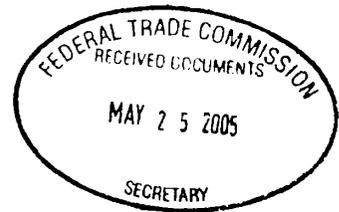


Secretary, Federal Trade Commission
600 Pennsylvania Ave. N.W.
Washington, D.C. 20580



Re: Notice of Proposed Rulemaking, following an Advance Notice of Proposed Rulemaking on Can-Spam topics published by the FTC in March 2004.

17 May 2005

Dear Secretary,

This letter concerns important omissions in the current Can-Spam implementation. Please give this letter your highest attention.

There are three methods currently in practice that meet the letter of the current Can-Spam law, but completely circumvent its intent and its effect on consumers.

All three of these loopholes could be corrected by simple modifications of the text of the law.

The **first** loophole concerns the use of multiple "single-use" domains and email addresses. A vendor creates a continuing stream of new domain names, all selling essentially identical products. They acquire an email address and send out an unsolicited email promoting one such site. The email is properly labeled, with a valid return address and a valid, working, unsubscribe link.

However, each day a new domain is created by the vendor, with a new email address, and a new email is sent, essentially identical to all others. It is useless to unsubscribe, because each domain and email address is used only once, regardless.

The law needs to be updated to include "substantially similar domains, online stores, services and offers" sent by "substantially the same owners or managers."

The **second** loophole is similar, but involves the use of "affiliate programs" or "managed programs." In these cases, a company creates a completely functional set of template for an online business, and then sells the templates to individual "owners," "affiliates" or "webmasters." Typically, the individual provides little more than his or her own name. The master program sets up domains, email address, web sites, mailing lists, billing services, and all associated business legal and functional elements, on behalf of the individuals. Such businesses often sell software, herbal products, sexual products, adult material, or online gaming. In such cases the "owner" of each such created business is indeed legally unique.

However, these "template" or "affiliate" programs easily circumvent the current law.

The law should be changed to include all such "remotely managed" programs or "packaged programs" of this type. Email campaigns that are "substantially similar" and that are managed by "one or a group of closely related entities" MUST use a "common opt-out" form that requires the consumer to provide only a SINGLE opt-out request that is effective opts-out for 100% of programs managed or sold by the primary entity.

The above modification should also apply to all companies that manage, own, rent, or broker email lists. Specifically, for any email list that is "not owned or managed 100% by the owner or manager of the promoted business," the opt-out form **MUST** include an **OPTION TO OPT-OUT FROM THE ENTIRE EMAIL LIST** and opt-out from all clients engaged in a similar business.

For example, if I am an email list broker, and I have a list that I rent to companies promoting herbal products, then **ALL** opt-out forms **MUST** include the ability to opt-out from **ALL** herbal product promotions.

The **third** loophole in the current law permits the holders of an email address to sell the address, **AFTER** the user has opted out. Once a user opts-out of a company's email list, that address is effectively useless to the company. They **might** as well sell it to anyone else, even a competitor. In fact, opting out of a list now **INCREASES** the chances that the owner of that list will sell that email address. This has the effect, currently, that opting-out of a list (even a legitimate list) **INCREASES** the chances that the consumer will receive **MORE** spam in the future.

The law needs to be updated so that once a customer opts out of a list, **THAT EMAIL ADDRESS MAY NOT BE SOLD, TRADED, RENTED, DISTRIBUTED,** or otherwise provided to **ANY** third party.

The waiting period for this newly prohibited resale **MUST BE ZERO**. This is not hard to implement. It means that any email address sold or rented must not have been used for the period of time that is the legal waiting period. This time is now ten days, but I understand it may be shortened to three days. This simple requirement means that the **MOMENT A CONSUMER OPTS-OUT**, that they have the legal promise their name **WILL NOT BE SOLD OR DISTRIBUTED FROM THAT MOMENT FORWARD**.

Without these three legal modifications, the Can-Spam act is of no value to consumers in the United States.

If you discuss these three proposed changes with people in the industry, I am certain you will find widespread agreement that these changes are required to implement the original intent of the law. None of these changes will be difficult to write or interpret clearly. None of these proposed changes will be difficult for the industry to implement. None of these changes will have a significant negative impact on legitimate marketing activities by legitimate, ongoing companies.

Thank you for your consideration.

Kim Rubin