

DELAWARE

Portions of Title 11, Sections 931, 937, and 938 of the *Delaware Code Annotated*, part of the laws dealing with computer crimes in general, govern the transmission of commercial bulk electronic mail. Those provisions:

- Apply when the recipient is located in Delaware, and the sender is aware of at least a reasonable possibility of that fact;
- Ban the distribution of unsolicited bulk commercial email without authorization;
- Forbid a sender, acting without authority, to falsify the routing information of an email;
- Make it illegal to distribute software designed to falsify routing information;
- Require a sender to establish a mechanism by which a recipient can ask not to be contacted; and
- Forbid the sending of email to a person who has asked not to be contacted.

Del. Code Ann., Title 11

§931. Definitions Pertaining to Computer Crimes

As used in this subpart [*Title 11, §§931-941*]:

(1) "Access" means to instruct, communicate with, store data in or retrieve data from a computer, computer system or computer network.

(2) "Computer" means a programmable, electronic device capable of accepting and processing data.

(3) "Computer network" means:

(3)a. A set of related devices connected to a computer by communications facilities;

(3)b. A complex of two or more computers, including related devices, connected by communications facilities; or

(3)c. The communications transmission facilities and devices used to interconnect computational equipment, along with control mechanisms associated thereto.

(4) "Computer program" means a set of instructions, statements or related data that, in actual or modified form, is capable of causing a computer or computer system to perform specified functions.

(5) "Computer services" includes, but is not limited to, computer access, data processing and data storage.

(6) "Computer software" means one or more computer programs, existing in any form, or any associated operational procedures, manuals or other documentation.

(7) "Computer system" means a computer, its software, related equipment and communications facilities, if any, and includes computer networks.

(8) "Data" means information of any kind in any form, including computer software.

(9) "Person" means a natural person, corporation, trust, partnership, incorporated or

unincorporated association and any other legal or governmental entity, including any state or municipal entity or public official.

(10) "Private personal data" means data concerning a natural person which a reasonable person would want to keep private and which is protectable under law.

(11) "Property" means anything of value, including data.

(12) "Electronic mail" or "e-mail" means any message that is automatically passed from an originating address or account to a receiving address or account;

(13) "Originating address" or "originating account" means the string used to specify the source of any electronic mail message (e.g. company@sender.com);

(14) "Receiving address" or "receiving account" means the string used to specify the destination of any electronic mail message (e.g. person@receiver.com);

(15) "Electronic mail service provider" means any person who:
(15)a. Is an intermediary in sending and receiving electronic mail; and
(15)b. Provides to end-users of electronic mail services the ability to send or receive electronic mail.

(16) The "Internet" is a hierarchy of computer networks and systems that includes, but is not limited to, commercial (.com or .co), university (.ac or .edu) and other research networks (.org, .net) and military (.mil) networks and spans many different physical networks and systems around the world.

(17) "Commercial electronic mail" or "commercial e-mail" means any electronic mail message that is sent to a receiving address or account for the purposes of advertising, promoting, marketing or otherwise attempting to solicit interest in any good service [sic] or enterprise.

Created by Chapter 438, §1, Volume 64 (1983-84), Delaware Laws. Amended by Chapter 135, §3, Volume 72 (1999), Delaware Laws, effective July 2, 1999.

§937. Unrequested or Unauthorized Electronic Mail

A person is guilty of the computer crime of unrequested or unauthorized electronic mail:

(1) when that person, without authorization, intentionally or recklessly distributes any unsolicited bulk commercial electronic mail (commercial E-mail) to any receiving address or account under the control of any authorized user of a computer system. This section shall not apply to electronic mail that is sent between human beings, or when the individual has requested said information. This section shall not apply to the transmission of electronic mail from an organization to its members or where there is a preexisting business relationship. No Internet/interactive service provider shall be liable for merely transmitting an unsolicited, bulk commercial electronic mail message in its network. No Internet/interactive service provider shall be held liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any unsolicited, bulk electronic mail which it believes is, or will be, sent in violation to disconnect or terminate the service of any person that is in violation of this article; or

(2) When a person uses a computer or computer network without authority with the intent to: Falsify or forge electronic mail transmission information in any manner in connection with the transmission of unsolicited bulk electronic mail through or into the computer network of an electronic mail service provider or its subscribers; or

(3) When a person sells, gives or otherwise distributes or possesses with the intent to sell, give or distribute software which:

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

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

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

(4) For the purposes of this section, conduct occurring outside of the State shall be sufficient to constitute this offense if such conduct is within the terms of Title 11, §204 [*which defines Delaware's jurisdiction over criminal acts*], or if the receiving address or account was under the control of any authorized user of a computer system who was located in Delaware at the time he or she received the electronic mail or communication and the defendant was aware of circumstances which rendered the presence of such authorized user in Delaware a reasonable possibility.

Created by Chapter 135, §1, Volume 72 (1999), Laws of Delaware, effective July 2, 1999.

§938. Failure to Cease Electronic Communication

(a) A person is guilty of the computer crime of failure to promptly cease electronic communication upon request when that person intentionally, recklessly or negligently, fails to stop sending commercial electronic mail to any receiving address or account under the control of any authorized user of a computer system after being requested to do so. All commercial electronic mail sent to any receiving address within the State shall have information to the recipient on how to unsubscribe or stop further receipt of commercial electronic mail from the sender.

(b) For the purposes of this section, conduct occurring outside of the State shall be sufficient to constitute this offense if such conduct is within the terms of Title 11, §204, or if the receiving address or account was under the control of any authorized user of a computer system who was located in Delaware at the time he or she received the electronic mail or communication and the defendant was aware of circumstances which rendered the presence of such authorized user in Delaware a reasonable possibility.

Created by Chapter 135, §1, Volume 72 (1999), Laws of Delaware, effective July 2, 1999.