

Via Electronic Delivery

April 20, 2004

Federal Trade Commission
CAN-SPAM Act
P.O. Box 1030
Merrifield, VA 22116-1030

Re: CAN-SPAM Act Rulemaking, Project No. R411008
Definitions, Implementations, and Reporting Requirements Under the CAN-SPAM Act

Dear Sir or Madam:

KeyCorp (“hereinafter Key”), one of the nation’s largest bank-based financial services companies with assets of approximately \$84 billion, is pleased to comment on the Federal Trade Commission’s (FTC) proposal on various topics related to Sections 3(2)(c), 3(17)(B), 5(c)(1), 5(c)(2), and 13 of the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act). In addition, we urge you to carefully consider the comments that make up the opinions from the various trade associations such as the Financial Services Roundtable, the Direct Marketing Association, and the American Bankers Association of which we are members.

Key companies provide consumer finance, investment management, retail and commercial banking, retirement, and investment banking products and services to individuals and companies throughout the United States and, for certain businesses, internationally. Key has a presence from Maine to Alaska, and we deliver products and services through a network of KeyCenters (branches), ATMs, affiliate offices, telephone banking centers and a website, Key.com.

Primary Purpose Rulemaking

The CAN-SPAM Act mandates that the FTC issue regulations “defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.” The term primary purpose needs further clarification. It could be interpreted the commercial aspect of the email is of greater importance than all other purposes combined. For example, a client may request relationship or transactional information via email. Key’s response to their email may include the transactional information and possibly a line up-selling or cross-selling an additional product or service relevant to their request. We would urge the FTC to set specific guidelines in its rulemaking that define primary purpose, and email relevance such as font size, positioning, and percentage of text contained in the email.

Transactional or Relationship Messages

The CAN-SPAM Act designates five broad categories of messages as transactional or relationship messages. One of the categories defines transactional or relationship messages as those that facilitate, complete, or confirm a commercial transaction that the recipient has previously agreed to enter into with the sender. In order to prevent evasion of the requirements and prohibitions, further clarification is needed. It is not clear in the Act whether or not a client request for information on a product or service constitutes a relationship/transaction or an advertisement. Without further clarification, it could be implied that companies must determine if the recipient has previously “opted out” before sending an email to complete the transaction. In addition, further clarification is requested on the types of email messages need to be labeled as advertisements.

Ten-Business-Day Period for Processing Opt-Out Requests

Section 5(a)(4) of the CAN-SPAM Act addresses the time that a request to “opt-out” of receiving future electronic mail messages must be honored. This section allows senders ten business days after receipt of a preference to process and execute the request. We do not feel that this is a reasonable time period. Promotional campaigns, facilitated by our Marketing department, could take between 15-30 days for processing and preparation. An appropriate time limit would be 30 days. This will allow the time required in development of marketing campaigns, including transmissions between company and 3rd party marketing partners.

Key must also develop a solution that removes opted out email addresses from email solicitations sent by employees. The estimated cost of implementing this system is a minimum of \$150,000. The procedures required to delete a person’s email address could include an automated process, which would delete the email within one business day. However processing manual customer requests could take much longer. Although the Act does not specify that Do Not Email (DNE) requests received by phone or mail be honored, customer’s expectations will be the same regardless of what medium is used for the DNE request. In addition requests, mailed via U.S. Mail service; emailed to the wrong email address; phoned in; or made to third party marketing partners will likely take greater than ten business days. It is recommended that the FTC adhere to same expectations provided for consumers to be added to company-specific Do Not Call lists, which, per FCC rules, is 30 days from the date of the request.

Labeling Commercial Electronic Mail

The CAN-SPAM Act requires the FTC to submit a report that sets forth a plan for requiring commercial email to be identifiable from its subject line. Key recommends that the FTC not require commercial email to include “ADV” or similar in the subject line. Doing so would indicate that the email is an advertisement, when in fact it may be a transactional email, reply to the client’s request for product information, or an offer for an enhancement to products or services. As a legitimate sender, we believe that it is more feasible to use “promotional material” in the body of the email in a manner that is conspicuous to the email recipient (e.g. top of body of message). By putting “ADV” in the subject line, it would encourage email recipients to possibly delete messages without even viewing the message. In addition, spam filters actively seek out “ADV” type headers, as well as similar content in emails. Using such a header could result in filtering out of emails that an individual would like to receive and possibly requested.

We thank the FTC for the opportunity to provide our thoughts and comments on the proposed rules. If you have any questions regarding our comments, please do not hesitate to contact me at (216) 689-4552 or our Do Not Solicit Specialist, Janice Stadin at (216) 689-5060.

Sincerely,

Brian Dean
Chief Privacy Officer
KeyCorp