

June 27, 2005

Via Electronic Filing

Mr. Donald S. Clark  
Secretary  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580

Re: CAN-SPAM Act Rulemaking, Project No. R411008

Dear Secretary Clark:

CMOR, the Council for Marketing and Opinion Research, represents a broad range of survey research companies. Our members include market researchers, political polling companies, advertising researchers, and, most relevant to this subject, online surveyors. Because a number of our members work in the e-mail realm, we would like to comment on a number of the Commission's proposed regulations.

*1. Provide Further Clarification on the Criteria Designating the "Sender" of a Commercial E-Mail in Addition to that Proposed in the Rule.*

In our opinion, the entity that controls the sampling, distribution, and opt-out registry should be treated as the sender. That sender should be held responsible for complying with this aspect of the CAN-SPAM law and rules, as they possess the ability to prevent the recipient from receiving further e-mails.

We look at this issue from the point of view of a "reasonable recipient". The reasonable recipient believes their opt-out is honored by the entity that sent him or her the e-mail, and which has the ability to control the opt-out database. In this way, recipients can fairly expect their opt out requests to be honored by the true sender of the e-mail.

*2. Maintain the Opt-Out Duration at 10 Days, at Minimum.*

The Commission has proposed reducing the processing period for opt-out requests under the CAN SPAM Act from 10 days to 3. In other words, companies sending electronic mail messages would have to cease sending further messages within 3 days of receiving an opt out from a recipient.

To be clear, our members—indeed, our entire industry—is committed to respecting consumers’ requests not to receive unwanted email. We stand in strong support of the 10 day opt out requirement in the CAN SPAM Act. And we certainly do not want to send survey research email to recipients who do not wish to receive such messages.

However, moving from the period set under the CAN SPAM Act (10 days) to 3 days would create an impossible threshold for opt-out processing in many common situations. The CAN SPAM Act creates the need for the transfer of opt-out lists (suppression files) within and between organizations. The transfer of such files can easily require more than three days in large organizations with highly distributed operations. Mandating a 3-day opt out processing period will put many well-intentioned companies unnecessarily out of compliance with the Act.

Additionally, it is common practice for many organizations to plan and program their email campaigns well in advance of the actual distribution. In such situations, the list of email addresses that a campaign will be delivered to may be determined up to a week prior to the actual delivery of the message. Requiring a 3-day opt out period would seriously impair the strategic use of email campaigns by requiring last-minute changes to already established schedules.

Perhaps most importantly, we are aware of no evidence suggesting that consumers receive any additional unwanted email during the opt-out period. I know that I can speak on behalf of all companies in our industry in saying that an opt-out request is not seen as an opportunity to send survey research e-mails for 10 additional days.

*3. Clarify that Forward-to-a-Friend E-Mail Campaigns Should in no Instance be Required to Comply with the Act When No Consideration is Provided*

The Commission indicates that if the entity whose product or service is advertised in a “forward-to-a-friend message” affirmatively acts or makes an explicit statement designed to urge another to forward the message, that that entity would be a sender for purposes of the Act even if no payment or consideration is provided. We urge the Commission to reconsider this position, which will limit offerings and functionalities that consumers enjoy and that have no impact on true “spam.”

The Commission’s stance would require either that businesses not encourage messages be forwarded or that a business attempt to honor opt-outs prior to messages being forwarded. It is ultimately impossible for businesses to control whether or not a recipient of an e-mail containing the business’ advertisement or promotion forwards such message and to what e-mail addresses the message is forwarded.

That said, the Commission should bear in mind that buddy letters, chain letters, massive round robins, and other forwarding techniques are often outside the boundaries of contracts between internet users and their ISP companies. Also, survey research

companies do not want their e-mails forwarded, as such acts ruin the random nature of the sample selected to complete the surveys.

For all these reasons, the Commission should take great care in determining how exactly to treat this aspect of the regulation.

*4. Opt Out Requests Should be Binding for 5 years at Minimum, and Eternally in Some Situations*

In some cases, people inherit functional e-mail addresses at their place of work, such as [jobs@techcompany.com](mailto:jobs@techcompany.com), [info@techcompany.com](mailto:info@techcompany.com). The person who receives e-mail at such addresses constantly changes as employees come and go from techcompany.com. As a result, opt outs to such addresses should last eternally.

If the individual employee(s) who oversee(s) such functional addresses would like to receive certain commercial or survey research e-mail, they can always opt-in (or choose not to opt out) from either a [johndoe@personalaccount.com](mailto:johndoe@personalaccount.com) address or their professional [johndoe@techcompany.com](mailto:johndoe@techcompany.com) address.

In cases where a recipient, using either a personal or non-functional professional address, chooses to opt out, we urge the Commission to at least maintain and certainly not reduce the opt-out timeframe.

Sincerely,

Brian D. Dautch  
Director of Government Affairs  
The Council for Marketing and Opinion Research