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April 16, 2004

## Comment Form

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**Federal Trade Commission****Title:** CAN-SPAM ANPR**Subject Category:** CAN-SPAM Act - Advanced Notice of Proposed Rulemaking ("ANPR")**Docket ID:** [3084-AA96]**CFR Citation:** 16 CFR 316**Published:** March 11, 2004 - Volume 69, Number 48, Pages 11775-11782**Comments Due:** Tuesday, April 20, 2004**Phase:** Rules**How To Comment:**

**The comment period on the CAN-SPAM Act Advanced Notice of Proposed Rulemaking has been extended through April 20, 2004. Comments must be submitted on or before that date. However, the comment period has closed for comments addressing the "National Do Not E-mail" Registry.**

The Federal Trade Commission invites comment on topics relating to the CAN-SPAM Act. Specifically, the FTC seeks comment on the form and content of certain regulations mandated or permitted by that Act, and several spam-related reports the Act requires the FTC to prepare and submit to Congress. The FTC posed questions on these topics in the Advanced Notice of Proposed Rulemaking ("ANPR") published in the Federal Register. For the convenience of commenters and the FTC, these questions are reflected in the webform below. For any question, you may enter additional information, or an explanation of your answer, in the Additional Comments section at the end of this form. Where you may wish to answer "I don't know" to a given question, and that selection is not provided, then leave that answer blank.

**PRIVACY & USE** The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All

timely and responsive public comments with all required fields completed, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at [www.ftc.gov](http://www.ftc.gov). Any information placed in the following fields on this form -- "Title," "First Name," "Last Name," "Organization Name," "State," "Country," "Additional Comments," and "Attachment" -- will be publicly available on the FTC Web site. Therefore, you should not include home contact or other personal information in any of these fields. However, your answers to specific questions A.1 through F will not be publicly available on the FTC Web site. The fields marked with an asterisk are required in order for the FTC to fully consider a particular comment. Commenters may choose not to fill in one or more of those fields, but if they do so, their comments may not be considered. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including other routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

**ACCESSIBILITY** If you are unable to access this form, [click here for an alternate method of submitting a public comment](#).

<b>Title</b>	<b>First Name</b>	<b>*Last Name</b>
Mr.	James "Rocky"	Tatarelli
<b>Organization Name</b>		
Earjazzem Publishing		
<b>Mailing Address</b>		
[REDACTED]		
<b>City</b>	<b>*State</b>	<b>Postal Code</b>
Oakland	CALIFORNIA	[REDACTED]
<b>*Country</b>		
UNITED STATES		

**Specific Questions**

If you wish to submit a comment as an attachment, you may do so at the end of this form.

**A. MANDATORY RULEMAKING – Determining whether “the primary purpose” of an email message is commercial.**

In modifying the Act’s definition of “commercial electronic mail message,” the term “the primary purpose” could be interpreted in many ways. Click the choice below that most closely matches your view of the correct interpretation.

1. The primary purpose of an email message should be viewed as commercial if:
  - a commercial advertisement or promotion in the message is more important than all of the message’s other purposes combined.
  - the commercial advertisement or promotion in the message is more important than any other single purpose of the email, but not necessarily more important than all other purposes combined
  - the “net impression” of the message as a whole compels the conclusion that the message is commercial
  - the commercial advertisement or promotion in an email is more than incidental to the email
  - Other, please specify in the Additional Comments section at the end of this form.
  
2. Should the identity of an email’s sender affect whether or not the primary purpose of the sender’s email is a commercial advertisement or promotion?
  - Yes
  - No
  
3. Are there other ways to determine whether a commercial advertisement or promotion in an email is the primary purpose of the email?
  - Yes
  - No

**If you wish to provide additional information on how to determine the “primary purpose” of an email message, please do so in the Additional Comments section at the end of this form.**

**OTHER POSSIBLE RULEMAKING TOPICS****B. Modifying what is a “transactional or relationship message”.**

Under the Act, a “transactional or relationship message” is defined as meeting one of seven criteria. As indicated in the choices below, the criteria relate to, for example, whether the message: concerns prior or already-established commercial transactions between sender and recipient; products or services purchased by the recipient; or an ongoing commercial or employment relationship between sender and recipient.

1. Choose any of the definition(s) below that you feel the Commission should modify or elaborate upon. (Choose all that apply)

- E-mail messages that “facilitate, complete, or confirm” a commercial transaction that the recipient has previously agreed to enter into with the sender
- E-mail messages that “provide warranty information, product recall information, or safety or security information about a commercial product or service.”
- E-mail messages that “provide notification concerning a change in the terms or features” of a subscription, membership, account, loan, or comparable ongoing commercial relationship
- E-mail messages that “provide notification of a change in the recipient's standing or status” with respect to a subscription, membership, account, loan, or comparable ongoing commercial relationship
- E-mail messages that provide “at regular periodic intervals, account balance information or other types of account statements” with respect to a subscription, membership, account, loan, or comparable ongoing commercial relationship
- E-mail messages that “provide information directly related to an employment relationship or related benefit plan in which the recipient is currently involved, participating, or enrolled.”
- E-mail messages that “deliver goods or services, including product updates or upgrades, that the recipient is entitled to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender.”
- None of the above, the term “transactional or relationship message,” as defined in the Act, is clear, and needs no further clarification or modification.

2. Have any changes in electronic mail technology or practices occurred since the CAN-SPAM Act became effective on January 1, 2004, that would necessitate modification of

the Act's definition of "transactional or relationship message" to accomplish the purposes of the Act?

- Yes
- No

3. Some transactional or relationship messages may also advertise or promote a commercial product or service. In such a case, is "the primary purpose" of the message relevant, and if so, what criteria should be applied to determine the "primary purpose" of such a message?

- No, the primary purpose of the message is not relevant
- Yes, the primary purpose of such a message is relevant, and the criteria specified in question A.1 above should be applied to determine its primary purpose.
- Yes, the primary purpose of such a message is relevant, but different criteria should be applied to determine its primary purpose.

4. Should transactional or relationship messages that also advertise or promote a commercial product or service be deemed "commercial" messages or should they be deemed "transactional or relationship" messages?

- They should be deemed Commercial messages
- They should be deemed "Transactional or Relationship" messages

**If you wish to provide additional information on the definition of "transactional or relationship" messages, please do so in the Additional Comments section at the end of this form.**

**C. Modifying the 10-business-day time period for processing opt-out requests.**

1. Is 10 business days an appropriate deadline for acting on an opt-out request by deleting the requester's email address from the sender's email directory or list? And if not, which of the following would be a more appropriate time limit?

- Yes
- No, a time limit of less than 10 days would be more appropriate
- No, a time limit of greater than 10 days would be more appropriate

**If you wish to provide additional information on modifying the 10-business-day time**

2. If a consumer has “opted out” from receiving commercial email from a particular company, and then receives a subsequent commercial email containing an ad for this company as well as ads for three other companies, does this violate the Act? If so, who has committed the violation?

No, if a consumer receives an email containing ads for four different companies, although s/he has opted out of receiving email from one of them, this does not violate the Act.

Yes, the Act has been violated by the company advertised and to whom the opt-out request was made.

Yes the Act has been violated by the party who initiated the email message, but who did not receive the opt-out request.

Other, please specify in the Additional Comments Section at the end of this form

3. Should the Commission issue regulations clarifying who meets the definition of “sender” under the Act?

Yes

No

### **E.2 Issuing Regulations to Implement Various Aspects of CAN-SPAM – “Forward-to-a-friend” scenarios.**

The Act defines “initiate” to mean originate or transmit, or procure the origination or transmission of a message. In turn, the term “procure” means to pay, provide consideration, or induce a person to initiate a message on one’s behalf.

1. Do “forward-to-a-friend” and similar marketing campaigns in which marketers rely on their customers to refer or forward the commercial emails to someone else fall within the parameters of “inducing” a person to initiate a message on behalf of someone else?

Yes

No

2. Are there different types of such “forwarding” marketing campaigns?

Yes

No

3. Should these marketing campaigns have to comply with the Act, and if so, who should

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be considered a person who "initiates" the message when one person forwards the message to another person?

- No, these types of marketing campaigns should not have to comply with the Act
- Yes, these types of marketing campaigns should have to comply with the Act, and the original sender of the email message, whose product, service or web site is advertised in the message, should be considered the person who initiates such a message
- Yes, these types of marketing campaigns should have to comply with the Act, and each person who forwards the message to another person should be considered as having initiated such a message.
- Other, please specify in the Additional Comments Section at the end of this form

4. Who should be required to provide an "opt-out" mechanism for such a message?

- The original sender of the email message and whose product, service or web site is advertised in the message.
- Each person who forwards the message to another person
- Other, please specify in the Additional Comments Section at the end of this form

5. Should each person who forwards the message be required to comply with the Act?

- Yes
- No

6. Should the original sender of the message remain liable for compliance with the Act after the original recipient forwards the message to someone else?

- Yes
- No

7. Do the Act's requirements reach email messages containing advertisements sent by using a web site that urges or enables individuals to email articles or other materials to friends or acquaintances?

- Yes
- No

**F. REPORTS.**

The Commission also seeks comment on the various reports required by the CAN-SPAM Act. Please identify which of the following reports you wish to comment on, and then enter your comment in the Additional Comments Section at the end of this form.

Alternatively, you may submit your comment as an attachment. When submitting your comment on one or more of these reports, please refer to the questions posed in the Federal Register Notice. If you do not wish to comment on any of these reports, please proceed to the end of this form.

1. Select the report or reports on which you wish to comment:

- The implementation of a National Do Not Email Registry.
- The implementation of a system for rewarding those who supply information about CAN-SPAM violations.
- The effectiveness and enforcement of the CAN-SPAM Act.
- Subject line labeling.

**G. REGULATORY FLEXIBILITY COMMENTS.**

Please enter comments on Small Business impacts and recommended regulatory alternatives (if any) related to the Regulatory Flexibility Act in the Additional Comments section at the end of this form.

**Additional Comments**

Re: CAN-SPAM Act Rulemaking, Project No. R411008 To the Commissioners, I applaud your efforts to curb the problem of unsolicited bulk email. However, I am concerned about the proposed requirement for merchants to maintain suppression lists. There are so many problems and costs associated with this idea, and so much damage done to consumers and businesses alike, that I feel I must urge you to consider this matter most carefully. Requirement of the use of suppression lists will seriously damage many of the legitimate publications available on the net. My specific concern is for harm to publishers who require permission from the consumer prior to adding them to any list. They're not who CAN-SPAM was designed to put out of business, but this requirement will very likely have that effect. There's also the potential for significant harm to consumers, because of the problem of properly knowing their intent when they unsubscribe from a list. On top of that, these suppression lists could easily fall into the hands of spammers, leading to more spam instead of less. I was quite surprised at the potential problems this ruling could involve, and urge you in the strongest possible terms to reconsider its implementation in light of these problems, D.1 The harvesting of email addresses and mailing without approval has to be stopped. Respectfully, James R Tatarelli Oakland, CA.

*Sincerely,* James R Tatarelli