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March 31, 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 Washington, DC Association of REALTORS®, 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 2,400 REALTORS® in the District of Columbia, we routinely use e-mail to communicate with members and therefore have a significant interest in the outcome of this rulemaking process.

Although our association generally 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 will penalize trade associations, membership organizations, charitable institutions and non-profits engaging in legitimate e-mail communications with members.

Our association regularly uses e-mail to inform members about our educational programs and professional development courses, industry and legislative developments, new products or services, and industry-related meetings and conventions typically offered to members with a "preferred member" pricing structure. Such e-mails are an important – and expected -- part of our service as an association, and are considered by our members to be 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 the value of association membership.

Moreover, we are 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. Unless carefully constructed 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.



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If the Federal Trade Commission pursues a Do-Not-E-mail Registry, we believe much careful research and beta-testing is required before any Registry is implemented so that it does not become a prime target for attacks by illegitimate spammers and unscrupulous computer hackers.

Because the significant development and maintenance costs of constructing a Do-Not-E-mail Registry will most likely be borne by the users of the Registry, and because of increased compliance costs, we believe that our association and members would suffer a serious economic impact under a Do-Not-E-mail Registry scheme. 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 our legitimate communication with members and clients, have yet to be absorbed. The imposition of dramatic new Registry compliance obligations would be truly problematic for our organization.

In closing, we urge you to reconsider whether dubious consumer benefits of a Do-Not-E-mail Registry as well as 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,



Scott M. Johnston
President

cc: NATIONAL ASSOCIATION OF REALTORS®