

Virginia SC Scuttles Spam Law

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The Virginia Supreme Court has declared the state's antispam law unconstitutional, turning loose a notorious spammer who had been sentenced to nine years in prison for violating it. The law did not distinguish sufficiently between protected and unprotected speech, the Court found.



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Jeremy Jaynes -- said to be one of the world's most prolific spammers -- had his nine-year prison sentence vacated after the Virginia state Supreme Court ruled that the law under which he was prosecuted violated the First Amendment.

The state's antispam law, the Court found, did not adequately differentiate between commercial and noncommercial speech.

Overly Broad

In fact, Jaynes mounted a number of legal challenges to his sentence, including the assertion that the state of Virginia did not have jurisdiction over him because the e-mails were sent from his home in North Carolina.

The court shot down that argument, along with other objections based on legal technicalities, but it ultimately found that the Virginia statute outlawing spam was unconstitutional because it was overly broad.

Virginia's antispam law outlawed sending unsolicited bulk e-mail. [Learn how you can enhance your email marketing program today. Free Trial - Click Here.](#) using false information, such as a phony Internet protocol address. Jaynes' attorney argued that the wording of the statute violated the First Amendment protection of anonymous speech.

However, speech can be classified as "commercial" or "noncommercial"; Jaynes' missives clearly fell in the former category.

"Noncommercial speech is given broader protection under the First Amendment," Randy M. Friedberg, a partner in Olshan Grundman Frome Rosenzweig & Wolosky, told the E-Commerce Times.

It might follow that if Jaynes -- or any spammer -- had been sending mass e-mails to strangers promoting political or religious views, he would have been protected under the First Amendment; since he wasn't, the antispam statute should therefore have applied to him.

However, Jaynes' attorney argued that because Virginia's antispam law could potentially affect protected speech, Jaynes was entitled to claim protection -- and thus exoneration from prosecution -- for his otherwise unprotected speech.

The Court agreed, striking down the statute.

"There is a long line of case authority which states that commercial speech received a lower level of First Amendment protection and higher scrutiny than noncommercial speech," Friedberg said.

"What the Court here decided was that the law was a per se violation of the First Amendment because it did not differentiate, even though the defendant at issue did not argue that anything he sent out was noncommercial."

A Reminder for Lawmakers

The decision is a lesson for legislatures crafting laws that might touch upon the First Amendment, Ronald Schechtman, managing partner with Pryor Cashman, told the E-Commerce Times.

"It is a reminder that courts hold [lawmakers] to a requirement that any limitation on speech must be drawn in the most narrow fashion possible to meet a legitimate need," he said.

The Virginia Supreme Court made the same observation in its ruling:

"Many other states have regulated unsolicited bulk e-mail but, unlike Virginia, have restricted such regulation to commercial e-mails," the Opinion states. "There is nothing in the record or arguments of the parties, however, suggesting that unsolicited noncommercial bulk e-mails were the target of this legislation, caused increased costs to the Internet service providers, or were otherwise a focus of the problem sought to be addressed by the General Assembly through its enactment of [the antispam law]."

"Jaynes does not contest the Commonwealth's interest in controlling unsolicited commercial bulk e-mail as well as fraudulent or otherwise illegal e-mail," it continues.

"Nevertheless, [the law] is not limited to instances of commercial or fraudulent transmission of e-mail, nor is it restricted to transmission of illegal or otherwise unprotected speech such as pornography or defamation speech. Therefore, viewed under the strict scrutiny standard, [it] is not narrowly tailored to protect the compelling interests advanced by the Commonwealth."