

5) Is the proposed rule adequate to inform a recipient that an e-mail may include content that is objectionable or offensive due to its sexual nature?

The proposed rule to include the phrase “SEXUALLY-EXPLICIT-CONTENT” (the “Proposed Mark”) will serve to inform unsuspecting recipients that certain electronic mail (“e-mail”) includes content that is objectionable or offensive due to its sexual nature. Recipients who receive such unsolicited e-mails are subjected to an unwanted intrusion to their home and privacy. Such information is shocking and offensive to the unsolicited individuals who receive it. Including such a label will enable individuals who do not want to receive such information to easily identify and delete the unwanted e-mails.

Further, it will enable parents to protect their children from materials the parents find harmful. With the inclusion of the Proposed Mark parents can easily filter and monitor what their children are receiving via e-mail.

7) Will the inclusion of the Proposed Mark aid a filtering program in blocking or filtering e-mail messages that include sexually oriented material?

The inclusion of the Proposed Mark will most definitely aid in a filtering program in blocking and/or filtering e-mail messages that include sexually oriented material. The Proposed Mark’s inclusion of hyphens between the words will address any concerns that a filter set to block a simple English phrase like “sexually explicit content” would prevent delivery of an e-mail from an anti-pornography group utilizing such a phrase in the content of their e-mail. Further, the use of the hyphens creates a unique mark that will serve to make e-mails containing such information to be more effectively and easily detected by recipients who do not wish to receive such material.

10) Would the proposed rule unduly burden either entities selling sexually oriented material through e-mail messages or those consumers who were interested in purchasing sexually oriented material offered to them through e-mail messages? How? Is this burden justified by offsetting benefits to consumers?

The proposal does not unduly burden either entities selling sexually oriented material through e-mail messages or consumers who are interested in purchasing sexually oriented material offered via e-mail. The rule will only act as a detection device. The Proposed Mark will enable unsolicited consumers who do not wish to receive such information to identify e-mails containing such material so that they are not unwittingly exposed to material they would find shocking and offensive. Consumers that wish to receive such information still can do so. In fact, the Proposed Mark will clearly identify the content for these consumers as well. It would then be that consumers choice to open such e-mails if they so choose.

Further, the proposed rule will not prevent entities selling sexually oriented material through e-mail messages from continuing their business. It will only prevent unsuspecting and unsolicited consumers from being shocked and surprised when they realize that an e-mail contains sexually oriented material.

This approach is a balanced approach that will alert individuals to inappropriate and offensive material while allowing consumers access if they choose, and will not unduly affect the business of entities dealing in such material via e-mails. This proposed rule is no different than current a postal law (39 USC 3010), which requires anyone sending unsolicited mail which includes sexually oriented material to be stamped with an identifying mark. The postal laws and subsequent regulations, promulgated by the post master, have been upheld by the Supreme Court in Towan v. U.S. Postal Department, 397 U.S. 728 (1971).

Therefore, the proposed rule utilizes a mechanism that has been found constitutional and effective. The proposed rule serves both the purpose of protecting free speech, while protecting our right to privacy and allowing parents to protect their children. Again, it will only act as a filter so that individuals that do not wish to receive such information can easily identify and delete the unwanted information. It will not prevent those who wish to view from doing so. Therefore, the benefits bestowed upon consumers far outweigh any minor inconvenience that inclusion of the Proposed Mark may theoretically impose on those who wish to view such material or those who wish to trade in it.

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