

The CAN-SPAM Act was a positive first-step in an effort to bring rationality to the rapidly growing use of the internet for mass marketing purposes. However, it has had little real impact on the distribution of commercial marketing and advertising practices.

The root of the problem is the conflict between the rights and preferences of private individuals who use the internet solely for personal purposes and those of business and commercial interests. The conflict is exacerbated by intentions and desires to keep the internet open and free for use by all. The internet provides ready access and connection to individuals, groups and communities throughout the world. It has become a key conduit of communication to the world. Unfortunately, the value and integrity of this resource is being severely challenged and undermined by the unscrupulous commercial practices of a few.

While the desire to maintain a free and open avenue for open communication is praiseworthy it should by now be clear that the free and open concept will, in the absence of regulation, be exploited and ultimately overwhelmed by those unscrupulous few. Further, by now it should be clear that the communication medium of the internet will require regulation to preserve and protect it for its intended purpose. This has long been the history of the major communication channels including postal service, radio, television, and telecommunications.

While the CAN-SPAM Act was a first step, it is already apparent that it has had little impact on the practices it seeks to bring into control. The failure of the CAN-SPAM Act was and is entirely predictable. When a public medium, such as the internet, is maintained free and open for all it will be exploited. The only viable resolution that has stood the test of time for other means is to eliminate the *free use* aspect for commercial purposes.

The interests of many are at stake in any discussion or debate of the use of the internet. However, it is paramount that the rights and freedoms of private individuals be treated as dominant over any with commercial intent or purpose. The ability to regulate the practical use of the internet will only be possible when a mechanism for discriminating between “commercial users” and private or individual users is included within the structure of internet users.

In this day and age of technical sophistication it should not be difficult to achieve the desired means, so long as a hierarchy of privileges is included in the foundation of the structure. Options can include a fee-per-use for business and commercial users while maintaining free use, within reasonable limits, for private individuals. Internet Service Providers (ISPs) and network service providers can readily separate users into these two classes today. Charging a fee-per-use for commercial purposes, akin to postage, would be straightforward to implement. Failure to comply can then be dealt with at the service provision level, not at the user or account level that has proved nearly impossible. This would, in turn, provide the structure that can be both regulated and controlled even in the face of international or “off-shore” sourcing for those with commercial or business intent. This would also provide the framework needed for individuals to choose to not receive

unwanted commercial distributions (opt-out). The fees generated by such a scheme can be put to good use for any number of purposes of public interest.

While the CAN-SPAM Act was the bold first step, it did not provide for the structure needed to resolve the problem of unsolicited and unwanted commercial e-mailing practices. Until such steps are taken, there can be little hope for achieving any real and lasting ability to regulate or control the use of the internet.

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