

000658

Re: CAN-SPAM Act Rulemaking, Project No. R411008

To the Commissioners.

I applaud your efforts to curb the problem of unsolicited bulk email. However, I am concerned about the proposed requirement for merchants to maintain suppression lists

There are so many problems and costs associated with this idea, and so much damage done to consumers and businesses alike, that I feel I must urge you to consider this matter most carefully.

Requirement of the use of suppression lists will seriously damage many of the legitimate publications available on the net. My specific concern is for harm to publishers who require permission from the consumer prior to adding them to any list.

They're not who CAN-SPAM was designed to put out of business, but this requirement will very likely have that effect.

There's also the potential for significant harm to consumers, because of the problem of properly knowing their intent when they unsubscribe from a list. On top of that, these suppression lists could easily fall into the hands of spammers, leading to more spam instead of less.

You can see a more detailed explanation of my concerns here:

<http://www.McWebAgency.com>

April 14, 2004

Mr. Robert McLaughlin  
McLaughlin Enterprises

[REDACTED]  
[REDACTED]  
United States of America

A. MANDATORY RULEMAKING – Determining whether “the primary purpose” of an email message is commercial.

In modifying the Act’s definition of “commercial electronic mail message,” the term “the primary purpose” could be interpreted in many ways. Click the choice below that most closely matches your view of the correct interpretation.

1. The primary purpose of an email message should be viewed as commercial if:  
 commercial advertisement or promotion in the message is more important than all of the message’s other purposes combined.  
the commercial advertisement or promotion in the message is more important than any other single purpose of the email, but not necessarily more important than all other purposes combined  
the “net impression” of the message as a whole compels the conclusion that the message is commercial  
the commercial advertisement or promotion in an email is more than incidental to the email  
Other, please specify in the Additional Comments section at the end of this form.

2. Should the identity of an email’s sender affect whether or not the primary purpose of the sender’s email is a commercial advertisement or promotion?

Yes

No

3. Are there other ways to determine whether a commercial advertisement or promotion in an email is the primary purpose of the email?

Yes  
 No

#### OTHER POSSIBLE RULEMAKING TOPICS

B. Modifying what is a "transactional or relationship message".

Under the Act, a "transactional or relationship message" is defined as meeting one of seven criteria. As indicated in the choices below, the criteria relate to, for example, whether the message: concerns prior or already-established commercial transactions between sender and recipient; products or services purchased by the recipient; or an ongoing commercial or employment relationship between sender and recipient.

1. Choose any of the definition(s) below that you feel the Commission should modify or elaborate upon. (Choose all that apply)

E-mail messages that "facilitate, complete, or confirm" a commercial transaction that the recipient has previously agreed to enter into with the sender

E-mail messages that "provide warranty information, product recall information, or safety or security information about a commercial product or service."

E-mail messages that "provide notification concerning a change in the terms or features" of a subscription, membership, account, loan, or comparable ongoing commercial relationship

E-mail messages that "provide notification of a change in the recipient's standing or status" with respect to a subscription, membership, account, loan, or comparable ongoing commercial relationship

E-mail messages that provide "at regular periodic intervals, account balance information or other types of account statements" with respect to a subscription, membership, account, loan, or comparable ongoing commercial relationship

E-mail messages that "provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled."

E-mail messages that "deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously ~~agreed to enter into with the sender."~~

None of the above, the term "transactional or relationship message," as defined in the Act, is clear, and needs no further clarification or modification.

2. Have any changes in electronic mail technology or practices occurred since the CAN-SPAM Act became effective on January 1, 2004, that would necessitate modification of the Act's definition of "transactional or relationship message" to accomplish the purposes of the Act?

Yes

No

3. Some transactional or relationship messages may also advertise or promote a commercial product or service. In such a case, is "the primary purpose" of the message relevant, and if so, what criteria should be applied to determine the "primary purpose" of such a message?

No, the primary purpose of the message is not relevant

Yes, the primary purpose of such a message is relevant, and the criteria specified in question A.1 above should be applied to determine its primary purpose.

Yes, the primary purpose of such a message is relevant, but different criteria should be applied to determine its primary purpose.

4. Should transactional or relationship messages that also advertise or promote a commercial product or service be deemed "commercial" messages or should they be deemed "transactional or relationship" messages?

They should be deemed Commercial messages

✗ They should be deemed "Transactional or Relationship" messages

C. Modifying the 10-business-day time period for processing opt-out requests.

1. Is 10 business days an appropriate deadline for acting on an opt-out request by deleting the requester's email address from the sender's email directory or list? And if not, which of the following would be a more appropriate time limit?

Yes

No, a time limit of less than 10 days would be more appropriate

No, a time limit of greater than 10 days would be more appropriate

D. Identifying additional "aggravated violations"

Section 5(b) of the Act identifies four "aggravated violations" associated with commercial email: (1) address harvesting; (2) dictionary attacks; (3) automated creation of multiple email accounts; and (4) relay or retransmission through unauthorized access to a protected computer or network.

1. Are there any additional activities or practices that should be treated as "aggravated violations" under the Act?

Yes, please specify in the Additional Comments Section at the end of this form

No

2. Are there new technologies that have been developed or are in development that would contribute substantially to the proliferation of commercial email that is unlawful under § 5(a)?

Yes, there are new technologies, and they should be added to the list

Yes, there are new technologies, but they should not be added to the list

No, there are no new technologies

E.1 Issuing Regulations to Implement Various Aspects of CAN-SPAM -- Defining who is the "sender" of a commercial email message.

Section 3(16) of the Act defines when a person is a "sender" of commercial email. The definition appears to contemplate that more than one person can be a "sender" of commercial email, for example, an email containing ads for four different companies.

1. Would it further the purposes of CAN-SPAM or assist the efforts of companies and individuals seeking to comply with the Act if the Commission were to adopt rule provisions clarifying the obligations of multiple senders under the Act?

Yes

No

2. If a consumer has "opted out" from receiving commercial email from a particular company, and then receives a subsequent commercial email containing an ad for this company as well as ads for three other companies, does this violate the Act? If so, who has committed the violation?

No, if a consumer receives an email containing ads for four different companies, although s/he has opted out of receiving email from one of them, this does not violate the Act.

Yes, the Act has been violated by the company advertised and to whom the opt-out request was made.

Yes, the Act has been violated by the party who initiated the email message, but who did not receive the opt-out request.

Other, please specify in the Additional Comments Section at the end of this form

3. Should the Commission issue regulations clarifying who meets the definition of "sender" under the Act?

Yes

 No

E.2 Issuing Regulations to Implement Various Aspects of CAN-SPAM -- "Forward-to-a-friend" scenarios. The Act defines "initiate" to mean originate or transmit, or procure the origination or transmission of a message. In turn, the term "procure" means to pay, provide consideration, or induce a person to initiate a message on one's behalf.

1. Do "forward-to-a-friend" and similar marketing campaigns in which marketers rely on their customers to refer or forward the commercial emails to someone else fall within the parameters of "inducing" a person to initiate a message on behalf of someone else?

Yes

 No

2. Are there different types of such "forwarding" marketing campaigns?

 Yes

No

3. Should these marketing campaigns have to comply with the Act, and if so, who should be considered a person who "initiates" the message when one person forwards the message to another person?

No, these types of marketing campaigns should not have to comply with the Act

Yes, these types of marketing campaigns should have to comply with the Act, and the original sender of the email message, whose product, service or web site is advertised in the message, should be considered the person who initiates such a message

Yes, these types of marketing campaigns should have to comply with the Act, and each person who forwards the message to another person should be considered as having initiated such a message.

Other, please specify in the Additional Comments Section at the end of this form

4. Who should be required to provide an "opt-out" mechanism for such a message?

The original sender of the email message and whose product, service or web site is advertised in the message.

Each person who forwards the message to another person

Other, please specify in the Additional Comments Section at the end of this form

5. Should each person who forwards the message be required to comply with the Act?

Yes

 No

6. Should the original sender of the message remain liable for compliance with the Act after the original recipient forwards the message to someone else?

Yes

 No

7. Do the Act's requirements reach email messages containing advertisements sent by using a web site that urges or enables individuals to email articles or other materials to friends or acquaintances?

 Yes

No

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## Addendum

~~2. If a sender's email address does not on its face identify the sender by name, does that email address comply with 16 C.F.R. § 57(a)(1)?~~

~~YES~~

~~NO~~

~~If you wish to provide additional information on issuing regulations implementing the Act, please do so in the Additional Comments section at the end of this form.~~

### F. REPORTS.

The Commission also seeks comment on the various reports required by the CAN-SPAM Act. Please identify which of the following reports you wish to comment on, and then enter your comment in the Additional Comments Section at the end of this form.

Alternatively, you may submit your comment as an attachment. When submitting your comment on one or more of these reports, please refer to the questions posed in the Federal Register Notice. If you do not wish to comment on any of these reports, please proceed to the end of this form.

1. Select the report or reports on which you wish to comment:

The implementation of a National Do Not Email Registry.

The implementation of a system for rewarding those who supply information about CAN-SPAM violations.

The effectiveness and enforcement of the CAN-SPAM Act.

Subject line labeling.

### G. REGULATORY FLEXIBILITY COMMENTS.

Please enter comments on Small Business impacts and recommended regulatory alternatives (if any) related to the Regulatory Flexibility Act in the Additional Comments section at the end of this form.

8. Should unsolicited commercial email campaigns that rely on having customers refer or forward the email to other parties be treated differently from other unsolicited commercial email?

Yes

No

E.3 Issuing Regulations to Implement Various Aspects of CAN-SPAM --The inclusion of a "valid physical postal address".

Section 5(a)(5)(A)(iii) requires the disclosure of "a valid physical postal address of the sender" in each commercial electronic mail message.

1. Should a P.O. Box be considered a "valid physical postal address"?

Yes

No

2. Should a commercial mail drop be considered a "valid physical postal address"?

Yes

No

E.4 Issuing Regulations to Implement Various Aspects of CAN-SPAM --Information in a message's "from" line.

1. Is the Act sufficiently clear on what information may or may not be disclosed in the "from" line, pursuant to Section 5(a), including the kind of "from" line information that should be considered acceptable under the Act?

Yes

No

2. If a sender's email address does not, on its face, identify the sender by name, does that email address comply with § 5(a)(1)?

Yes

No

*Insert - Page 6 of 6 here!*

The following is a series of comments made to the committee:

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Respectfully,  
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New Mexico, USA

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Respectfully,  
Robert C. McLaughlin  
New Mexico, USA

A handwritten signature in black ink that reads "Robert C. McLaughlin". The signature is written in a cursive style with a large, sweeping flourish at the end.