

## The Electronic Crimes Act of 2008

1. This Act may be cited as the Electronic Crimes Act of 2008.
2. The term “electronic means” includes, but is not limited to, unsolicited electronic mail (spam), advertising posted on web sites, or any other means involving electronic communication.
3. For the purposes of this act, a resident of California shall be deemed to have been solicited when that resident receives any electronic communication that references an Internet domain (website) that offers goods or services in violation of this act.
4. There shall be established in the office of the Attorney General of the State of California, and in the offices of the District Attorneys of the State of California, an office of Electronic Crimes. The sole purpose of this office is to prosecute crimes committed under this act and any other electronic crimes that may be created in the future. These offices shall receive a budget and staffing equal to the budget and staffing of the most numerous office in each of the listed organizations.
  - a. The Office of Electronic Crimes within the Office of the Attorney General of the State of California shall be the office responsible for dealing with other states and foreign countries regarding the extradition of persons charged under the Act.
  - b. The Office of Electronic Crimes in the offices of the District Attorneys shall investigate and prosecute all complaints of violations under this act. Each office shall establish a website where allegations of crimes under this Act may be lodged. The victim shall have their allegation investigated within 24 hours of posting to the web site. The victim shall be informed of the status of the investigation by electronic mail or by website every 24 hours.
5. It shall be a crime (felony) for any person, partnership, corporation or other entity to load onto the computer of another person without their permission, or by means of subterfuge, any computer code, in any form whatsoever, that sends any personally identifiable data to any entity without the permission of the owner of the effected computer.
6. It shall be a misdemeanor for any person, partnership, corporation or other entity to place upon the computer of any other person without their permission, or by means of subterfuge, any computer code or file of the kind commonly known as a “tracking cookie” for the purpose of discerning the web browsing habits of any person. If the use of the tracking cookie causes unsolicited advertising to be sent to the computer, it shall be a felony punishable as listed below.
7. It shall be a crime (felony) for any person, partnership, corporation or other business organization to advertise to, solicit from, or otherwise contact any resident of the State of California by electronic means for the purpose of negotiating, or purporting to negotiate, any financial transaction that requires a license under the California Residential Mortgage Lender's Act (CRMLA) unless:
  - a. that entity is otherwise exempt from possessing such license by the CRMLA,
  - b. that entity possesses a valid license issued under the provisions of the CRMLA
  - c. that license number is prominently displayed in any electronic communication between the soliciting organization and any resident of the State of California,
  - d. the business entity maintains a business office located within the borders of the State of California where constructive service of process may be obtained.

e. If the website advertises for a consortium of the businesses described in this section, the website shall prominently display the name and license number of each member of the consortium.

f. The solicitation, if by electronic mail, shows the correct from address of the person sending the email and the receiver of the email shall have affirmed permission for the business to contact them by electronic mail (opt-in).

8. It shall be a crime (felony) for any person, partnership, corporation or other business entity to advertise to, solicit from or otherwise contact any resident of the State of California by electronic means for the purpose of offering for sale, or selling to, any drug, medicine, medical device or any other thing for which a pharmacist's license is required without possessing such license and otherwise complying with the provisions of the applicable sections of the applicable Codes of the State of California.

9. It shall be a crime (felony) for any person who is not licensed as a physician in the State of California to prescribe any drug, medicine, medical device or other thing for which such a license is required by electronic means without having performed a personal examination of the patient. Such exam shall require that the prospective patient visit the office of the physician for such examination.

10. It shall be a crime (felony) for any person, partnership, corporation or any other business entity to emit any electronic mail message purporting to be from any electronic mail address belonging to a governmental entity of the State of California or any of its political subdivisions for the purposes of advertising any service in violation of the provisions of this act. Each electronic mail so emitted shall be deemed a separate offense under this section.

11. Constructive Conspiracy. It shall be presumed as a matter of law that a person, partnership, corporation or other business entity is guilty of the offenses enumerated in this act as if they were the principal offending party if:

a. as a Domain Name Registrar

1) they fail to take reasonable due diligence to insure that a domain name registrant's identification data is true and complete and that the registrant is legally entitled to register a particular domain name.

2) they fail to cancel a domain name registration within one hour when informed that the domain is in violation of any of the articles of this act.

b. as an Internet Service Provider (ISP)

1) fails to take reasonable due diligence to monitor the domains it services for violations of this act

2) fails to block the access of a domain to the Internet when informed that the domain is in violation of this act within one hour of such notification.

3) continues to provide Internet access to persons, partnerships, corporations or other business entities who have previously violated the provisions of this act.

c. as the Internet Corporation for Assigned Names and Numbers (ICANN):

1) fails to remove an offending domain from the Domain Name System within one hour of notification that a domain is in violation of any section of the act,

2) fails to block all additional domain names that point to the same IP address as the offending domain,

3) fails to provide for a process to discipline ISPs who continue to provide services to offenders under this act that includes the reassignment of their assigned public IP addresses. For the purposes of this act, a repeat offender is any ISP who has assigned more than five of their

assigned block of IP addresses to offenders under this act. The IP addresses allocated to the offender shall be reassigned to an ISP in a different country from that of the offending ISP.

d. as an Internet hosting service hosts any domain which is an offender under any portion of this act when notified that the domain is offending and fails to remove the offending domain within one hour of notification of such offense.

12. Penalties. Any person who as an individual, partner, officer or director of a corporation who violates any section of this act or is deemed to be a constructive conspirator under 11 above shall,

a. for a first offense be remanded to the Department of Corrections and incarcerated for a term of two years or four years and shall pay a fine of 100,000.00 dollars.

b. for a second or subsequent offense be remanded to the Department of Corrections and incarcerated for a term of ten years or fifteen years and pay a fine of 1,000,000.00 dollars.

c. If multiple counts are charged in an indictment for which a conviction is obtained and the defendant has no prior convictions under this act, the first conviction on a count of the indictment shall be deemed to be the first conviction under this act and each conviction on another count in the same indictment shall be deemed a second or subsequent offense. The terms for multiple convictions under this act shall be served consecutively unless such conviction shall be by a plea of guilty under a plea agreement when such terms may be served concurrently. The fines for all convictions under this act shall be cumulative.

13. Section 485i PC.(added). Any person, partnership, corporation or any other business arrangement that expropriates the email address or domain name of another for the purpose of hiding the true source of any electronic message whose purpose is to violate any section of The Electronic Crimes Act of 2008 is guilty of grand theft. For the purposes of this section, the value of such email address or domain name shall be declared to be one dollar (\$1.00) more than the lowest value limit in sections 484 through 488 which constitutes grand theft. The penalties for violations of this section shall be the same as for the commission of any of the crimes listed in the Electronic Crimes Act of 2008.