



**Deborah Zuccarini
President**

Experian Marketing
Solutions
955 American Lane
Schaumburg, IL 60173
(224) 698-8409

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Mr. Donald S. Clark
Secretary
Federal Trade Commission
Room 159-H
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: CAN-SPAM Act Rulemaking, Project No. 41108 - FTC Study on Do Not E-Mail Registry

Dear Mr. Secretary:

Experian is pleased to have the opportunity to submit comments on the Commission's pending report to Congress on a "plan and timetable" for establishing a Do-Not-E-Mail (DNE) registry.

Experian is a global leader in providing information services solutions to consumers and its client organizations. Experian has 13,000 employees worldwide who support clients in more than 60 countries, and our annual sales exceed \$2.2 billion. In particular, we help organizations find, develop and manage profitable customer relationships by providing them with information, decision-making solutions and processing services, including e-mail deployment services. Experian empowers consumers to understand, manage and protect personal information, as well as their credit and assets. Experian and its predecessor companies have provided credit reporting services for more than 100 years; its consumer credit reporting business, in fact, provides hundreds of millions of credit reports to lenders annually, thereby contributing significantly to the streamlined credit system that exists in the United States today. We also work tirelessly to provide fraud and identity theft prevention services, scoring and analytic tools, and risk management consulting. We do business with more than 40,000 clients every day, across a range of industries as diverse as financial services, telecommunications, health care, insurance, retail and catalog, automotive, manufacturing, leisure, utilities, property, e-commerce and government.

Experian is firmly committed to complying with the applicable laws governing email communications, including the recently adopted CAN-SPAM Act, as well as any subsequent FTC rules that might be promulgated to implement the Act. We want to be both a resource to the Commission and a bellwether within our industry. In this regard, we must express our very serious concerns about the impact that a DNE registry might have on consumers and the thousands of businesses that rely on email for legitimate marketing, customer service, and other valuable communications. Compliance with a DNE registry is likely to require a serious and

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exceedingly burdensome dedication of resources for these businesses, with only a marginal positive reduction in the spread of spam. A DNE registry would, in our judgment, have the counterproductive, “real world” effect of stopping the use of e-mail by legitimate businesses interested in respecting consumers' wishes.

Specifically, while we realize that the Commission’s Telemarketing Sales Rule (TSR) gave birth to the concept of a DNE registry, it is important that policymakers realize that spam is simply not analogous to telemarketing. The technologies are very different, there is far greater potential for a multitude of consumer controls in email communications, and, unlike telemarketing that is conducted legally by businesses offering legitimate products, the great majority of spam is sent in violation of existing law.

Spammers routinely falsify the email sender information. By using entirely false information or impersonating an innocent organization, spammers can, and do, send out millions of anonymous spam messages. Unlike telemarketers, the location of a sender of e-mail cannot always be determined in part because the current Simple Mail Transfer Protocol (SMTP) is not secure and spammers can easily use technology to forge email headers and obscure their identities.

It is also highly unlikely, in our view, that spammers will comply with any requirements that might attach to a DNE registry. Any DNE registry modeled on the Do Not Call (DNC) registry would give spammers access to email addresses in order to scrub their lists. Moreover, providing spammers with access to the registry will actually result in increased volumes of spam as spammers use the access to supplement, rather than modify, their email lists. An unfortunate reality is that a DNE registry is likely to have the unintended consequence of providing unscrupulous spammers with the “ultimate phonebook.”

Unauthorized access and distribution by a hacker could provide an opportunity for millions of email addresses to be regenerated for spammers across the Internet. A DNE registry will be vulnerable to breaches in security regardless of whether the FTC or third parties administer it.

Spammers not only disregard law but also are difficult to punish even when caught. Sellers who employ telemarketing and direct mail can be found, their assets frozen, and restitution can be sought for victims. Many spammers cannot be located, operate overseas, and have very limited assets. The costs required of enforcing any DNE registry while also preventing fraudulent uses of the registry will far outweigh the benefits. Furthermore, the CAN-SPAM Act gives ample authority to enforce against criminal violations, and actions such as those recently taken by the “Big Four” Internet Service Providers (ISPs) America Online Inc., Microsoft Corp., Yahoo Inc. and EarthLink Inc. are evidence that enforcement is taking place.

In fact, we believe that new technologies, including verified sender programs and technology filters, will have a more significant impact on the spread of spam than any registry can ever have. Verified sender models are already under development in the marketplace by ISPs and Email Service Providers (ESPs) as publicly witnessed with Microsoft’s Caller ID program, Yahoo!’s DomainKeys program, and Project Lumos proposed by the Network Advertising Initiative (NAI) ESP Coalition. These verified sender models propose to create transparency among senders of volume email such that any recipient can confidently decide which email they want to receive and which they do not want to receive. These models should have a significant impact on spam by holding all volume senders accountable for the mail they send and their sending practices.

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ESPs are already testing these technologies, and hope to be implementing a common solution within the calendar year.

Enforcement of a DNE registry would be hindered by complaints resulting from consumer confusion over the distinctions between spam, compliant unsolicited commercial email, and requested email. Millions of consumers have signed up for offers, often from third parties, via email. Many entrepreneurial companies have been built upon the ease of this process to provide relevant offers that are valued by consumers. Consumers do not necessarily know the brands they will receive messaging from, and may mistakenly consider these emails to be violations of a DNE registry.

Experian recognizes that the CAN-SPAM Act requires the Commission's report to Congress to include a DNE registry plan, and so, despite our firm belief that a DNE registry is both unworkable and contrary to the public interest, what follows are what we hope will be helpful additional comments.

First, Experian recognizes that when the Commission issued its TSR, it failed to make it preemptive of similar state law because it did not believe it had the inherent statutory authority to do so by rule. It is our belief that the Commission surely appreciated the importance of uniformity in the telemarketing arena, and its efforts to coordinate with the states and produce as uniform a system as possible is proof of that understanding. In the case of a proposed DNE plan, however, the Commission has the flexibility to recommend that which it might not otherwise be authorized to achieve unilaterally: i.e., federal preemptive language. In our judgment, no area of domestic commerce is more appropriately regulated at the federal level than is the Internet, and no communication is more purely Internet in nature than is electronic mail, whether solicited or unsolicited, and whether commercial or non-commercial. If the Commission presents any recommendations to the Congress relative to a DNE registry, it is our strong belief that it should include a recommendation that any legislation in this or any other Internet-specific area be preemptive in nature. This will ensure a single, uniform standard with which entities actively engaged in e-commerce may readily and reliably comply.

Second, Experian urges the Commission to include in its report a proposal for an exception to the registry for existing business relationships. Without this exception, a DNE registry will, as a practical matter, impose an unnecessary burden on businesses by barring them from communicating with registered email recipients who have consented to communications. Further, without this exception, registered consumers will be confused when entities with which they have previously chosen to do business with cease communications as a result of suppressing the Do Not Email Registry list.

Third, any plan the Commission recommends should include a flexible timetable which provides for further evaluation of a DNE registry and alternatives created by new and evolving technologies including verified sender programs and technology filters which present far greater prospects for reducing spam.

Fourth, Experian hopes the Commission will reject the consideration of proposals for a domain-based registry. The CAN-SPAM Act does not grant ISPs and domain owners authority to block either solicited or compliant unsolicited commercial email. Such a "broad brush" approach

would effectively end email marketing and customer service and would deny millions of consumers and businesses the important services and information, including credit report changes, billing notifications, and special incentives offers, which they have come to expect and on which they regularly rely. Any ISP or domain owner could block access to their owned email addresses, irrespective of any preference of individual recipients that receive the messaging. As a consequence, the domain ownership option could well result in literally millions of well-founded complaints from recipients overwhelming the Commission's enforcement resources. A domain-based registry would be analogous to providing for a DNC registry based on area codes, and since domain owners are often anonymous, they could, and likely would, falsify registry requests to get access to the database.

In conclusion, Experian believes very strongly that a DNE registry is unlikely to be a workable, effective, and efficient tool in combating the problem of spam while, instead, having a devastating impact on the many companies which rely on email for legitimate business purposes. We are in the business of electronic commerce, and we believe that the only efficient and effective solution to the problem of spam must apply a multi-pronged strategy that utilizes new technologies in combination with aggressive government and private party enforcement, active industry involvement, and effective consumer education.

Sincerely,

Deborah Zuccarini
President