



Securities Industry Association

120 Broadway, New York, NY 10271-0080, (212) 608-1500, Fax (212) 608-1604
1401 Eye Street, NW, Washington, DC 20005-2225, (202) 296-9410, Fax (202) 296-9775
info@sia.com, <http://www.sia.com>

May 15, 2002

The Honorable Ernest F. Hollings
Chairman
Senate Commerce, Science and Transportation Committee
SD-508 Dirksen SOB
Washington, DC 20510

Dear Mr. Chairman:

We, the undersigned, are writing to communicate our serious concerns about the Commerce Committee's scheduled consideration of S. 630, the CAN SPAM Act of 2001. We recognize that the sponsors of this bill, especially Senators Conrad Burns and Ron Wyden, have devoted literally months of intensive effort and enormous energy to crafting an anti-spam bill. Many of us, in fact, spent hours working with their staff in an effort to come to an agreement, submitting several redline drafts containing changes and alterations to S. 630, as introduced. On Tuesday evening of this week, in fact, we received another draft, dated May 14, 2002.

Throughout our discussions, we reiterated our continuing support for targeted anti-spam legislation that would eradicate false, misleading and pornographic email from the Internet. We are already on record in support of H.R. 718, as reported by the Judiciary Committee of the House of Representatives, a bill that we believe supports these principles.

Unfortunately, S. 630, even as represented by this recent draft, and despite the good faith efforts of the Committee, goes beyond what we are able to endorse and, in our judgment, would, if enacted, have the effect of frustrating the continued expansion and use of the Internet. Specifically, we believe that the following issues reflect some of S. 630's deficiencies:

- **Inadequate Pre-emption of State Law.** The May 14th draft of S. 630, despite improvements, remains defective. The legislation does not deal effectively with the prospect of inconsistent state regulation. The new draft still leaves open the possibility that, as technology improves, a State or locality may utilize other means to regulate commercial messages sent over the Internet. Of more importance, however, are the exceptions which appeared before and which still remain in the May 14th draft. Their continued presence in S. 630 gives rise to the potential use of State or local law to regulate the Internet.
- **Overbroad Enforcement Authority.** The enforcement provisions of S. 630, even as modified by the May 14th draft, contemplate not only

enforcement by the Federal Trade Commission (FTC) and certain functional regulators, but also continue to provide incentives for the filing of civil actions by State Attorneys General and Internet Service Providers (ISPs). These provisions encourage litigation through the selective use of a strict liability standard and the imposition of statutory damages. In an Internet environment, such otherwise innocent conduct could easily give rise to enormous cumulative liability exposure, all without a showing or any actual harm.

- **“Implied consent” may continue to ignore long-standing business relationships.** There are still ambiguities over S. 630's impact on long-standing business relationships. The latest draft seeks to clarify how long-standing business relationships are affected by S. 630. While we applaud these improvements, we still believe that there are substantial ambiguities in the new language. We are concerned that the term "commercial electronic mail message" may not be specific enough to address what relationships it applies to. We are also concerned that the "look back" provision under the definition of "implied consent" has been reduced from five years to three years. This change reduces the universe of past and present customers who might be construed to have provided their "implied consent" to receive commercial e-mail, and in the process, puts a heavy financial burden on companies that will be required to divide their customer bases into different segments.
- **Discrimination against e-commerce transactions and communications.** By imposing regulatory thresholds, then, that far exceed those in the offline world, S. 630 effectively discriminates against electronic commerce. Consumers and businesses alike will have fewer incentives to use the Internet to conduct transactions if the bar is set too high for needed communications to occur in the first place. Legislation should be designed to *encourage* the use of the Internet, not *discourage* it. Regulation of the Internet should be minimal, as has been the case in Congress up until this point, and should not serve to retard e-commerce.

Mr. Chairman, we recognize that changes have been made to earlier drafts of S. 630, but we have listed just a few of the potentially harmful deficiencies which we believe still reside in the May 14th draft. We believe that regulation of the Internet should be undertaken *only* when there is a demonstrated need and, even then, the solutions employed must be precisely targeted to correct those demonstrated problems. That is why we continue to support the bipartisan solutions represented by H.R. 718, as reported by the House Judiciary Committee, and why we reluctantly must oppose S. 630, even in its most recent form.

Sincerely,

America's Community Bankers
American Bankers Association

Insurance Technology Coalition
Investment Company Institute

American Council of Life Insurers
American Financial Services
Association
American Insurance Association
The Bond Market Association
Consumer Bankers Association
Financial Services Coordinating
Council
The Financial Services Roundtable
Information Technology Association
of America

The National Retail Federation
Securities Industry Association
U. S. Chamber of Commerce
National Business Coalition on
E-Commerce and Privacy
National Association of Insurance
and Financial Advisors