

**Before the  
FEDERAL TRADE COMMISSION  
Washington, D.C.**

**COMMENTS OF  
REED ELSEVIER INC.**

**Responding to the Discretionary Rulemaking Request for Comments**

**CAN-SPAM Act Rulemaking, Project No. R411008**

Steven M. Manzo  
Vice President, Government Affairs  
Steven M. Emmert  
Director, Government & Industry Affairs  
Reed Elsevier Inc.  
1150 18<sup>th</sup> Street, N.W., Suite 600  
Washington, D.C. 20036  
202.857.8253

Counsel:  
Stuart Ingis  
Alisa Bergman  
DLA Piper Rudnick Gray Cary US LLP  
1200 19<sup>th</sup> Street, N.W.  
Washington, D.C. 20036  
202.861.3900

Emilio Cividanes  
Venable LLP  
575 Seventh Street, N.W.  
Washington, D.C. 20004-1601  
202.344.4414

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## **I. Introduction, Background and Summary**

Reed Elsevier Inc. appreciates this opportunity to submit comments to the Federal Trade Commission (the “Commission”) in response to the Commission’s request for public comment on its discretionary rulemaking under the CAN-SPAM Act, 16 C.F.R. Part 316, 70 Fed. Reg. 25426, May 12, 2005. Reed Elsevier also submitted comments on the advance notice of proposed rulemaking (69 Fed. Reg. 11776, March 11, 2004).

Reed Elsevier is one of the world’s leading publishing and information companies, employing more than 20,000 people in the United States and over 35,000 people worldwide. Reed Elsevier provides publications and information in both hard copy and electronic formats to the government, scientific, medical, legal, educational, and business communities. Reed Elsevier businesses include Reed Business Information, Reed Exhibitions, Harcourt Education, LexisNexis, and Elsevier.

Reed Elsevier businesses use e-mail in a variety of ways to communicate with current and potential customers, including to provide up-to-date information via e-mail alerts and newsletters, to conduct surveys and other market research, to verify contact and order details, to respond to requests and inquiries, to provide subscriber account expiration and renewal information, to present special offers and promotions, and to advertise products and services. In addition, Reed Elsevier uses e-mail to deliver many products and services that are available exclusively in electronic form or as an alternative to hard copy versions. For instance, we offer digital editions of periodicals normally published in print form. We also offer several publications exclusively in digital form. Reed Elsevier plans to continue to expand its offering of digital products to serve increased customer demand.

Reed Elsevier appreciates the continued efforts of the Commission to define the appropriate framework for interpreting the CAN-SPAM Act. We offer several points from our experience in response to the Commission’s request for comment. Specifically, our comments will focus on the following four areas, which we believe are critical to ensuring that the Act enables consumers to control the types of messages they receive and provides clarity for legitimate companies that wish to use e-mail responsibly:

- (1) Maintaining the current 10-business-day time frame for processing opt outs set forth in the statute;
- (2) Further clarifying the proposed criteria for the “sender” in instances of commercial messages with multiple advertisers. Specifically, we believe that the criteria regarding “control of the content of the message” and determination of the e-mail addresses to which a message is sent require additional clarification;
- (3) Including “business relationship messages” within the definition of “transactional or relationship” messages; and

- (4) Not limiting the ability to offer products or services in exchange for sending commercial e-mail.

## **II. The Proposal to Modify the 10-Business-Day Period to Three Business Days For Processing Opt-Out Requests Is Unworkable**

The Commission proposes to modify from 10 business days to three, the time frame for honoring opt-out requests. Reed Elsevier believes that the proposed three-business-day period is operationally unworkable. We request that the Commission maintain the current 10-business-day time frame set forth in the CAN-SPAM statute.

Companies have been working under the 10-day framework for processing opt-outs for the last 18 months. Nothing in our customers' feedback or behavior indicates that that 10-business-day policy under which we now operate is insufficient.

As the Commission itself recognizes in its proposal, there is no record evidence of abuse (*e.g.*, "mail bombing") during the opt-out period that would justify a departure from the 10-business-day time frame that is contained in the statute. *See* 15 U.S.C. § 7714(a)(4)(A)(ii); 70 Fed. Reg. at 25444 (discussion regarding the appropriate deadline for effectuating an opt-out request). In addition, shortening the time frame would require us, as well as similarly situated companies, to incur significant additional costs to retrofit systems, once again restructure e-mailing activities, and hire additional staff. The complexity of implementing this change from a compliance perspective could result in our limiting the amount of commercial e-mail we send to our customers. Absent any record evidence to justify a departure from the current time frame, needlessly imposing increased cost and relationship burdens on companies is unwarranted.

From a process perspective, we strive to offer a convenient manner by which our customers can opt out, balanced with our business need to deliver a very cost- and labor-effective solution. Ten business days already is an aggressive schedule within which we have to adjust customer preferences not only in our internal databases, but also with vendors, who do not have real-time access to our databases, for supportive and strategic services. A reduction to three business days would require a substantial amount of process re-engineering, requiring us to reallocate limited staff resources away from revenue-generating efforts to support functions.

Our businesses frequently partner with other companies to co-sponsor programs and events and contract with third parties to conduct e-mail campaigns. A shortened time frame would pose an even greater compliance challenge than does the current 10-business-day period. The processing of consumer opt outs requires a series of steps to ensure the proper processing of the opt outs through multiple databases.

The Commission proposes its rule change based on its belief that technology allows for opt outs to be processed within three business days. Yet, despite external appearances, opt outs are not processed instantaneously. By way of illustration the following is an overview of one type of multiple-step process involved in using a suppression file at one of our business units:

- The e-mail addresses are selected and a file created;
- The opt-out list is delivered to the vendor or put on a file transfer protocol site;
- The activity is logged;
- The vendor obtains the opt-out list from e-mail or ftp transfers it to its system;
- The vendor logs information about the opt-out list;
- The vendor removes the opt outs from the file to be deployed;
- The vendor logs the results; and
- The vendor deletes the opt-out file.

As these steps highlight, e-mail suppression is a time-consuming, multi-layered process. One of our divisions estimates that the total amount of time spent on each suppression file is 30-60 minutes of employee time and, on larger files, 60 or more minutes of computer time. If the time frame to process opt-outs were shortened to three business days, the cost numbers would dramatically increase as the opt-out process would have to be repeated more than three times as often as it is today.

In addition, although the proposed criteria for a single sender may help alleviate some of the concerns regarding processing opt outs in a timely manner, there still may be instances in which we and other companies may not meet the single-sender criteria, further underscoring the need to ensure that the ten-business-day time frame is preserved.

For these reasons Reed Elsevier urges the Commission to maintain the current statutory requirement to honor opt outs within 10 business days.

### **III. The Commission Should Further Clarify the Proposed Criteria for the “Sender” in Instances of Commercial Messages with Multiple Advertisers**

The Commission proposes the following criteria to establish a single “sender” where commercial e-mail messages may have multiple advertisers: 1) control of the content of the message, (2) determination of the e-mail addresses to which the message is sent; or (3) identification in the “from” line as the sender of the message. The Commission’s proposal would require that the designated sender be the only entity that possesses any of these three characteristics.

Reed Elsevier supports the Commission’s efforts to develop criteria for designating a single “sender” when more than one person’s products or services are promoted or advertised in a single commercial e-mail message. We believe that such an approach is consistent with the goals of the CAN-SPAM Act, as well as with consumers’ expectations with respect to who the “sender” is, and thus from which entities’ communications they would expect to be able to exercise an opt out.

The Commission’s proposal is a positive step toward addressing the compliance challenges raised by multiple senders and, subject to clarification, offers a workable approach to address this issue. Specifically, although the third criterion offers clear guidance with respect to designating a single “sender,” we believe that the first two criteria could benefit from additional

clarification. The Commission should clarify that control over the content of the message should be interpreted to mean primary control over the content of the message. Given the importance and standard industry practice of advertisers approving message copy and exercising control over use of their trademarks, messaging, and branding, these types of activities should not otherwise disqualify multiple advertisers from eligibility for the single-sender criteria.

With respect to the second factor—determination of the e-mail addresses to which a message is sent—the Commission should clarify that assisting with the identification and selection of e-mail addresses that comprise a list of messages to which the mailing will be sent should not otherwise disqualify multiple advertisers from eligibility for the single-sender criteria. For example, in connection with our custom publishing pieces, there may be instances where more than one advertiser provides input on the criteria for selection of recipients, as well as provides e-mail addresses of recipients. The Commission should clarify that the focus of the proposed second factor is primary responsibility for determining the e-mail addresses, and that jointly identifying the criteria to be used for determining recipients as well the provision of e-mail addresses do not otherwise undermine qualification for the single-sender criteria.

Reed Elsevier supports the Commission’s efforts to continue to develop a workable framework that will allow companies to structure their messages in a manner in which there are not multiple senders of the message.

#### **IV. The Commission Should Include So-Called “Business Relationship Messages” within the Definition of “Transactional or Relationship” Messages**

The Commission should include within the definition of “transactional or relationship” messages, those messages sent from one employee of a company to an individual recipient or a small number of recipients—so-called “business relationship messages.”

This result is consistent with the Act’s purposes and would preserve the critical use of e-mail as a method of communication for conducting business transactions. The costs and difficulties of implementing controls over e-mail messages sent to a limited number of people, with many of whom we have an existing business relationship, is significant. Moreover, this would recognize the practical day-to-day realities of business e-mail communications.

The design of our e-mail systems makes difficult the scrubbing of each employee e-mail message against our business suppression lists. In addition, including business relationship messages within this definition avoids interfering with legitimate practices that are critical to business relationships and operations. Regulating this type of e-mail would restrict legitimate e-mail without addressing the spam problem, and would hamper this beneficial e-mail communication, which has been critical to the growth of our businesses.

Reed Elsevier has thousands of sales employees who work with tens of thousands of customers with whom they communicate frequently. These employees routinely send e-mail as part of their daily activities. These communications constitute part of a day-to-day dialogue, and are not the types of unsolicited communications that the CAN-SPAM Act was enacted to

address. In many instances, e-mail is used for these communications because it is fast, efficient, less intrusive than, and therefore preferable to, other means of communication. For example, our ad sales personnel routinely contact current advertisers about upcoming issues of publications. These communications are targeted and personal, between existing business associates and, unlike other mediums, allow the advertiser to read the notice at his or her convenience. Similarly, e-mail is the preferred communication method by our divisions in the business context for communications requiring a quick turnaround. Subjecting such messages to the opt-out requirements would reduce the efficiency of these communications and significantly add to our costs.

By way of example of the potential costs involved, if 1,000 sales employees each were to spend an additional 30 minutes per day managing opt-out requirements in their relationship messaging, this task would add approximately 130,000 administrative hours to our business every year. At 1,960 work hours per person per year, this level of effort would require us to invest in approximately 66 additional full-time administrative personnel each year to comply with these requirements and maintain the current level of sales efforts.

Monitoring the e-mail traffic of high-volume users and reviewing what they send is time-consuming and costly; it would require even greater resources to monitor smaller volume senders, and would cause delays in and increase costs of legitimate business dialogue. Absent the requested result, the cost of complying with the CAN-SPAM Act for this type of e-mail message is significant, and adversely impacts our ability to operate effectively in this medium.

Reed Elsevier believes that the Commission should include business relationship messages within the category of “transactional or relationship messages” to help ease companies’ administrative compliance burdens and to preserve the reliability and usefulness of e-mail communications.

## **V. The Commission Should Not Limit the Ability to Provide a Product or Service in Exchange for Sending Commercial E-mail Messages**

The Commission asks whether depriving recipients of a benefit when they opt out of commercial e-mail messages should be prohibited when opting in was required to receive the benefit. 70 Fed. Reg. 25451, Question 5b of the questions on proposed specific provisions.

Reed Elsevier believes that such a prohibition is unwarranted and would have a particularly harmful effect on free business models, which provide consumers with access to benefits in exchange for the ability to disclose information for advertising and similar purposes. The ability to send promotional e-mail enables us to reduce or eliminate the fees for certain products and services. For example, some of our business-to-business controlled circulation publications provide information, free of charge, to subscribers in advertiser-selected demographics. This business model is dependant upon our ability to use subscriber information to send advertiser-funded product or service opportunities. If the Commission were to prohibit these activities, customers who opt out could continue to use the product or service for free while depriving the company of the benefit of its bargain. More importantly, if Reed Elsevier had to

forego the benefit of this bargain, this could make many of these products unprofitable and, in turn, could limit our offering of these products.

Moreover, this business model is enormously successful and offers consumers access to products and services that they otherwise may not be able to access or afford. Consumers receive real value in exchange for their agreement to entertain offers related to the product. Provided consumers are afforded a reasonable opportunity to terminate the relationship when appropriate or upon fulfillment of their commitment, the Commission should not take any actions that would undermine the continued availability of these offerings.

## **VI. Conclusion**

Reed Elsevier appreciates the continued efforts of the Commission to define the appropriate framework for interpreting the CAN-SPAM Act. We encourage the Commission to implement the following:

- (1) Maintaining the current 10-business-day time frame for processing opt outs set forth in the statute;
- (2) Further clarifying the proposed criteria for the “sender” in instances of commercial messages with multiple advertisers. Specifically, we believe that the criteria regarding “control of the content of the message” and determination of the e-mail addresses to which a message is sent require additional clarification;
- (3) Including “business relationship messages” within the definition of “transactional or relationship” messages; and
- (4) Not limiting the ability to offer products or services in exchange for sending commercial e-mail.

Reed Elsevier thanks the Commission for the opportunity to provide these comments on this proposal. Should the Commission have any questions concerning these comments or our practices and procedures, please do not hesitate to contact us.