



## INDEPENDENT SECTOR

*The national leadership forum  
fostering private initiative  
for the public good*

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September 13, 2004

Federal Trade Commission  
Office of the Secretary  
CAN-SPAM Act  
Post Office Box 1030  
Merrifield, VA 22116-1030

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

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Gary L. Yates  
*Vice Chair*

Paula Van Ness  
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Christopher Gates  
*Secretary*

Diana Aviv  
*President and CEO*

Dear Sir or Madam:

INDEPENDENT SECTOR, a national coalition of over 600 charitable nonprofit organizations, philanthropic foundations, and corporate giving programs, welcomes this opportunity to comment on the Notice of Proposed Rulemaking with respect to the CAN-SPAM Act (Project No. R411008) published in the August 13, 2004 Federal Register.

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In comments filed in response to the Commission's Advanced Notice of Proposed Rulemaking on this issue in April, 2004, INDEPENDENT SECTOR argued that email sent by a nonprofit organization primarily related to the organization's tax-exempt purposes should not be considered to be "commercial" messages and should therefore be exempt from regulation under the Act. We appreciate the Commission's statement in its current rulemaking:

"On the issue of messages between a nonprofit and its members, it is possible – or even likely – that such messages are "transactional or relationship messages" under §7702(17)(A)(v), depending on the facts of a particular membership." 69 Fed. Reg. 50100.

We agree that most messages from nonprofit organizations will not meet the definition of commercial email given the criteria outlined in Project No. R411008, but there is still confusion over the definition of "transactional or relationship messages." We respectfully request that the Commission provide further guidance on "transactional or relationship messages" that clearly states that email sent by a nonprofit organization to its members, donors and others who have indicated an interest in its work will not be considered to be commercial email.

The Honorable John W. Gardner  
(1912-2002)  
*Founding Chair*

Brian O'Connell  
*Founding President  
and President Emeritus*

INDEPENDENT SECTOR advises all nonprofit organizations to observe responsible emailing practices, including honoring requests from any member of the public to remove his or her name and contact information from future

solicitations and other communications. We recognize, however, that limited staff resources and information systems capabilities of many nonprofit organizations will make it difficult to honor all opt-out requests within ten business days. We therefore respectfully request that the Commission adopt a more-workable 30-day time frame to process opt-out requests.

INDEPENDENT SECTOR further recognizes that despite the good-faith efforts of any organization, there can be inadvertent violations of the CAN-SPAM Act requirements regarding the subject line or content of an email message or failure to honor an opt-out request. We respectfully request that the Commission create a safe harbor, as it did in the Do Not Call rule, for email senders that have committed such inadvertent violations which provides for warnings to be issued with an opportunity to comply before any enforcement action is taken.

Communicating electronically with our members, supporters, and others who have shown an interest in our missions has proven to be an invaluable tool for nonprofits. Nonprofits serve the community in countless ways impacting millions of people and we want to ensure that our communications are not hampered by a law that was written to combat a completely different type of communication. Again, we thank you for this opportunity to offer comments.

Sincerely,

Patricia Read  
Senior Vice President, Public Policy and Government Relations  
INDEPENDENT SECTOR