

These comments address the questions related to Subject Line Labeling. The numbers below are those of the questions in section VI(I) of the NPRM. All statements below are the personal opinion of the author.

2. How effective is labeling? The imposition of requirements by various states to place labels in Subject lines for advertisements has not been effective in either discouraging spam or in allowing users to distinguish spam from other email for filtering or other purposes. There are several reasons for this:

a. Much spam is submitted from outside of states which impose these requirements, or from outside of the United States. Since electronic mail can be originated from anywhere on Earth for little difference in cost, it is easy to evade restrictions that are specific to the origination point.

b. It is often difficult to reliably trace the origin of mail in order to identify the submitter and the circumstances in which the mail was submitted. Since the general public and many internet network operators are hostile to spam, it is hardly surprising that spammers seek to disguise the origins of their messages or to submit them from locations from which tracing is difficult. In those cases where it is feasible to identify the originator, significant resources are often required to do that, which in turn imposes practical limitations on the number of spammers who may be punished for violating the laws. There are significant barriers to the development and deployment of technology which would make tracing of email reliable. Until these barriers are overcome, mandatory labeling is unlikely to become more effective than has been observed in the past.

c. An increasing proportion of spam is being submitted into the mail system from computers that have been compromised with viruses. It is even more difficult to identify the real origin of mail that is submitted to the mail system from a compromised computer, than it is to identify the real origin of an email submitted via standard mechanisms. Most deployed personal computers run some version of Windows, an operating system which has historically been extremely vulnerable to attack. Partially this is because for many years Microsoft failed to follow the specifications for Internet messages ("MIME") which specify that content types that are not known to be safe to display should not be displayed to recipients, but should at most be saved on disk. This in turn has provided attackers with several means by which they could induce a recipient's computer to execute instructions of the attacker's choosing (including instructions to modify the behavior of the computer being attacked) merely by sending an email message. Firewalls and virus filters help, but cannot entirely prevent such attacks without severely compromising the ability of the email system to convey desirable attachments. If (as seems likely) the use of viruses to submit spam continues to increase, this will further increase the difficulty in identifying the true origin of spam. Mandatory labeling seems unlikely to be effective absent an effective means of identifying and punish those who violate the law.

d. For a label like "ADV" to be useful in filtering it must only appear on those messages which a recipient does not want to see. If a recipient wishes to see some messages labeled "ADV", he is forced to at least cursorily examine all of them, and the "ADV" label saves him no effort. Realizing this, some advertisers will apply the "ADV" label to some messages that the recipient will not want to ignore -- perhaps because they contain valuable information that the recipient needs to know to effectively conduct business with the advertiser, or perhaps because the advertiser occasionally offers substantial incentives to recipients in exchange for reading the message. The point is that since the "ADV" label will appear on some messages that the recipient wants or needs to read, it will not significantly aid the recipient in filtering unwanted mail. An "ADV" label

might be useful as a sort of "priority" indicator to a rare recipient who had a preference for reading advertisements over ordinary mail. However as long as advertisers see benefit in indiscriminately sending mail to millions of recipients without regard for whether those recipients are actually interested in their products, it seems unlikely that many recipients would find an "ADV" label useful as an indicator of desirable traffic. 3. Should the Commission recommend that all unsolicited non-adult commercial email be labeled "ADV"? No. As long as there is no prohibition on initially sending unsolicited email (before the recipient has had an opportunity to "opt out" of mail from that sender), requiring an "ADV" label would slightly burden senders of commercial email and add complexity to the user's experience, without providing any significant benefit to recipients. 4. Would labeling, as part of a regime that includes other technological or law enforcement approaches, be an appropriate and effective tool to help control spam? Why or why not? "ADV" labeling will only be useful if it is a reliable indicator, for most recipients, of mail that the recipient does not want to read. Even trying to imagine new laws and new technologies it is difficult to see how a sender can be expected to reliably label messages in this way. First, the advertiser is likely to place a higher value on its message than the recipient does. Second, the advertiser has every incentive to make the "ADV" label ineffective and will do so within the limits of the law. Third, recipient preferences vary, but for the "ADV" label to be valuable to a recipient the sender must know each recipient's preference about whether to read that message before actually sending the message. (The sender might have a useful indicator of the recipient's preference once the recipient has had a chance to "opt-out", but "ADV" only applies to unsolicited messages.) 5. What are the costs and benefits to industry of labeling? The answer is different depending on whether "industry" means "the advertising industry", or the "internet service industry", or "industry in general". Since bulk mail is usually sent via specialized tools, the costs to the advertising industry are minimal - all that is needed is to modify the messages that are being sent to include the label, or to modify the tools used to send messages to add that label to outgoing messages. The benefit to the advertising industry is that labeling provides the appearance of legitimacy and acceptance to a practice that is widely regarded by the public as heinous. The "internet service industry" will have increased costs due to a user expectation that ISPs will answer questions about the label and explain it to recipients who wish to use it to filter spam. I see no benefit from labeling to "industry in general". 6. What are the costs and benefits to consumers of labeling? In the absence of a global "do not email" list and global prohibition of sending unsolicited commercial email to members of that list, there will be little or no benefit to consumers from such labeling. The cost of labeling to consumers is similar to that of any measure that adds complexity for no significant benefit - the label becomes yet another technical detail which must be understood in order to use the Internet effectively. 7. If the Commission recommends that non-adult commercial email have an "ADV" label, should it also recommend that senders be allowed to provide additional explanatory information in the subject line? Yes. As bad as the proposal to require the "ADV" label is, it would be even worse if the recipient had to open and read each message labeled as "ADV" before being able to determine whether to discard it. If the "ADV" label were to be required it would be tempting to require that a useful and accurate indication of the nature of the message be provided in the Subject field. However this is infeasible due to language issues - it is clearly unreasonable to expect

everyone to read English and it is impractical to supply Subject in multiple languages for each message.