

**Comments to the Federal Trade Commission  
From the National Consumers League  
Regarding the “National Do Not E-Mail” Registry  
CAN-SPAM Act Rulemaking, Project No. R411008  
March 31, 2004**

**Introduction**

On behalf of the National Consumers League (NCL), a nonprofit organization founded in 1899 to identify, protect, represent, and advance the social and economic interests of consumers and workers, we appreciate the opportunity to comment in support of the creation of a “National Do Not E-mail” (DNE) registry. NCL may comment about other aspects of this rulemaking at a later date.

Unsolicited commercial email, commonly referred to as spam, raises multiple concerns for consumers, including privacy, security, fraud, and offensive content. NCL hears about fraudulent spam directly from consumers through our Internet Fraud Watch, a program that provides advice and enables consumers to make reports about online scams through a toll-free number, 800-876-7060, and our [www.fraud.org](http://www.fraud.org) Web site. The IFW transmits consumers’ reports about possible fraud to law enforcement agencies in the United States and Canada.

In 2003, emails only accounted for about 5 percent of the fraudulent solicitations that consumers reported to the IFW overall, but the percentage of solicitations by email was much higher in certain categories of Internet fraud. For example, 22 percent of contacts with consumers for work-at-home scams, 32 percent of contacts for information/adult services, 93 percent of contacts for fake check scams, 94 percent of contacts for Nigerian money offers, and 97 percent of contacts for lottery/lottery club scams were initiated by email.

However, emails for fraudulent schemes are not the only issue. Just as in telemarketing and door-to-door sales, many people do not want to be solicited by email even by legitimate marketers.

The Trans Atlantic Consumer Dialogue, a coalition of consumer organizations from the United States and European Union member countries to which NCL belongs, conducted an online survey between October 8 and December 8, 2003 to gauge people’s experiences with and

attitudes about spam. More than 21,000 people from more than 36 countries around the world responded. The survey report is available on the [www.tacd.org](http://www.tacd.org) Web site.

The overwhelming majority of respondents said they either hated (46 percent) or were annoyed (49 percent) by spam. Among the other key findings:

- 83 percent said that more than 10 percent of the email they received every week was spam, while 42 percent said that spam accounted more than half of their weekly email;
- 84 percent said that all unsolicited commercial emails should be banned;
- 83 percent said that they believed that most of the unsolicited commercial emails they received were fraudulent or deceptive;
- 52 percent said they shopped less online or not at all because of concern about spam;
- Given the choice of government doing nothing, allowing commercial emails to be sent with a way to decline future messages (opt-out), or allowing commercial messages to be sent only with the recipients' prior consent (opt-in), 82 percent favored the opt-in approach.

Two-thirds of the respondents said that dealing with spam costs them or their employers time and money. While 62 percent used filters, only 17 percent said they worked very well. And although respondents felt that unsolicited emails with adult/pornographic content were the most objectionable, they also strongly objected to spam advertising or selling products.

It is interesting to note that the survey results were virtually the same for every question, no matter whether the respondents were from the United States or other countries (except for the question about whether the respondents had ever complained about spam; more than twice as many people in the United States had complained to the sender, their ISP or email service provider, a non-profit spam "buster," a government agency, or a hotline than in any other country). In the comments that respondents made, many stressed that spam intruded on their privacy and interfered with their use of email.

NCL was disappointed that the CAN SPAM ACT of 2003 took the opt-out approach, because it denies consumers the right to say that they don't want to receive any unsolicited commercial emails. Instead, it places the burden on consumers to tell each sender, after receiving at least one message, not to send more. Furthermore, to monitor compliance, consumers must

keep track of to whom they made their opt-out requests, when they made them, whether their requests were violated, and when.

This is exactly the same unwieldy and unfair situation that consumers faced under the Federal Trade Commission's (FTC) Telemarketing Sales Rule prior to the creation of the national "Do Not Call" (DNC) registry. The same arguments in favor of the DNC registry – that the company-by-company approach did not provide adequate protection for consumers and that people should have the option for a "one stop" solution to unwanted telemarketing calls – can be made for a DNE registry.

### **Registration**

NCL believes that if a national DNE registry is created, email service providers should be able to register their domain names for the convenience and protection of their customers. However, individual choice must also be accommodated. Consumers should be able to "opt-out" of their addresses being in the registry if their email providers have registered their domain names and to register individually if their email providers haven't.

### **Access and Security**

One concern that has been raised about a DNE registry is that if the email addresses it contains got into the wrong hands, the information could be used for illegal marketing or malicious purposes. While not impossible, NCL does not believe that these problems are likely to occur. The FTC has demonstrated that it can protect the numbers in the DNC registry; there is no reason to think that email addresses would be more vulnerable to attack from hackers or misuse by companies that are authorized to access them. Furthermore, we assume that there would be substantial penalties for misuse of email addresses in the DNE registry. Moreover, the email addresses in the DNE registry would not be very tempting to use for marketing, since these would be the least likely consumers to be receptive to unsolicited commercial emails.

NCL is concerned about a registry model in which a private company would be contracted to screen commercial emails to determine whether they should go to addresses in the registry or not. This would place too much information and power in the hands of a commercial entity and significantly increase the monitoring burden for the government. The FTC would be

better able to assure the security and appropriate use of the addresses if it manages control of the DNE registry in the same way as it does the DNC registry.

## **Enforcement**

Spam presents many challenges for the FTC and other law enforcement agencies. Spammers may be difficult to trace. Some may be located in other countries, complicating enforcement efforts. There is also concern about whether the number of complaints that the FTC might receive about DNE violations could overwhelm the agency's resources.

The FTC has developed considerable expertise in successfully dealing with telemarketing and Internet fraud, which pose the same basic challenges. In many cases, "following the money" that consumers have paid for the goods or services in question leads investigators to the sources of the solicitations. Cooperation by ISPs and other companies that facilitate communications and payment is also vital in pursuing these scams.

Another key in dealing with spam is effective cooperation and coordination with law enforcement agencies in other countries. The FTC led the effort in the Organization for Economic Cooperation and Development to formulate "Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders" and is actively promoting implementation of those principles here and abroad. This will make it easier to pursue spammers.

There is no doubt that it will require strong enforcement efforts to deter spammers. This does not mean that court action will be required for every complaint, however. Vigorous, well-publicized enforcement action resulting in significant penalties against the worst offenders would send a strong message that spam will not be tolerated.

NCL contends that the DNE registry would be very helpful for enforcement purposes. Not many consumers are likely to keep track of their company-by-company "opt-out" requests and report well-documented violations. But those who place their email addresses in a DNE registry will be more motivated to complain about violations, and the DNE will enable violations to be more easily proven.

A DNE registry will not be a "silver bullet" for spam, and it will be important for consumers to understand that it may take some time for them to notice a significant reduction in the number of unwanted commercial emails they receive. The solution to spam requires a comprehensive approach that includes improvements in technology, sustained business and

consumer education efforts, labeling for commercial messages, and aggressive action to enforce consumers' privacy rights and protect them from fraudulent solicitations. NCL believes that a DNE registry can be an important component of this effort and urges the FTC to give the matter favorable consideration.

Respectfully submitted by:

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