



**Deborah Zuccarini
President**

Experian Marketing
Solutions
955 American Lane
Schaumburg, IL 60173
(224) 698-8409

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Mr. Donald S. Clark
Secretary
Federal Trade Commission
Room 159-H
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

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

Dear Mr. Secretary:

Experian Marketing Solutions is pleased to have the opportunity to offer preliminary comments on the Commission's implementation of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("the CAN-SPAM Act" or "the Act") pursuant to the Commission's Advanced Notice of Proposed Rulemaking (ANPR), issued on March 11, 2004.

Experian, along with its affiliates, is a global leader in providing information services solutions to consumers and its client organizations. We have 13,000 employees worldwide who support clients in more than 60 countries, and our annual sales exceed \$2.2 billion. We also do business with more than 40,000 clients every day, across a range of industries as diverse as financial services, telecommunications, health care, insurance, retail and catalog, automotive, manufacturing, leisure, utilities, property, e-commerce and government. Experian helps organizations find, develop and manage profitable customer relationships by providing them with information, decision-making solutions and processing services, including e-mail deployment services. In addition to providing marketing solutions, Experian and its predecessor companies have provided credit reporting services for more than 100 years; our consumer credit reporting business, in fact, provides hundreds of millions of credit reports to lenders annually, thereby contributing significantly to the streamlined credit system that exists in the United States

today. We also work tirelessly to provide fraud and identity theft prevention services, scoring and analytic tools, and risk management consulting.

Background

Experian recognizes that Congress passed the CAN-SPAM Act on December 16, 2003, and in delegating its implementation to the FTC, Congress directed that the Commission issue a rulemaking not later than 12 months following enactment in order to clarify the “relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.”¹ Congress also provided the Commission with broad discretionary authority to issue regulations implementing other provisions of the Act.² In doing so, Congress accepted the inherent difficulties and dangers of harnessing the rapidly changing technologies of the Internet. We therefore recognize that the Commission need not act on any other portions of the CAN-SPAM Act other than “primary purpose.” However, for the reasons we will outline below, we urge the Commission to consider expanding its review in several areas.

Primary Purpose

As noted, section 3(2)(C) of the CAN-SPAM Act requires that the FTC issue regulations “defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.” We believe that “primary purpose” is the pivotal phrase in the Act. It is contained in the definition of “commercial electronic mail message” as well as the definition of “transactional or relationship message.”³ It is, therefore, the most critical component of the Act, since the definition dictates what email messages are and are not covered by the other provisions of the Act and, in the case of a transactional or relationship message, the scope of the exceptions to coverage.

Experian believes it is imperative that the Commission recognize that “primary purpose” under the CAN-SPAM Act requires a different analysis than the statutory framework underlying the “deceptive acts or practices” evaluation which the FTC has traditionally applied in the context of advertising. We believe that primary purpose should be evaluated based upon the perspective of a “reasonable sender,” rather than the impression of the recipient, or a “reasonable consumer,” as with advertising, or even a “reasonable observer,” as suggested by question VI (A)(3) of the ANPR. Congress deliberately adopted the primary purpose standard. It was included in virtually every version of the House and Senate bills that eventually merged into the CAN-SPAM Act.

The Commission set forth seven questions in section VI (A) of its ANPR, with the hope that they would assist in the effort to agree on a standard that might be utilized to effectively define the phrase, “primary purpose.” For example, question VI (A)(1) of the ANPR suggests a test of whether “an email’s commercial advertisement or promotion is more important than all of the email’s other purposes combined.” Question VI (A)(2) offers a similar but subtly different test: whether “an email’s commercial advertisement or promotion is more important than any other single purpose of the email, but not

¹ CAN-SPAM Act of 2003, Pub. L 108-187, § 3(2)(C).

² *Id.* at §13(a).

³ CAN-SPAM Act § 3(17)(A).

necessarily more important than all other purposes combined.” Both of these suggestions, standing alone, fail to provide useful criteria because the meaning of “importance” is unclear (i.e. important to whom?). It is our view that, since compliance with the Act lies on the shoulders of the sender, the standards applicable to the sender’s “primary purpose” should, logically, also lie in the mind and motivation of a “reasonable sender,” not the recipient. The word “purpose” is inescapably tied to “intent,” and the phrase suggests a link to the decision-making process of the sender, as opposed to the recipient or some other third party. To determine otherwise is counterintuitive and outside the clear meaning of the Act.

Experian believes this view is supported by the weight of responsibility placed upon the sender throughout the Act, and contained in section 5 of the Act in particular. For example, section 5(a)(1) subjects the sender, or any “person who initiates” a commercial email message, to liability if that person improperly “initiate[s] the transmission” of a commercial email message. Similarly, subsections 5(a)(2), (a)(3), (a)(4)(A)(i) and (a)(5) all link the sender to liability for improperly initiating a commercial email. The same is also true of sections 5(b)(1) and 5(d).

Question VI (A)(5) discusses basing the primary purpose “analysis on whether the commercial aspect of the email financially supports the other aspects of the email.” Most content is supported by paid advertising, and therefore, trying to assess the degrees of financial support may inhibit the ability of organizations sending newsletters, for example, to capitalize on compelling and relevant content in a free marketplace. The fact that most email is relatively inexpensive to deliver should be a profit-growth incentive rather than an inhibiting factor. Therefore, the financial support test should be rejected.

Last, question VI (A)(6) inquires whether “the identity of an email’s sender affects whether or not the primary purpose of the sender’s email is a commercial advertisement or promotion.” Specifically, this suggestion implies that if a sender is a “for profit” entity, such as the professional sports league used in the question, it should be automatically deemed “commercial” for purposes of this definition. This suggestion attaches too literal a meaning to the dispatch of an email that merely contains “the commercial advertisement or promotion of a commercial product or service” and, if adopted, would render meaningless the word “primary.” This option, too, should be rejected.

Since “purpose” is not written in the plural, we believe that there can be but one “primary purpose,” and it must, of necessity, be tied to the motives of the sender. The word “purpose” clearly implies intent. In fact, the phrase has legal precedent that should guide the Commission in its effort to identify “relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.” The identical legal standard already exists in current law, and it has been used in applying the Foreign Intelligence Surveillance Act (“FISA”). Notwithstanding the foreign intelligence nature of the statute, the “primary purpose” test anticipates that federal courts will be called upon to compare and weigh competing purposes, applying criteria that articulates “the test [as] one of purpose or primary purpose” (*United States v. Sarkissian*, 841 F.2d 959 (9th Cir., 1998), or equates “primary purpose” with the “exclusive” purpose of the conduct under review. *United States v. Duggan*, 743 F.2d 59,78 (2d Cir., 1984). Other courts of appeal have defined “primary purpose” as “the primary objective” of a course

of action, *United States v. Radia*, 827 F.2d 1458, 1464 (11th Cir., 1987), or an action taken “primarily, for the purpose of” achieving a specific goal (*United States v. Pelton*, 835 F.2d 1067,1075 (4th Cir, 1987). Under any of these criteria, then, the motives or intent of the sender is the critical element. Similarly, the term modifies “electronic mail message” in the Act, which, in turn, is under the exclusive control of the sender. Put another way, if, after considering the totality of the circumstances surrounding the likely motivation or intent of the sender, a “reasonable sender” were to conclude that the email would not have been sent, “but for” its secondary, commercial content (such as a trade association newsletter, bill, or reservation/purchase confirmation that carries with it commercial content), then we believe that “reasonable sender” should determine that the email is a “commercial” email under this Act. If, on the other hand, the email would be sent notwithstanding its commercial content, then its primary purpose should not be regarded as commercial. Commercial advertisements or promotions, then, that are “incidental” to the primary purpose of the email should not be allowed to transform an email message, the primary purpose of which is non-commercial, into a commercial message.

Here again, the same would be true of the use of the phrase in the context of a “transactional or relationship message.” There, the “primary purpose” or “primary” motivation, applies to the leading reason why an email is initiated and, in this context, whether it is intended “to facilitate . . . a commercial transaction”⁴ or a range of other purposes. If the email fits into any of these categories, it is not, nor should it be, covered by the Act.

Apart from our views concerning the application of the “primary purpose” test to transactional or relationship messages, Experian believes the Commission should utilize its authority under section 17(B) of the Act to modify the definition of “transactional or relationship message” in order to accommodate widely acceptable, industry emailing practices. Common business-to-business messaging, which is essential to day-to-day operations, should be included within this definition of transactional or relationship message and, thus, be exempted from general commercial email compliance requirements. As most businesses operate on a macro-transaction level (meaning affiliated purchasing departments pay each other, yet numerous affiliated sales and marketing groups are involved in the process), transactions of this type should be incorporated into the definition of transactional or relationship message, and subsequent emails related to those product or service purchases should similarly be exempt from the requirements of the Act. While such business messages may indeed have a commercial component, they certainly do not raise the public policy issues the Act was intended to address. Senders who initiate such business-to-business emails should not, in our view, be liable for not including an opt-out mechanism, not including identification as an advertisement or solicitation, or not utilizing a suppression list.

Aside from the clarification regarding business-to-business messaging, the current definition of “transactional or relationship message” contained in section 3(17) is acceptable.

Ten Business Day Time Period for Processing Opt-out Requests

⁴ *Id.* at § 3 (17)(A)(i).

If the FTC chooses to modify the ten business days deadline for processing opt-out requests, pursuant to section VI (C) of the ANPR, it should lengthen -- not shorten -- the timeframe. It is almost certain that the current ten business days already is and will continue to be a burden on small business, nonautomated services, third party acquisition messaging, and multiple emailers under a primary corporate sender. Anything less would be unworkable.

Foremost, for purposes of clarification, the Commission's use of the term "delete" with respect to the processing of opt-out requests is inconsistent with industry practice and the language of the Act itself. Common industry practice does not involve "deleting" the recipient from a list. Instead, the common industry practice is more akin to suppressing the recipient's email address from being mailed to following the opt-out request.

The procedures for processing opt-out requests in the context of third party messaging include the process of sharing the opt-out requests with the advertiser. This process can take up to ten business days to collect, transfer and apply the requests to the existing database. The burden of tightening this time period for the entity collecting the requests may require upgrading to automated systems from manual processing, enabling a more expedient transfer of the requests to the advertiser and for the advertiser to apply across multiple acquisition campaigns. Each of these steps could have significant burdens beyond those already in place for a ten-day timeframe. There are few clear benefits to consumers with expediting this process, as email acquisitions often take place at one time, with subsequent campaigns being sent following the ten-day period.

The costs associated with suppressing a person's email address include the collection processing by the sender, the application of the suppressions to the sender database, and the application of the suppression to future campaigns. Additionally, imposing a requirement on advertisers to collect and apply suppression lists from all third party offers imposes a tremendous expense and consequently forces the advertiser to invest in other acquisition media. At a minimum, these costs will be passed along within their product offerings to recipients. However, many of Experian's clients may abandon the medium after determining the expense associated with third party suppressions outweighs the benefits of email marketing. As a result, the requirement that advertisers collect and apply suppressions with third party email acquisition campaigns may inhibit the growth of ecommerce.

The "average time" to create and implement procedures for collecting and applying suppressions, and the time for actually collecting and applying suppressions, varies by organization, industry sector, and complexity of the system. Each system for maintaining, distributing and using lists of email addresses has a unique process with distinct variables. Therefore, the Commission should not restrict innovation in the industry through the imposition of further requirements related to the ten-day opt-out period.

The size and structure of the sender's business does affect the time it takes to effectuate an opt-out request. There are some senders whose business depends on new acquisitions, which email affords the opportunity to provide with limited costs. As these

senders utilize multiple email lists simultaneously, they are burdened with creating sophisticated databases, or turning to third party providers, to maintain this elaborate suppression file and apply the suppressions accordingly across their acquisition campaigns within ten business days. These companies are now spending great amounts of time, labor, and resources creating these databases and the ten-day period is very tight for their processes. Likewise, companies with a heavily distributed sales force or multiple divisions will encounter greater difficulties with the ten-day period, unless such a business-to-business exemption as that described above is clarified.

Sender Definitional Issues

Section VI (E) of the ANPR invites comments on the issue of multiple senders. Again, Experian recognizes that the CAN-SPAM Act does not mandate that the Commission address this issue, but we also believe that the Commission must understand the practical application of the existing statute and implement it in a fashion that reflects an appreciation for how the email marketing industry actually functions. In most cases, acquisition email marketing is provided by a service that collects email addresses from a website, or multiple websites. The advertiser rarely collects the email addresses for prospecting themselves. Instead, advertisers use email list service providers or third party advertising services who acquired the email addresses, have the relationships with the recipients, and often email on behalf of multiple advertisers. The “sender” in such cases, regardless of whether the email has a single advertiser or multiple advertisers, should be the entity that collects the email address of the recipient, originates the email, and holds itself out as the sender throughout the email and through the unsubscribe request.

The Commission should use its broad implementation authority under section 13 of the Act to issue regulations clarifying the definition of sender. Rather than requiring advertisers to be held accountable for collecting and applying suppressions with permission-based email list acquisition campaigns, Experian urges the Commission to incorporate the concept of “third party advertising service” into the definition of “sender” under section 3(16)(B) of the Act, “Separate Lines of Business or Divisions.” By recognizing that a treatment of third party advertising services parallel to separate lines of business or divisions is appropriate, the Commission can bridge the discrepancies between implementation of the Act and actual industry practice. To do so, the Commission must merely interpret the Act as providing that a “third party advertising service” which “holds itself out to the recipient throughout the message as that particular [third party advertising service] rather than as the [advertiser itself], then the [third party advertising service] shall be treated as the sender of such message for purposes of this Act.” Experian strongly believes that the content of an email message should not dictate which party is responsible for the suppression; instead, it should be the entity that holds itself out as the third party advertising service.

The current definition of “sender” includes any entity that initiates a commercial email “and” whose product or service is advertised or promoted via the email. This interpretation would include an advertiser who originates a commercial email message as the sender, with the result that it imposes significant costs on the advertiser to maintain sophisticated suppression processes and technology. We believe this definition is clear in that it does not anticipate that it would be extended to include all advertisers in a multiple

advertisement email. This interpretation would have a devastating impact on advertisers, the email marketing industry, and consumers.

First, the email recipient would have to choose from which advertisers to opt-out, in addition to considering whether to opt-out from the list itself. Apart from being inconsistent with the single sender framework set forth in the Act and further clarified in the Senate Report,⁵ choices such as these would be burdensome and confusing for email recipients.

Second, sharing suppression files with advertisers with each email campaign already leads to increased costs for email acquisition and increasing that requirement to multiple senders will potentially inhibit the ability for the media to be successful. Many of Experian's clients may determine the expense associated with third party suppressions out-weighs the benefits of email marketing altogether. As a result, consumers lose the opportunity to receive new and relevant offers from advertisers. Furthermore, sharing suppression files with multiple advertisers will increase the risk that data could be transferred inaccurately and could inhibit compliance with the ten-day opt-out period.

If a recipient opts-out from a multiple advertisement email, it is common practice for the third party advertising service to apply that opt-out rather than the multiple advertisers. This practice is consistent with consumers' expectations – consumers expect – and the Act specifies – that email is to be from a single sender, though there can be multiple “initiators.” Accordingly, where a consumer has previously opted out from receiving emails from one of the four advertisers in the Commission's example, we do not believe there should be any violation of the Act.

Referral Marketing

Experian believes that it would be immensely helpful if the Commission would propose a rule that would clarify the law that is applicable to this practice. Referral marketing (also known as Forward-to-a-Friend or “Refer a Friend”) campaigns, as discussed in question VI (E)(3) of the ANPR, are an important and legitimate tool for both consumers and businesses in the information marketplace. Referral marketing, in fact, is a key component of the services Experian and its subsidiary CheetahMail offer to their customers. We believe that referral marketing -- in its basic form -- primarily benefits recipients, as opposed to senders. Although all forms of referral marketing should comply with the fraud provisions of the CAN-SPAM Act, only referral marketing that involves a payment or other consideration, should be subject to the commercial portions of the Act. Basic referral marketing that relies on consumers to refer or forward commercial emails to someone else falls within the parameters of “inducing” a person to initiate a message on behalf of someone else only when there is some form of payment, inducement, or other consideration.

Question VI (E)(3)(b) inquires as into different types of referral marketing. First, senders may include a “prompt” in their email that will allow the recipient to forward that message to another secondary recipient using a mechanism installed by the original sender. The email may include a link to a web page. Second, senders may include a

⁵ S. REP. No. 108-102 at 16 (2003).

forwarding prompt in addition to an incentive, which may take the form of an award or a coupon, which the recipients are offered for forwarding the message. Third, an original recipient may forward the message to another recipient without any prompting or incentive, for example, by clicking on the forward button within an email client program. Finally, a consumer may visit a commercial web site and simply choose to forward a message from the web site directly to a recipient.

Referral marketing is primarily consumer-driven, where no consideration is offered. These marketing campaigns involve emails sent on behalf of one individual to another, with the “reply-to” mechanism typically functioning back to the individual initiating the referral rather than the original senders or related message content provider. To this extent, Experian believes that these messages should be treated as messages from individuals, not from institutions, and should be exempt from the commercial portions of the Act. Furthermore, the opportunity to simply provide the original recipient with a forwarding mechanism should not rise to the level of “inducement” queried in question VI (E)(3)(b) and therefore, we believe that it should not subject referral marketing to the applicable commercial portions of the Act.

In responding to various questions posed by VI (E)(3)(c), it is important to recognize that once a message is effectively forwarded by the original recipient to a secondary recipient, the original sender relinquishes control of it. The original sender should not be liable for compliance with the Act once the message has been forwarded because the original recipient may have altered the email from its original form. With this in mind, an opt-out should be applicable to a decision on the part of the original recipient only. It should NOT obligate the original sender to provide an opt-out for anyone to whom that recipient forwards the email. This would serve as a direct, effective opt-out, for purposes of the Act. Furthermore, all effective senders should be in compliance with the fraud provisions of the CAN-SPAM Act by truthfully representing themselves as the sender. Likewise, in the absence of a payment, inducement or other consideration, an unsolicited commercial email message which is forwarded by one individual to another should not be treated differently than any other individually initiated email message.

Referral marketing offers the same benefits inherent to consumers in traditional email communications – speed, affordability, convenience, etc. In addition, senders that enable referral marketing are adding “ease of use” functionality to the consumer’s ability to choose products and services, as consumers are able to easily pass along the benefits of products and services they recommend. Furthermore, both the consumer and the advertiser benefit from the credence lent when consumers receive messages from individuals they know.

Referral marketing generates a “high brand value” as well as a significant return on an investment. The costs to create forwarding technology are currently minimal. However, inhibiting the process of referral marketing would prove cumbersome and expensive to consumers and businesses alike. Consumers would, conceivably, no longer be able to benefit from sharing information about products and services with friends. The costs of modifying the mechanism offering the forwarding service to apply the advertisers suppression list prior to the deployment of the email message would be difficult and cost-prohibitive particularly for small business. Doing so would strip both

consumers and businesses of an innovative and effective information-sharing methodology successfully deployed in the marketplace.

Finally, in order for companies who may offer an incentive or inducement for forwarding messaging to be in compliance, multiple mechanisms must be in place in order to take advantage of this service. The first is the application of an existing advertiser suppression list from a database to the mechanism that sends the messaging on behalf of the advertiser. Therefore, when an original recipient enters a friend's email address that has already been suppressed in the forwarding service, that friend will not receive the messaging. Potentially, the original recipient will be notified of non-delivery online or via email. The second necessity is the commercial identification, postal identification, and opt-out request all present within the body of the email message being forwarded. The third is the mechanism to collect opt-out requests, and apply those requests to the advertisers' suppression list. This application is especially difficult as most of the requested recipients will not have been an existing recipient, and a special "instance" in the advertisers' database will need to be created for such recipients.

Finally, any opt-out request will need to be applied to the advertisers' suppression list within 10 business days of that request. This process may only be available to well endowed advertisers with technology and database specialists who can configure such systems for expeditious compliance. Hence, any small business or advertiser without these resources will cease to operate such incentive-driven referral models and eliminate the effectiveness of this very powerful methodology.

Additional Issues

While we understand the Commission's concerns about whether or not to include a post office box in the definition of "valid physical postal address" under section 5(a)(5)(A)(iii) of the Act, we do not believe the Act provides the Commission with any legal authority to deviate from the definition and exclude post office box addresses. Experian believes the term, as used in the Act, is clear: any mailing address that can be identified with the sender should be appropriate and sufficient.

Question VI (E)(5) asks whether the Commission should clarify the disclosure requirements with regard to false or misleading transmission information in a message's "from" line. Experian believes the Commission should clarify whether the Act intends the "from" field to be attributed to the advertiser, the third party advertising service, or the email service provider.

Section VI (G) requests information relating to the system for rewarding those who supply information about CAN-SPAM Act violations. The FTC already receives a tremendous number of emails from recipients, and should continue to enable recipients to forward fraudulent and deceptive messaging to the Commission. In the marketing industry, industry self-regulation and incentive programs surrounding information gathering have been extremely successful. However, a small number of wrong doers are responsible for the vast majority of fraudulent practices.

In addition, legitimate commercial emailers should not be the targets of these investigations. In light of the Commission's limited resources, pursuit of senders of the

forwarded emails should be restricted to enforcement of the fraud-related provisions of the Act.

Section VI (H) of the ANPR requests comments on the report mandated by Congress on the effectiveness of the Act. In drafting its report, the Commission should focus on the impact of industry efforts to combat spam through the use of legal enforcement and technology. The Commission should also highlight the enforcement difficulties caused by the international sources of spam.

The advent of email authentication and enhanced delivery mechanisms in the near future will likely impact the effectiveness of the Act. The Commission should monitor these developments by working with Internet Service Providers (“ISPs”), email delivery providers (“Network Advertising Initiative Email Service Provider Coalition”) and direct email marketers (“Direct Marketing Association”). Further, the Commission should regulate the flow of commercial email originating outside the United States through the assignment of Internet Protocol addresses through the Internet Assigned Numbers Authority (“IANA”). To better protect consumers, especially children, from receiving obscene or pornographic email messages, the Commission should consider tax incentives for filter software programs that would block these messages.

In evaluating the enforcement in many states of the requirement that many non-adult commercial emails contain an “ADV” label, the Commission should consider the constitutionality of such provisions – specifically whether they would infringe on commercial speech standards. Furthermore, the Commission should weigh heavily the fact that such a requirement would likely harm compliant business, as the impact of lost revenue could be significant. There are relatively few benefits to consumers of requiring this labeling and the increased costs to senders would potentially be passed on to consumers. Finally, requiring a more specific subject line in addition to the “ADV” will likely confuse consumers as well as limit the success and even existence of email marketing.

Section VI (J) inquires about the impact of the Act on small businesses. The impact of specific regulatory actions is discussed in the applicable sections of these comments. However, Experian stresses that collecting, managing and applying a suppression list with each email acquisition campaign is a very difficult task and burden on small businesses. It may have already deterred countless small businesses from using email as an acquisition vehicle, even through “permission-based” email list providers.

Generally, in complying with the Act, small businesses may require some external legal counsel to determine the applicability of new compliance requirements under the CAN-SPAM Act. This and other burdens can be minimized with a visible FAQs section on the Commission’s website for small business owners, including specific wording and placement recommendations to be provided in email messages.

Under Section H of the ANPR, the Commission solicits general thoughts about what other issues it should address. We recognize that the FTC’s resources have been strained throughout this process, but we urge the Commission to take a close look at placing a reasonable cap on the duration of the “opt-out” once exercised. We do not believe that Congress intended for opt-outs to be in effect indefinitely, especially when

the senders may change identities, and new products and services may evolve over time. We believe that, since the marketplace is a readily adaptive environment, and the life of a particular product or service is short and finite, three years is a reasonable time period for a recipient's opt-out to apply to the sender which he or she originally registered an objection. Much like the five-year period applicable to telephone numbers on the National Do Not Call Registry under the Commission's Telemarketing Sales Rule, Experian believes that both consumers and industry would be better served by a similar expiration of individual, electronic opt-outs. In any event, Experian believes that the Commission should solicit comment, perhaps in a forthcoming ANPR aimed at evaluating another part of the Act.

Finally, Experian has serious concerns with the impact of the form for comments (i.e. the "webform" available on the www.regulations.gov web site). Experian certainly appreciates that the Commission is required by the Office of Management and Budget (OMB) to use this format in order to facilitate public participation in the rulemaking process. However, Experian believes the restrictive, multiple choice format of the "webform" trivializes public comments by preordaining the ANPR's findings even though the Commission provides commenting parties the opportunity to supplement answers in the "Additional Comments" section of the form. Most importantly, the webform lends itself to the wholesale manipulation of the rulemaking process, as it enables interested parties to print out the form, mark their preferred answers, and initiate a campaign designed to flood the Commission with scripted comments. We understand that the Commission has already received thousands of comments using the webform and we anticipate these comments will reflect remarkably similar positions. In sum, Experian believes that any comments filed with the Commission via this method should be strictly scrutinized with an eye toward severely discounting as unreliable.

Again, Experian very much appreciates the opportunity to offer comments to the Commission on implementation of the CAN-SPAM Act. The Company will gladly provide any further information should the Commission require clarification or additional explanation of any of the issues discussed herein.

Sincerely,

Deborah Zuccarini
President
Experian Marketing Services