

**BEFORE THE
FEDERAL TRADE COMMISSION
WASHINGTON, D.C.**

**Definitions, Implementation, and Reporting
Requirements Under the CAN-SPAM Act**

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: **Project No. R411008**
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**COMMENTS
OF THE
AMERICAN SOCIETY OF TRAVEL AGENTS, INC.,
CRUISE LINES INTERNATIONAL ASSOCIATION
And
NATIONAL TOUR ASSOCIATION**

The American Society of Travel Agents, Inc. (ASTA) submits these comments in response to the Notice of Proposed Rulemaking captioned above. The Cruise Lines International Association (CLIA) and the National Tour Association (NTA) concur in these comments. In addition, ASTA, CLIA and NTA have joined the comments filed as the “Associations” letter by the law firm of Piper Rudnick LLP.

ASTA is the world’s largest association of travel professionals. Its more than 20,000 members include travel agents, both traditional offline and online, as well as the companies whose products the agents sell, such as airlines, tour operators, cruise lines, hoteliers, and car rental firms. Travel agencies in the United States account for more than \$120 billion in annual sales of travel services over all product lines. Air transactions alone number more than 170 million tickets in a typical year.

The National Tour Association is an association for travel professionals who have an interest in the packaged travel sector of the industry. The association, comprised of nearly 4,000 members, brings together those who package travel (group as well as individual trips) with suppliers and destinations that represent the various components of a trip. Although based in North America, NTA's membership spans the globe.

CLIA is a not-for-profit trade association for the North American cruise industry. Membership in 2003 included 24 member cruise lines (representing over 95% of the capacity marketed in North America). More than 16,000 travel agency locations are CLIA affiliates. CLIA plays an important role in speaking for the cruise industry. A key element of CLIA's mission is to help travel agencies understand and sell cruise travel through sales training, certification programs and marketing services and communications. The Association executes extensive direct mail, fax, e-mail and web site communications to its affiliated travel agencies on a daily basis to inform members of association initiatives, training and education opportunities, as well as news and developments within the cruise segment of the travel industry.

I. The Commission Should Not Insert the E-mail Regulations Into Employment Relationships.

The discussion of the e-mail regulations in the context of employment, at 70 Fed. Reg. 25436, suggests that the Commission does not recognize a difference between commercial e-mails sent to employees through employer-owned computers with the employer's consent and commercial e-mails directed into an employer's computer system without the consent of the employer. If so, this is an inappropriate intrusion into private management of computer facilities and into internal corporate affairs.

There is no evidence of which we are aware that Congress intended to limit a company's use of its own computers to communicate with its employees. If so, it should follow that an employer may, without running afoul of the e-mail regulations, allow a third party to communicate messages, including commercial messages, when the company decides that it is in its interest to do so. Employees using company computer facilities have no expectation of privacy with respect to such use, and therefore should expect no immunity from employer-approved commercial messages directed at them by third parties.

The Commission's determination that employer-consent does not remove an incoming commercial e-mail from the regulations seems to be based on the proposition that it "would diminish the protections provided to the recipients of unwanted commercial e-mail messages." 70 Fed. Reg. 25436. But that reasoning is circular. The question is "what protections were really intended in the employment situation?" If Congress had intended to supersede private management of computer networks and to abrogate a portion of the employer's authority in the employment contract, surely a clear and specific statement of that intention would appear in the legislative history.

II. Reduction of the Period for Effectuating Opt-Outs Is Unreasonable and Unwarranted.

The Commission proposes to reduce the period to effectuate opt-outs from ten days to three days, apparently on the basis that the most sophisticated and advanced technology permits highly automated and rapid effectuation by those who have access to it.

This is, we submit, an entirely inappropriate standard. Small travel agencies, and indeed most small businesses, lack the resources to invest in software for this purpose. "Nearly instantaneous processing" may be possible for some, but there is no record support for the proposition that it is possible for all, or even most, businesses, particularly small businesses. The

burden of showing that this kind of technological standard is appropriate for most businesses rests on the Commission.

ASTA currently employs 47 full-time equivalent personnel in a wide variety of tasks. ASTA has 31 chapters who regularly engage in e-mail communications with their respective members. Each list is unique and varies over time due to membership additions, deletions and changes of relevant information. To manage this task, an outside firm is used for transmission of messages, using lists uploaded to it from ASTA's internal membership database. To meet a three-day opt-out effectuation rule, the lists would have to be uploaded very other day, a change of process that would require the hiring of an additional employee or the postponement of numerous other tasks that list management staff now perform, including application entries, meeting registration entries, record changes, annual directory verifications, among others.

To manage e-mail messages from national ASTA to its national membership, which are based upon internal pulls from the membership database by the same staff who manage the chapter messages, all list pulls would have to occur no more than two days before a transmission, to assure that all updates had been accounted for in the list being used. ASTA simply cannot afford to devote more staff time to managing this type of function, and it is unreasonable to expect us to do so in order to comply with a standard that may be applicable and feasible only for companies with either huge budgets for MIS personnel or which have, for other reasons, achieved true and continuing state-of-the-art capabilities for managing data as the Commission has suggested.

ASTA is working very hard to raise the status of its automation. It is going as fast as resources permit. Most of the technology resources we possess are devoted to managing ASTAnet, the Society's website, which is very large by any standard and growing more complex

with rich content every day. If the three day rule would work hardships on ASTA, it will be impossible for most small business travel agencies to meet.

III. The Commission Should Create a Hotline Facility to Provide Interpretations of CAN-SPAM Issues.

Given the ubiquity of e-mail, its centrality to the conduct of commerce, and the Commission's determination to interpret "transactional or relationship" and "employment relationship" as narrowly as possible, the Commission should establish a quick-response hotline to which questions can be submitted. The answers should be posted on the FTC website to serve as guidance to others as to the development of the Commission's position on issues as they arise.

Respectfully submitted,
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