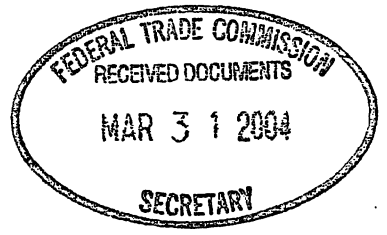




000015

March 30, 2004



VIA FEDERAL EXPRESS

Federal Trade Commission/Office of the Secretary
Room 159-H
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: CAN-SPAM Act Rulemaking, Project No. R411008: "National Do Not E-mail" Registry

ELECTRONIC
PRESENCE
PROVIDER

Dear Sir or Madam,

The undersigned company, Aristotle.Net Inc. ("Aristotle"), appreciates the opportunity to provide comments on the FTC's Notice of Proposed Rulemaking (Federal Register, 16 CFR 316) (the "ANPR") concerning a National Do Not E-Mail Registry as provided under §9(a) of the CAN-SPAM Act of 2003 (the "CAN-SPAM Act" or the "Act").

401 WEST CAPITOL
SUITE 700
LITTLE ROCK,
ARKANSAS
72201
TEL: 501.374.4638
FAX: 501.376.1377
E-MAIL: info@aristotle.net

Aristotle is a mid-sized ISP headquartered in Little Rock, Arkansas. Aristotle provides dial-up Internet access to over 30,000 customers nationwide. Aristotle also provides application hosting services, including the hosting and delivery of e-newsletters. Aristotle's sister company, Aristotle Interactive, Inc. is a full service web design and Internet marketing company. Aristotle Interactive provides design services to clients nationwide and provides consultation and advice on effective e-newsletters and marketing.

Aristotle believes that a National Do Not E-mail Registry (the "Registry") would provide some fundamental benefits. Additionally, while such a registry would not eliminate the problem of spam, it would offer a mechanism to address some aspects of the spam problem. Aristotle's specific comments are below:

Security, Privacy, and Enforceability

Spammers can be generally divided into two categories: legitimate and illegitimate marketers. Legitimate marketers can further be subdivided into two broad groups - (1) those that "rent" lists to which other companies can market their goods and (2) those who have proprietary lists to which they market their own goods. Aristotle submits that any legitimate marketer will comply with the requirements of a National Do Not E-mail Registry. These marketers rely on a certain response rate in order to make a profit and, since they are or represent legitimate companies concerned about good will, would be unlikely to misuse a Do-Not E-mail list.

Illegitimate marketers are far more difficult to predict or to control. An illegitimate marketer who "rents" his or her e-mail list at a certain price per name might, in fact, abuse a National Do Not E-mail Registry, assuming that he or she could gain access to the list.¹ For this reason, the security of the list is paramount.

¹ It should be noted, however, that the e-mail addresses on the Registry would be of only marginal value as a marketing list, since they represent a self-selected group of people who have indicated their desire *not* to receive unsolicited commercial e-mail ("UCE").

Given the risk that a Do-Not E-mail list could provide illegitimate marketers with a means to access possibly hundreds of thousands of valid e-mail addresses, Aristotle recommends that the FTC strongly consider certain security measures:

- (1) Require all marketers to register before being given access to the Registry. The registration should include (a) the name of the marketer as well as any DBA designations, (b) affiliate corporations with whom the marketer shares information, (c) current mailing address(es) and physical locations of any and all offices, (d) verification that the marketer's practices comply with Can-Spam, (e) IP address(es), and (e) a fee for receipt of the list.
- (2) Require marketers to cross-check their mailing lists against the Registry immediately prior to each and every mailing.
- (3) Require any ISP that needs access to the list provide (a) the ISP's corporate name and (b) the mailing address(es) of any corporate offices.
- (4) Seed the Do-Not E-mail list with randomly generated e-mail addresses that go directly to enforcement staff. These e-mail addresses should be indistinguishable on their face from the other addresses on the Registry and should be unique for each marketer receiving the list.
- (5) Encrypt the list and store it on a secure server behind a firewall.
- (6) Do not provide the list on a CD or other copyable format.

Requiring registration and "seeding" the list with dummy e-mail addresses will aid in enforcement against marketers who abuse the list. By requiring registration, the FTC will be able to limit access to the list and will be able to track which marketers have accessed the Registry. By providing each marketer with a list "seeded" with unique dummy e-mail addresses, enforcement staff would be able to determine which marketer had illegally used the Registry to e-mail individuals or had transferred the list to third parties for this purpose.

Domain-Level Opt-Out

ISPs and business should be able to opt-out entire domains and to declare themselves "spam-free" zones to which UCE cannot be sent. Allowing domain-level opt out has a number of advantages. First, ISPs are not technologically able to allow certain customers to receive spam while blocking spam from others. Therefore, in order to allow some customers to receive spam, ISPs would have to open up their servers to all spam. Given the volume of spam (60% of the total volume of e-mail, according to Brightmail), this would be an unacceptable drain on bandwidth and other resources. Aristotle currently blocks over 99.9% of all spam. Our customers greatly appreciate this fact, and we would be hard-pressed to accept a rule that would require us to do otherwise. We have, in effect, declared our company to be a spam-free zone. Allowing domain-level opt-out would make this task easier by pre-warning marketers that customers of "spam free" ISPs such as Aristotle are off limits.

Second, companies, and particularly large companies, that have their own connections to the Internet and their own mail servers would be well-served by allowing domain-level opt-out. For large companies, identifying and registering each and every employee e-mail address on the Registry would be time-consuming and burdensome. It would be far more cost-effective for these companies to be able simply to register their entire domains.

Third, from a marketing perspective, domain-level opt-out has the advantage of simplicity. Marketers would be able to purge their lists wholesale of addresses that contain a particular domain extension rather than having to "cherry pick" just those e-mail addresses that are on the Registry.

Technical Considerations and Timeframe

In order to prevent someone from registering an e-mail address that is not his or her own, the National Do Not Spam Registry should operate as a "double opt-in" list. In other words, once an individual registers a particular e-mail address, the Registry should automatically send a confirming e-mail requesting the owner of that e-mail address to click a link to confirm that he or she wishes the address to be placed on the Registry. Such a feature would serve to prevent registration of e-mail addresses without the owner's consent.

Additionally, registered e-mail addresses should be connect to a zip code. Zip code information will provide jurisdiction for ISPs and States Attorneys General should consumers in their jurisdictions be illegally sent UCE.

Occasionally, in spite of any protections, an e-mail address may be registered that either does not belong to the individual registering it or that is registered inadvertently. For this reason, the FTC should provide a mechanism for removing a name from the Registry. Parents should be able to register their children's e-mail addresses, and minors should be able to remove their e-mail addresses, if desired, once they reach the age of majority.

The Registry should be stored in a database that registered marketers can match against their mailing lists immediately prior to each mailing. This process can be automated on the marketers' side so that the mail server checks the Registry each time as part of the mailing routine.

Impact on the Problem of Spam

A Registry will not completely resolve the problem with the increasing volume of spam. Illegitimate marketers who operate outside the law today will in all likelihood continue to do so once a Registry is in place. However, like the Do Not Call Registry, a Do Not E-mail Registry can be an effective tool in the fight against spam. First, a Registry will provide some protection to consumers from legitimate marketers and will, therefore, reduce the total volume of spam to some degree. Second, it will "drain the swamp" by isolating the bad actors who, according to the Direct Marketers Association, comprise only 5% of the total Internet marketing population. Third, it will aid ISPs in their spam filtering efforts by requiring marketers to provide their IP addresses in order to receive the Registry. ISPs will be able to "whitelist" only those servers which are registered with the FTC and will be able to block entirely UCE from servers other than those on the list.

Aristotle supports the concept of a National Do Not E-mail Registry and believes that such a Registry not only is feasible but would be a useful part of the solution to the spam problem.

Yours truly,



L. Elizabeth Bowles
President
Aristotle.Net, Inc.
401 West Capitol, Suite 700
Little Rock, AR 72201
(501) 374-4638