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Federal Trade Commission
CAN-SPAM Act
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Ref: CAN-SPAM Act Rulemaking Project No. R411008

A. MANDATORY RULEMAKING – Determining whether “the primary purpose” of an email message is commercial.

A.1. The primary purpose of an email message should be viewed as commercial if:

If a company truly wants to send “public service” or “informational” messages, why doesn't it do so without mentioning its own name? Why not mention only the names of non-profit organizations, or industry groups that include its competitors?

The reason and the solution are obvious. Any message mentioning the company or its products, that is not a “transactional or relationship” message, is intended to promote the company and is therefore “commercial”.

B. Modifying what is a “transactional or relationship message”.

B.1. Definitions of “transactional or relationship messages”

“Transactional or relationship messages” should be allowed ONLY if the recipient has given an email address to the sender AND requested that the sender use this method to send these messages.

If a consumer does not give an email address, but instead gives a telephone number or mailing address, then the company must be required to respect their wishes and use that method to contact the consumer.

B.3. Should transactional or relationship messages that also advertise or promote a commercial product or service be deemed “commercial” messages or should they be deemed “transactional or relationship” messages?

Some guidelines are needed to restrict the amount of advertising or promotion that is allowed in “transactional” or relationship email messages.

For example, it's very common for advertising to make up more than half of the pieces of paper that accompany a credit card statement.

One possible guideline: advertising in transactional messages could be limited to 1/3 of the text, 1/3 of the area of the message in HTML or other “page” format, 1/3 of the width of the screen, and placed at a location below or after the “transactional” information.

D. Identifying additional "aggravated violations"

D.1. Are there any additional activities or practices that should be treated as "aggravated violations" under the Act?

CAN-SPAM has created two kinds of spam: legal and illegal. Before deciding whether the message is "legal", and whether to unsubscribe, the recipient must determine which one it is: have the message headers been falsified, is the physical address real, etc. and will the sender will honor the unsubscribe request.

Even if "illegal" spam were stopped, the act of unsubscribing places an unreasonable burden on the recipient who has only a finite amount of time, and their email systems, which have finite amounts of storage space and bandwidth.

To reduce this burden on the recipient's resources, repeated commercial emails (more than 1 or 2) to an individual address, with no positive request by the recipient to continue, should be considered as a violation.

E. Issuing Regulations to Implement Various Aspects of CAN-SPAM -- Defining who is the "sender" of a commercial email message.

E.1. If a consumer has "opted out" from receiving commercial email from a particular company, and then receives a subsequent commercial email containing an ad for this company as well as ads for three other companies, does this violate the Act?

Unsolicited advertising email is already a burden upon the recipient. All companies who participate in advertising that includes a company that has been sent an opt-out request, should be responsible for violations. The burden of being "clean" and choosing advertising partners should fall on the advertiser who expects to benefit.

E.2 Issuing Regulations to Implement Various Aspects of CAN-SPAM -- "Forward-to-a-friend" scenarios

It is not clear whether the Commission is distinguishing between emails that are truly forwarded from a party that is separate from the advertiser, and emails that is sent by the advertiser but which purports to be from the "friend".

Those are two separate senders, who should each be treated the same as any sender of unsolicited commercial email.

Email that is sent by the sender in response to a request from a "friend" should be treated the same as other unsolicited email. A single opt-out request should invalidate the right of any sender to send advertising email to that recipient, regardless of future requests from "friends".

F. The effectiveness and enforcement of the CAN-SPAM Act

Since it is not being enforced, the CAN-SPAM Act has no effect on the spam that must be handled by my email provider

Even if it were being enforced, the CAN-SPAM Act legalizes unsolicited commercial email and places the burden for receiving it and responding to it (unsubscribe) unfairly on the recipients, who receive no value for their wasted resources.

There are at least 23 million businesses in the USA. If only 0.1% of them choose to send one advertising message every month, that would amount to about 750 messages in our inboxes every day. That inconvenience to recipients far outweighs the "right" of any advertiser to send unsolicited marketing email.

This is not a free speech issue. That has already been decided by Congress and the courts. Advertisers are not allowed to send unsolicited faxes, and they cannot use the telephone to call consumers on the National Do-Not-Call list.

In broadcast or print media, advertising pays for useful content: news, sports, entertainment, drama, comedy, etc. Marketing by postal mail helps keep first-class mail reliable, timely, and affordable. The cost of these media limits the level of advertising. When a consumer does not wish to view advertising s/he can turn can watch television programs with no advertising or read something else.

Like telemarketing and junk faxes, email delivers no content of value: news, information, drama, sports, comedy. A consumer cannot "withdraw" from advertising emails, even when working on personal business or correspondence, because companies still send their advertising to personal email addresses.

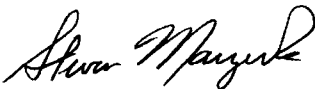
The CAN-SPAM Act must be changed. As it is, it really means that advertisers "CAN-SPAM" without penalty. The Act also struck down a number of state laws that would have more clearly limited unsolicited commercial email, required it to be more clearly marked, and allowed a private right of action against spammers.

The government has acted wisely in the past and imposed restrictions on telemarketing and junk faxes. The same needs to be done for unsolicited commercial email.

G. REGULATORY FLEXIBILITY COMMENTS.

I operate a Small Business. I do not use spam to market my services and I do not buy anything from advertisers who send spam. Unsolicited marketing email, even when "legal" under the CAN-SPAM Act, is a drain on my time, resources, and that of my customers and suppliers.

Regards,



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