

March 31, 2004

Via Electronic Filing

Mr. Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: CAN-SPAM Act Rulemaking, Project No. R411008—  
Do-Not-E-Mail Registry

Dear Secretary Clark:

The signatories to this letter include trade associations and business coalitions (hereinafter “Associations”) whose members have an interest in eliminating spam. Some of these Associations are submitting comments separately in this proceeding. These Associations collectively represent thousands of companies across a diverse cross-section of industry, all of which benefit from electronic commerce.

The Associations support efforts to combat spam. All of the Associations have an interest in electronic commerce and the existence of a healthy e-mail medium. The Associations believe that technological developments and effective implementation and enforcement of the CAN-SPAM Act will go a long way toward eliminating spam without jeopardizing the development of e-commerce. Conversely, the creation of a do-not-e-mail registry is not an appropriate solution to address the spam problem. The Associations oppose the creation of a do-not-e-mail registry primarily because it would not prevent spam. Instead, a registry would create significant privacy and security risks for consumers, inhibit the development of e-commerce, hinder the ability of legitimate businesses to communicate with consumers, and impose unnecessary costs on companies that conduct business legitimately.

- **A do-not-e-mail registry would not prevent spam.** The spam problem is caused by criminal spammers who do not obey the law and who take steps to avoid detection and anti-spam measures. These bad actors are systematically breaking every provision of this new law and the numerous state laws. They are unlikely to comply with a do-not-e-mail registry. In most cases, it is very difficult, if not impossible, to find spammers. For this reason, it would be difficult to identify and take enforcement actions against spammers who violate a do-not-e-mail registry. As a result, only companies intending to

comply with the registry requirement would be affected; the spam sent by bad actors would not be prevented by a registry.

- **A do-not-e-mail registry would set unrealistic expectations for consumers.** If a do-not-e-mail registry is created, consumers will have the expectation that spam will be reduced or eliminated from their inboxes. This would not occur, as the bad actors would continue to send spam.
- **A do-not-e-mail registry poses significant privacy and security risks with respect to the e-mail addresses on the registry.** The technological sophistication of spammers and their criminal intent indicate that the potential security and privacy risks of a registry are high. If spammers obtain the list of e-mail addresses on the registry, they are likely to use it as a list of recipients to whom to send spam. If a registry were distributed to tens of thousands of senders of commercial e-mail, there is a high likelihood that the list would be compromised and the e-mail addresses would become available to bad actors, inconsistent with its original purpose.
- **A do-not-e-mail registry would impair the development of e-commerce.** Restrictions that could limit legitimate commercial e-mail are likely to inadvertently impede the development of e-commerce. There are significant and innovative business models in development regarding e-commerce use of electronic mail. A do-not-e-mail registry, by creating a broad category of individuals to whom e-mail may not be sent, would limit such innovations.
- **E-mail that consumers want to receive could be blocked as a result of such a registry.** There may be categories of e-mail that individuals want to receive that would not be able to be sent to those who place their names on the registry. For example, an individual may consent to receive some commercial e-mail but also sign onto a registry. There may be categories of e-mail that fall outside the scope of 'transactional and relationship' messages that an individual has requested that then could not be sent to individuals on the registry.
- **A do-not-e-mail registry would impose unnecessary costs on legitimate senders of commercial e-mail.** Scrubbing lists for each commercial e-mail that is sent would result in significant costs to legitimate businesses with no benefit in reduction of spam to consumers. Such additional costs ultimately would be built into the prices of the company's products and services.

The signatories to this letter remain committed to technological development and look forward to cooperative activities with the Federal Trade Commission concerning enforcement of the CAN-SPAM Act. Development of a registry, however well

intentioned, is unnecessary given other actions that can more effectively control spam and protect consumers.

For these reasons, we strongly urge that the Commission, in its report to Congress, recommend against adoption of a do-not-e-mail registry. However, if the Commission is considering recommending a specific proposal, we would welcome the opportunity to constructively work on such an implementation plan. For additional information, please contact Ron Plessler, Piper Rudnick LLP, at 202/861-3900.

Sincerely,

American Advertising Federation  
American Association of Advertising Agencies  
American Bankers Association  
American Business Media  
Association of National Advertisers  
Consumer Bankers Association  
Continuity Shippers Association  
Direct Marketing Association  
Electronic Retailing Association  
Email Service Provider Coalition  
Independent Insurance Agents & Brokers of America  
Information Technology Association of America  
Interactive Travel Services Association  
Internet Alliance  
Internet Commerce Coalition  
Magazine Publishers of America  
National Retail Federation  
Network Advertising Initiative  
Newspaper Association of America  
Promotion Marketing Association  
U.S. Chamber of Commerce