



American Insurance Association

1130 Connecticut Ave. NW

Suite 1000

Washington, DC 20036

202-828-7100

Fax 202-293-1219

www.aiadc.org

September 13, 2004

V I A E L E C T R O N I C F I L I N G

Mr. Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

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

Dear Secretary Clark:

The American Insurance Association (“AIA”) is a trade association of 450 major insurance companies that write around \$113 billion in property and casualty insurance premiums annually. Most of AIA’s member companies use independent insurance agents and brokers to market, sell, and distribute their insurance products.

An increasing amount of communication between insurers and agents/brokers is conducted via electronic mail. It is with this in mind, and with our support for a modern, common sense framework for regulating electronic mail, that we offer the following comments.

The CAN-SPAM Act requires that the Commission issue rules to determine what constitutes the “primary purpose” of an e-mail message. The Commission has stated that the determination of whether the primary purpose of an e-mail message is commercial should focus on what the message’s recipient would reasonably interpret its primary purpose to be. Often, e-mail messages have several purposes, some that are “commercial” and others that are not. Thus, for messages with multiple purposes, the provisions of the statute that apply to commercial e-mail will be determined by which of the purposes is the primary purpose of the message.

JAY S. FISHMAN
Chairman

JOHN J. AMORE
Chairman Elect

DOUGLAS G. ELLIOT
Vice Chairman

MIKE MCGAVICK
Vice Chairman

ROBERT E. VAGLEY
President

We believe that the Commission's criteria for determining the "primary purpose" should provide a more objective standard that allows for the certainty required for senders of e-mail to manage their e-mail operations. The CAN-SPAM Act suggests that the "primary purpose" of an e-mail message should be determined from the perspective of the sender of the message and not that of the recipient.

Rather than following the dictates of the statute to adopt a "purpose," the FTC has chosen an "effects" test in adopting a standard determined by the impression of a reasonable recipient. Unfortunately, this test does not provide any certainty for either the sender or the recipient of the message. Indeed, if adopted, this test could have contrary effects. For example, a reasonable recipient may have the impression that she cannot opt-out of receiving services she requested in exchange for receiving a benefit, such as a free e-mail account.

In defining criteria for the term "primary purpose," the AIA believes that the Commission should clarify that at least one specific type of e-mail does not have a primary purpose that is "commercial" in nature, specifically, e-mail communications between principals and their agents, or between principals and any party representing the principal. This approach would relieve insurers of the obligation to provide their producers with the ability to "opt out" of receiving any further e-mail messages from the insurer where there are extensive and continuing business relationships. It would also eliminate the need for insurers to include physical postal addresses that would crowd e-mail and potentially create confusion among its distribution force.

We appreciate the opportunity to comment on this proceeding and we hope that you will take our suggestions into consideration. If you have questions or would like further information, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "E. M. Goldberg", with a long horizontal flourish extending to the right.

Eric M. Goldberg
Assistant General Counsel