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CALIFORNIA ASSOCIATION OF REALTORS®

March 24, 2004

Federal Trade Commission
CAN-SPAM Act
Post Office Box 1030
Merrifield, VA 22116-1030

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

2004 OFFICERS

ANN PETTJOHN
President

JIM HAMILTON
President-Elect

COLLEEN BADAGLIACCO
Treasurer

JOEL SINGER
*Executive Vice President/
State Secretary*

Dear Mr. Secretary:

On behalf of the 140,000 members of the California Association of REALTORS® (C.A.R.), I am pleased to submit the following comments on the FTC's proposed rule referenced above, specifically clarification of "Criteria for determining whether 'the primary purpose' of an electronic mail message is commercial." C.A.R. is asking the FTC to clarify that the Controlling the Assault of Non-Solicited Pornography And Marketing Act of 2003 (CAN-SPAM) does not apply to emails initiated by non-profit organizations. Non-profit organizations play a unique role in American society, and as such, were not intended by Congress to be subject to CAN-SPAM.

Non-profit organizations have a long Congressional history of being recognized as unique in character and worthy of special consideration. The IRS has taken a considerable amount of time and effort in defining these organizations and establishing policies to address their particular functions. In creating the CAN-SPAM legislation, Congress itself defined the purpose of the Act as being to control "the extremely rapid growth in the volume of unsolicited *commercial* electronic mail" (emphasis added). It was not anticipated to be used as a method to block communications between non-profit organizations and their participants.

In addition non-profit organizations serve society on a host of important issues. Their primary purpose is to benefit others rather than themselves, which is in marked contrast to commercial enterprises. The advent of email has given non-profits an inexpensive tool to communicate with donors, members, and other contacts in a cost efficient manner. This has given non-profits the ability to redirect more of their limited resources towards their primary mission of providing assistance to their members and society in general. If the CAN-SPAM Act were to apply to non-profit entities, according to IRS numbers over one million organizations could be impacted.

The FTC's request for comment gave the example of, "if a professional sports league sends email promoting its involvement with a charitable organization, should that email be considered to have a commercial 'primary purpose' under the Act based on the



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league's "for-profit" status?" C.A.R. believes that under CAN-SPAM this would be an example of a commercial email because the email originated from the professional sports team. Therefore, it can be seen as self-promotion of a "for-profit" entity. The initial factor to consider in determining the purpose of the email is the identity of the sender. In the example above, the sender of the email was a "for-profit" organization. Thus, the email sent would be subject to further scrutiny under CAN-SPAM. If, however, the sender had been a non-profit organization then the email would fall outside of CAN-SPAM as a non-commercial communication.

On behalf of the members of the California Association of REALTORS® I thank you for your consideration of the comments above. If you would like to discuss the issues presented in this letter in more detail, please do not hesitate to contact our Director of Public Policy, Ms. Janet M. Gagnon-Stovall, at 213-739-8272.

Sincerely,



Ann Pettijohn,
President, California Association of REALTORS®



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