

This is in response to the Federal Trade Commission's (the "Commission") request for public comments for the implementation of the National Do Not Email Registry (the "Registry") relating to the CAN-SPAM Act.

In our opinion, the Registry would be a good resource to control spam. However, we would like to bring to the attention of the Commission certain practical issues that might arise in the implementation of the Registry, and that we believe the Commission should address.

Pursuant to the Electronic Communications Privacy Act (ECPA)¹, employees have a limited expectation of privacy at the work place. Many employers require employees to consent to an "electronic and telephone equipment policy statement," which enables employers to regulate and monitor the use of email and the internet. In addition, even without such a policy statement, under established common law in most, if not all states, employers have the right to regulate, monitor and control their employees' use of email.

However, an employee may attempt to restrict his or her employer from forwarding third party emails to the employee's work email address by signing-up his or her work email address with the Registry. Therefore, to prevent confusion, we suggest that the Commission should clearly state in its regulations that employees cannot restrict employer sanctioned third party email, such as information concerning corporate benefits, corporate discount plans, continuing education seminars, etc. from being sent to their employer provided email address regardless of whether such emails are sent directly by third parties or forwarded by an employer to its employees.

We would appreciate if the Commission would address the issues raised above in the formation and implementation of its regulations concerning the Registry.

¹ See 18 U.S.C. §2510 et seq.