

F.1 First, my comments on the "Do not Spam List" I think that there are three vital aspects to the implementation of the Do not Spam List that need addressing: 1) Primacy of Do Not Spam List It must be clear that the do not spam list is applicable to all Commercial Email that is not Transactional or Relational. If not, then various definitions 'Opt In' definitions will creep in, and the "Do Not Spam List" will be worthless if these definitions are allowed to stand. 2) Enforcement of Do Not Spam List My major worry about a do not spam list is enforcement. If the "Do not SPAM list" is spread to companies that are not bound by the CAN-SPAM act, it becomes a list of valid addresses ripe to send UCE to, and the problem of UCE has returned. The global reach of email versus telephone solicitation make this solution not as apt as for a "Do not Call List" Email can be composed in English much more easily than finding English speakers for telemarketing. Add to that the fact that foreign telephone calls are expensive, and foreign participation in telemarketing is not a problem. Foreign participation in UCE is a HUGE problem, and threatens to make a "Do Not Spam List" worse than worthless. Foreign participation in UCE activities threaten to turn the list into the ultimate spamming tool! Any implementations and enforcements must take this into account. 3) Pre-Existing lists and Do Not Spam List I don't know if it needs to be addressed separately or not, but the effect of the "Do Not Spam List" on these CDs of email addresses or lists that are sold should be spelled out. I feel it should be considered a violation of the CAN-SPAM act to sell a list that is not purged with the national "Do Not Spam List" in addition to being purged against a given company's list of email addresses that opted out of their promotions. ----- Other Comments ----- A.1 Primary purpose of Email Clarification Importance should perhaps be replaced by a more objective term. The question here is whether email be subject to "Opt Out" and "Do not Spam List" requirements. The murkiest area has to do with companies where there is a (possibly perceived) business relationship. Perhaps incidental is the word I'm looking for. Basically, if I get email where there is significant space taken up by an opportunity to spend more money with them, I consider it Advertising, or Commercial Email, and I should be able to opt out of it if I choose to. If it's just a small mention, I don't mind, but if I get a small notice of some sort, along with half that notice or more in ads, I consider it opportunistic advertising, where it's veiled in 'routine contact.' Importance is not a good term, because the recipient considers advertising to be un-important and a waste of time, more often than not. Relative Prominence is better. A.3 Other methods of determining purpose of email See above, but the down shot is how much space in the layout is taken up by advertisement or promotion. More than 1/4 of the message, by "volume" and I'd consider it commercial email, especially if the promotion comes first. B.1 Transactional or relationship message: What is informational and what is advertising is the key here. If a message simply confirms the buisness relationship and then has non-incidental promotion of third party services or products, this should not be considered transactional. However I do admit that a company should be allowed to advertise to its customers with moderation just as with traditional advertising. There's a balance here. b.3 Primary purpose of transactional or relationship message email including Advertisement D.1 Additional Aggravated Violations 1) Contracting with firms outside the US to thwart enforcement of the terms of the CAN Spam Act. It should be considered a Aggravated violation for a company that would normally be subject to the CAN-SPAM act to send its marketing to a country that is not subject to the Act. In fact, out of country influences

may doom this act's aims of giving individuals control of the commercial email they receive. The senders may soon be overseas as loosely connected vendors of products of companies in the US. It would be hard to regulate foreign based resellers, correct? 2) Sharing email addresses in violation of privacy policies It may be beyond the scope of this legislation, but I think that it should be an Aggravated Violation for a company to share an email address with other companies contrary to their privacy policies at the time the email address was obtained. Confirmation of a new privacy policy where the customer could opt out of the service or opt out of the sharing should be allowable, but privacy policies should be binding until re-accepted. This likely a Major source of UCE.

E1.2 Comments on email with multiple companies advertised The compliance of a multiple company advertisement including products from Company A (the opted out company) has more to do with the relationship between the company paying for the sending of the UCE (the payer) and Company A than anything else. If the email purchaser is simply a reseller of products of Company A, the advertising is acceptable, however if the payer and Company A are marketing partners, the email should be considered to be in violation of the CAN-SPAM act. The problem here is shell games. If a company simply packages its ads along side other companies to avoid opt out restrictions, this violates the spirit of the law. It also depends on the purpose of the email. If the advertisement is only an incidental part of the other email, and the 'purpose' of the email is considered non-commercial, the email containing Company A's advertisement (say a little banner, or small paragraph) is in compliance.

E.2.3 - Forward to a friend The restrictions This should be tight enough that only methods that have a fully functioning opt out process as specified by the CAN-SPAM act are compliant with the CAN-SPAM act. Some would say there is an accountability or free speech issue here if this sort of campaign is regulated under the same laws as centrally distributed Commercial Email. The companies interested in this sort of campaign would argue that they can't be held accountable for the actions of the recipients. I would refute that in this way: A suggestion that a commercial advertising email recipient send email on behalf of the original company is a request that the recipient become an agent of the company, and his action is endorsed by the company. A recipient forwarding email without the company requesting that he/she forward the email is not an agent of the company because the action is not endorsed or requested by the company. In this case the company is not influencing the action and the email is not subject to the CAN-SPAM act. I recommend that any email sent by 'friends' to an email address that has previously opted out is a violation because there was no opt out mechanism provided, yet the email was sent by request of the originating company. A controllable way to do the same marketing would be to point a user to a web form (or even provide a web form in the email) that is subject to opt out requests to a central location. Also duplicate email from the same originating message should be limited by this central server. In this case especially, 10 days between opt out and cessation of email is far too long, especially if some plea becomes especially effective. There is no technical reason not to provide an opt out effective within an hour. I do think however, that non-commercial email, email that is not advertising by its nature (See comments on A.1) shouldn't be subject to the CAN-SPAM act. (also E.2.4. and E.2.6) In the case of an email recipient directly emailing a third party, opt out to the forwarder (who received the email with the plea to forward the CE) has no meaning, since that friend won't likely forward it again, further copies of it will be another friend forwarding

the email. It is unreasonable to expect non-professional marketers to check a central opt out list or do not spam list, thus encouraging this behavior should be strongly discouraged because they are likely to cause the marketer to be in violation of the CAN-SPAM act. (also E.2.5.) However, consumers who email without consulting a do not spam list or the companies central opt out list should also be held responsible. E.2.8. Unsolicited commercial email campaigns that rely on having customers refer or forward email should be treated differently in that email sent by third parties, to email addresses that have opted out, on behalf of the campaign should be considered violations of the CAN-SPAM act. E.4.1. Thought should be applied to the problem of email from domain X originating from IP addresses connected to another internet domain. The problem is that ideally, the from address attached to UCE should reflect the company that is soliciting purchase goods and services. However, when companies contract with a third party, the originating IP address doesn't match up with the domain in the from address. In addition, the company may not have a valid domain name, and may be trying to avoid that expense. In general using an address that doesn't correspond to the originating IP address is considered spoofing, however restricting this would eliminate the availability of third party email transmission services, which would be beyond the aims of this act. F. Enforcement of can Spam Act.. Enforcement troubles will fall into two categories, 1) Companies that are shadowy and hard to track down. 2) Email originating in a Foreign country. The success of this act depends on finding ways to effectively limit these two groups of senders of UCE.