

Utah Anti-Spam Registry Lawsuit Summary

The Utah Child Protection Registry Act (CPR Act) went into effect on July 15, 2005. The Act provides administrative, civil, and criminal penalties for anyone who sends prohibited e-mail to a registered e-mail that has been on the registry list for at least 30 days. E-marketers who wish to send a commercial e-mail that may be ultimately received by a recipient located in Utah are required to submit their e-mail marketing list to the Registry division and pay a fee to have it 'scrubbed' against their registry.

The Free Speech Coalition, the trade association for the adult entertainment industry, filed suit in federal court in Utah on November 17, 2005, challenging the Utah law that mandated the creation of the registry. This lawsuit seeks to prevent enforcement of the act against members of the Free Speech Coalition, and asserts the following declarations:

1. The CPR Act is pre-empted by federal law (The CAN-SPAM Act).
2. It violates the Commerce Clause of the United States Constitution for the following reasons:
 - a. It impermissibly regulates protected speech of plaintiffs and its members outside the borders of Utah;
 - b. It imposes community standards and regulations of Utah on the Plaintiff and its members and e-mail recipients Nationwide;
 - c. It subjects Plaintiffs, members, and other e-marketers to inconsistent e-mail regulations among the various states;
 - d. It unreasonably increases the costs of conducting interstate commerce for plaintiffs, its members, and other e-marketers.
3. CPR Act violates the 1st and 14th Amendment (Free Speech Provision) of the United States Constitution because:
 - a. It is an unlawful prior restraint on expressive activities of plaintiff, members, and other e-marketers;
 - b. It prohibits truthful and non-misleading commercial speech;
 - c. It is vague and overbroad;
 - d. It violates Article I Section 15 (Free Speech provision) of the Utah Constitution for the same reasons as the 1st Amendment of the US Const.
4. CPR Act violates the Utah Equal protection of Plaintiffs in comparison to other marketers.

The Plaintiffs are seeking a temporary restraining order, preliminary, and permanent injunction as well as a declaration from the US District Court for the Central Division of Utah that the CPR Act is unconstitutional.