

# GEORGIA

The Georgia Slam Spam E-Mail Act, Section 16-9-100 through 16-9-107 of the *Official Code of Georgia*, part of that state's criminal code, govern the transmission of deceptive commercial electronic mail. Those code sections:

- Generally prohibit the sending of false or misleading email;
- Impose criminal penalties on violators; and
- Entitle an Internet service provider, or a recipient of an email who owns a computer, to sue for damages, costs, and attorney's fees.

## **§16-9-100. Definitions Pertaining to Commercial Electronic Mail**

As used in this part [§§16-9-100 - 16-9-107], the term:

- (1) "Advertiser" means a person or entity that advertises through the use of commercial e-mail.
- (2) "Automatic technical process" means the actions performed by an e-mail service provider's or telecommunications carrier's computers or computer network while acting as an intermediary between the sender and the recipient of an e-mail.
- (3) "Commercial e-mail" means any e-mail message initiated for the purpose of advertising or promoting the lease, sale, rental, gift, offer, or other disposition of any property, services, or extension of credit.
- (4) "Direct consent" means that the recipient has expressly consented to receive e-mail advertisements from the advertiser or initiator, either in response to a clear and conspicuous request for direct consent or at the recipient's own initiative.
- (5) "Domain" 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.
- (6) "Domain owner" means, in relation to an e-mail address, the actual owner at the time an e-mail is received at that address of a domain that appears in or comprises a portion of the e-mail address. The registrant of a domain is presumed to be the actual owner of that domain.
- (7) "E-mail" means an electronic message that is sent to an e-mail address and transmitted between two or more telecommunications devices, computers, or electronic devices capable of receiving electronic messages, whether or not the message is converted to hard copy format after receipt, viewed upon transmission, or stored for later retrieval. The term includes electronic messages that are transmitted through a local, regional, or global computer network.
- (8) "E-mail address" means a destination, commonly expressed as a string of characters, to which e-mail can be sent or delivered. An e-mail address consists of a user name or mailbox, the "@" symbol, and reference to a domain.
- (9) "E-mail service provider" means any person, including an Internet service provider, that is an intermediary in sending or receiving e-mail or that provides to end-users of the e-mail service the ability to send or receive e-mail.

- (10) "False or misleading," when used in relation to a commercial e-mail, means that:
- (10)(A) The header information includes an originating or intermediate e-mail address, domain name, or Internet protocol address which was obtained by means of false or fraudulent pretenses or representations;
  - (10)(B) The header information fails to accurately identify the computer used to initiate the e-mail;
  - (10)(C) The subject line of the e-mail is intended to mislead a recipient about a material fact regarding the content or subject matter of the e-mail;
  - (10)(D) The header information is altered or modified in a manner that impedes or precludes the recipient of the e-mail or an e-mail service provider from identifying, locating, or contacting the person who initiated the e-mail;
  - (10)(E) The header information or content of the commercial e-mail, without authorization and with intent to mislead, references a personal name, entity name, trade name, mark, domain, address, phone number, or other personally identifying information belonging to a third party in such manner as would cause a recipient to believe that the third party authorized, endorsed, sponsored, sent, or was otherwise involved in the transmission of the commercial e-mail;
  - (10)(F) The header information or content of the commercial e-mail contains false or fraudulent information regarding the identity, location, or means of contacting the initiator of the commercial e-mail; or
  - (10)(G) The commercial e-mail falsely or erroneously states or represents that the transmission of the e-mail was authorized on the basis of:
    - (10)(G)(i) The recipient's prior direct consent to receive the commercial e-mail; or
    - (10)(G)(ii) A preexisting or current business relationship between the recipient and either the initiator or advertiser.

(11) "Header information" means those portions of an e-mail message which designate or otherwise identify:

- (11)(A) The sender;
- (11)(B) All recipients;
- (11)(C) An alternative return e-mail address, if any; and
- (11)(D) The names or Internet protocol addresses of the computers, systems, or other means used to send, transmit, route, or receive the e-mail message.

The term does not include either the subject line or the content of an e-mail message.

(12) "Incident" means the contemporaneous initiation in violation of this part of one or more commercial e-mails containing substantially similar content.

(13) "Initiate" or "initiator" means to transmit or cause to be transmitted a commercial e-mail, but does not include the routine transmission of the commercial e-mail through the network or system of a telecommunications utility or an e-mail service provider.

(14) "Internet protocol address" means the unique numerical address assigned to and used to identify a specific computer or computer network that is directly connected to the Internet.

(15) "Minor" means any person under the age of 18 years.

(16) "Person" means a person as defined by §16-1-3 and specifically includes any limited liability company, trust, joint venture, or other legally cognizable entity.

(17) "Preexisting or current business relationship," as used in connection with the sending of a commercial e-mail, means that the recipient has made an inquiry and has provided his or her e-mail address, or has made an application, purchase, or transaction, with or without consideration, regarding products or services offered by the advertiser.

(18) "Protected computer" means any computer that, at the time of an alleged violation of any provision of this part involving that computer, was located within the geographic boundaries of the State of Georgia.

(19) "Recipient" means any addressee of a commercial e-mail advertisement. If an addressee of a commercial e-mail has one or more e-mail addresses to which a commercial e-mail is sent, the addressee shall be deemed to be a separate recipient for each e-mail address to which the e-mail is sent.

(20) "Routine transmission" means the forwarding, routing, relaying, handling, or storing of an e-mail message through an automatic technical process. The term shall not include the sending, or the knowing participation in the sending, of commercial e-mail advertisements.

*Created by Page 199, §4, Laws of 2005, effective July 1, 2005.*

#### **§16-9-101. Initiation of Deceptive Commercial Electronic Mail**

Any person who initiates a commercial e-mail that the person knew or should have known to be false or misleading that is sent from, passes through, or is received by a protected computer shall be guilty of the crime of initiation of deceptive commercial e-mail.

*Created by Page 199, §4, Laws of 2005, effective July 1, 2005.*

#### **§16-9-102. Criminal Penalties for Initiating Deceptive Commercial Electronic Mail**

(a) Any person convicted of a violation of §16-9-101 shall be guilty of a misdemeanor and punished by a fine of not more than \$1,000 or by imprisonment of not more than 12 months, or both, except:

(a)(1) Where the volume of commercial e-mail transmitted exceeded 10,000 attempted recipients in any 24 hour period;

(a)(2) Where the volume of commercial e-mail transmitted exceeded 100,000 attempted recipients in any 30 day period;

(a)(3) Where the volume of commercial e-mail transmitted exceeded 1,000,000 attempted recipients in any one-year period;

(a)(4) Where the revenue generated from a specific commercial e-mail exceeded \$1,000;

(a)(5) Where the total revenue generated from all commercial e-mail transmitted to any e-mail service provider or its subscribers exceeded \$50,000; or

(a)(6) Where any person knowingly hires, employs, uses, or permits any minor to assist in the transmission of commercial e-mail in violation of §16-9-101,

the person shall be guilty of a felony and punished by a fine of not more than \$50,000 or by imprisonment of not more than five years, or both.

(b) For the second conviction of §16-9-101 within a five-year period, as measured from the dates of previous arrests for which convictions were obtained to the date of the current arrest for which a conviction is obtained, the person shall be guilty of a felony and punished

by a fine of not more than \$50,000 or by imprisonment of not more than five years, or both. For the purpose of this subsection, the term "conviction" shall include a plea of nolo contendere.

*Created by Page 199, §4, Laws of 2005, effective July 1, 2005.*

#### **§16-9-103. Venue for Criminal Prosecutions**

For the purpose of venue under this part, any violation of this part shall be considered to have been committed:

(1) In the county of the principal place of business in this state of the owner of an involved protected computer, computer network, or any part thereof;

(2) In any county in which any person alleged to have violated any provision of this part had control or possession of any proceeds of the violation or of any books, records, documents, or property which were used in furtherance of the violation;

(3) In any county in which any act was performed in furtherance of any transaction which violated this part; and

(4) In any county from which, to which, or through which any use of an involved protected computer or computer network was made, whether by wires, electromagnetic waves, microwaves, or any other means of communication.

*Created by Page 199, §4, Laws of 2005, effective July 1, 2005.*

#### **§16-9-104. Authority to Prosecute Violators**

The Attorney General shall have concurrent jurisdiction with the district attorneys and solicitors-general to conduct the criminal prosecution of violations of this part.

*Created by Page 199, §4, Laws of 2005, effective July 1, 2005.*

#### **§16-9-105. Civil Actions Against Violators**

(a) The following persons shall have standing to assert a civil action under this part:

(a)(1) Any e-mail service provider whose protected computer was used to send, receive, or transmit an e-mail that was sent in violation of this part; and

(a)(2) A domain owner of any e-mail address to which a deceptive commercial e-mail is sent in violation of this part, provided that the domain owner also owns a protected computer at which the e-mail was received.

(b) Any person who has standing and who suffers personal, property, or economic damage by reason of a violation of any provision of this part may initiate a civil action for and recover the greater of:

(b)(1) \$5,000 plus expenses of litigation and reasonable attorney's fees;

(b)(2) Liquidated damages of \$1,000 for each offending commercial e-mail, up to a limit of \$2,000,000 per incident, plus expenses of litigation and reasonable attorney's fees; or

(b)(3) Actual damages, plus expenses of litigation and reasonable attorney's fees.

*Created by Page 199, §4, Laws of 2005, effective July 1, 2005.*

**§16-9-106. Miscellaneous Provisions**

- (a) Any crime committed in violation of this part shall be considered a separate offense.
- (b) The provisions of this part shall not be construed as limiting or precluding the application of any other provision of law which applies to any transaction or course of conduct which violates this part.
- (c) Nothing in this part shall be construed to limit or restrict the adoption, implementation, or enforcement by an e-mail service provider or Internet service provider of a policy of declining to transmit, receive, route, relay, handle, or store certain types of e-mail.  
*Created by Page 199, §4, Laws of 2005, effective July 1, 2005.*

**§16-9-107. Routine Transmissions Exempted**

There shall be no cause of action under this part against an e-mail service provider on the basis of its routine transmission of any commercial e-mail over its computer network.  
*Created by Page 199, §4, Laws of 2005, effective July 1, 2005.*