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### **Introduction**

The National Newspaper Association is the oldest and largest community newspaper association in the country. The NNA represents 2,500 community newspapers nationwide. Most are family-owned and operated, and have circulation under 10,000 copies in a typical issue. They specialize in local news and advertising, and they provide the mortar that holds small towns, suburbs and urban communities together. As in many industries, the use of computers and electronic mail has grown greatly in the recent years. Many newspapers now offer a website to go along with their physical publications. Some use e-mail to approve proofs of ads and notify existing and prospective customers of purchasing opportunities. Many also provide email alerts to subscribers—a few for a small subscription fee, but most for free to the subscribers, but with advertising attached to pay for the service.

The Commission's "primary purpose" standard does not provide sufficient guidance as to when a message will be considered "commercial" under the CAN-SPAM Act. The standard for an e-mail with only commercial content is clear, but the standard for mixed messages, those which contain both commercial and non-commercial elements

is vague and leaves open too many questions for small newspapers to know if they are within the law. A particular area of potential problems is in information related to editorial content, such as requests for interviews, or material for special sections that may have a commercial purpose, where information could be construed by a recipient as commercial solely because it derives from a commercial enterprise.

### **News Content with Commercial Content**

While e-mail has become the preferred method of communication for many people, it has also become their source of news, as many newspapers now offer daily, weekly, or even monthly e-mail updates of the news from around the community to around the world. People can now check their e-mail every morning to see the headlines and big news stories of the day. This news cannot be provided for free however. News organizations must pay their reporters who gather the news, editors who edit the news, and now they must support an information technology staff to distribute the news electronically. Newspapers are able to provide information to the public because they are supported by advertisers.

Under the proposed regulations, these e-mail updates would be considered e-mail containing both advertising content and other “non-commercial” content. The proposed regulations for these types of e-mails state that the e-mail will be considered commercial if a recipient reasonably interprets the subject heading or the body of the message to be commercial, based on several factors including placement, size, color, graphics, and style of the commercial content. While it is understandable that people would attempt to bury minimal non-commercial content at the bottom of an e-mail to gain protection, e-

newsletters need to be able to provide advertising where they can maximize both their news content as well as some commercial content. The current proposal will limit such newsletters from offering advertisers the space and quality of advertisements they wish to place, thereby limiting news organizations in the services they are able to provide to the public.

The key to determining the primary purpose of a non-commercial e-mail with commercial content is the proportion of the message dedicated to commercial content, and not the actual content itself. Adding a nice graphic to an ad that supports a news update service does not change the primary purpose of the e-mail: to provide an update on current news.

In order to allow e-newsletters and e-mail news updates to support themselves, and provide a valuable asset to their communities, the proposed rules should be revised to allow flexibility in design when the primary purpose is not to sell or promote a product or service, but may nonetheless contain commercial content. Standards should not restrict placement of the commercial content, but rather judge the message according to its primary purpose.

### **Transactional Content with Commercial Content**

Community newspapers also use e-mail for transactional purposes, including sending of ad proofs, confirmation of subscriptions, renewal notices, etc. The Commission's definitions of what constitutes a transactional or relationship e-mail do provide a set of clearly defined guidelines that community newspapers can use. However, these guidelines should be expanded to include renewals of subscriptions and

memberships that have expired within the past 18 months. Some grace period is necessary in that not all subscribers are prompt with renewals, and need extra reminders that they need to renew, even after their subscription has expired. Often times subscribers or members cannot renew their subscriptions of memberships for a certain year, but do wish to continue in later years. Since most weekly newspapers offer subscriptions for annual terms only, an 18-month business relationship period should be recognized in the rules.

### **Conclusion**

The proposed rules provide restrictions on commercial content that are unfair for small community newspapers trying to provide a service to their customers. There is a need to include commercial content in non-commercial e-mails, and community newspapers need flexibility in where to place and how to design these advertisements. Also, the definition of a transactional e-mail should be expanded to include a grace period of subscription and membership renewals. Community newspapers need to be able to take advantage of the opportunities they have as they provide news to their communities.

Respectfully submitted,



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