

**BEFORE THE
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580**

In the Matter of)
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CAN-SPAM Act Rulemaking - Comment) Project No. R411008
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**COMMENTS OF THE
NEWSPAPER ASSOCIATION OF AMERICA**

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March 31, 2004

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The Newspaper Association of America (“NAA”) hereby submits its comments in response to the Federal Trade Commission’s (“Commission” or “FTC”) *Advanced Notice of Proposed Rulemaking* (“ANPRM”).¹ NAA is a non-profit organization representing more than 2,000 newspapers in the United States and Canada. NAA members account for nearly 90 percent of the daily newspaper circulation in the United States and a wide range of non-daily U.S. newspapers.

The Commission’s ANPRM seeks comments in anticipation of its June 1, 2004, report to Congress that must set forth a plan to establish a nationwide Do-Not-Email registry under the CAN-SPAM Act. Specifically, the Commission seeks comments on the practical, technical, security, privacy, enforceability, and other issues surrounding a national Do-Not-Email registry.

As a preliminary matter, we respectfully submit that establishing a Do-Not-Email registry at this time would be very premature. This Commission is only now seeking comment on a wide range of issues relating to commercial messages, in a proceeding that may not conclude for quite awhile. Until that aspect of this proceeding is complete, the Commission cannot know definitely

¹ *Definitions, Implementation, and Reporting Requirements Under the CAN-SPAM Act, Advance Notice of Proposed Rulemaking*, 69 *Fed. Reg.* 11776 (March 11, 2004).

how many types, and what volumes, of emails potentially might be subject to such a registry. As such, while we appreciate that the Commission has an obligation to meet a congressional deadline to make its report, we suggest that it would be highly premature to make any recommendation – other than not to proceed with such a registry – before the Commission has completed the other proceedings required by the CAN-SPAM Act and developed a better understanding of what such a registry might affect.

On the merits, as explained below, NAA agrees with Chairman Muris that a Do-Not-Email registry currently is unworkable, would be ineffective, and thus could frustrate rather than help users. At the same time, the existence of such a list would, if not completely secured, would endanger the privacy of those listed. For these reasons, the Commission’s June 1, 2004, report to Congress should recommend against adopting a national Do-Not-E-Mail registry.

I. A Federal Do-Not-Email Registry Is Not Feasible, Would Not Prevent Spam Emails, And Therefore Would Create Unrealistic Expectations

Despite its superficial appeal, a national Do-Not-Email registry would do little to prevent spam email. The unfortunate fact is that the most troublesome senders of spam emails are serial violators of the law and will not respect any system that regulates their actions, including all current proposals for a Do-Not-Email registry. Indeed, spammers are adept at developing daily changes in their sending programs to circumvent blocking techniques used by ISPs and individuals. The only entities that would comply with a registry would be the legitimate businesses, and their emails are not the cause of the problem.

We strongly support the leadership of Chairman Muris, who has consistently stated to Congress, the press and the public that a national Do-Not-Email registry would be ineffective.²

² *FTC Chairman Calls Spam “One of the Most Daunting Consumer Protection Problems FTC Has Ever Faced,”* August 19, 2003. Available at <http://www.ftc.gov/opa/2003/08/aspenspeech.htm>.

Unfortunately, some policymakers are under a mistaken belief that a Do-Not-Email registry would function as effectively as the recently established Do Not Call registry. There are material differences between the two technologies that make enforceability far more difficult in the case of email. The technological capability of the telecommunications network allows for far easier tracing of telemarketers than the Internet allows tracing of spammers. Furthermore, unlike the telemarketers targeted by the national Do Not Call registry, spammers are largely unwilling to comply with the law and currently have the technical capability to avoid effective detection and law enforcement. As Chairman Muris has aptly noted, only advancements in anti-spam technology will solve the problem of unwanted spam messages.

Furthermore, the creation of a national Do-Not-Email registry would likely raise unrealistic expectations among users. Consumers might expect that signing up for such a registry would reduce the amount of spam deluging their inboxes. Such expectations would likely be frustrated. Spammers willing to falsify the routing information and subject lines of their emails are unlikely to feel compunctions against sending more spam to someone on such a list. As a result, the registry would likely result in substantial dissatisfaction on the part of email users.

Yet, at the same time users might not understand that they also would be excluding themselves from receiving other emails they have registered for and want to receive. Many businesses send legitimate emails to users. Ironically, the only emails that a national Do-Not-Email registry might stop would be those consumers most want, as they are sent by law-abiding businesses.

II. Spammers Could Access Emails On A Do-Not-E-Mail Registry, Compromising The Privacy Of The List's Registrants

As local businesses intent on maintaining good relations with their customers, newspapers well understand the importance of treating email addresses with respect and protection. NAA believes that there is an unacceptably high risk that a national Do-Not-Email registry could compromise the privacy of the many Americans who might place their email addresses on such a list in hopes of reducing the volume of spam cluttering their inboxes. Absent the FTC itself becoming a remailer of email, a problematic and costly endeavor, there does not appear any readily feasible means of preserving the security of the addresses on the list.

Indeed, there is a substantial danger that the list itself (consisting of perhaps millions of accurate email addresses) would be a target for spam and, once compromised, could not be put back into the bag. The risk that creating a Do-Not-Email registry would, ironically, increase the spam in registrants' inboxes and compromise the privacy of those citizens who sought protection by being placed on the list is unacceptable.

III. Conclusion

NAA believes that the Commission report to Congress regarding a national Do-Not-Email registry should reflect the realities listed above and reassert the position long taken by

Chairman Muris. In sum, NAA urges the Commission to report that a national Do-Not-Email registry is well intentioned, but thoroughly impractical and potentially counterproductive.

Respectfully submitted,

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