



Magazine Publishers of America

06-102212

March 31, 2004

Mr. Donald S. Clark
Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

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

Dear Secretary Clark:

The Magazine Publishers of America (MPA) appreciates this opportunity to respond to the Federal Trade Commission's (Commission) Federal Register Notice, published on March 11, 2004, seeking public comment on regulations regarding unsolicited commercial email. MPA is the premiere trade association representing the consumer magazine industry. Our membership includes more than 240 U.S. publishing companies that publish approximately 1,400 magazines, including some of the most widely distributed consumer publications in America as well as local and specialized magazines. Many magazine publishers engage in electronic marketing and have a strong interest in promoting beneficial ecommerce business practices.

MPA applauds the Commission's efforts to protect consumers from fraudulent electronic marketing. The proliferation of deceptive email, or spam, is a serious problem. Many unscrupulous marketers have discovered that email is an inexpensive way to send false and misleading solicitations to consumers. These deceptive and misleading solicitations are growing at an unprecedented rate, clogging Internet pathways, annoying consumers, and greatly reducing the effectiveness of legitimate electronic marketing.

However, not all unsolicited email is spam. Many reputable businesses use email as an effective and efficient tool to communicate with consumers and many consumers find email to be an efficient and convenient method of receiving and responding to offers that may be of interest to them. For example, magazine publishers are finding that many consumers prefer receiving offers to subscribe to magazines and other special offers by email. Our members are currently testing other ways to use email to provide better services and products to their readers. MPA is concerned that placing too many restrictions on legitimate email marketing will deprive both consumers and businesses of an inexpensive, efficient means of communication.

Although MPA supports the Commission's efforts to find and prosecute senders of false and deceptive email solicitations, we believe that the provisions of the Can Spam Act will provide the Commission with the necessary tools to do so and strongly oppose

the establishment of a Do-Not-Email registry as creating an unnecessary burden and restriction on legitimate marketers without any countervailing consumer benefit. A Do-Not-Email registry will not protect consumers and will discourage legitimate companies from using the efficiencies of email marketing to communicate with consumers. The loss of these efficiencies to marketers will necessarily result in higher prices to consumers by forcing marketers to forego many of the savings offered by the efficiencies of the Internet.

Moreover, as commercial transactions on the Internet continue to increase, email seems to be a natural and efficient way for marketers to communicate their offers to prospective customers. Imposing severe and unnecessary restrictions on email marketing will have a substantial negative impact on the growth of e-commerce, which is only now beginning to emerge from the economic collapse that plagued this medium only several years ago.

The recently enacted Can Spam Act with its required opt-out mechanism is likely to result in a substantial reduction in unwanted spam. In addition, the Act has provided the Internet Service Providers (ISPs) with strong tools to combat spam as evidenced by the recent cases filed by the ISPs. We would urge the Commission to allow the impact of the Can Spam Act to be felt before taking an additional drastic measure such as the creation of a Do Not Email List which will severely and irrefutably harm the marketing efforts of legitimate businesses, reduce the availability of price-saving offers, and restrict a convenient and cost-efficient method of communication between marketers and consumers while affording little consumer benefit.

Creating a Do-Not-Email list will not protect consumers from spam. Most spammers ignore current laws. In fact, spammers continue to violate the provisions of the Can Spam Act by sending false and deceptive emails without giving consumers the ability to opt-out. Therefore, it is reasonable to assume that even if the Commission were to establish a Do-Not-Spam registry, spammers would ignore the registry and continue to send deceptive and pornographic spam--leaving consumers frustrated and angry.

A Do-Not-Email registry will not serve the same purpose as a National Do-Not-Call List. Supporters of the Do-Not-Email list argue that it would be comparable to the National Do-Not-Call list that went into effect in October of last year. However, there are fundamental differences between telephone marketing and email marketing. Because of the cost of telemarketing, it is in the sellers' interest to target telemarketing campaigns towards consumers who are most likely to buy their products and limit calls to consumers who will not. Moreover, the telephone network makes it difficult for a fraudulent telemarketer to hide his or her identity.

In contrast, the economics of sending electronic messages make it easy for unscrupulous marketers to send millions of messages a day without targeting campaigns to specific consumer interests. Spammers are also able to employ false routing information to hide their identities and locations, making it difficult for law enforcement authorities to bring action against them.

Furthermore, email systems are global in nature. Overseas marketers who generate a high percentage of spam will not feel compelled to comply with a Do-Not-Email registry. Therefore, many spammers will simply move their operations to other countries where they would not be subject to U.S. jurisdiction.

In addition, there are significant differences between spam and unsolicited telephone calls that warrant disparate treatment and a different cost benefit analysis. Specifically, while spam may be annoying to consumers, it is not as intrusive as many considered unsolicited telephone calls to be. Unlike an unsolicited telephone call which can interrupt a consumer who is in the midst of another activity, including family time, spam is more passive in nature and only becomes apparent to the consumer when he or she has affirmatively chosen to log on to the computer. Under the opt-out provisions of the new Can Spam Act, consumers can easily and readily eliminate unwanted email messages by simply clicking on the opt-out button. The technologies associated with online marketing easily allow for the adoption of a system which will allow consumers greater choice and flexibility in blocking those emails they do not wish to receive while continuing to receive those messages which may be of interest to them. The Commission should embrace this notice of flex-choice and flexibility as currently incorporated in the Can Spam Act.

A Do-Not-Email list is unnecessary and will reduce consumer choice. MPA believes that the Can Spam Act adequately protects consumers by requiring businesses to give consumers the ability to opt out of receiving future emails from the sender. This requirement gives consumers an easy to use method to decline to receive email from some companies while receiving offers for goods and services that are of interest to them.

A Do-Not-Email list will impose additional costs on businesses without providing significant benefits to consumers. The cost of establishing and maintaining a Do-Not-Email list will be substantial. The registry would have to implement stringent security measures to ensure consumer privacy. Moreover, MPA believes that a national Do-Not-Email registry will be even larger than the Do-Not-Call registry because there are more email addresses than telephone numbers and people tend to change their email addresses more frequently than they do their telephone number. This means that businesses that send highly targeted email solicitations will be required to “scrub” their lists against the large number of email addresses that would be included in the registry. Although it is difficult to estimate the costs at this time, MPA does not believe that imposing this cost on businesses can be justified because such a list will not protect consumers against unwanted emails.

Maintaining a Do-Not-Email registry could pose significant privacy risks to email addresses on the list. Spammers continue to violate current laws governing electronic marketing; therefore, it is probable to assume that spammers will access the Do-Not-Email list and use it to obtain additional email addresses and to verify that the email addresses included in the list are “live”. Spammers could even sell the list to other

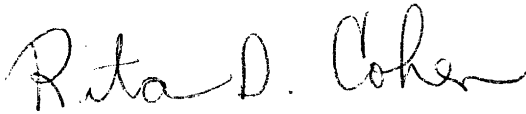
spammers, resulting in even more spam being sent to email addresses contained in the registry—which would frustrate the purpose of the list.

MPA welcomes the opportunity to work cooperatively with the Commission as it establishes regulations governing commercial email that would prohibit fraudulent practices while enabling both consumers and legitimate businesses to benefit from the efficiencies of electronic marketing. We believe that the current law will provide adequate authority for the Commission to craft regulations and state attorneys general and ISPs to initiate enforcement actions that benefit consumers without causing substantial harm to legitimate businesses and e-commerce.

Sincerely,

A handwritten signature in black ink, appearing to read 'JRC', with a long, sweeping horizontal line extending to the right.

James R. Cregan
Executive Vice President
Government Affairs
Magazine Publishers of America

A handwritten signature in black ink, appearing to read 'Rita D. Cohen', written in a cursive style.

Rita D. Cohen
Senior Vice President
Legislative and Regulatory Policy
Magazine Publishers of America