

June 27, 2005

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW, Room H-159
Washington, D.C. 20580

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

On behalf of the 5,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer comments on the Federal Trade Commission's (FTC) Notice of Proposed Rulemaking (NOPR) regarding Definitions, Implementation and Reporting Requirements under the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act of 2003 published May 12, 2005.

ARTBA's membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects throughout the country. Our industry generates more than \$200 billion annually in U.S. economic activity and sustains more than 2.2 million American jobs.

As a non-profit trade association that interacts with thousands of members across the United States on a daily basis, ARTBA undertakes a variety of activities in service to our membership that could be directly affected by the CAN-SPAM Act and the definitions and substantive provisions in the May 12 NOPR. While ARTBA appreciates the intent of the CAN-SPAM Act to help prevent unwanted pornographic or otherwise undesirable e-mail, non-judicious implementation of the Act could place a number of burdensome restrictions on the ability of non-profit trade associations to communicate directly with their members

At the outset, the FTC should consider all e-mail communications between an association and its members as "transactional" e-mails as opposed to "commercial" e-mails. Conveying information to individuals that voluntarily chose to join an organization is one of the core missions of trade associations. This includes not only informational updates on relevant legislative and regulatory matters, but also information on association products and services for which members are eligible. Incorrect classification of e-mails between trade associations and their members would effectively deny association members these services.

Of specific concern to ARTBA is the NOPR's proposal to shorten the period of time in which an "opt-out" request must be honored from ten to three business days. Allowing only three days to honor an "opt-out" request would place an unreasonable hardship on non-profit trade associations, especially those without large staffs or multiple dedicated IT personnel to handle such matters. State associations which often have considerably smaller staffs with even fewer personnel to dedicate to such issues could be particularly impacted by this new requirement. As such, shortening the time limit for honoring an "opt-out" request to three days is an unfair and restrictive burden to place on non-profit trade associations.

The NOPR states that a primary reason for shortening the time in which to honor an "opt-out" clause is the fear of "mail-bombing," or sending an increased amount of e-mail messages within the ten day window before the "opt-out" clause must be honored. This fear should not apply to non-profit trade associations. As already described, the mission of a trade association is to provide member services and goodwill between an association and its members is essential. Thus, it would run completely counter to any established notion of good business for an association to alienate any member by "mail-bombing" them for ten days prior to honoring an "opt-out" request.

The NOPR also mentions that products are "in development" to allow instantaneous honoring of "opt-out" requests. Requiring trade associations to expend unplanned resources on such technology would divert funds from other important member service obligations. Also, it would effectively transform non-profit trade associations into a "captive marketplace" for producers of CAN-SPAM compliance software.

Allowing ten business days, as opposed to three, for trade associations to honor "opt-out" requests gives the flexibility needed to both continue member service activities and abide by the intent of the CAN-SPAM Act. However, if the FTC does determine such a course of action is warranted, ARTBA requests that an exemption be made for non-profit trade associations.

Again, we respect the intent of the CAN-SPAM Act, but do not believe Congress intended to impose unreasonable staffing burdens on non-profit organizations or limit member services provided by trade associations when the measure was enacted. We urge the FTC to focus its implementation on objectionable and unwanted e-mail communications and not legitimate communications between consenting parties.

Sincerely,

T. Peter Ruane
President & C.E. O.