

George M. Ellenburg

May 17, 2005

Federal Trade Commission
CAN-SPAM ACT
PO Box 1030
Merrifield, VA 22116-1030

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

To Whom it May Concern,

I am writing to you today to give you *my* public-opinion on the CAN-SPAM act, and my observations since its inception.

To understand specifically why this act is so seriously flawed, we must first dissect it's definition:

can¹ |kan| |kən| |kan|

modal verb (3rd sing present **can** |kən|; past **could** |kʊd| |kəd| |kʊd|)

1 be able to : *they can run fast* | *I could hear footsteps* | *he can't afford it.*

- be able to through acquired knowledge or skill : *I can speak Italian.*
- have the opportunity or possibility to : *there are many ways vacationers can take money abroad.*
- [with negative or in questions] used to express doubt or surprise about the possibility of something's being the case : *he can't have finished* | *where can she have gone?*

2 be permitted to : *you can use the phone if you want to* | *nobody could legally drink on the premises.*

- used to ask someone to do something : *can you open the window?* | *can't you leave me alone?*
- used to make a suggestion or offer : *we can have another drink if you like.*

3 used to indicate that something is typically the case : *antique clocks can seem out of place in modern homes* | *he could be very moody.*

ORIGIN Old English *cunnan* [know] (in Middle English [know how to]), related to Dutch *kunnen* and German *können*; from an Indo-European root shared by Latin *gnoscere* 'know' and Greek *gignōskein* 'know.'

USAGE Is there any difference between **can** and **may** when used to request or express permission, as in: *may I ask you a few questions?* or | *can I ask you a few questions?* It is still widely held that using **can** for permission is somehow incorrect and that it should be reserved for expressions denoting capability, as in | *can you swim?* Although the use of the 'permission' sense of **can** is not regarded as incorrect in standard English, there is a clear difference in formality between the two verbs: **may** is, generally speaking, a more polite way of asking for something and is the better choice in more formal contexts. The distinction is largely a matter of manners, and sometimes of authority. See also **usage** at **may**¹.

can² |kən| |kan|

noun

1 a cylindrical metal container : *a garbage can* | *a can of paint.*

- a small steel or aluminum container in which food or drink is hermetically sealed for storage over long periods : *soup cans.*
- the quantity of food or drink held by such a container : *he drank two cans of beer.*

2 (**the can**) informal prison.

3 (**the can**) informal the toilet.

verb (**canned** | kɑnd |, **canning** | kɑnɪŋ |) [trans.] (often **be canned**)

1 preserve (food) in a can.

2 informal dismiss (someone) from their job : *he was canned because of a fight over promotion.*

• reject (something) as inadequate : *the editorial team was so disappointed that they canned the project.*

PHRASES

a can of worms a complicated matter likely to prove awkward or embarrassing : *to question the traditional model of education opens up a can of worms.*

in the can informal on tape or film and ready to be broadcast or released.

DERIVATIVES

canner | kɑnə | noun

ORIGIN Old English *canne*, related to Dutch *kan* and German *Kanne*; either of Germanic origin or from late Latin *canna*.

While Congress no doubt intended the word “can” in the CAN-SPAM act title to be defined as the ephemeral phrase “can-it,” “put a lid on it,” or perhaps even “stop-it,” as we see—according to the the Oxford New-English Dictionary—there is but one negative definition (out of several) for the English word “can.”

From the get-go this law—and subsequent act—was flawed.

What we need is the equivalent to the *do-not-call list* currently under the FTC’s supervision, with enforcement tied into global trade treaties. After all, if we—the United States—can force other countries to enact similar legislation such as our own as part of trade agreements, then we certainly can do something similar to help fight the scourge of UCE & SPAM.

The current CAN-SPAM act leaves enforcement up to the Internet Service Provider who provides the Email address which is receiving spam, but “Internet Service Provider” is not well-defined. Am I an Internet Service Provider because I own and operate my own Email domains, the run those same servers?

What about if I receive SPAM at my comcast.net address?

Enforcement needs to be moved into the hands of the recipient, much like the current laws which forbid the sending of unsolicited commercial faxes. Only when spammers face thousands of lawsuits from thousands of individuals in thousands of jurisdictions will they maybe begin to realize the seriousness of their offensiveness.

The current CAN-SPAM act requires senders of SPAM to not forge any headers, but says nothing about the fact that anyone sending unsolicited commercial Email must do so only using infrastructure that they own or are authorized to use. Currently spammers employ a network of compromised computers, acting as “proxies,” to help hide the true origin of a message.

The current CAN-SPAM act requires contact information and a means to “opt-out,” from receiving further messages but this, too, is flawed.

I, nor anyone, should ever have to “opt-out” of receiving something I didn’t desire to receive in the first place.

No, what we need, and what I hope someday would become reality, is the legal backbone to go after these spammers and to inflict my own judicial wrath. I will be more than happy to do the research myself to attempt to find these companies. Just let me have some legal muscle behind me if I do.

But sadly, nothing Congress or the FTC does can do anything to thwart any spam which comes from outside our borders which, like a lot of our American jobs, are increasingly more and more being exported to other countries where laws are weak and labor is cheap.

Let’s take a look at a recent piece of SPAM I received, and I’ll show you what I’m talking about here:

From: "Daly Kenyon"
Subject: Re: VÁ1iUM ViAGGRà ClàLIS
Date: May 16, 2005 9:48:47 AM EDT

To: "Marilyn Bernard"
Return-Path:
Delivered-To:
Received: (qmail 6225 invoked from network); 16 May 2005 08:48:55 -0400
Received: from p549d1696.dip0.t-ipconnect.de (HELO kauten.com) (84.157.22.150) by yakko.gmensl.com with SMTP; 16 May 2005 08:48:54 -0400
Mime-Version: 1.0
Content-Type: multipart/alternative; boundary="-----_NextPart_000_0008_01C57E07.428896AF"
X-Priority: 3
X-Msmail-Priority: Normal
X-Unsent: 1
X-Mimeole: Produced By Microsoft MimeOLE V6.00.2800.1106
Hello, do you want to spend less on your ddruggs?

CAI I GA V LUI LS VA R AI M and many other.

Save over 70% with MEDS-By-MAIL SHOPP.

Have a nice day.

The above message was received by a Deutsche-Telekom ISP customer (84.157.22.150) which was probably used by a zombie Windows box. I know this because the IP address 84.157.22.150 was the actual IP address received by my mail server.

There was one URL in the message, "MEDS-By-MAIL SHOPP" which linked to one address: www.kbihvflcbat.undersethterri.com. I know this by looking at the actual "source" of the message.

This address resolves to another IP address 222.122.655.9, which in turn is owned by a South Korean ISP based in Seoul.

The actual registrant for the "MEDS-By-MAIL" website appears to be registered in Brazil, with two name-servers registered in Brazil, also.

However, there is a yahoo.com Email address listed as contacts for both the domain and name-servers, and had I the legal muscle, I would love to be able to go to the Cobb County Courthouse and get a subpoena for Yahoo, Inc., for the IP addresses of anyone who ever accessed the Email box for "claudionorkosmann@yahoo.com," which might lead me to a dead-end but might lead me to someone located here in the US, too.

If I had the legal muscle provided by a CAN-SPAM act which truly gave me the tools of enforcement, and were the IP addresses located in the US, I would then love to be able to subpoena the account information from a respective ISP so I knew where to serve papers.

But today... I don't. Because neither Congress, nor the FTC, have given me the power to do so.

The CAN-SPAM act will never be "perfect." Nothing enacted by the United States will be able to do anything about those operating from outside our borders, but Congress and the FTC can give those of us who receive UCE the ability to fight back and at the same time help others.

Sincerely yours,

George M. Ellenburg

