electronic Communications (EC Directive) Regulations 2003</b></p> <p><b>22. (Use of electronic mail for direct marketing purposes)</b></p> <p>(1) This regulation applies to the transmission of unsolicited communications by means of electronic mail to individual subscribers.</p> <p>(2) Except in the circumstances referred to in paragraph (3), a person shall neither transmit, nor instigate the transmission of, unsolicited communications for the purposes of direct marketing by means of electronic mail unless the recipient of the electronic mail has previously notified the sender that he consents for the time being to such communications being sent by, or at the instigation of, the sender.</p> <p>(3) A person may send or instigate the sending of electronic mail for the purposes of direct marketing where—</p> <p>(a) that person has obtained the contact details of the recipient of that electronic mail in the course of the sale or negotiations for the sale of a product or service to that recipient;</p> <p>(b) the direct marketing is in respect of that person’s similar products and services only; and</p> <p>(c) the recipient has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of his contact details for the purposes of such direct marketing, at the time that the details were initially collected, and, where he did not initially refuse the use of the details, at the time of each subsequent communication.</p> <p>(4) A subscriber shall not permit his line to be used in contravention of paragraph (2).</p>

### 第三條 主管機關

比較法制	內 容
美 國	<b>Federal Trade Commission</b>
日 本	總務省指定法人：日本資料通信協會
澳 洲	<b>the Australian Communications Authority</b>

第四條 發送商業電子郵件之基本要件

比較法制	內	容
我 國	<p>消費者保護法 第十八條</p> <p>企業經營者為郵購買賣或訪問買賣時，應將其買賣之條件、出賣人之姓名、名稱、負責人、事務所或住居所告知買受之消費者。</p> <p>公平交易法 第二十一條</p> <p>事業不得在商品或其廣告上，或以其他使公眾得知之方法，對於商品之價格、數量、品質、內容、製造方法、製造日期、有效期限、使用方法、用途、原產地、製造者、製造地、加工者、加工地等，為虛偽不實或引人錯誤之表示或表徵。</p> <p>事業對於載有前項虛偽不實或引人錯誤表示之商品，不得販賣、運送、輸出或輸入。</p> <p>前二項規定於事業之服務準用之。</p> <p>廣告代理業在明知或可得知情形下，仍製作或設計有引人錯誤之廣告，與廣告主負連帶損害賠償責任。廣告媒體業在明知或可得知其所傳播或刊載之廣告有引人錯誤之虞，仍予傳播或刊載，亦與廣告主負連帶損害賠償責任。</p> <p>第二十四條</p> <p>除本法另有規定者外，事業亦不得為其他足以影響交易秩序之欺罔或顯失公平之行爲。</p>	
美 國	<p>SEC. 5. OTHER PROTECTIONS FOR USERS OF COMMERCIAL ELECTRONIC MAIL.</p> <p>(a) REQUIREMENTS FOR TRANSMISSION OF MESSAGES.—</p> <p>(1) PROHIBITION OF FALSE OR MISLEADING TRANSMISSION INFORMATION.—It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message, or a transactional or relationship message, that contains, or is accompanied by, header information that is materially false or materially misleading. For purposes of this paragraph—</p> <p>(A) header information that is technically accurate but includes an originating electronic mail address, domain name, or Internet Protocol address the access to which for purposes of initiating the message was obtained by means of false or fraudulent pretenses or representations shall be considered materially misleading;</p> <p>(B) a “from” line (the line identifying or purporting to identify a person initiating the message) that accurately identifies any person who initiated the message shall not be considered materially false or materially misleading; and</p> <p>(C) header information shall be considered materially misleading if it fails to identify accurately a protected computer used to initiate the message because the person initiating the message knowingly uses another protected computer to relay or retransmit the message for purposes of disguising its origin.</p> <p>(2) PROHIBITION OF DECEPTIVE SUBJECT HEADINGS.—It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message if such person has actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that a subject heading of the message would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message (consistent with the criteria used in enforcement of section 5 of the Federal Trade Commission Act (15 U.S.C. 45)).</p> <p>(3) INCLUSION OF RETURN ADDRESS OR COMPARABLE MECHANISM IN COMMERCIAL</p>	

**ELECTRONIC MAIL.—**

(A) **IN GENERAL.**—It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message that does not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—

(i) a recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(ii) remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.

(B) **MORE DETAILED OPTIONS POSSIBLE.**—The person initiating a commercial electronic mail message may comply with subparagraph (A)(i) by providing the recipient a list or menu from which the recipient may choose the specific types of commercial electronic mail messages the recipient wants to receive or does not want to receive from the sender, if the list or menu includes an option under which the recipient may choose not to receive any commercial electronic mail messages from the sender.

(C) **TEMPORARY INABILITY TO RECEIVE MESSAGES OR PROCESS REQUESTS.**—A return electronic mail address or other mechanism does not fail to satisfy the requirements of subparagraph (A) if it is unexpectedly and temporarily unable to receive messages or process requests due to a technical problem beyond the control of the sender if the problem is corrected within a reasonable time period.

**(4) PROHIBITION OF TRANSMISSION OF COMMERCIAL ELECTRONIC MAIL AFTER OBJECTION.—**

(A) **IN GENERAL.**—If a recipient makes a request using a mechanism provided pursuant to paragraph (3) not to receive some or any commercial electronic mail messages from such sender, then it is unlawful—

(i) for the sender to initiate the transmission to the recipient, more than 10 business days after the receipt of such request, of a commercial electronic mail message that falls within the scope of the request;

(ii) for any person acting on behalf of the sender to initiate the transmission to the recipient, more than

10 business days after the receipt of such request, of a commercial electronic mail message with actual

knowledge, or knowledge fairly implied on the basis of objective circumstances, that such message falls within the scope of the request;

(iii) for any person acting on behalf of the sender to assist in initiating the transmission to the recipient, through the provision or selection of addresses to which the message will be sent, of a commercial electronic mail message with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such message would violate clause (i) or (ii); or

(iv) for the sender, or any other person who knows that the recipient has made such a request, to sell,

lease, exchange, or otherwise transfer or release the electronic mail address of the recipient (including through any transaction or other transfer involving mailing lists bearing the electronic mail address of the recipient) for any purpose other than compliance with this Act or other provision of law.

(B) **SUBSEQUENT AFFIRMATIVE CONSENT.**—A prohibition in subparagraph (A) does not apply if there is affirmative consent by the recipient subsequent to the request under subparagraph (A).

**(5) INCLUSION OF IDENTIFIER, OPT-OUT, AND PHYSICAL ADDRESS IN COMMERCIAL ELECTRONIC MAIL.—**

(A) It is unlawful for any person to initiate the transmission of any commercial electronic mail message to a protected computer unless the message provides—

(i) clear and conspicuous identification that the message is an advertisement or solicitation;

(ii) clear and conspicuous notice of the opportunity under paragraph (3) to decline to receive further commercial electronic mail messages from the sender; and

(iii) a valid physical postal address of the sender.

(B) Subparagraph (A)(i) does not apply to the transmission of a commercial electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

(6) **MATERIALLY.**—For purposes of paragraph (1), the term “materially”, when used with respect to false or misleading header information, includes the alteration or concealment of header information in a manner that would impair the ability of an Internet access service processing the

message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who initiated the electronic mail message or to investigate the alleged violation, or the ability of a recipient of the message to respond to a person who initiated the electronic message.

**(b) AGGRAVATED VIOLATIONS RELATING TO COMMERCIAL ELECTRONIC MAIL.—**

**(1) ADDRESS HARVESTING AND DICTIONARY ATTACKS.—**

**(A) IN GENERAL.—***It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message that is unlawful under subsection (a), or to assist in the origination of such message through the provision or selection of addresses to which the message will be transmitted, if such person had actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that—*

*(i) the electronic mail address of the recipient was obtained using an automated means from an Internet website or proprietary online service operated by another person, and such website or online service included, at the time the address was obtained, a notice stating that the operator of such website or online service will not give, sell, or otherwise transfer addresses maintained by such website or online service to any other party for the purposes of initiating, or enabling others to initiate, electronic mail messages; or*

*(ii) the electronic mail address of the recipient was obtained using an automated means that generates possible electronic mail addresses by combining names, letters, or numbers into numerous permutations.*

**(B) DISCLAIMER.—***Nothing in this paragraph creates an ownership or proprietary interest in such electronic mail addresses.*

**(2) AUTOMATED CREATION OF MULTIPLE ELECTRONIC MAIL ACCOUNTS.—***It is unlawful for any person to use scripts or other automated means to register for multiple electronic mail accounts or online user accounts from which to transmit to a protected computer, or enable another person to transmit to a protected computer, a commercial electronic mail message that is unlawful under subsection (a).*

**(3) RELAY OR RETRANSMISSION THROUGH UNAUTHORIZED ACCESS.—***It is unlawful for any person knowingly to relay or retransmit a commercial electronic mail message that is unlawful under subsection (a) from a protected computer or computer network that such person has accessed without authorization.*

**(c) SUPPLEMENTARY RULEMAKING AUTHORITY.—***The Commission shall by regulation, pursuant to section 13—*

*(1) modify the 10-business-day period under subsection (a)(4)(A) or subsection (a)(4)(B), or both, if the Commission determines that a different period would be more reasonable after taking into account—*

*(A) the purposes of subsection (a);*

*(B) the interests of recipients of commercial electronic mail; and*

*(C) the burdens imposed on senders of lawful commercial electronic mail; and*

*(2) specify additional activities or practices to which subsection (b) applies if the Commission determines that those activities or practices are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under subsection (a).*

**(d) REQUIREMENT TO PLACE WARNING LABELS ON COMMERCIAL ELECTRONIC MAIL CONTAINING SEXUALLY ORIENTED MATERIAL.—**

**(1) IN GENERAL.—***No person may initiate in or affecting interstate commerce the transmission, to a protected computer, of any commercial electronic mail message that includes sexually oriented material and—*

*(A) fail to include in subject heading for the electronic mail message the marks or notices prescribed by the Commission under this subsection; or*

*(B) fail to provide that the matter in the message that is initially viewable to the recipient, when the message is opened by any recipient and absent any further actions by the recipient, includes only—*

*(i) to the extent required or authorized pursuant to paragraph (2), any such marks or notices;*

*(ii) the information required to be included in the message pursuant to subsection (a)(5); and*

*(iii) instructions on how to access, or a mechanism to access, the sexually oriented material.*

**(2) PRIOR AFFIRMATIVE CONSENT.—***Paragraph (1) does not apply to the transmission of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.*

**(3) PRESCRIPTION OF MARKS AND NOTICES.—***Not later than 120 days after the date of the enactment of this Act, the Commission in consultation with the Attorney General shall prescribe clearly identifiable marks or notices to be included in or associated with commercial electronic mail that contains sexually oriented material, in order to inform the recipient of that fact and to*

	<p>facilitate filtering of such electronic mail. The Commission shall publish in the Federal Register and provide notice to the public of the marks or notices prescribed under this paragraph.</p> <p>(4) <i>DEFINITION.</i>—In this subsection, the term “sexually oriented material” means any material that depicts sexually explicit conduct (as that term is defined in section 2256 of title 18, United States Code), unless the depiction constitutes a small and insignificant part of the whole, the remainder of which is not primarily devoted to sexual matters.</p> <p>(5) <i>PENALTY.</i>—Whoever knowingly violates paragraph (1) shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.</p> <p><b>SEC. 6. BUSINESSES KNOWINGLY PROMOTED BY ELECTRONIC MAIL WITH FALSE OR MISLEADING TRANSMISSION INFORMATION.</b></p> <p>(a) <i>IN GENERAL.</i>—It is unlawful for a person to promote, or allow the promotion of, that person’s trade or business, or goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business, in a commercial electronic mail message the transmission of which is in violation of section 5(a)(1) if that person—</p> <p>(1) knows, or should have known in the ordinary course of that person’s trade or business, that the goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business were being promoted in such a message;</p> <p>(2) received or expected to receive an economic benefit from such promotion; and</p> <p>(3) took no reasonable action—</p> <p>(A) to prevent the transmission; or</p> <p>(B) to detect the transmission and report it to the Commission.</p> <p>(b) <i>LIMITED ENFORCEMENT AGAINST THIRD PARTIES.</i>—</p> <p>(1) <i>IN GENERAL.</i>—Except as provided in paragraph (2), a person (hereinafter referred to as the “third party”) that provides goods, products, property, or services to another person that violates subsection (a) shall not be held liable for such violation.</p> <p>(2) <i>EXCEPTION.</i>—Liability for a violation of subsection (a) shall be imputed to a third party that provides goods, products, property, or services to another person that violates subsection (a) if that third party—</p> <p>(A) owns, or has a greater than 50 percent ownership or economic interest in, the trade or business of the person that violated subsection (a); or</p> <p>(B)(i) has actual knowledge that goods, products, property, or services are promoted in a commercial electronic mail message the transmission of which is in violation of section 5(a)(1); and (ii) receives, or expects to receive, an economic benefit from such promotion.</p> <p>(c) <i>EXCLUSIVE ENFORCEMENT BY FTC.</i>—Subsections (f) and (g) of section 7 do not apply to violations of this section.</p> <p>(d) <i>SAVINGS PROVISION.</i>—Except as provided in section 7(f)(8), nothing in this section may be construed to limit or prevent any action that may be taken under this Act with respect to any violation of any other section of this Act.</p> <p><b>SEC. 11. IMPROVING ENFORCEMENT BY PROVIDING REWARDS FOR INFORMATION ABOUT VIOLATIONS; LABELING.</b></p> <p>The Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce—</p> <p>(1) a report, within 9 months after the date of enactment of this Act, that sets forth a system for rewarding those who supply information about violations of this Act, including—</p> <p>(A) procedures for the Commission to grant a reward of not less than 20 percent of the total civil penalty collected for a violation of this Act to the first person that—</p> <p>(i) identifies the person in violation of this Act; and</p> <p>(ii) supplies information that leads to the successful collection of a civil penalty by the Commission;</p> <p>and</p> <p>(B) procedures to minimize the burden of submitting a complaint to the Commission concerning violations of this Act, including procedures to allow the electronic submission of complaints to the Commission; and</p> <p>(2) a report, within 18 months after the date of enactment of this Act, that sets forth a plan for requiring commercial electronic mail to be identifiable from its subject line, by means of compliance with Internet Engineering Task Force Standards, the use of the characters “ADV” in the subject line, or other comparable identifier, or an explanation of any concerns the Commission has that cause the Commission to recommend against the plan.</p>
日 本	<p>第三條（表示義務） 發送者對於特定電子郵件之發送，應依總務省規定將下列各款事項正確顯示</p>

	<p>於受信者所使用之通信終端機器之影像輸出裝置：</p> <ul style="list-style-type: none"> <li>一、此為特定電子郵件。</li> <li>二、發送者的姓名或名稱及住所。</li> <li>三、發送此特定電子郵件所用的電子郵件地址。</li> <li>四、為接收第四條通知之發送者的電子郵件地址。</li> <li>五、其他總務省所定之事項。</li> </ul>
澳 洲	<p><b>16</b> Unsolicited commercial electronic messages must not be sent</p> <p>(1) A person must not send, or cause to be sent, a commercial electronic message that:</p> <ul style="list-style-type: none"> <li>(a) has an Australian link; and</li> <li>(b) is not a designated commercial electronic message.</li> </ul> <p>Note 1: For <b>Australian link</b>, see section 7.</p> <p>Note 2: For <b>designated commercial electronic message</b>, see Schedule 1.</p> <p>(2) Subsection (1) does not apply if the relevant electronic account-holder consented to the sending of the message.</p> <p>Note: For the meaning of <b>consent</b>, see Schedule 2.</p> <p>(3) Subsection (1) does not apply if the person:</p> <ul style="list-style-type: none"> <li>(a) did not know; and</li> <li>(b) could not, with reasonable diligence, have ascertained; that the message had an Australian link.</li> </ul> <p>(4) Subsection (1) does not apply if the person sent the message, or caused the message to be sent, by mistake.</p> <p>(5) A person who wishes to rely on subsection (2), (3) or (4) bears an evidential burden in relation to that matter.</p> <p>Message must not be sent to a non-existent electronic address</p> <p>(6) A person must not send, or cause to be sent, a commercial electronic message to a non-existent electronic address if:</p> <ul style="list-style-type: none"> <li>(a) the person did not have reason to believe that the electronic address existed; and</li> <li>(b) the electronic message: <ul style="list-style-type: none"> <li>(i) has an Australian link; and</li> <li>(ii) is not a designated commercial electronic message.</li> </ul> </li> </ul> <p>(7) Subsection (6) does not apply if the person:</p> <ul style="list-style-type: none"> <li>(a) did not know; and</li> <li>(b) could not, with reasonable diligence, have ascertained; that the message had an Australian link.</li> </ul> <p>(8) A person who wishes to rely on subsection (7) bears an evidential burden in relation to that matter.</p> <p>Ancillary contraventions</p> <p>(9) A person must not:</p> <ul style="list-style-type: none"> <li>(a) aid, abet, counsel or procure a contravention of subsection (1) or (6); or</li> <li>(b) induce, whether by threats or promises or otherwise, a contravention of subsection (1) or (6); or</li> <li>(c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1) or (6); or</li> <li>(d) conspire with others to effect a contravention of subsection (1) or (6).</li> </ul> <p>(10) A person does not contravene subsection (9) merely because the person supplies a carriage service that enables an electronic message to be sent.</p> <p>Civil penalty provisions</p> <p>(11) Subsections (1), (6) and (9) are <b>civil penalty provisions</b>.</p> <p>Note: Part 4 provides for pecuniary penalties for breaches of civil penalty provisions.</p> <p><b>17</b> Commercial electronic messages must include accurate sender information</p> <p>(1) A person must not send, or cause to be sent, a commercial electronic message that has an Australian link unless:</p> <ul style="list-style-type: none"> <li>(a) the message clearly and accurately identifies the individual or organisation who authorised the sending of the message; and</li> <li>(b) the message includes accurate information about how the recipient can readily contact that individual or organisation; and</li> <li>(c) that information complies with the condition or conditions (if any) specified in the regulations; and</li> </ul>

(d) that information is reasonably likely to be valid for at least 30 days after the message is sent.

Note: For **Australian link**, see section 7.

(2) Subsection (1) does not apply if the person:

- (a) did not know; and
- (b) could not, with reasonable diligence, have ascertained;

that the message had an Australian link.

(3) Subsection (1) does not apply if the person sent the message, or caused the message to be sent, by mistake.

(4) A person who wishes to rely on subsection (2) or (3) bears an evidential burden in relation to that matter.

Ancillary contraventions

(5) A person must not:

- (a) aid, abet, counsel or procure a contravention of subsection (1); or
- (b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or
- (c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or
- (d) conspire with others to effect a contravention of subsection (1).

(6) A person does not contravene subsection (5) merely because the person supplies a carriage service that enables an electronic message to be sent.

Civil penalty provisions

(7) Subsections (1) and (5) are **civil penalty provisions**.

Note: Part 4 provides for pecuniary penalties for breaches of civil penalty provisions.

**18** Commercial electronic messages must contain a functional unsubscribe facility

(1) A person must not send, or cause to be sent, a commercial electronic message that:

- (a) has an Australian link; and
- (b) is not a designated commercial electronic message;

unless:

(c) the message includes:

- (i) a statement to the effect that the recipient may use an electronic address set out in the message to send an unsubscribe message to the individual or organisation who authorised the sending of the first-mentioned message; or
  - (ii) a statement to similar effect; and
- (d) the statement is presented in a clear and conspicuous manner; and
- (e) the electronic address is reasonably likely to be capable of receiving:
- (i) the recipient's unsubscribe message (if any); and
  - (ii) a reasonable number of similar unsubscribe messages sent by other recipients (if any) of the same message;

at all times during a period of at least 30 days after the message is sent; and

- (f) the electronic address is legitimately obtained; and
- (g) the electronic address complies with the condition or conditions (if any) specified in the regulations.

Note 1: For **unsubscribe message**, see subsection (8).

Note 2: For **Australian link**, see section 7.

Note 3: For **designated commercial electronic message**, see Schedule 1.

(2) Subsection (1) does not apply if the person:

- (a) did not know; and
  - (b) could not, with reasonable diligence, have ascertained;
- that the message had an Australian link.

(3) Subsection (1) does not apply to the extent (if any) to which it is inconsistent with the terms of a contract or other agreement between:

- (a) the individual or organisation who authorised the sending of the first-mentioned message; and
- (b) the relevant electronic account-holder.

(4) Subsection (1) does not apply if the person sent the message, or caused the message to be sent, by mistake.

(5) A person who wishes to rely on subsection (2), (3) or (4) bears an evidential burden in relation to that matter.

Ancillary contraventions

(6) A person must not:

- (a) aid, abet, counsel or procure a contravention of subsection (1); or

	<p>(b) induce, whether by threats or promises or otherwise, a contravention of subsection (1); or</p> <p>(c) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of subsection (1); or</p> <p>(d) conspire with others to effect a contravention of subsection (1).</p> <p>(7) A person does not contravene subsection (6) merely because the person supplies a carriage service that enables an electronic message to be sent.</p> <p>Civil penalty provisions</p> <p>(8) Subsections (1) and (6) are <b>civil penalty provisions</b>.</p> <p>Note: Part 4 provides for pecuniary penalties for breaches of civil penalty provisions.</p> <p>Unsubscribe message</p> <p>(9) For the purposes of the application of this section to a commercial electronic message, where the sending of the message is authorised by an individual or organisation, an <b>unsubscribe message</b> is:</p> <p>(a) an electronic message to the effect that the relevant electronic account-holder does not want to receive any further commercial electronic messages from or authorised by that individual or organisation; or</p> <p>(b) an electronic message to similar effect.</p>
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## 第五條 禁止行為

比較法制	內容	容
美國	同前	
日本	<p>第四條（禁止向拒絕受信者發送電子郵件）</p> <p>發送者不得違背其所發送之特定電子郵件之收受者依總務省規定為拒絕之請求（對於與某些事項相關之特定電子郵件為拒絕時，其所為拒絕表示之意旨），再為發送特定電子郵件。違反者，應為特定電子郵件之發送。</p> <p>第五條（禁止以虛構之電子郵件地址發送特定電子郵件）</p> <p>發送者為自己或他人之營業從事以廣告或宣傳為手段而發送電子郵件時，不得利用具有將符號組合為電子郵件地址機能之程式（係指輸入指令於電子計算機，再將得出結果進行組合者，以總務省所定之方式將號碼作成之電子郵件地址為限。）作成虛構之電子郵件地址（意即以此符號組成之電子郵件地址並無實際之使用者。第十條及第十六條第一項規定，亦同。）作為受信者的電子郵件地址。</p> <p>第八條（投訴等之處理）</p> <p>特定電子郵件之發送者，對於因特定電子郵件之發送所為之投訴、詢問等，應本於誠意處理。</p>	
澳洲	同前	
加拿大	<p><b>11.</b> Every person commits an offence who</p> <p>(a) sends spam to an address without identifying it as such;</p> <p>(b) sends spam to an address</p> <p style="padding-left: 20px;">(i) that is on the no-spam list, or</p> <p style="padding-left: 20px;">(ii) in respect of which the owner has sent an opt-out message to the person sending the message or to a person whom the person represents in sending the message;</p> <p>(c) sends spam to an address without determining that the address is not on the no-spam list;</p> <p>(d) sends spam that does not contain a means for the recipient to send an opt-out message;</p> <p>(e) sends spam that does not show the address of the sender;</p> <p>(f) sends spam that offers goods or services on behalf of another person without showing the identity of the other person;</p> <p>(g) sends spam that offers goods or services and contains a false statement about the goods</p>	

	<p>or services or the identity or address of the sender or another person on behalf of whom the sender is acting; or</p> <p>(h) sells, trades or offers to sell or trade or uses any means to collect or obtain addresses from the Internet for the purpose of enabling any person to send spam to those addresses.</p> <p><b>12.</b> Every Internet service provider commits an offence who</p> <p>(a) is an accessory to an offence under paragraphs 11(a) to (g);</p> <p>(b) is an accessory to an offence under paragraph 11(h);</p> <p>(c) fails to install a spam filter that complies with standards set in the by-laws of the Council;</p> <p>(d) fails to use reasonable efforts to prevent spam from going to the provider's customers, and in the case of a provider who does not follow the standards of the Council, the onus is on that provider to show that reasonable efforts were used; or</p> <p>(e) knowingly provides false information to the Council or the Minister in a matter related to the Internet or the administration of this Act.</p>
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## 第六條 電子郵件服務提供者特別條款

比較法制	內 容
美 國	
日 本	<p>第九條（電信業者之資訊提供及技術開發義務）</p> <p>提供電子郵件服務之電信業者（指電信事業法第二條第五款所定之電信業者）對於其服務使用者，應盡力提供有利於防止因特定電子郵件所造成電子郵件傳送接收障礙之相關資訊。</p> <p>提供電子郵件服務之電信業者，應盡力開發或導入有利於防止因特定電子郵件所造成電子郵件傳送接收障礙之相關技術。</p> <p>第十條（拒絕提供電信服務）</p> <p>電信事業（電信事業法第二條第五項規定之電信事業。）對於同一時間以多數虛構電子郵件地址為收件者進行電子郵件位址之發送，認為自己之電信設備（同法第二條第二款規定之電信設備。）機能將因此受到顯著損害，而對於電子郵件使用者所提供之電信服務（同法第三項之電信服務，以下亦同）有生顯著障礙之虞時，得對於發送者以虛構電子郵件地址為收件者所發送之電子郵件，拒絕提供電信服務。</p>
加 拿 大	<p><b>15.</b> (1) An Internet service provider who refuses or cancels service or access to any person who has committed an offence under this Act or who has, on more than one occasion, sent to the provider a message that the provider has reasonable grounds to believe is spam, is not liable to that person for any loss or damage arising from the refusal or cancellation.</p> <p>(2) An Internet service provider has reasonable grounds to believe that a message is spam if the message fails to pass a spam filter approved by the Council.</p>

第七條 主管機關之權責

比較法制	內 容
美 國	<p><b>SEC. 7. ENFORCEMENT GENERALLY.</b></p> <p>(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of this Act is deemed to be a violation of a Federal Trade Commission trade regulation rule. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.</p> <p>(d) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any entity that violates any provision of that subtitle is subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of that subtitle.</p> <p><b>SEC. 9. DO-NOT-E-MAIL REGISTRY.</b></p> <p>(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce a report that—</p> <ol style="list-style-type: none"> <li>(1) sets forth a plan and timetable for establishing a nationwide marketing Do-Not-E-Mail registry;</li> <li>(2) includes an explanation of any practical, technical, security, privacy, enforceability, or other concerns that the Commission has regarding such a registry; and</li> <li>(3) includes an explanation of how the registry would be applied with respect to children with e-mail accounts.</li> </ol> <p>(b) AUTHORIZATION TO IMPLEMENT.—The Commission may establish and implement the plan, but not earlier than 9 months after the date of enactment of this Act.</p> <p><b>SEC. 10. STUDY OF EFFECTS OF COMMERCIAL ELECTRONIC MAIL.</b></p> <p>(a) IN GENERAL.—Not later than 24 months after the date of the enactment of this Act, the Commission, in consultation with the Department of Justice and other appropriate agencies, shall submit a report to the Congress that provides a detailed analysis of the effectiveness and enforcement of the provisions of this Act and the need (if any) for the Congress to modify such provisions.</p> <p>(b) REQUIRED ANALYSIS.—The Commission shall include in the report required by subsection (a)—</p> <ol style="list-style-type: none"> <li>(1) an analysis of the extent to which technological and marketplace developments, including changes in the nature of the devices through which consumers access their electronic mail messages, may affect the practicality and effectiveness of the provisions of this Act;</li> <li>(2) analysis and recommendations concerning how to address commercial electronic mail that originates in or is transmitted through or to facilities or computers in other nations, including initiatives or policy positions that the Federal Government could pursue through international negotiations, fora, organizations, or institutions; and</li> <li>(3) analysis and recommendations concerning options for protecting consumers, including children, from the receipt and viewing of commercial electronic mail that is obscene or pornographic.</li> </ol> <p><b>SEC. 11. IMPROVING ENFORCEMENT BY PROVIDING REWARDS FOR INFORMATION ABOUT VIOLATIONS; LABELING.</b></p> <p>The Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce—</p> <ol style="list-style-type: none"> <li>(1) a report, within 9 months after the date of enactment of this Act, that sets forth a system for rewarding those who supply information about violations of this Act, including— <ol style="list-style-type: none"> <li>(A) procedures for the Commission to grant a reward of not less than 20 percent of the total civil penalty collected for a violation of this Act to the first person that— <ol style="list-style-type: none"> <li>(i) identifies the person in violation of this Act; and</li> <li>(ii) supplies information that leads to the successful collection of a civil penalty by the Commission;</li> </ol> </li> <li>and</li> <li>(B) procedures to minimize the burden of submitting a complaint to the Commission concerning violations of this Act, including procedures to allow the electronic submission of complaints</li> </ol> </li> </ol>

	<p>to the Commission; and</p> <p>(2) a report, within 18 months after the date of enactment of this Act, that sets forth a plan for requiring commercial electronic mail to be identifiable from its subject line, by means of compliance with Internet Engineering Task Force Standards, the use of the characters “ADV” in the subject line, or other comparable identifier, or an explanation of any concerns the Commission has that cause the Commission to recommend against the plan.</p> <p><b>SEC. 13. REGULATIONS.</b></p> <p>(a) IN GENERAL.—The Commission may issue regulations to implement the provisions of this Act (not including the amendments made by sections 4 and 12). Any such regulations shall be issued in accordance with section 553 of title 5, United States Code.</p> <p>(b) LIMITATION.—Subsection (a) may not be construed to authorize the Commission to establish a requirement pursuant to section 5(a)(5)(A) to include any specific words, characters, marks, or labels in a commercial electronic mail message, or to include the identification required by section 5(a)(5)(A) in any particular part of such a mail message (such as the subject line or body).</p>
日 本	<p>第六條（措施命令）</p> <p>經總務大臣認定，發送者於同一時間針對多數人發送特定電子郵件或其他電子郵件時，未遵守前三條規定，為防止電子郵件傳送接收之障礙，必要時，得命該發送者採取必要措施，以確保其能遵守前三條規定之事項。</p> <p>第七條（對於總務大臣之建議）</p> <p>特定電子郵件之收件者，認有特定電子郵件之發送違反第三條或第四條規定時，得向總務大臣提出應採取適當措施之建議。</p> <p>總務大臣對於依前項規定所提出之建議，應為必要之調查，依調查結果認有必要時，應採取本法規定之措施或其他適當措施。</p> <p>第十一條（對於電信事業團體之指導及建言）</p> <p>總務大臣應對於依民法（明治二十九年法律第 89 號）第三十四條規定設立之以電信事業為會員之社團法人提供資訊，或對於其他有助於防止因特定電子郵件所產生之電子郵件發送接收障礙之業務，為必要之指導及建言。</p> <p>第十二條（研究開發等狀況的公告）</p> <p>有關為防止因特定電子郵件造成電子郵件發送接收障礙技術之研究開發及根據提供電子郵件服務之電信業者導入技術之情形，總務大臣每年至少須為公告一次。</p> <p>第十三條（指定法人）</p> <p>依民法第三十四條規定設立之法人，經總務大臣認定已適切地執行第二項規定之業務（以下稱「特定電子郵件發送正常化業務」）時，若認得確保發送之正常化，總務大臣得依其申請指定其為特定電子郵件發送正常化業務執行者（以下稱「指定法人」）。</p> <p>指定法人之業務範圍為下列各款：</p> <p>對於依第七條第一項規定向總務大臣提出申請者進行指導或建議。</p> <p>經總務大臣請求時，對於第七條第二項規定提出之申請相關之事實關係進行調查。</p> <p>收集及提供與特定電子郵件相關資訊或資料。</p> <p>第十四條（改善命令）</p> <p>總務大臣認指定法人之特定電子郵件發送正常化業務之執行有改善之必要時，得命該指定法人採取必要之改善措施。</p> <p>第十五條（指定之取消）</p> <p>指定法人違反依前條規定所為之命令時，總務大臣得撤銷其指定。</p> <p>第十六條（報告及實施檢查）</p> <p>總務大臣為落實本法，必要時得命特定電子郵件發送者，或以虛構電子郵件地址為收件者之電子郵件發送者，對其發送行為進行相關報告，或派員進入</p>

	<p>發送者之事務所，檢查其帳簿、文書或其他物件。</p> <p>總務大臣為確保特定電子郵件發送正常化業務之正常運作，得於必要之限度內命指定法人，就特定電子郵件發送正常化業務或其資產狀況為必要之報告，或派員進入該指定法人之事務所，針對特定電子郵件發送正常化業務狀況、帳簿、文書或其他物件實施檢查。</p> <p>依前二項規定實施檢查之人員應攜帶身分證件，並向實施檢查場所之關係人員出示。</p> <p>依第一項或第二項規定而實施之檢查，不包括犯罪之搜索。</p>
<p>澳 洲</p>	<p>38 <i>Acceptance of undertakings</i></p> <p>(1) <i>The ACA may accept a written undertaking given by a person for the purposes of this section in connection with a matter relating to:</i></p> <p>(a) <i>commercial electronic messages; or</i></p> <p>(b) <i>address-harvesting software.</i></p> <p>(2) <i>The person may withdraw or vary the undertaking at any time, but only with the consent of the ACA.</i></p> <p>39 <i>Enforcement of undertakings</i></p> <p>(1) <i>If the ACA considers that a person who gave an undertaking under section 38 has breached any of its terms, the ACA may apply to the Federal Court for an order under subsection (2).</i></p> <p>(2) <i>If the Federal Court is satisfied that the person has breached a term of the undertaking, the Court may make any or all of the following orders:</i></p> <p>(a) <i>an order directing the person to comply with that term of the undertaking;</i></p> <p>(b) <i>an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;</i></p> <p>(c) <i>any order that the Court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;</i></p> <p>(d) <i>any other order that the Court considers appropriate.</i></p> <p>40 <i>Assessment of compensation for breach of undertaking</i></p> <p>(1) <i>This section applies if, in a proceeding under section 39, the Federal Court finds that a person has breached a term of an undertaking relating to the sending of commercial electronic messages.</i></p> <p>(2) <i>In determining whether another person (the <b>victim</b>) has suffered loss or damage as a result of the breach, and in assessing the amount of compensation payable, the Court may have regard to the following:</i></p> <p>(a) <i>the extent to which any expenses incurred by the victim are attributable to dealing with the messages;</i></p> <p>(b) <i>the effect of dealing with the messages on the victim's ability to carry on business or other activities;</i></p> <p>(c) <i>any damage to the reputation of the victim's business that is attributable to dealing with the messages;</i></p> <p>(d) <i>any loss of business opportunities suffered by the victim as a result of dealing with the messages;</i></p> <p>(e) <i>any other matters that the Court considers relevant.</i></p>
<p>英 國</p>	<p><b>Request that the Commissioner exercise his enforcement functions</b></p> <p>32. Where it is alleged that there has been a contravention of any of the requirements of these Regulations either OFCOM or a person aggrieved by the alleged contravention may request the Commissioner to exercise his enforcement functions in respect of that contravention, but those functions shall be exercisable by the Commissioner whether or not he has been so requested.</p> <p><b>Technical advice to the Commissioner</b></p> <p>33. OFCOM shall comply with any reasonable request made by the Commissioner, in connection with his enforcement functions, for advice on technical and similar matters relating to electronic communications.</p>

加拿大	<p><b>8.</b> (1) The Minister shall, within 180 days after the day on which this Act comes into force, establish and maintain a no-spam list.</p> <p>(2) Any person who is the owner of an address may file with the Minister a no-spam notice in the form and manner determined by the Minister.</p> <p>(3) No person shall send spam to an address unless the person has first determined, from the Minister or the body to which the Minister’s responsibilities under this section are delegated, that the address is not on the no-spam list.</p> <p>(4) The Minister shall establish electronic means for allowing a person to make the determination required by subsection (3).</p> <p>(5) The means established under subsection (4) shall not provide any address to the person.</p> <p>(6) The no-spam list is not a public document and the Minister shall not reveal to any person the identity or address of any other person who files a no-spam notice.</p> <p><b>9.</b> (1) Every person who authorizes an agent to send e-mail on their behalf must promptly notify the Minister</p> <p>(a) that the agent is so authorized; and (b) if the authorization is terminated, of the date of termination.</p> <p>(2) The Minister shall make available to the Council and its members the information the Minister receives under subsection (1).</p> <p><b>10.</b> The Minister may delegate the Minister’s responsibilities under sections 8, 9 and 16 to any board, commission or agency of the Government of Canada that is accountable to the Minister.</p>
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第八條 民事損害賠償請求權與擬制賠償額規定

比較法制	內容
我國	<p>民法 第一百九十七條</p> <p>因侵權行為所生之損害賠償請求權，自請求權人知有損害及賠償義務人時起，二年間不行使而消滅。自有侵權行為時起，逾十年者亦同。</p> <p>損害賠償之義務人，因侵權行為受利益，致被害人受損害者，於前項時效完成後，仍應依關於不當得利之規定，返還其所受之利益於被害人。</p>

著作權法  
第八十八條

因故意或過失不法侵害他人之著作財產權或製版權者，負損害賠償責任。

數人共同不法侵害者，連帶負賠償責任。

前項損害賠償，被害人得依下列規定擇一請求：

- 一 依民法第二百十六條之規定請求。但被害人不能證明其損害時，得以其行使權利依通常情形可得預期之利益，減除被侵害後行使同一權利所得利益之差額，為其所受損害。
- 二 請求侵害人因侵害行為所得之利益。但侵害人不能證明其成本或必要費用時，以其侵害行為所得之全部收入，為其所得利益。

依前項規定，如被害人不易證明其實際損害額，得請求法院依侵害情節，在新臺幣一萬元以上一百萬元以下酌定賠償額。如損害行為屬故意且情節重大者，賠償額得增至新臺幣五百萬元。

電腦處理個人資料保護法  
第二十七條

公務機關違反本法規定，致當事人權益受損害者，應負損害賠償責任。但損害因天災、事變或其他不可抗力所致者，不在此限。

被害人雖非財產上之損害，亦得請求賠償相當之金額；其名譽被侵害者，並得請求為回復名譽之適當處分。

前二項損害賠償總額，以每人每一事件新臺幣二萬元以上十萬元以下計算。但能證明其所受之損害額高於該金額者，不在此限。

基於同一原因事實應對當事人負損害賠償責任者，其合計最高總額以新臺幣二千萬元為限。

第二項請求權，不得讓與或繼承。但以金額賠償之請求權已依契約承諾或已起訴者，不在此限。

第二十八條

非公務機關違反本法規定，致當事人權益受損害者，應負損害賠償責任。但能證明其無故意或過失者，不在此限。

依前項規定請求賠償者，適用前條第二項至第五項之規定。

美 國	<p><b>SEC. 7. ENFORCEMENT GENERALLY.</b></p> <p>(a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR PRACTICE.— Except as provided in subsection (b), this Act shall be enforced by the Commission as if the violation of this Act were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).</p> <p>(b) ENFORCEMENT BY CERTAIN OTHER AGENCIES.—Compliance with this Act shall be enforced—</p> <ol style="list-style-type: none"> <li>(1) under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of— <ol style="list-style-type: none"> <li>(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;</li> <li>(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 and 611), and bank holding companies, by the Board;</li> <li>(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and</li> <li>(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision;</li> </ol> </li> <li>(2) under the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the Board of the National</li> </ol>
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	<p>Credit Union Administration with respect to any Federally insured credit union;</p> <p>(3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) by the Securities and Exchange Commission with respect to any broker or dealer;</p> <p>(4) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.) by the Securities and Exchange Commission with respect to investment companies;</p> <p>(5) under the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) by the Securities and Exchange Commission with respect to investment advisers registered under that Act;</p> <p>(6) under State insurance law in the case of any person engaged in providing insurance, by the applicable State insurance authority of the State in which the person is domiciled, subject to section 104 of the Gramm-Bliley-Leach Act (15 U.S.C. 6701), except that in any State in which the State insurance authority elects not to exercise this power, the enforcement authority pursuant to this Act shall be exercised by the Commission in accordance with subsection (a);</p> <p>(7) under part A of subtitle VII of title 49, United States Code, by the Secretary of Transportation with respect to any air carrier or foreign air carrier subject to that part;</p> <p>(8) under the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 406 of that Act (7 U.S.C. 226, 227)), by the Secretary of Agriculture with respect to any activities subject to that Act;</p> <p>(9) under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association; and</p> <p>(10) under the Communications Act of 1934 (47 U.S.C. 151 et seq.) by the Federal Communications Commission with respect to any person subject to the provisions of that Act.</p> <p>(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of this Act is deemed to be a violation of a Federal Trade Commission trade regulation rule. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this Act, any other authority conferred on it by law.</p> <p>(d) ACTIONS BY THE COMMISSION.—The Commission shall prevent any person from violating this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any entity that violates any provision of that subtitle is subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of that subtitle.</p> <p>(e) AVAILABILITY OF CEASE-AND-DESIST ORDERS AND INJUNCTIVE RELIEF WITHOUT SHOWING OF KNOWLEDGE.—Notwithstanding any other provision of this Act, in any proceeding or action pursuant to subsection (a), (b), (c), or (d) of this section to enforce compliance, through an order to cease and desist or an injunction, with section 5(a)(1)(C), section 5(a)(2), clause (ii), (iii), or (iv) of section 5(a)(4)(A), section 5(b)(1)(A), or section 5(b)(3), neither the Commission nor the Federal Communications Commission shall be required to allege or prove the state of mind required by such section or subparagraph.</p> <p>(f) ENFORCEMENT BY STATES.—</p> <p>(1) CIVIL ACTION.—In any case in which the attorney general of a State, or an official or agency of a State, has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person who violates paragraph (1) or (2) of section 5(a), who violates section 5(d), or who engages in a pattern or practice that violates paragraph (3), (4), or (5) of section 5(a), of this Act, the attorney general, official, or agency of the State, as <i>parens patriae</i>, may bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction—</p> <p>(A) to enjoin further violation of section 5 of this Act by the defendant; or</p> <p>(B) to obtain damages on behalf of residents of the State, in an amount equal to the greater of—</p> <p>(i) the actual monetary loss suffered by such residents; or</p> <p>(ii) the amount determined under paragraph (3).</p> <p>(2) AVAILABILITY OF INJUNCTIVE RELIEF WITHOUT SHOWING OF KNOWLEDGE.—Notwithstanding any other provision of this Act, in a civil action under paragraph (1)(A) of this subsection, the attorney general, official, or agency of the State shall not be required to allege or prove the state of mind required by section 5(a)(1)(C), section 5(a)(2), clause (ii), (iii), or (iv) of section 5(a)(4)(A), section 5(b)(1)(A), or section 5(b)(3).</p> <p>(3) STATUTORY DAMAGES.—</p>
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- (A) IN GENERAL.—For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of violations (with each separately addressed unlawful message received by or addressed to such residents treated as a separate violation) by up to \$250.
- (B) LIMITATION.—For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed \$2,000,000.
- (C) AGGRAVATED DAMAGES.—The court may increase a damage award to an amount equal to not more than three times the amount otherwise available under this paragraph if—
- (i) the court determines that the defendant committed the violation willfully and knowingly; or
  - (ii) the defendant’s unlawful activity included one or more of the aggravating violations set forth in section 5(b).
- (D) REDUCTION OF DAMAGES.—In assessing damages under subparagraph (A), the court may consider whether—
- (i) the defendant has established and implemented, with due care, commercially reasonable practices and procedures designed to effectively prevent such violations; or
  - (ii) the violation occurred despite commercially reasonable efforts to maintain compliance the practices and procedures to which reference is made in clause (i).
- (4) ATTORNEY FEES.—In the case of any successful action under paragraph (1), the court, in its discretion, may award the costs of the action and reasonable attorney fees to the State.
- (5) RIGHTS OF FEDERAL REGULATORS.—The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) and provide the Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right—
- (A) to intervene in the action;
  - (B) upon so intervening, to be heard on all matters arising therein;
  - (C) to remove the action to the appropriate United States district court; and
  - (D) to file petitions for appeal.
- (6) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—
- (A) conduct investigations;
  - (B) administer oaths or affirmations; or
  - (C) compel the attendance of witnesses or the production of documentary and other evidence.
- (7) VENUE; SERVICE OF PROCESS.—
- (A) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.
- (B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—
- (i) is an inhabitant; or
  - (ii) maintains a physical place of business.
- (8) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission, or other appropriate Federal agency under subsection (b), has instituted a civil action or an administrative action for violation of this Act, no State attorney general, or official or agency of a State, may bring an action under this subsection during the pendency of that action against any defendant named in the complaint of the Commission or the other agency for any violation of this Act alleged in the complaint.
- (9) REQUISITE SCIENTER FOR CERTAIN CIVIL ACTIONS.— Except as provided in section 5(a)(1)(C), section 5(a)(2), clause (ii), (iii), or (iv) of section 5(a)(4)(A), section 5(b)(1)(A), or section 5(b)(3), in a civil action brought by a State attorney general, or an official or agency of a State, to recover monetary damages for a violation of this Act, the court shall not grant the relief sought unless the attorney general, official, or agency establishes that the defendant acted with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, of the act or omission that constitutes the violation.
- (g) ACTION BY PROVIDER OF INTERNET ACCESS SERVICE.—
- (1) ACTION AUTHORIZED.—A provider of Internet access service adversely affected by a violation of section 5(a)(1), 5(b), or 5(d), or a pattern or practice that violates paragraph (2), (3), (4), or (5) of section 5(a), may bring a civil action in any district court of the United States with

	<p>jurisdiction over the defendant—</p> <p>(A) to enjoin further violation by the defendant; or</p> <p>(B) to recover damages in an amount equal to the greater of—</p> <p>(i) actual monetary loss incurred by the provider of Internet access service as a result of such violation; or</p> <p>(ii) the amount determined under paragraph (3).</p> <p>(2) SPECIAL DEFINITION OF “PROCURE”.—In any action brought under paragraph (1), this Act shall be applied as if the definition of the term “procure” in section 3(12) contained, after “behalf” the words “with actual knowledge, or by consciously avoiding knowing, whether such person is engaging, or will engage, in a pattern or practice that violates this Act”.</p> <p>(3) STATUTORY DAMAGES.—</p> <p>(A) IN GENERAL.—For purposes of paragraph (1)(B)(ii), the amount determined under this paragraph is the amount calculated by multiplying the number of violations (with each separately addressed unlawful message that is transmitted or attempted to be transmitted over the facilities of the provider of Internet access service, or that is transmitted or attempted to be transmitted to an electronic mail address obtained from the provider of Internet access service in violation of section 5(b)(1)(A)(i), treated as a separate violation) by—</p> <p>(i) up to \$100, in the case of a violation of section 5(a)(1); or</p> <p>(ii) up to \$25, in the case of any other violation of section 5.</p> <p>(B) LIMITATION.—For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed \$1,000,000.</p> <p>(C) AGGRAVATED DAMAGES.—The court may increase a damage award to an amount equal to not more than three times the amount otherwise available under this paragraph if—</p> <p>(i) the court determines that the defendant committed the violation willfully and knowingly; or</p> <p>(ii) the defendant’s unlawful activity included one or more of the aggravated violations set forth in section 5(b).</p> <p>(D) REDUCTION OF DAMAGES.—In assessing damages under subparagraph (A), the court may consider whether—</p> <p>(i) the defendant has established and implemented, with due care, commercially reasonable practices and procedures designed to effectively prevent such violations; or</p> <p>(ii) the violation occurred despite commercially reasonable efforts to maintain compliance with the practices and procedures to which reference is made in clause (i).</p> <p>(4) ATTORNEY FEES.—In any action brought pursuant to paragraph (1), the court may, in its discretion, require an undertaking for the payment of the costs of such action, and assess reasonable costs, including reasonable attorneys’ fees, against any party.</p>
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<p>澳 洲</p>	<p>23 Simplified outline</p> <p>The following is a simplified outline of this Part:</p> <div style="border: 1px solid black; padding: 10px; margin: 10px 0;"> <ul style="list-style-type: none"> <li>• Pecuniary penalties are payable for contraventions of civil penalty provisions.</li> <li>• Proceedings for the recovery of penalties are to be instituted in the Federal Court.</li> <li>• The Federal Court may make ancillary orders: <ul style="list-style-type: none"> <li>(a) directing the payment of compensation to a victim of a contravention of a civil penalty provision; and</li> <li>(b) directing the payment to the Commonwealth of an amount up to the amount of any financial benefit that is attributable to a contravention of a civil penalty provision.</li> </ul> </li> </ul> </div> <p>Note: Schedule 3 sets up a system of infringement notices relating to contraventions of civil penalty provisions.</p> <p>24 Pecuniary penalties for contravention of civil penalty provisions</p> <p>(1) If the Federal Court is satisfied that a person has contravened a civil penalty provision, the Court may order the person to pay to the Commonwealth such pecuniary penalty, in respect of each contravention, as the Court determines to be appropriate.</p> <p>(2) In determining the pecuniary penalty, the Court must have regard to all relevant matters, including:</p> <ul style="list-style-type: none"> <li>(a) the nature and extent of the contravention; and</li> <li>(b) the nature and extent of any loss or damage suffered as a result of the contravention; and</li> <li>(c) the circumstances in which the contravention took place; and</li> <li>(d) whether the person has previously been found by the Court in proceedings under this Act to have engaged in any similar conduct; and</li> </ul>
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(e) if the Court considers that it is appropriate to do so—whether the person has previously been found by a court in a foreign country to have engaged in any similar conduct.

25 Maximum penalties for contravention of civil penalty provisions

- (1) The maximum penalty payable under subsection 24(1) by a person in respect of a contravention of a civil penalty provision depends on:
- (a) whether the person has a prior record in relation to the civil penalty provision (see subsection (2)); and
  - (b) whether the person is a body corporate; and
  - (c) whether the civil penalty provision is subsection 16(1), (6) or (9).

Prior record

(2) If:

- (a) on a particular day (the **first day**), the Federal Court makes an order under subsection 24(1) against a person in respect of a contravention of a particular civil penalty provision; and
  - (b) that is the first occasion on which the Federal Court makes an order under subsection 24(1) against the person in respect of a contravention of the civil penalty provision;
- then, for the purposes of determining the penalty payable under subsection 24(1) by the person in respect of a contravention of the civil penalty provision that occurs after the first day, the person has a **prior record** in relation to the civil penalty provision.

Maximum penalty payable by body corporate—no prior record

- (3) If a body corporate does not have a prior record in relation to a particular civil penalty provision:
- (a) the penalty payable under subsection 24(1) by the body corporate in respect of a contravention of the civil penalty provision must not exceed:
    - (i) if the civil penalty provision is subsection 16(1), (6) or (9)—100 penalty units; or
    - (ii) in any other case—50 penalty units; and
  - (b) if the Federal Court finds that the body corporate has, on a particular day, committed 2 or more contraventions of the civil penalty provision—the total of the penalties payable under subsection 24(1) by the body corporate in respect of those contraventions must not exceed:
    - (i) if the civil penalty provision is subsection 16(1), (6) or (9)—2,000 penalty units; or
    - (ii) in any other case—1,000 penalty units.

Maximum penalty payable by a person other than a body corporate—no prior record

- (4) If a person other than a body corporate does not have a prior record in relation to a particular civil penalty provision:
- (a) the penalty payable under subsection 24(1) by the person in respect of a contravention of the civil penalty provision must not exceed:
    - (i) if the civil penalty provision is subsection 16(1), (6) or (9)—20 penalty units; or
    - (ii) in any other case—10 penalty units; and
  - (b) if the Federal Court finds that the person has, on a particular day, committed 2 or more contraventions of the civil penalty provision—the total of the penalties payable under subsection 24(1) by the person in respect of those contraventions must not exceed:
    - (i) if the civil penalty provision is subsection 16(1), (6) or (9)—400 penalty units; or
    - (ii) in any other case—200 penalty units.

Maximum penalty payable by body corporate—prior record

- (5) If a body corporate has a prior record in relation to a particular civil penalty provision:
- (a) the penalty payable under subsection 24(1) by the body corporate in respect of a contravention of the civil penalty provision must not exceed:
    - (i) if the civil penalty provision is subsection 16(1), (6) or (9)—500 penalty units; or
    - (ii) in any other case—250 penalty units; and
  - (b) if the Federal Court finds that the body corporate has, on a particular day, committed 2 or more contraventions of the civil penalty provision—the total of the penalties payable under subsection 24(1) by the body corporate in respect of those contraventions must not exceed:
    - (i) if the civil penalty provision is subsection 16(1), (6) or (9)—10,000 penalty units; or
    - (ii) in any other case—5,000 penalty units.

Maximum penalty payable by a person other than a body corporate—prior record

- (6) If a person other than a body corporate has a prior record in relation to a particular civil penalty provision:
- (a) the penalty payable under subsection 24(1) by the person in respect of a contravention of the civil penalty provision must not exceed:
    - (i) if the civil penalty provision is subsection 16(1), (6) or (9)—100 penalty units; or
    - (ii) in any other case—50 penalty units; and
  - (b) if the Federal Court finds that the person has, on a particular day, committed 2 or more contraventions of the civil penalty provision—the total of the penalties payable under

	<p>subsection 24(1) by the person in respect of those contraventions must not exceed:</p> <ul style="list-style-type: none"> <li>(i) if the civil penalty provision is subsection 16(1), (6) or (9)—2,000 penalty units; or</li> <li>(ii) in any other case—1,000 penalty units.</li> </ul> <p>26 Civil action for recovery of pecuniary penalties</p> <ul style="list-style-type: none"> <li>(1) The ACA may institute a proceeding in the Federal Court for the recovery on behalf of the Commonwealth of a pecuniary penalty referred to in section 24.</li> <li>(2) A proceeding under subsection (1) may be commenced within 6 years after the contravention.</li> <li>(3) The Federal Court may direct that 2 or more proceedings under subsection (1) are to be heard together.</li> </ul> <p>27 Criminal proceedings not to be brought for contravention of civil penalty provisions</p> <p>Criminal proceedings do not lie against a person only because the person has contravened a civil penalty provision.</p> <p>28 Ancillary orders—compensation</p> <ul style="list-style-type: none"> <li>(1) If: <ul style="list-style-type: none"> <li>(a) in one or more proceedings under section 26, the Federal Court finds that a person (the <b>perpetrator</b>) has contravened one or more civil penalty provisions; and</li> <li>(b) the Court is satisfied that another person (the <b>victim</b>) has suffered loss or damage as a result of any or all of those contraventions;</li> </ul> <p>the Court may, on the application of the ACA or the victim, make an order that the Court considers appropriate directing the perpetrator to compensate the victim.</p> </li> <li>(2) In determining whether a person (the <b>victim</b>) has suffered loss or damage as a result of one or more contraventions by another person of section 16 in relation to the sending of one or more commercial electronic messages, and in assessing the amount of compensation payable, the Court may have regard to the following: <ul style="list-style-type: none"> <li>(a) the extent to which any expenses incurred by the victim are attributable to dealing with the messages;</li> <li>(b) the effect of dealing with the messages on the victim’s ability to carry on business or other activities;</li> <li>(c) any damage to the reputation of the victim’s business that is attributable to dealing with the messages;</li> <li>(d) any loss of business opportunities suffered by the victim as a result of dealing with the messages;</li> <li>(e) any other matters that the Court considers relevant.</li> </ul> </li> <li>(3) The Federal Court may make an order under subsection (1), whether or not it makes an order under section 24.</li> <li>(4) An application under subsection (1) may be made at any time within 6 years after the contravention concerned.</li> </ul> <p>29 Ancillary orders—recovery of financial benefit</p> <ul style="list-style-type: none"> <li>(1) If: <ul style="list-style-type: none"> <li>(a) in one or more proceedings under section 26, the Federal Court finds that a person has contravened one or more civil penalty provisions; and</li> <li>(b) the Court is satisfied that the person has obtained (whether directly or indirectly) a financial benefit that is reasonably attributable to any or all of those contraventions;</li> </ul> <p>the Court may, on the application of the ACA, make an order directing the person to pay to the Commonwealth an amount up to the amount of the financial benefit.</p> </li> <li>(2) The Federal Court may make an order under subsection (1), whether or not it makes an order under section 24.</li> <li>(3) An application under subsection (1) may be made at any time within 6 years after the contravention concerned.</li> </ul> <p>30 Schedule 3 (infringement notices)</p> <p>Schedule 3 has effect.</p>
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## 第九條 團體訴訟程序

參 考 立 法 例	內 容
民 事 訴 訟 法	<p>第四十四條之二</p> <p>因公害、交通事故、商品瑕疵或其他本於同一原因事實而有共同利益之多數人，依第四十一條之規定選定一人或數人為同種類之法律關係起訴者，法院得徵求原被選定人之同意，或由被選定人聲請經法院認為適當時，公告曉示其他共同利益人，得於一定期間內以書狀表明其原因事實、證據及應受判決事項之聲明，併案請求。其請求之人，視為已依第四十一條為選定。</p> <p>其他有共同利益之人，亦得聲請法院依前項規定為公告曉示。併案請求之書狀，應以繕本或影本送達於兩造。</p> <p>第一項之期間至少應有二十日，公告應黏貼於法院公告處，並登載公報、新聞紙或其他相類之傳播工具，其費用由國庫墊付。</p> <p>第一項原被選定人不同意者，法院得依職權公告曉示其他共同利益人起訴，由法院併案審理。</p> <p>第四十四條之三</p> <p>以公益為目的之社團法人或財團法人，經其目的事業主管機關許可，於章程所定目的範圍內，得對侵害多數人利益之行為人，提起不作為之訴。</p> <p>前項許可及監督辦法，由司法院會同行政院定之。</p>
消 費 者 保 護 法	<p>第四十九條</p> <p>消費者保護團體許可設立三年以上，申請消費者保護委員會評定優良，置有消費者保護專門人員，且合於下列要件之一，並經消費者保護官同意者，得以自己之名義，提起第五十條消費者損害賠償訴訟或第五十三條不作為訴訟：</p> <ol style="list-style-type: none"> <li>一 社員人數五百人以上之社團法人。</li> <li>二 登記財產總額新臺幣一千萬元以上之財團法人。</li> </ol> <p>消費者保護團體依前項規定提起訴訟者，應委任律師代理訴訟。受委任之律師，就該訴訟，除得請求預付或償還必要之費用外，不得請求報酬。</p> <p>消費者保護團體關於其提起之第一項訴訟，有不法行為者，許可設立之主管機關應廢止其許可。</p> <p>消費者保護團體評定辦法，由消費者保護委員會另定之。</p> <p>第五十條</p> <p>消費者保護團體對於同一之原因事件，致使眾多消費者受害時，得受讓二十人以上消費者損害賠償請求權後，以自己名義，提起訴訟。消費者得於言詞辯論終結前，終止讓與損害賠償請求權，並通知法院。</p> <p>前項訴訟，因部分消費者終止讓與損害賠償請求權，致人數不足二十人者，不影響其實施訴訟之權能。</p> <p>第一項讓與之損害賠償請求權，包括民法第一百九十四條、第一百九十五條第一項非財產上之損害。</p> <p>前項關於消費者損害賠償請求權之時效利益，應依讓與之消費</p>

	<p>者單獨個別計算。</p> <p>消費者保護團體受讓第三項所定請求權後，應將訴訟結果所得之賠償，扣除訴訟及依前條第二項規定支付予律師之必要費用後，交付該讓與請求權之消費者。</p> <p>消費者保護團體就第一項訴訟，不得向消費者請求報酬。</p> <p>第五十二條</p> <p>消費者保護團體以自己之名義提起第五十條訴訟，其標的價額超過新臺幣六十萬元者，超過部分免繳裁判費。</p>
<p>電腦處理個人資料保護法(修正草案)</p>	<p>第三十二條</p> <p>依本章規定提起訴訟之財團法人或公益社團法人，應符合下列要件：</p> <ol style="list-style-type: none"> <li>一、 財團法人之登記財產總額達新臺幣一千萬元或社團法人之社員人數達五百人。</li> <li>二、 保護個人資料事項於其章程所定目的範圍內。</li> <li>三、 許可設立三年以上。</li> </ol> <p>第三十三條</p> <p>財團法人或公益社團法人對於造成多數當事人個人資料遭不法蒐集、處理或利用之事件，得由二十人以上受有損害之當事人授與訴訟實施權後，以自己之名義，提起損害賠償訴訟。當事人得於言詞辯論終結前撤回訴訟實施權之授與，並通知法院。</p> <p>財團法人或公益社團法人依前項規定提起訴訟後，得由其他因同一多數當事人個人資料遭不法蒐集、處理或利用之事件受有損害之當事人授與訴訟實施權，於第一審言詞辯論終結前，擴張應受判決事項之聲明。</p> <p>前二項訴訟實施權之授與，應以文書為之。</p> <p>依第一項規定提起訴訟之財團法人或公益社團法，其標的價額超過新臺幣六十萬元者，超過部分免徵裁判費。</p> <p>第三十四條</p> <p>當事人依前條第一項規定撤回訴訟實施權之授與者，該部分訴訟程序當然停止，該當事人應即聲明承受訴訟，法院亦得依職權命該當事人承受訴訟。</p> <p>財團法人或公益社團法人依前條規定起訴後，因部分當事人撤回訴訟實施權之授與，致其餘部分不足二十人者，仍得就其餘部分繼續進行訴訟。</p> <p>第三十五條</p> <p>各當事人於第三十三條第一項及第二項之損害賠償請求權，其時效應分別計算。</p> <p>第三十六條</p> <p>財團法或公益社團法人就當事人授與訴訟實施權之事件，有為一切訴訟行為之權。但當事人得限制其為捨棄、撤回或和解。</p> <p>前項當事人中一人所為之限制，其效力不及於其他當事人。</p> <p>第一項之限制，應於第三十三條第三項之文書內表明，或以書狀提出於法院。</p> <p>第三十七條</p> <p>當事人對於第三十三條訴訟之判決不服者，得於財團法或公益</p>

	<p>社團法人上訴期間屆滿前，撤回訴訟實施權之授與，依法提起上訴。</p> <p>財團法或公益社團法人於收受判決書正本後，應將其結果通知當事人，並應於七日內將是否提起上訴之意旨以書面通知當事人。</p> <p>第三十八條</p> <p>財團法人或公益社團法人應將第三十三條訴訟結果所得之賠償，扣除訴訟必要費用後，分別交付授與訴訟實施權之當事人。</p> <p>提起第三十三條第一項訴訟之財團法人或公益社團法人，均不得請求報酬。</p>
證券投資人及期貨交易人保護法	<p>第二十八條</p> <p>保護機構為維護公益，於其章程所定目的範圍內，對於造成多數證券投資人或期貨交易人受損害之同一證券、期貨事件，得由二十人以上證券投資人或期貨交易人授與訴訟或仲裁實施權後，以自己之名義，起訴或提付仲裁。證券投資人或期貨交易人得於言詞辯論終結前或詢問終結前，撤回訴訟或仲裁實施權之授與，並通知法院或仲裁庭。</p> <p>保護機構依前項規定起訴或提付仲裁後，得由其他因同一證券或期貨事件受損害之證券投資人或期貨交易人授與訴訟或仲裁實施權，於第一審言詞辯論終結前或詢問終結前，擴張應受判決或仲裁事項之聲明。</p> <p>前二項訴訟或仲裁實施權之授與，應以文書為之。</p> <p>仲裁法第四條之規定，於保護機構依第一項或第二項規定起訴或擴張應受判決事項之聲明時，不適用之。</p> <p>第二十九條</p> <p>證券投資人或期貨交易人依前條第一項撤回訴訟或仲裁實施權之授與者，該部分訴訟或仲裁程序當然停止，該證券投資人或期貨交易人應即聲明承受訴訟或仲裁，法院或仲裁庭亦得依職權命該證券投資人或期貨交易人承受訴訟或仲裁。</p> <p>保護機構依前條規定起訴或提付仲裁後，因部分證券投資人或期貨交易人撤回訴訟或仲裁實施權之授與，致其餘部分不足二十人者，仍得就其餘部分繼續進行訴訟或仲裁。</p> <p>第三十條</p> <p>各證券投資人或期貨交易人於第二十八條第一項及第二項之損害賠償請求權，其時效應個別計算。</p> <p>第三十一條</p> <p>保護機構就證券投資人或期貨交易人授與訴訟或仲裁實施權之事件，有為一切訴訟或仲裁行為之權。但證券投資人或期貨交易人得限制其為捨棄、認諾、撤回或和解。</p> <p>前項證券投資人或期貨交易人中一人所為之限制，其效力不及於其他證券投資人或期貨交易人。</p> <p>第一項之限制，應於第二十八條第三項之文書內表明，或以書狀提出於法院或仲裁庭。</p> <p>第三十二條</p> <p>證券投資人或期貨交易人對於第二十八條訴訟之判決不服者，得於保護機構上訴期間屆滿前，撤回訴訟實施權之授與，依法</p>

	<p>提起上訴。</p> <p>保護機構於收受判決或判斷書正本後，應即將其結果通知證券投資人或期貨交易人，並應於七日內將是否提起上訴之意旨以書面通知證券投資人或期貨交易人。</p>
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相關條文

比較法制	內容
我國	<p>電腦處理個人資料保護法 第三十三條 意圖營利違反第七條、第八條、第十八條、第十九條第一項、第二項、第二十三條之規定或依第二十四條所發布之限制命令，致生損害於他人者，處二年以下有期徒刑、拘役或科或併科新臺幣四萬元以下罰金。</p> <p>第三十四條 意圖為自己或第三人不法之利益或損害他人之利益，而對於個人資料檔案為非法輸出、干擾、變更、刪除或以其他非法方法妨害個人資料檔案之正確，致生損害於他人者，處三年以下有期徒刑、拘役或科新臺幣五萬元以下罰金。</p>
	<p>電腦處理個人資料保護法(修正草案) 第二十三條 非公務機關對個人資料之利用，應於蒐集之特定目的必要範圍內為之。但有下列情形之一者，得為特定目的外之利用： 一、法規明文規定。 二、為增進公共利益。 三、為免除當事人之生命、身體、自由或財產上之危險。 四、為防止他人權益之重大危害。 五、經當事人書面同意。</p>
	<p>刑法 電腦犯罪章 第三五八條 無故輸入他人帳號密碼、破解使用電腦之保護措施或利用電腦系統之漏洞，而入侵他人之電腦或其相關設備者，處三年以下有期徒刑、拘役或科或併科十萬元以下罰金。</p> <p>第三五九條 無故取得、刪除或變更他人電腦或其相關設備之電磁紀錄，致生損害於公眾或他人者，處五年以下有期徒刑、拘役或科或併科二十萬元以下罰金。</p> <p>第三六〇條 無故以電腦程式或其他電磁方式干擾他人電腦或其相關設備，致生損害於公眾或他人者，處三年以下有期徒刑、拘役或科或併科十萬元以下罰金。</p> <p>第三六二條 製作專供犯本章之罪之電腦程式，而供自己或他人犯本章之罪，致生損害於公眾或他人者，處五年以下有期徒刑、拘役或科或併科二十萬元以下罰金。</p>
美國	<p>SEC. 4. PROHIBITION AGAINST PREDATORY AND ABUSIVE COMMERCIAL E-MAIL. (a) OFFENSE.—</p>

(1) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following new section:

“§ 1037. Fraud and related activity in connection with electronic mail

“(a) IN GENERAL.—Whoever, in or affecting interstate or foreign commerce, knowingly—

“(1) accesses a protected computer without authorization, and intentionally initiates the transmission of multiple commercial electronic mail messages from or through such computer,

“(2) uses a protected computer to relay or retransmit multiple commercial electronic mail messages, with the intent to deceive or mislead recipients, or any Internet access service, as to the origin of such messages,

“(3) materially falsifies header information in multiple commercial electronic mail messages and intentionally initiates the transmission of such messages,

“(4) registers, using information that materially falsifies the identity of the actual registrant, for five or more electronic mail accounts or online user accounts or two or more domain names, and intentionally initiates the transmission of multiple commercial electronic mail messages from any combination of such accounts or domain names, or

“(5) falsely represents oneself to be the registrant or the legitimate successor in interest to the registrant of 5 or more Internet Protocol addresses, and intentionally initiates the transmission of multiple commercial electronic mail messages from such addresses,

or conspires to do so, shall be punished as provided in subsection (b).

“(b) PENALTIES.—The punishment for an offense under subsection (a) is—

“(1) a fine under this title, imprisonment for not more than 5 years, or both, if—

“(A) the offense is committed in furtherance of any felony under the laws of the United States or of any State; or

“(B) the defendant has previously been convicted under this section or section 1030, or under the law of any State for conduct involving the transmission of multiple commercial electronic mail messages or unauthorized access to a computer system;

“(2) a fine under this title, imprisonment for not more than 3 years, or both, if—

“(A) the offense is an offense under subsection (a)(1);

“(B) the offense is an offense under subsection (a)(4) and involved 20 or more falsified electronic mail or online user account registrations, or 10 or more falsified domain name registrations;

“(C) the volume of electronic mail messages transmitted in furtherance of the offense exceeded 2,500 during any 24-hour period, 25,000 during any 30-day period, or 250,000 during any 1-year period;

“(D) the offense caused loss to one or more persons aggregating \$5,000 or more in value during any 1-year period;

“(E) as a result of the offense any individual committing the offense obtained anything of value aggregating \$5,000 or more during any 1-year period; or

“(F) the offense was undertaken by the defendant in concert with three or more other persons with respect to whom the defendant occupied a position of organizer or leader; and

“(3) a fine under this title or imprisonment for not more than 1 year, or both, in any other case.

“(c) FORFEITURE.—

“(1) IN GENERAL.—The court, in imposing sentence on a person who is convicted of an offense under this section, shall order that the defendant forfeit to the United States—

“(A) any property, real or personal, constituting or traceable to gross proceeds obtained from such offense; and

“(B) any equipment, software, or other technology used or intended to be used to commit or to facilitate the commission of such offense.

“(2) PROCEDURES.—The procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section, and in Rule 32.2 of the Federal Rules of Criminal Procedure, shall apply to all stages of a criminal forfeiture proceeding under this section.

“(d) DEFINITIONS.—In this section:

“(1) LOSS.—The term ‘loss’ has the meaning given that term in section 1030(e) of this title.

“(2) MATERIALLY.—For purposes of paragraphs (3) and (4) of subsection (a), header information or registration information is materially falsified if it is altered or concealed in a manner that would impair the ability of a recipient of the message, an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person who initiated the electronic mail message or to investigate the alleged violation.

	<p>“(3) MULTIPLE.—The term ‘multiple’ means more than 100 electronic mail messages during a 24-hour period, more than 1,000 electronic mail messages during a 30-day period, or more than 10,000 electronic mail messages during a 1-year period.</p> <p>“(4) OTHER TERMS.—Any other term has the meaning given that term by section 3 of the CAN-SPAM Act of 2003.”.</p> <p>(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 47 of title 18, United States Code, is amended by adding at the end the following:</p> <p>“Sec.</p> <p>“1037. Fraud and related activity in connection with electronic mail.”.</p> <p>(b) UNITED STATES SENTENCING COMMISSION.—</p> <p>(1) DIRECTIVE.—Pursuant to its authority under section 994(p) of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, as appropriate, amend the sentencing guidelines and policy statements to provide appropriate penalties for violations of section 1037 of title 18, United States Code, as added by this section, and other offenses that may be facilitated by the sending of large quantities of unsolicited electronic mail.</p> <p>(2) REQUIREMENTS.—In carrying out this subsection, the Sentencing Commission shall consider providing sentencing enhancements for—</p> <p>(A) those convicted under section 1037 of title 18, United States Code, who—</p> <p>(i) obtained electronic mail addresses through improper means, including—</p> <p>(I) harvesting electronic mail addresses of the users of a website, proprietary service, or other online public forum operated by another person, without the authorization of such person; and</p> <p>(II) randomly generating electronic mail addresses by computer; or</p> <p>(ii) knew that the commercial electronic mail messages involved in the offense contained or advertised an Internet domain for which the registrant of the domain had provided false registration information; and</p> <p>(B) those convicted of other offenses, including offenses involving fraud, identity theft, obscenity, child pornography, and the sexual exploitation of children, if such offenses involved the sending of large quantities of electronic mail.</p> <p>(c) SENSE OF CONGRESS.—It is the sense of Congress that—</p> <p>(1) Spam has become the method of choice for those who distribute pornography, perpetrate fraudulent schemes, and introduce viruses, worms, and Trojan horses into personal and business computer systems; and</p> <p>(2) the Department of Justice should use all existing law enforcement tools to investigate and prosecute those who send bulk commercial e-mail to facilitate the commission of Federal crimes, including the tools contained in chapters 47 and 63 of title 18, United States Code (relating to fraud and false statements); chapter 71 of title 18, United States Code (relating to obscenity); chapter 110 of title 18, United States Code (relating to the sexual exploitation of children); and chapter 95 of title 18, United States Code (relating to racketeering), as appropriate.</p>
加拿大	<p>垃圾邮件控制法草案</p> <p><b>11.</b> Every person commits an offence who</p> <p>(a) sends spam to an address without identifying it as such;</p> <p>(b) sends spam to an address</p> <p>(i) that is on the no-spam list, or</p> <p>(ii) in respect of which the owner has sent an opt-out message to the person sending the message or to a person whom the person represents in sending the message;</p> <p>(c) sends spam to an address without determining that the address is not on the no-spam list;</p> <p>(d) sends spam that does not contain a means for the recipient to send an opt-out message;</p> <p>(e) sends spam that does not show the address of the sender;</p> <p>(f) sends spam that offers goods or services on behalf of another person without showing the identity of the other person;</p> <p>(g) sends spam that offers goods or services and contains a false statement about the goods or services or the identity or address of the sender or another person on behalf of whom the sender is acting; or</p> <p>(h) sells, trades or offers to sell or trade or uses any means to collect or obtain addresses from the Internet for the purpose of enabling any person to send spam to those addresses.</p> <p><b>12.</b> Every Internet service provider commits an offence who</p> <p>(a) is an accessory to an offence under paragraphs 11(a) to (g);</p> <p>(b) is an accessory to an offence under paragraph 11(h);</p>

	<p>(c) fails to install a spam filter that complies with standards set in the by-laws of the Council;</p> <p>(d) fails to use reasonable efforts to prevent spam from going to the provider's customers, and in the case of a provider who does not follow the standards of the Council, the onus is on that provider to show that reasonable efforts were used; or</p> <p>(e) knowingly provides false information to the Council or the Minister in a matter related to the Internet or the administration of this Act.</p> <p><b>13.</b> (1) A person who commits an offence under section 11 or 12 is liable on conviction to a fine not exceeding \$500.</p> <p>(2) A person who commits an offence under any of paragraphs 11(a) to (g) or 12(a) is liable on conviction to a fine not exceeding \$1,000, or to imprisonment for a term not exceeding six months, or to both fine and imprisonment, if the spam contains</p> <p>(a) material that is child pornography within the meaning of section 163.1 of the Criminal Code;</p> <p>(b) a depiction of explicit sexual activity; or</p> <p>(c) a message that constitutes an attempt to defraud the recipient.</p> <p>(3) A person who commits an offence described in subsection (2) is liable on conviction to a fine not exceeding \$5,000, or to imprisonment for a term not exceeding one year, or to both fine and imprisonment, where it is shown that the spam was</p> <p>(a) designed to be attractive specifically to children;</p> <p>(b) directed to any educational institution that is not a post-secondary institution; or</p> <p>(c) directed to an address at which the sender had reason to believe children were likely to see the spam.</p> <p>(4) In the case of a person convicted of an offence described in subsection (2) the court may order, and in the case of a person convicted of an offence described in subsection (3) the court shall order, that the person be prohibited, for a period not exceeding two years, from</p> <p>(a) being the owner, director, partner, employee or shareholder of an Internet service provider; or</p> <p>(b) communicating by e-mail with any person for any commercial purpose.</p> <p>(5) Where a corporation or partnership is convicted of an offence under this section, the court may, in addition to imposing a fine on the corporation or partnership, convict any person who is a director, partner or officer of the corporation or partnership of the same offence, if the court finds that the person ordered the act for which the corporation or partnership was convicted, or knew that it was going to be carried out and tolerated it.</p>
韓 國	<p>資訊通訊網路利用及資訊保護法</p> <p>對以下行為處以刑罰：</p> <p>(一) 個人資料的非法蒐集、洩漏與利用，五年以下有期徒刑或罰金</p> <p>(二) 惡意傳輸行為導致傳輸網路無法正常運作，五年以下有期徒刑或罰金</p> <p>(三) 利用通信網路方式而有以不實之內容誹謗他人之情事，處三年以下有期徒刑或罰金</p> <p>(四) 利用通信網路方式發送違反青少年保護法中所訂有害青少年身心之內容而未加註標示者，處兩年以下有期徒刑或罰金</p> <p>(五) 違反其他標示標準而進行以行銷為目的之傳送者，處一年以下有期徒刑或罰金</p> <p>其他：(略)</p>
日 本	<p>特定商業交易法</p> <p>個人資料保護法</p>

## 第十五條 國際合作與交流

比較法制	內	容
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我 國	<p>通訊傳播基本法 第十五條 為提升通訊傳播之發展，政府應積極促進、參與國際合作，必要時，得依法委託民間團體辦理。</p> <p>環境基本法 第十二條 中央政府應推動地球永續發展相關之國際合作與技術協助、工程技術及試驗研究，並公開相關資訊，以利國民、事業運用；地方政府亦得視需要辦理之。</p> <p>貿易法 第六條 有左列各款情形之一者，主管機關得暫停特定國家或地區或特定貨品之輸出入或採取其他必要措施： 一 天災、事變或戰爭發生時。 二 危害國家安全或對公共安全之保障有妨害時。 三 國內或國際市場特定物資有嚴重匱乏或其價格有劇烈波動時。 四 國際收支發生嚴重失衡或有嚴重失衡之虞時。 五 國際條約、協定或國際合作需要時。 六 外國以違反國際協定或違反公平互惠原則之措施，妨礙我國輸出入時。 前項第一款至第四款或第六款之適用，以對我國經濟貿易之正常發展有不利影響或不利影響之虞者為限。 主管機關依第一項第四款或第六款暫停輸出入或採行其他必要措施前，應循諮商或談判途徑解決貿易爭端。 主管機關採取暫停輸出入或其他必要措施者，於原因消失時，應即解除之。 前條追認規定於本條適用之。</p> <p>毒品危害防制條例實行細則 第六條 各查緝機關、單位應協商合作，建立反毒情報網及緝毒資料庫。 防制毒品犯罪，有關積極加入國際組織、參與國際反毒活動、建立雙邊及多邊國際合作事宜，應商同外交部辦理之。</p> <p>原子能法 第六條 原子能委員會對外得代表政府，從事國際合作事宜。</p>
美 國	<p><b>SEC. 10. STUDY OF EFFECTS OF COMMERCIAL ELECTRONIC MAIL.</b> (a) <b>IN GENERAL.</b>—Not later than 24 months after the date of the enactment of this Act, the Commission, in consultation with the Department of Justice and other appropriate agencies, shall submit a report to the Congress that provides a detailed analysis of the effectiveness and enforcement of the provisions of this Act and the need (if any) for the Congress to modify such provisions. (b) <b>REQUIRED ANALYSIS.</b>—The Commission shall include in the report required by subsection (a)— (1) an analysis of the extent to which technological and marketplace developments, including changes in the nature of the devices through which consumers access their electronic mail messages, may affect the practicality and effectiveness of the provisions of this Act; (2) analysis and recommendations concerning how to address commercial electronic mail that originates in or is transmitted through or to facilities or computers in other nations,</p>

	<p>including initiatives or policy positions that the Federal Government could pursue through international negotiations, fora, organizations, or institutions; and</p> <p>(3) analysis and recommendations concerning options for protecting consumers, including children, from the receipt and viewing of commercial electronic mail that is obscene or pornographic.</p>
澳 洲	<p>45 Giving effect to international conventions</p> <p>(1) The regulations may make provision for and in relation to giving effect to an international convention that deals with either or both of the following:</p> <ul style="list-style-type: none"> <li>(a) commercial electronic messages;</li> <li>(b) address-harvesting software.</li> </ul> <p>(2) Regulations made for the purposes of subsection (1) may:</p> <ul style="list-style-type: none"> <li>(a) vest the Federal Court with jurisdiction in a matter or matters arising under the regulations; and</li> <li>(b) prescribe penalties, not exceeding a fine of 50 penalty units, for offences against the regulations; and</li> <li>(c) declare that a specified provision of the regulations is a civil penalty provision for the purposes of this Act.</li> </ul>
加 拿 大	<p>3. (1) The Minister shall initiate consultation with officials of governments of the provinces and of other countries with the objects of</p> <ul style="list-style-type: none"> <li>(a) sharing information on means to control spam and on persons who are identified as senders of spam;</li> <li>(b) finding new ways to control and limit the flow of spam; and</li> <li>(c) cooperating in law enforcement activities related to the misuse of the Internet for illegal purposes or the sending of spam.</li> </ul> <p>(2) The Minister shall prepare a report of activities under subsection (1) and subsection 5(7) in respect of every year and shall cause it to be laid before each House of Parliament on any of the first five days on which that House sits after April 1 of the following year.</p> <p>(3) Every report under subsection (2) that is laid before a House is deemed to be referred to the standing committee of that House that normally deals with matters under the administration of the Minister.</p>