

To: The Federal Trade Commission Re: CAN-SPAM Act Rulemaking, Project No. R411008d Commissioners, I previously sent a comment concerning the reasons that I believe that suppression lists are dangerous to both consumers and true opt-in mailers. That comment can be read online as well, at: http://www.talkbiz.net/ramblings/comments.php?id=23_0_1_0_C I have further concerns with the proposed requirement to use merchant-specific suppression lists. Such a requirement would put me, and most other publishers who already require affirmative consent, in an ethically and legally untenable position. I've been publishing TalkBiz News for over 7 years now. Throughout that time, the one thing I have always promised people who sign up for the newsletter is that I will never share their addresses with third parties - for any reason. This is a standard commitment from legitimate publishers who maintain true opt-in practices. If we are required to share the addresses of people who ask to unsubscribe, we face a number of problems. First, many of our subscribers are from the European Union and Canada, which have data privacy laws that specifically forbid such sharing of an email address without the prior consent of the owner of that address. Complying with any regulations that required sharing those addresses could also require that we violate those laws. It is possible that a merchant maintaining such a list would violate them as well. More important is the damage such a requirement would do to the relationship between consumer and publisher. If we promise not to give those addresses out, and break that promise, we lose our credibility. For honest businesspeople, that credibility is all that truly stands between us and closing our doors. My subscribers learn from me, and I learn from them. They contribute to my income when they buy my products and some of the products I recommend. Hopefully, they use those products to increase their own incomes beyond what the products cost. All of them have trusted me to keep my word about not sharing their addresses. Some have become personal friends over the years, and I'm sure more will in the future. I'm not at all comfortable with the idea of breaking my promises to any of them. I'm also concerned about various ways that suppression lists could fall into the hands of spammers. If suppression lists are required, and I comply with those requirements, I could well be exposing the people who trusted me to increased harm from spammers. True opt-in (affirmative consent) lists which have a working unsubscribe function are not the problem. Anyone can control the mail they get from these lists, easily and absolutely. They simply choose which they want to receive and which they want to stop receiving. This whole issue seems to be the result of problems with defining the word "Sender" within the context of the requirements of the Act. When someone signs up for my newsletter, they are trusting ME to deliver appropriate content that fits the guidelines I've described. Not someone else. I decide what content is included. During the short period in which I accepted paid advertising, I often refused ads for products and services that didn't fit my guidelines. When I recommend a product, whether there's the potential for a commission on that product or not, it's because I believe in the product. I make those decisions, and I put my credibility with my subscribers on the line with every such recommendation. By any generally accepted definition of the word, I am the only Sender of that content. I am also the only initiator, by the same logic. More importantly, the subscription agreement that exists is between me, as the publisher, and the consumer, as subscriber. That agreement is a contract, by any reasonable standard. It contains offer, acceptance and consideration. The offer is the promised content. The consideration is the opportunity to present that content.

along with whatever benefit the publisher believes will derive from that presentation. Acceptance is the act of subscribing - giving affirmative consent. One of the conditions of that acceptance is the maintenance of the privacy of the individual subscriber. Most individuals consider that an absolute must before they'll accept the offer and subscribe. Requiring that we share addresses after having promised not to is requiring that we materially breach an existing contract. The answer to this is simple: Exempt publishers who employ a policy of requiring affirmative consent, and who maintain working unsubscribe mechanisms, from suppression list regulations. I urge the Commission to take this step. Respectfully submitted, Paul Myers Publisher, TalkBiz, Inc
[REDACTED] Eric, PA [REDACTED]