

KANSAS STATE UNIVERSITY
FOUNDATION

April 7, 2004

Office of the Secretary
Federal Trade Commission
Room 159-H
600 Pennsylvania Avenue NW
Washington, DC 20580

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

Dear Sir or Madam:

In recent months, the *Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003* ("CAN SPAM" or the "Act") has come into play as this country's first legal weapon to control unsolicited commercial email. While our organization supports this purpose, we are seeking your assistance in preventing CAN SPAM from eradicating the use of email as an efficient, effective, and economical communications resource for educational institutions.

With the fiscal crisis facing educational institutions today, we must rely more than ever on the ability to reach out to our alumni and friends for support. Email provides one of the best tools that educational institutions can use. It has proved to be a non-intrusive, inexpensive way to communicate with our growing list of alumni, friends, and other supporters with whom we have built relationships and engaged in the work of our schools. Unless our email messages are reclassified as "transactional or relationship messages" under CAN SPAM, our schools will be deprived of the financial and other benefits earned from using email to reach out to our academic communities.

For the reasons set forth below, we urge the Commission to hold that all email communications between a tax-exempt or public educational institution be categorically classified as transactional. We show that this result is consistent with the intent and language of CAN SPAM. We further strongly urge the Commission to refrain from proposing adoption of a national Do-Not-Email Registry.

The Effects of CAN SPAM on Educational Institutions

CAN SPAM regulates "commercial electronic mail messages," which have the primary purpose of advertising or promoting a commercial product or service. As it stands, the law makes no exception for messages sent by educational institutions. Messages that

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promote a theatre production, on-campus exhibit, or sporting event when there is a charge for admittance are "commercial" messages subject to the requirements of the Act. Messages that educational institutions send to alumni and friends who contribute to an annual fund are currently treated the same under the Act as a "get-rich-quick" proposal sent to millions of impersonal contacts. The law even restricts messages to prospective students, regardless of whether the prospective student has initiated the email exchange.

Because the law presently makes no distinction between commercial spam and the legitimate, relationship-building communications that we send to our alumni and friends, the intended effects of CAN SPAM are backfiring in the educational sector. Many of the Act's requirements directly affect our economic ability to reach out to those within our own community.

Kansas State University enjoys remarkable alumni support, measured by both membership in the Alumni Association and by the percentage of alumni annually supporting their alma mater through gifts to the KSU Foundation. Restricting e-mail access to our alumni, given their documented level of support for our programs, is counterproductive and will jeopardize continued success of our communication and fund-raising programs.

Based on the established and mutually-beneficial relationships we have built with our alumni, folding educational institutions like K-State into legislation designed to address commercial e-mail is beyond the spirit of the initial legislation and will make it more difficult to maintain outstanding educational and alumni programming. E-mail has proven efficient, economical, and effective. Considering the fiscal challenges in higher education, e-mail is increasingly important as a communication tool and as a tool for encouraging financial support.

CAN SPAM requires commercial electronic mail messages to include a clear and conspicuous notice of the recipient's right to opt-out of receiving future commercial messages from the sender. Messages must provide a means for recipients to submit an opt-out request, and senders must honor any opt-out requests when they receive them. These requirements will affect the way that alumni view our message when our emails are overridden by CAN SPAM compliance language, and there is no practical way for us to define the emails we send by their "primary purpose." These requirements also have the potential to reduce drastically the size of our email contact list, thereby cutting a core line of communication between our school and our supporters.

The time, money, and effort devoted to maintaining vital contacts with alumni and friends are too valuable to waste by a law intended to control the proliferation of unsolicited commercial and pornographic email. Unless changes are made, the Act's requirements will force organizations like ours to resort to traditional and expensive modes of communications, including mail and telephone, to stay in touch with our

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alumni. Given the financial outlook for most educational institutions today, the use of more expensive means to communicate with alumni and other supporters is unsustainable.

The CAN SPAM concerns of educational institutions are heightened by the prospect of a national "Do-Not-Email" registry. Congress has commissioned the FTC to set forth a plan and timetable for establishing a nationwide Do-Not-Email registry by September 2004. Alumni and other members of our academic communities that enroll with the registry to avoid unsolicited marketing and pornographic messages will also not receive messages from our schools, unless educational institution emails are separated from "commercial" email. The task of asking each individual alumni, friend, or other supporter to "opt-in" to our email distribution list would be a tremendously costly and nearly impossible achievement.

Transactional and Relationship Messages

We are seeking a definitional separation between messages sent by or on behalf of educational institutions and "commercial" messages defined by the Act. Communications with alumni and friends – whether by mail, telephone, or email – are inherently transactional, relationship-building messages that should not share definitional status with commercial spam.

The statutory definition of "transactional or relationship message" includes a variety of messages typically sent to individuals who have entered into a transaction or other ongoing relationship with the sender (e.g., messages that confirm a purchase or provide information regarding a membership, subscription, or account). Messages sent in furtherance of the ongoing relationship that educational institutions share with alumni and friends are mistakenly absent from the Act's "transactional or relationship" category.

We believe that all of our messages are primarily transactional because, in one way or another, all of them convey information about the school, its activities, and other matters of interest to the recipients. The responses we typically receive from communications of this type provide clear evidence of the perceived value of these communications to our constituent groups.

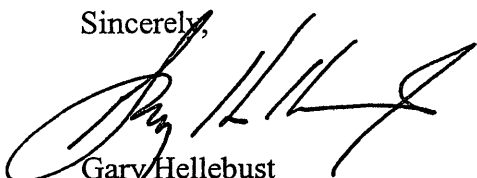
The Commission has the ability to expand the types of messages that are treated as transactional or relationship messages for CAN SPAM purposes. The Commission has asked for public comment on defining additional types of messages that might warrant exclusion from the definition of "commercial electronic message." We propose that the Commission add to the definition of "transactional or relationship message" any message sent from or on behalf of an educational institution to its faculty, staff, students, alumni, and friends. This definitional change will properly reclassify relationship-based

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communications to our alumni and other supporters under the "transactional or relationship" category.

If you have any questions concerning our comments, or if we may be of further assistance to you in connection with this issue, please do not hesitate to contact me directly at 785-532-7505.

Sincerely,



Gary Hellebust
President & Chief Executive Officer

cc: Senator Sam Brownback
Senator Pat Roberts
Congressman Dennis Moore
Congressman Jerry Moran
Congressman Jim Ryun
Congressman Todd Tiahrt