

The following are comments over the CAN SPAM Act of 2003.

We believe that the current definition of transactional or relationship e-mail is fine and should not be modified. However, regarding question 4, since the customer has purchased the message should be considered a transactional or relationship message, but if the business isn't providing the consumer with relevant product/service information and is using the customer base to just promote other products without giving the customer information related to the product/service they purchased the message should be commercial. However, such a standard should not apply in cases where a merchant is providing information on a product to upsell the customer. For example, if I sell office supplies the standard should not prohibit me from sending an e-mail to my customers about a book on home office management, but it should prohibit me and classify the message as commercial if I'm telling them about a book on the best way to buy a house.

Regarding the 10-business day time limit to process an opt-out request.

Most list management software will remove a subscriber immediately upon them e-mailing an opt-out address, or clicking a link. Therefore, the regulations should modify the rule to state that if the sender provides an automated method for opting-out the time limit is 48 hours. This way you give time for say a down server on the Internet or something. If the sender also provides a regular mail opt-out method the time limit is 10 days if the user uses the regular mail method.

The regulation needs to provide for both methods, but give the consumer protection at the same time. Possibly requiring consumers who choose to use regular mail for opting-out to send such a request via certified mail. This way the consumer, if they also use return receipt requested, will get proof the business received the request.

Comments on E.1.

If a consumer opts-out of receiving ads from one company, but later they receive a message from another company with an ad from the company they opted-out from this does not violate the act. Not to mention the commission could run up against constitutional problems with such a regulation.

If I send out a newsletter and I run four ads I should also be defined as the sender not the advertisers. Let's look at how the offline world does it. If I don't want to see ads from a certain company, but I know that company advertises in a magazine I can either not read the magazine, or skip the ad. Online users have the same option.

Comments on E.2.

If our company newsletter is forwarded by recipients the opt-out process should not apply.

This is over reacting to the Spam problem and could result in the breakdown of e-mail communication among friends and family.

The implementation of a National Do Not Email Registry

We are opposed to such an action for several reasons, but the main reason is that such a system would be technologically impossible to monitor or police.

1. How would senders check the database?
2. How could the commission make the system affordable for small business owners who are just starting out?

These are just two questions that will be asked of the commission.

The effectiveness and enforcement of the CAN-SPAM Act

To date the act seems to have had no effect on Spam. Within our company alone Spam has increased three fold. For some of our employees who responded to a request we sent out They tell us that some well-known and respected companies have not stopped e-mailing them even after they made a request to be removed from the list.

Also, consumers have no right of action under the act so an ISP must wait until they have enough complaints to act. We would suggest that regulations be made, or the act be modified by congress to allow consumers rights of action in small-claims court.

Subject line labeling

The regulations should require that messages that are completely ads should contain ADV: in the subject line, but if a sender is sending out a newsletter or transactional/relationship e-mail that should not apply.

In closing, we would suggest the commission be careful on how it implements regulations. Be sure it doesn't impact negatively on free enterprise or restrict free speech. Also, don't try and apply a new dynamic to the Internet. The last thing that needs to happen is to over react to the Spam problem.

Congress went into this in a reactionary mode and the commission needs to stop that from happening in the regulatory process and be proactive in the rule making process.

We thank you for considering our comments.

Regards,

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