

Additional Comments of Karl A. Krueger to the Federal Trade Commission Title: CAN-SPAM ANPR Subject Category: CAN-SPAM Act - Advanced Notice of Proposed Rulemaking (ANPR) Docket ID: [3084-AA96] CFR Citation: 16 CFR 316 A. An e-mail message should be adjudged as commercial if it suggests or promotes an exchange of goods or services, regardless of whether the entity sending the message is organized for-profit or non-profit. B. No additional comment. C. It is entirely within the current ability of electronic mailing list software to process unsubscriptions ("opt-out requests") immediately, with a delay of seconds or minutes -- not days. This is not in any way speculative; several freely available mailing list software packages such as "Majordomo", "GNU Mailman", and "Easy Mailing List Manager (ezmlm)" have this ability now. There is therefore no technical need to grant e-mailers 10 days to continue to intrude upon the privacy of those who have opted out. D. A number of unsolicited e-mailers have sent their mail by way of home computers infected with computer viruses such as "Mimail", "Sobig", and "Bugbear". The consensus of the computer security community is that these viruses were created for the purpose of sending unsolicited e-mail through the infected computers. The use of computer viruses in the sending of unsolicited commercial email should be considered an aggravated offense. E.1. There have been a number of cases in which companies have begged off responsibility for unsolicited e-mailing by claiming that the e-mail was sent by an "affiliate". Affiliate marketing is popular on the Internet, but can allow a company an "out" to permit the promotion of its products by illegal unsolicited e-mail -- by negligently looking the other way when affiliates promote illegally. A standard of negligence should be issued such that companies who benefit from affiliate marketing will be encouraged to police their affiliates' e-mail practices. E.2. A recipient's freely-chosen act of forwarding a solicited commercial message directly to another person should not incur obligations on the part of that message's sender. However, a distinct type of marketing campaign exists in which recipients are urged to provide the e-mail addresses of "friends and family" to the marketer, who then sends commercial messages directly to these unsolicited recipients. Since the original recipient is not authorized by his or her "friends and family" to "opt them in" to receive commercial mailings, these mailings should be considered prohibited. E.3. A "valid physical postal address" should be one suited for the delivery of (e.g.) legal documents by registered mail, subpoenas, et al. It should be thus be the primary place of business of the sender, not an outsourced processing facility (as are commonly used in the mail-order trade). The purpose of this regulation should be construed to ensure that parties responsible for violations be findable for service of process by law enforcement, plaintiffs, and other aggrieved parties. E.4. There are from three to five sender addresses placed on most e-mail messages -- not merely one. Three which are mandatory in standards-conformant e-mail are the SMTP envelope sender (or "MAIL FROM") address; the "From:" header address; and the first (lowest) "Received:" header. The optional two are the "Sender:" header address; and the "Reply-To:" header address. Regulation should require that the three mandatory addresses accurately represent the sender and the message's commercial intent; and that the two optional ones not be misleading. For instance, it should be a violation to place a false "Received:" header, which would misdirect investigators of violations; or a false "Reply-To:" header, which would misdirect replies to the e-mail. F. The standard promulgated by several states is to require the symbol "ADV:" to be placed at the beginning of the subject line of

commercial e-mail, or "ADV-ADLT:" for adults-only commercial e-mail. These standards are technically useful, although not sufficient in themselves, and should be maintained. "Adults-only" commercial e-mail should be construed as any it would be illegal to send to a minor child.