

March 23, 2004

Federal Trade Commission  
Office of the Secretary  
Room 159-H (Annex D)  
600 Pennsylvania Ave, N.W.  
Washington, D.C. 20580

**Re: “CAN-SPAM Act Rulemaking, Project No. R411008,” 69 *Federal Register* 48, 11775-11782 (March 11, 2004)**

Dear Sir or Madam:

On behalf of the Nebraska REALTORS® Association, I appreciate this opportunity to comment on the Federal Trade Commission’s proposal on the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN SPAM Act). As a membership association representing over 3900 REALTORS®, we routinely use e-mail to communicate with members and therefore have a significant interest in the outcome of this rulemaking process.

While our association supports the Commission’s efforts to control fraudulent, misleading and abusive unsolicited e-mails and e-mailing practices, we are concerned that the establishment of a Do-Not-E-mail Registry (“Registry”) will penalize trade associations, membership organizations, and non-profits engaging in legitimate e-mail communications with members.

Our association commonly uses e-mail to inform members about industry and legislative developments as well as professional development courses, new products or services, and industry-related conventions typically offered to members with a “preferred member” pricing structure. Such e-mails are an important part of our service as an association and transmit information that is expected as a benefit of membership. We believe that the establishment of a Registry will require the association to institute compliance measures which will result in some members not receiving notice of the benefits that their membership conveys and will ultimately impact members’ perceptions of the value of association membership.

In addition to our concerns with communication restrictions that would be imposed by a Do-Not-E-mail Registry, we are also concerned with the significant threat to our members’ privacy that could occur should the security of a Do-Not-E-mail Registry be breached by spammers. As many computer security experts have indicated, the creation of an effective, secure and enforceable Do-Not-E-mail Registry is not as simple a task as creating a Do-Not-Call Registry and enforcement system. Unless carefully crafted and controlled, a Do-Not-E-mail Registry system could be used or “gamed” to identify and confirm the existence of legitimate e-mail addresses which then would be subjected to abusive spam e-mail. It would be ironic if the very system that is proposed to protect e-mail users were used to expose individuals and firms to the very abuses that supporters of a Registry believe will be eliminated by its creation.

If the FTC endeavors to establish a Do-Not-E-mail Registry, we believe much careful research and beta-testing is required before any Registry is implemented so that it not be a prime target for attacks by illegitimate spammers and unscrupulous computer hackers.

Given the challenges of creating a safe, secure and effective system, a Registry will not be an inexpensive undertaking. Since development and maintenance costs will most likely be borne by the users of the Registry, we believe that a Do-Not-E-mail Registry would have a significant economic impact on our association and members by imposing significant compliance costs. These expenses would be layered on top of compliance costs imposed last year when our association and members were subjected to several new federal regulations (Do-Not-Call regulations, Do-Not-Fax regulations and CAN SPAM provisions). These newly imposed compliance measures, which have greatly impacted the ordinary course of communication with members and clients, have yet to be absorbed. The imposition of additional and significant Registry compliance obligations would be truly problematic for our organization.

Once again, we urge you to closely consider whether the disputable consumer benefits of a Do-Not-E-mail Registry and the potential risk to privacy of a central depository of legitimate e-mail addresses outweigh the onerous and costly compliance burdens on trade associations, membership organizations non-profits and their member/client bases.

Sincerely,

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cc: NATIONAL ASSOCIATION OF REALTORS®