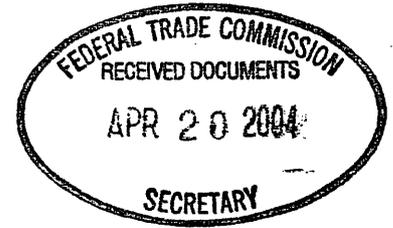


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BEFORE THE FEDERAL TRADE COMMISSION

Washington, D.C. 20580

*In the Matter of*

CAN-SPAM Act Rulemaking, Project No. R411008

*Comments of*

**United Online**

1 United Online submits these comments pursuant to the request of the Federal Trade Commission (the "Commission") for comment on the CAN-SPAM Act (the "Act") published on March 11 2004.

2 United Online is one of the nation's leading providers of value-priced Internet access services. Through the NetZero, Juno, and BlueLight Internet access brands operated by United Online's wholly-owned subsidiaries, consumers are provided high quality, easy-to-use free and value-priced Internet access and e-mail. United Online is committed to protecting the privacy of the members of its subsidiaries' services, and, therefore supports the goals of the Act.

3 The primary purpose of United Online's comments is to encourage the Commission to clarify the definition of "transactional or relationship messages" contained in Section 3 of the Act so as not to unreasonably restrict the ability of an informed consumer to enter into a contract by which the consumer agrees to receive commercial electronic mail messages in exchange for valuable consideration.

4 Since October 1998 United Online (and its predecessors in interest) have provided consumers free Internet access. This free Internet access and e-mail has been well received by consumers, and United Online's subsidiaries currently have over 2.4 million users of free Internet access and electronic mail services.

5 The premise upon which the free Internet access model is based is that consumers receive a certain service for free in exchange for consideration. The user receives free Internet access services, an e-mail account, as well as other benefits. In exchange, the user agrees to receive surveys, questionnaires, and other electronic mail communications (including commercial e-mail concerning other services provided by the Internet service provider, its affiliates and goods and services provided by third parties) in the free e-mail account provided with the service, and/or such other account as the user designates. To opt-out of receiving such communications would be a direct negation of the agreement the user knowingly entered with the service provider..

6 One of the express purposes of the Act is to prevent the receipt of unsolicited commercial electronic mail. Act, Section 2 (a) (3). Congress expressly authorized the Commission to modify the definition of "transactional or relationship messages" "to the extent such modification is necessary to accommodate changes in electronic mail technology or practices and accomplish the purposes of the Act." Act, Section 3 (B). United Online believes that the intent of the Act is not (and should not be) to prevent recipients from receiving communications they have asked to, and expect to receive from a sender. This appears to be the intent of the exemption of

“transactional or relationship messages” from the definition of a “commercial electronic mail message.”

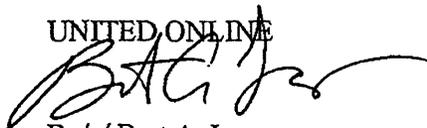
7 When a consumer makes an informed decision to agree to receive electronic e-mail, the e-mail should not be viewed as unsolicited. For example, a recipient may agree to receive communications about potential upgrades or add-ons to a service. United Online believes that such communications are permitted under the Act. However, the relevant language of the Act is unclear, and may be susceptible to a narrow interpretation, in contravention of the Act, that a communication the recipient asked to receive as part of an ongoing commercial relationship and/or which provides information that the recipient has requested that to receive falls outside the definition of “transactional or relationship message.” Since such communications are, by definition, not unsolicited, it would accomplish the purpose of the Act to expressly include in the definition of “transactional or relationship messages” messages that the recipient expressly agrees to receive.

8 In order to meet the intent of the Act, a “transactional or relationship message” should include communications that a recipient agrees (or “affirmatively consents”) to receive, either a) as part of an ongoing commercial relationship under Section 3 (19) (A) (iii) of the Act; or b) under the terms of a transaction that the recipient has agreed (or “affirmatively consented”) to receive under the terms of a transaction that the recipient has previously agreed to enter into with the sender under Section 3(19) (A) (v) of the Act. By so doing the Act will make clear that consumers may agree to receive commercial messages from senders; and a sender engaged in an ongoing direct commercial relationship with a recipient may notify the recipient of product benefits, updates, and upgrades that the recipient has agreed to receive and is entitled to receive under the terms of a transaction the recipient has entered into with the sender.

9 In summary, United Online understands the substantial harm posed by the distribution of unsolicited commercial e-mail and supports the purposes of the Act. It recognizes, however, that the right to privacy is a right that an informed consumer should be free to exercise or choose to limit or modify by contract in exchange for valuable consideration. The definition of “transactional or relationship message” should be modified accordingly, since a communication a consumer knowingly chooses to receive is not unsolicited.

Respectfully submitted,

UNITED ONLINE



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