

**FEDERAL TRADE COMMISSION
WASHINGTON, DC
REGULATORY REVIEW OF THE CAN-SPAM RULE
MATTER NO. R711010**

**COMMENTS OF
MPA – THE ASSOCIATION OF MAGAZINE MEDIA**

AUGUST 31, 2017

On behalf of the membership of MPA - The Association of Magazine Media (MPA), we are pleased to submit the following response to the Federal Trade Commission's (FTC or Commission) recent request for public comment on its rule implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM Rule, 16 CFR part 316, Project No. R711010. (June 28, 2017). As the national trade association for the consumer magazine industry, MPA represents approximately 100 domestic magazine media companies with more than 900 national publications that span an enormous range of genres across print and digital media. The U.S. magazine media industry plays a prominent role in culture, society and the economy by fulfilling readers' desires for timely information and entertainment that appeal to a broad spectrum of personal interests. Our members connect more than 90 percent of all U.S. adults to the print and digital magazine titles they trust and value most.

MPA has a long history of working with the FTC on many of its consumer protection efforts, including the CAN-SPAM rule. Our hope in these interactions is to work with the Commission to develop consumer protection measures that are beneficial to consumers and workable for industry. We look forward to continuing our work with the Commission to provide meaningful, productive contributions to its work in this area.

CAN-SPAM Is Effective in its Current Form and Should Not Be Modified

It is MPA's belief that the CAN-SPAM Rule should remain unchanged. The Rule has proven to be an effective regulatory tool that has reduced dissemination of unwanted and potentially deceptive email messages to consumers. In its current form, the Rule strikes an appropriate balance of protecting consumers while avoiding overly burdensome or expensive regulatory requirements for businesses. Legitimate businesses are complying across the board. This is certainly true for magazine publishers. Since the Rule was first promulgated in 2004, magazine publishers have made significant investments and operational specifications to comply with the Rule. Magazine media companies have developed disclosure templates for emails, processes for honoring opt-outs and email list scrubbing systems. Additionally, CAN-SPAM compliance has been built into internal and external operational procedures and protocols. Today these procedures are well-established, standardized, and workable.

Equally important, the Rule's requirements have become second nature to consumers as well. After more than a decade since the Rule was promulgated, consumers have become innately familiar and comfortable with opt-out functionality. They understand how to opt-out, what opting out means, and how to opt back in if they decide they are interested in receiving a business' commercial communications.

The Rule is successfully and effectively carrying out its intended purpose in a manner that benefits consumers and is workable for businesses and therefore should not be modified.

Reducing the Ten-Day Opt-Out Period Would Negatively Impact Businesses without Benefiting Consumers

The Commission's notice specifically requests comments on a potential modification of the Rule that would reduce the current ten day timeframe for honoring opt-out requests. MPA first addressed this issue with the Commission in 2005, in response to the FTC's notice of proposed rulemaking (NPRM) which sought comment regarding a proposal to shorten the timeframe from ten days to three days. At that time, MPA responded to the proposal – in a similar manner to today – by urging the Commission to retain the full ten day timeframe. Following the NPRM, and after reviewing comments received on the proposal, the FTC ultimately decided to retain the ten day time period and provided the following explanation in its final rule:

The Commission is persuaded that its proposal in the NPRM to shorten the period to three business days could impose a substantial burden on legitimate commercial email marketers. In particular, the Commission is concerned that reducing the opt-out period could pose a significant challenge for small entities. In addition, the Commission believes that reducing the opt-out period would not necessarily advance the privacy interests of consumers. (FTC, May 21, 2008)

While many technological advancements have undoubtedly been achieved since the final ruling was issued in 2008, much remains the same from a business practicality standpoint. The ten day timeframe continues to be appropriate at this time. Processing opt-out requests and list scrubbing can involve multiple parties and therefore require both internal and external processes. Opt-out requests may be received at several contact points (e.g., fulfillment centers and third party email management companies). Multiple parties may maintain lists and databases (e.g., list rental companies and multi-party email messaging campaigns). Processes can involve different email providers as well as software applications. For large databases, scrubbing email lists can be quite extensive and time consuming. Businesses need sufficient time in order to ensure accuracy and full compliance.

Shortening the compliance timeframe provides very little benefit to the consumer, while potentially disrupting legitimate email marketing campaigns. This could have the unfortunate and unintended effect of negatively impacting consumers that want to receive communication from the sending entity. An unworkable time frame may result in lost business opportunities for businesses - including small businesses - that may shelve email campaigns rather than risk noncompliance.

Current CAN-SPAM policies and procedures are designed around the ten day time period for honoring opt-out requests. A shortened time frame would require companies to modify their internal and external systems, adding expense and potential disruption to the current well-established system. The requirement would provide little to no benefit to the consumer while placing new burdens on businesses – including small businesses that may need more outside resources to accomplish the change. Additionally, MPA is concerned that a shortened time frame could result in a higher incidence of inadvertent errors which would place well-meaning companies seeking to comply with the CAN-SPAM Rule at risk of an enforcement action. Such occurrences could potentially undermine consumer confidence in legitimate

companies and the process altogether. This would be an unfortunate result, as consumers are very comfortable with, and satisfied by, the current system.

Conclusion

We thank the Commission for providing us with the opportunity to submit these comments on behalf of our membership. Our organization is committed to working with the Commission and others stakeholders in the electronic mail ecosystem to ensure that regulations in this space strike a fair and appropriate balance of the needs and requirements for senders and recipients of e-mail communications. If you have any questions or concerns regarding these comments or any other aspects of the MPA, please feel free to contact us.

Sincerely,



Rita Cohen
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MPA – The Association of Magazine Media