

April 26, 2004

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

**RE: Comments to CAN SPAM Act Rulemaking, Project No. R411008
addressing the implementation and enforcement of the Act as set forth in
Section 5(a)(4)(A)(iv)**

Introduction

The Project Management Institute wishes to raise an issue of importance, both to itself and to other professional membership organizations, that needs clarification.

The issue is whether a parent membership association that processes membership transactions on behalf of its component membership organizations (i.e., Chapters and Specific Interest Groups) is permitted to forward member/applicant email addresses to such component organization(s), if a member/applicant chooses to opt-out of receiving commercial email from the parent organization. Section 5(a)(4)(A)(iv) of the CAN-SPAM Act (the “Act”) should permit such a transfer of email addresses to components under that scenario, but it would be helpful to all membership organizations and their members for that to be clarified in the forthcoming CAN SPAM regulations. While an overly literal reading of the Act might prohibit such a transfer, such an interpretation would be contrary to the purpose of the Act to ensure that consumers have a choice in determining whom they receive commercial email from.

Project Management Institute

Project Management Institute (“PMI”) is a professional membership association for project managers with over 125,000 members worldwide in over 120 countries. PMI is a non-profit organization incorporated in the Commonwealth of Pennsylvania and recognized by the IRS as a tax-exempt entity under Section 501(c) (6) of the Internal Revenue Code. Like many membership organizations, PMI has affiliated component organizations (“Components”) that are chartered by PMI but which are separately incorporated and governed. When individuals choose to join PMI they are given the opportunity to join PMI Components. PMI has over 300 Components, consisting of both geographic-based Chapters and groups organized to further project management in a particular industry or field (Specific Interest Groups).

PMI handles the administrative processing of members for both itself and its Components. Individuals can join a Component(s) at the same time that they join PMI, with an individual typically joining a local Chapter and a Specific Interest Group in a relevant industry. When a person joins a Component, PMI invoices and collects from the member the Component dues as well as the PMI dues. PMI forwards the Component dues portion of the total payment to the specified Component. PMI maintains the member’s personal contact information in its database. Each Component is given access to that portion of the database that relates solely to those

members who have joined the specific Component and other individuals who have indicated that they are interested in receiving communications from a Component.

This unified administration benefits the Components in reducing duplicative administrative costs. It also benefits the members by in turn reducing Component dues and allowing them the choice to join various Components in one easy application. Many Components are small organizations that do not have the financial and human resources to handle their membership transactions on their own.

Once a member has gone through the registration process, PMI and Components provide different programs, services and professional opportunities to their membership. The Chapter, for example, may run local networking and educational events. PMI provides a broader range of products and services than Components. Consequently, some members may be more interested in local offerings of Chapters than in the broader offerings of the parent organization and vice versa. Depending on the interests of the member, that person could opt-out of receiving PMI's commercial e-mails and still want the Component's commercial messages. Likewise, even where an opt-out occurs members have a legitimate need to receive non-commercial messages concerning corporate governance and other essential membership-related topics concerning the Components of which they are lawful members.

Requested Action and Rationale

PMI believes that the FTC should clarify that membership associations that handle registration and membership related transactions on behalf of their affiliated organizations are permitted to share member/applicant e-mail addresses with such affiliated organizations, regardless of whether a member/applicant opts-out of receiving the parent organization's commercial email. Under a very literal reading of the law, Section 5(a)(4)(a)(iv) of the Act could prohibit a parent association from providing member/applicant email addresses to its component organizations if that member/applicant opts-out of commercial contact from the parent organization. PMI does not believe that this interpretation of the law is in the best interest of the individual member or that sharing of emails between parent and component membership organizations was an issue that Congress was trying to address with the Act. Section 5(a)(4)(a)(iv) of the Act states that if a person chooses to opt-out of receiving commercial email from a sender, then it is unlawful for that "sender, or any other person who knows that the recipient has made such a request, to sell, lease, exchange, or otherwise transfer or release the electronic mail address of the recipient (including through any transaction or other transfer involving mailing lists bearing the electronic mail address of the recipient) for any purpose other than compliance with this Act or other provision of law."

First, in processing membership-related transactions for PMI Components, PMI is acting as an agent for the Component in a transaction between the Component and the member/applicant, into which transaction the member/applicant has freely entered. Thus, by affirmatively choosing to join a Component, a person is effectively authorizing PMI to share their contact and demographic information with the Component to whom they have applied for membership and submitted payment to PMI for the Component's membership dues. Moreover, a member/applicant could expect, and likely desire, to be contacted by the Component directly. In

this situation, there is no sharing of information with any unaffiliated third parties, which appears to be the type of activity that this provision of the Act is intended to proscribe.

Second, since the PMI registration process is actually a multiple-registration process if a person chooses to join one or more Components, that person's decision to opt-out of commercial contact from PMI does not necessarily indicate that the individual does not want to receive communication from the applicable PMI Component. PMI Components offer many unique opportunities and benefits to their members apart from PMI, such as geographic and industry-specific networking, so it is reasonable to think that at least some persons who opt-out of commercial contact from PMI would want to continue to receive such contact from their Component organization. Any concern that a person would receive unwanted emails from a Component will be alleviated by the requirement that the Component, just like any other organization, must permit an opt-out mechanism for all commercial emails it sends so the member would have the ability to opt-out of commercial email contact from the Component in the future.

Third, both PMI and Components send via email certain Transactional and Relationship messages that are exempted from the CAN SPAM Act. Under the Act, PMI and PMI Components may send such Transactional and Relationship messages to a member (including but not limited to informational newsletters and messages relating to membership benefits, account information and status) even if that member chooses to opt-out of commercial email contact. However, if PMI is not permitted to forward the email addresses of the Component members to the Component, the Component's ability to send such permitted messages to a significant portion of their membership will be impeded. While traditional mail might be used, that option increases the cost to the Component and ultimately to the member who defrays such cost through paying membership dues.

Conclusion

It is submitted that Congress did not intend with the CAN SPAM Act to prohibit membership associations from distributing member/applicant email addresses to their affiliated component membership organizations. Permitting organizations such as PMI to forward member information to their affiliated component organizations recognizes the unique nature of the membership association corporate structure and does not in any way contradict the CAN SPAM Act's purposes and goals. Clarification regarding this matter will permit membership organizations such as PMI and its Components to comply with the CAN SPAM Act while also assuring that their business operations are not unnecessarily disrupted. It will also ensure that the members themselves will not have their choices limited by the unintended consequences of a potential interpretation of the Act.

PMI submits that it is appropriate for the FTC to promulgate a regulation clarifying that Section 5(a)(4)(a)(iv) of the Act does not prevent the sharing of e-mail contacts of individuals where the transfer meets all of the following elements: (a) the transfer occurs between two affiliated non-profit organizations, (b) the affiliated organizations have common membership, and (c) each organization has mechanisms in place to ensure that the transfer of the electronic mail addresses

is secure and will not result in additional commercial communications being sent by it to an individual who has previously opted-out of receiving such contact from the sending organization.