



Questions and comments concerning this Alert should be directed to Stuart Ingis at singis@venable.com.

Please direct requests to be added to the distribution list or address changes to Kay Pauley at kpauley@venable.com.

Issue Editor:
Stuart P. Ingis
singis@venable.com
202.344.4613

Associate Editor:
Katharine A. Pauley
kpauley@venable.com
202.344.4669

Download Contributors:

Emilio Cividanes
ecividanes@venable.com
202.344.4414

Michael Signorelli
masignorelli@venable.com
202.344.8050

FTC Issues CAN-SPAM "Discretionary" Final Rule

The Federal Trade Commission on May 12, 2008 issued its long-awaited "discretionary" rulemaking Final Rule implementing the CAN-SPAM Act of 2003. The highlights of the Final Rule include the following:

- The Commission modified the definition of what entity is a "sender" of a commercial e-mail message in instances in which there are multiple marketers in a single message and, therefore, potentially multiple "senders" under the Act. For such messages, the Commission's Order will allow multiple entities to designate an entity as the single "sender" of the message if that single "sender" is identified in the from line of the message. The Commission's Order will, however, hold each of the other potential "senders" liable in such a scenario if the designated sender is not in compliance with the "sender," and certain "initiator," requirements.
- The Commission left at 10 days (and did not reduced to 3 as proposed) the amount of time that a sender of commercial e-mail has to honor an opt-out request;
- The Commission clarified that in instance of "forward-to-a-friend" messages if a seller offers something of value in exchange for forwarding a commercial message, the seller will be considered a "sender" under the Act and must comply with the CAN-SPAM sender requirements;
- The Commission indicated that a sender of commercial e-mail cannot require a recipient of commercial e-mail to pay a fee, provide information other than their e-mail address and opt-out preferences, or take any steps other than sending a reply e-mail message or visit a single web page to opt out of receiving future e-mail messages from the sender;
- The Commission clarified that a "sender" of a commercial e-mail may meet the Act's requirement that a commercial e-mail display a "valid physical postal address" by including an accurately registered post office box or private mailbox established under U.S. Postal Service regulations; The Commission declined to extend the CAN-SPAM Act requirements to third party list providers who do nothing more than provide a list of names to whom others send commercial e-mail; and
- The Commission declined to modify those types of messages that are defined in the Act as "transactional or relationship" messages and, thus, excluded from the Act's requirements on commercial e-mail messages.

CALIFORNIA MARYLAND NEW YORK VIRGINIA WASHINGTON, DC

1.888.VENABLE | www.Venable.com