

Statement of
The Honorable Orrin Hatch.

United States Senator
Utah
September 25, 2003

Statement of Chairman Senator Orrin G. Hatch

Before the United States Senate Committee on the Judiciary

Executive Business Meeting

On the Nomination of

Carlos T. Bea to be

U.S. Circuit Judge for the Ninth Circuit

Let me make some brief remarks about Judge Carlos Bea, the Ninth Circuit nominee whose nomination we'll vote on today.

After a distinguished thirty-two year career in private practice, Judge Bea was appointed and subsequently elected to his current position as a judge on the San Francisco Superior Court in 1990. He was re-elected--without opposition--to the Superior Court bench in 1996 and 2002. In this capacity, he has handled literally thousands of cases and presided over hundreds of trials.

As with other nominees to the Ninth Circuit that this Committee has considered this year, Judge Bea's colleagues overwhelmingly support his confirmation to the federal appellate bench. Thirty-seven judges of the San Francisco Superior Court, who serve with Judge Bea and work with him every day, sent a letter to the Committee praising his skills as a jurist, and recognizing his service on many of the Superior Court's management committees.

In addition to his Superior Court colleagues, California Supreme Court Justice Carlos Moreno, San Francisco Mayor Willie Brown, and representatives of the San Francisco Bay Area's Hispanic community have all written to this Committee expressing enthusiastic support for Judge

Bea's confirmation to the Ninth Circuit. I hope my colleagues will join me in supporting him now, and on the Senate floor.

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On

"Criminal Spam Act of 2003"

S. 1293, the "Criminal Spam Act of 2003", is a measure which Senator Leahy, Schumer and others have worked with me on. It is designed to send a significant message of deterrence to the most egregious spammers by providing stiff criminal penalties to address this growing problem. We have circulated a substitute amendment that incorporates some technical changes and includes an up to the minute spam technique recently utilized by enterprising spammers.

This bill is an important step in the fight over abusive unsolicited commercial e-mail, commonly known as spam. Sophisticated spammers send millions of e-mail messages quickly, at an extremely low cost, with no repercussions. The sheer volume of spam, which is growing at an exponential rate, is overwhelming entire network systems, as well as consumers' in-boxes. By year end, it is estimated that fifty percent of all e-mail traffic will be spam.

The rapid increase in the volume of spam has imposed enormous costs on our economy - potentially \$10 billion in 2003 alone. But spam is not just about annoying unsolicited advertisements. It represents unprecedented risks to our children and other vulnerable components of our society. Spam has become the tool of choice for those who distribute pornography and indulge in fraud schemes. Rarely a minute passes without American consumers and their children being bombarded with e-mail messages promoting pornographic web sites, illegally pirated software, bogus charities, pyramid schemes and other "get rich quick" or "make money fast" scams. We all know of children who have opened unsolicited e-mail messages with benign subject lines only to be exposed to sexually explicit images. We have heard of seniors using their hard earned savings to buy fraudulent health care products advertised on-line. And of others being duped into sharing sensitive personal information to later find themselves victims of identity and credit card theft. It is no exaggeration to say that spam is threatening the future viability of all e-commerce. The time has come to curb the growth of spam on all fronts - through aggressive civil and criminal enforcement actions, as well as innovative technological solutions.

The criminal provisions that make up the Criminal Spam Act of 2003 are intended to target those who use fraudulent and deceptive means to send unwanted e-mail messages. A recent study conducted by the Federal Trade Commission (FTC) demonstrates that this is no small number. According to the FTC, sixty-six percent of spam contains some kind of false, fraudulent, or misleading information, and one-third of all spam contains a fraudulent return e-mail address that is included in the routing information, or header, of the e-mail message. By concealing their identities, spammers succeed in evading Internet filters, luring consumers into opening messages, and preventing consumers, ISPs and investigators from tracking them down to stop their unwelcomed messages.

The Criminal Spam Act of 2003 contains five new offenses. It makes it a crime to hack into a computer, or to use a computer system that the owner has made available for other purposes, as a conduit for bulk commercial e-mail. It also prohibits sending bulk commercial e-mail that conceals the true source, destination, routing or authentication information of the e-mail, or is generated from multiple e-mail accounts or domain names that falsify the identity of the actual registrant.

This bill provides for stiff penalties which are intended to deter the most abusive spammers. Recidivists and those who send spam to commit another felony face a sentence of up to five years' imprisonment. Those who hack into another's computer system to send spam, those who send large numbers of spam, and spam kingpins who direct others in their spam operations, face up to three years' imprisonment. Other illegal spammers face up to a year in prison. The amendment provides additional deterrence with criminal forfeiture provisions and the potential for sentencing enhancements for those who generate e-mail addresses through harvesting and dictionary attacks.

I believe enactment of "the Criminal Spam Act of 2003" is an important first step toward curbing predatory and abusive commercial e-mail, but it is certainly not the end. We all recognize that there is no single solution to the spam problem. While we must critically and continually monitor the effectiveness of any legislative solution we enact, we must pursue other avenues as well. Technological fixes, education and international enforcement are integral components to any effective solution. To this end, we will need the assistance of private industry and our international partners.

I look forward to working with my colleagues as we attempt to confront the spam problem on all fronts. I urge my colleagues to vote in favor of this bill.

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