

2002

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### Recommended Citation

Carol Jones *E-Mail Solicitation: Will Opening a Spam-Free Mailbox Ever be a Reality?*, 15 Loy. Consumer L. Rev. 69 (2002).  
Available at: <http://lawcommons.luc.edu/lclr/vol15/iss1/5>

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# NEWS

## E-Mail Solicitation: Will Opening a “Spam-Free” Mailbox Ever Be a Reality?

Carol Jones\*

### I. Introduction

“The magic of e-mail is that you can e-mail almost anyone. The tragedy is that almost anyone can e-mail you.”<sup>1</sup> Unsolicited commercial e-mail, commonly known as “spam,” congests e-mail inboxes across the country. Estimates indicate that more than one-third of all e-mail sent in the United States today is spam.<sup>2</sup> By 2006, experts predict that consumers will receive an average of 1400 pieces of junk e-mail every day.<sup>3</sup> While there seems to be no imminent cure for the “delete-delete-delete headache,” anti-spam efforts have been heating up.<sup>4</sup> Significant debate has ensued among those with an interest in curbing spam about the appropriate measures to actually

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<sup>1</sup> Fed. Trade Comm’n, *Protecting Consumers’ Privacy: Goals and Accomplishments*, Remarks of FTC Chairman Timothy J. Muris at the Networked Economy Summit (June 11, 2002), at <http://www.ftc.gov/speeches/muris/gmason.htm> (referring to a comment made by Internet guru Esther Dyson).

<sup>2</sup> Shira Kantor, *Consumer Groups: Tighten Spam Rules – FTC Urged to Halt Tide of Junk E-mail*, CHI. TRIB., Sept. 5, 2002, at 11, available at 2002 WL 26771626.

<sup>3</sup> Stefanie Olsen, *Privacy Group to Put Seal on Spam*, CNET News (Jan. 31, 2002), at <http://news.com.com/2100-1023-826747.html>.

<sup>4</sup> Curt Brown, *Quest Is on to Delete Junk E-mail; Sick of a Cluttered In-Box? The Battle Against “Spam” Is Heating up on Several Fronts*, STAR TRIB., Aug. 24, 2002, at 1A, available at 2002 WL 5380950.

deal with the problem. Disagreement stems from the fact that the parties involved in the debate don't want just *any* solution. They want the solution that will, in practice, have the best chance of convincing spammers to stop their annoying and abusive practices. This article reviews the current debate surrounding unsolicited e-mail and the various solutions that might serve as potential remedies.

## II. Why Do Spammers Spam?

Marketers expend significant time to target specific consumers with spam. This effort is worth the time, due to the low cost of mounting an Internet advertising campaign as opposed to the cost of using traditional media.<sup>5</sup> The cost savings to the marketer are considerable: the average unit price for an e-mail marketing campaign in the United States is about ten cents compared to a cost of between fifty cents and \$1 for a direct mail campaign.<sup>6</sup> With such low costs, the response rate may be low yet still worth it for the e-mail marketer.<sup>7</sup> These figures also explain why a growing shift in expenditure is expected over the next few years in the direction of direct marketing over the Internet and e-mail marketing, in particular.<sup>8</sup> Statistics show that Internet direct marketing has overtaken traditional advertising: according to the Direct Marketing Association (DMA), direct marketing expenditures for 1999 in the United States came to \$176 billion, or 57% of total spending on commercial communications and is forecast to reach \$221.5 billion in 2003.<sup>9</sup> However, this data may not prove significant to the average consumer who often believes that e-mail is a free service to simply make communication a life convenience.

Contrary to what consumers believe, e-mail is *not* free. In fact, a study by the European Commission reveals that the transmission of junk e-mail racks up nearly \$8.8 billion in costs annually.<sup>10</sup> Who incurs this \$8.8 billion of cost? Consumers! These

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<sup>5</sup> Commission on the European Communities, *Unsolicited Commercial Communications and Data Protection* (Jan. 31, 2001), at [http://europa.en.int/comm/internal\\_market/en/media/dataprot/studies/spamstudyen.pdf](http://europa.en.int/comm/internal_market/en/media/dataprot/studies/spamstudyen.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> Brown, *supra* note 4.

<sup>8</sup> Commission on the European Communities, *supra* note 5.

<sup>9</sup> *Id.*

<sup>10</sup> Stefanie Olsen, *Congress, Critics Wrinkle Noses at Spam Bills*, CNET news (May 21, 2001), at <http://news.com.com/2100-1023-257941.html>.

costs are not made apparent to the consumer, who thinks paying a reasonable price for their Internet use is a justified cost. Consumers rarely consider what their monthly check covers once it is delivered to their internet service provider. What consumers should consider is the amount of time spent deleting and reading spam. Even if it only takes five or ten seconds per e-mail, “it could be up to billions of dollars a year in just time.”<sup>11</sup> This cost is added to the millions of dollars an ISP<sup>12</sup> already spends annually on labor, additional bandwidth, and software dedicated to stopping junk e-mail’s inbound stream to its network and customers.<sup>13</sup> ISPs often pass these extra costs that stem from constant spam on to consumers in the form of rate hikes, for example.<sup>14</sup> Consumers may incur the costs of spam more directly if they do not have flat-rate plans for Internet access, but instead have to pay for the increased time they spend online.<sup>15</sup> For recipients of spam in the workplace, these costs are further passed on to employers through decreased productivity, due to the time employees spend sifting through their e-mail in-boxes.<sup>16</sup>

In addition to low costs, spammers are further encouraged by the ease with which they can obtain e-mail addresses. There are two ways spammers obtain e-mail addresses: harvesting and dictionary spamming.<sup>17</sup> Through harvesting, spammers use software to sift through web pages and extract anything that resembling an e-mail address.<sup>18</sup> The obtained e-mail address is then checked against that which the ISP the mail protocol allows, and then it’s added to a list.<sup>19</sup> The second method, dictionary spamming, is a more recently developed practice.<sup>20</sup> This approach is basically sophisticated

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<sup>11</sup> Olsen, *supra* note 10 (citing Steve Dougherty, director of systems vendor management at ISP Earthlink).

<sup>12</sup> “ISP” is the abbreviation for Internet Service Provider.

<sup>13</sup> Olsen, *supra* note 10.

<sup>14</sup> *Id.*

<sup>15</sup> *State v. Heckel*, 24 P.3d 404, 410 (Wash. 2001). *See also Ferguson v. Friendfinders, Inc.*, 115 Cal. Rptr. 2d 258, 267 (Cal. Ct. App. 2002).

<sup>16</sup> *Ferguson*, 115 Cal. Rptr. 2d at 267.

<sup>17</sup> *All Things Considered* (NPR Radio Broadcast, Aug. 15, 2002), available at 2002 WL 3497486.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *See id.*

guesswork.<sup>21</sup> If the spammer sees an address like “john42@aol.com,” then they try “john43@aol.com,” and if that exists, then they try “john44@aol.com.”<sup>22</sup> By this process of systematic exploration and guessing, they can actually get e-mail addresses that may have never been published anywhere.<sup>23</sup>

### III. Anti-Spam Solutions

#### A. Self-Help Measures

The most obvious response to the question of how to deal with spam is to simply suggest that recipients use their delete key to do away with unwanted e-mails. However, with this solution comes the risk of deleting legitimate e-mails.<sup>24</sup> This is particularly true when a spammer uses false or misleading subject lines such as “Hi There!,” “Information Request,” and “Your Business Records.”<sup>25</sup> Such subject lines make it difficult to distinguish between spam from legitimate personal or business messages.<sup>26</sup> Additionally, simply pushing delete may seem like “small potatoes,” but when you “multiply that a couple million times in every office in every city and you have a big problem that bogs down computers, wastes employees’ time and offends people.”<sup>27</sup> The considerable time and money wasted by the use of the “delete key” obviously makes this solution the least desirable, and clearly not effective in attaining the ultimate goal of curbing spam.

The other self-help suggestion is that the recipient should respond to the unsolicited e-mail with a request to be removed from the mailing list. One privacy advocacy group contends that replying and typing “remove” in the subject line often provokes little or no desired result, apart from getting an e-mail back from an ISP saying that they have never heard of the e-mail address to which you are

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<sup>21</sup> *All Things Considered*, *supra* note 17.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> Brown, *supra* note 4.

<sup>25</sup> Heckel, 24 P.3d at 410. *See also* Ferguson, 115 Cal. Rptr. 2d 258.

<sup>26</sup> Heckel, 24 P.3d at 410. *See also* Ferguson, 115 Cal. Rptr. 2d 258.

<sup>27</sup> Brown, *supra* note 4.

attempting to write.<sup>28</sup> Other commentators specifically recommend that recipients do not unsubscribe to something they don't remember subscribing to because it confirms that the recipient is active and reads e-mail.<sup>29</sup> Regardless of whether a request to be removed from a spammer's e-mail list will be respected, this remedy for spam still requires significant work and time on the part of the recipient. The ideal goal is obviously to stop spam before it hits e-mail inboxes.

## B. Spam-Filtering Software

Anti-spam software programs have been designed in an attempt to do just that. In fact, software superstar, Microsoft, just announced a deal with Brightmail to incorporate the company's spam-filter technology in popular free e-mail service, Hotmail.<sup>30</sup> This "spam-styming" move is similar to action that other free e-mail services have already taken.<sup>31</sup> For example, Yahoo routes unsolicited e-mail to a separate bulk e-mail folder in users' in-boxes.<sup>32</sup> The Brightmail solution "works by leveraging a collection of more than 200 million e-mail addresses designed to attract spam, allowing Brightmail to identify and eliminate spam before it reaches users' inboxes."<sup>33</sup>

Rather than filtering out unsolicited e-mails, a different technological approach would put a stamp of approval on e-mails before allowing them to be delivered. Nonprofit group, Truste, is taking such an approach, having recently announced a partnership with privacy and consulting company ePrivacy Group to introduce a certification and seal program for commercial e-mail.<sup>34</sup> Under the plan, e-mail sent by volunteer "trust-sender-certified" companies will contain a seal that signifies that a message is compliant with Truste's

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<sup>28</sup> *All Things Considered*, *supra* note 17. This comment was made by Jason Catlett of Junkbusters Corporation.

<sup>29</sup> Brown, *supra* note 4. This comment was made by Marshall Hays, a spokesman for Dallas-based emailabuse.org, a consumer advocacy group.

<sup>30</sup> Scarlett Pruitt, *Hotmail Aims to Cut Spam Off at the Pass*, INFOWORLD DAILY NEWS (Sept. 18, 2002), at 2002 WL 8304900.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Olsen, *supra* note 3.

privacy rules.<sup>35</sup> Participants can obtain an e-mail seal only if they comply with four criteria: (1) the sender must adhere to Truste's fair information practice principles and e-mail best principles, which include giving consumers notice and choice about receiving e-mail solicitations; (2) the subject line of the e-mail must be accurate; (3) the message test must always allow consumers to opt out of further communications; and (4) the sender is accountable to Truste's dispute resolution program, through which consumers can complain about a company's e-mail practices.<sup>36</sup>

Truste's plan is promising for several reasons. First, a company like Truste, with its wealth of computer knowledge would be responsible for ensuring that senders comply with the criteria before allowing the e-mail to be sent with a "seal." This seal would reassure the recipient and inform them of exactly what they are receiving. This is opposed to the consumers having to figure out distorted and misleading subject lines on their own. Second, if ISPs such as AOL only allowed e-mails with Truste's seal to come through its servers to its members, spammers would have a huge incentive to seek the seal from Truste. Both benefits shift the responsibility for curbing spam from the recipient to the sender, resulting in less lost time for the consumer and a deterrent to spammers.

While spam-filtering software may eventually achieve a full shift of responsibility away from e-mail recipients, this transition may take time to perfect. Though software companies designing these filtering programs might be crafty in their approach, spammers are equally crafty in finding ways to get around the software. In order for spam-filtering software to maintain success, software companies will have to anticipate how spammers might circumvent their system and be ready to respond.

### C. State Legislation

Though software is the computer industry's best attempt to take action into their own hands, the approach is not without flaws. As a result, for years, opponents of spam have been urging for the passage of anti-spam legislation. Without waiting for Congress to act, state legislatures have taken up the cause. Twenty-five states now have laws that are supposed to restrict the sending of unsolicited

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<sup>35</sup> Stefanie Olsen, *Privacy Group to Put Seal on Spam*, CNET news (Jan. 31, 2001), at <http://news.com.com/2100-1023-826747.html>.

<sup>36</sup> *Id.*

messages.<sup>37</sup> Some state laws give consumers standing to bring a private right of action against spammers, instead of waiting for the state attorney general to act.<sup>38</sup> While this is certainly empowering, the time and effort needed to identify the sender of an unsolicited e-mail is often not worth it to the recipient of junk e-mail. The fines imposed on those spammers who actually endure litigation are simply paid and disregarded as a cost of doing business.<sup>39</sup> Commentators suggest that implementing technical solutions to the problem are just a better route to go until “real legislation” is passed that provides real economic incentives to prosecute someone.<sup>40</sup>

While the statutes vary by state, certain provisions are more common than others. Almost uniformly, statutes mandate an “opt-out” requirement.<sup>41</sup> Within the opt-out provision, most states require the sender to establish a toll-free telephone number or valid sender-operated return e-mail address through which the recipient of the unsolicited documents may request the sender does not e-mail any further documents.<sup>42</sup> Having an opt-out requirement would be futile if spammers could simply ignore the request. Therefore, for those states that require the opt-out mechanism, most mandate that the sender respects any request made by the recipient.<sup>43</sup> A few states impart a

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<sup>37</sup> *All Things Considered*, *supra* note 17.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *See, e.g.*, MO. REV. STAT. § 407.1123(1) (2001) (“No person or entity conducting business in this state shall electronically mail or cause to be mailed, documents consisting of advertising material for the lease, sale, rental, gift offer or other disposition of any realty, goods, services or extensions of credit without a toll-free telephone number or valid sender-operated return e-mail address that the recipient may call or e-mail to notify the sender not to e-mail any further unsolicited documents.”); *See also* CAL. BUS. & PROF. CODE § 17538.4(a)(2) (West 2002); TENN. CODE ANN. § 47-18-2501(a) (1999); IDAHO CODE § 48-603E(2) (2000); R.I. GEN. LAWS § 6-47-2(b) (2001).

<sup>42</sup> *See, e.g.*, COLO. REV. STAT. § 6-2.5-103(4) (2002); CAL. BUS. & PROF. CODE § 17539.4(g) (West 2002); NEV. REV. STAT. 41.730(1)(c) (Michie 1997); TENN. CODE ANN. § 47-18-2501(d) (1999); 18 PA. CONS. STAT. ANN. § 5903(a.1) (2002).

<sup>43</sup> *See, e.g.*, IOWA CODE § 714E.1(2)(3) (2002); IDAHO CODE § 48-603E(3)(d) (2000); COLO. REV. STAT. § 6-2.5-103(5) (2002); CAL. BUS. & PROF. CODE § 17539.4(c) (West 2002); DEL. CODE ANN. tit. 11, § 938(a) (1999); R.I. GEN. LAWS § 6-47-2(c) (2001).

time limit on senders to honor the opt-out request.<sup>44</sup> The typical qualifier gives the recipient a request a “reasonable time,” which for most states equals no more than five business days after receipt of the request.<sup>45</sup>

A few states have provisions that clearly attempt to assist consumers in discerning between wanted and unwanted e-mails. These states expressly make it a violation to contain false or misleading information in the subject line.<sup>46</sup> However, the newest trend goes beyond this by requiring the overt act of placing the letters “ADV:” in the subject line for e-mails that consist of unsolicited advertising material.<sup>47</sup> There are slight inconsistencies from state to state regarding which type of e-mail must include this label in the subject line. For most states, however, it is required for an e-mail that consists of unsolicited advertising material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit. Nevada’s statute, while standing out as overly specific for other requirements, simply insists upon the advertisement being “readily identifiable as promotion, or contains a statement providing that it is an advertisement.”<sup>48</sup> Three states add a further requisite label of “ADV:ADLT:” if the message contains information that consists of unsolicited material for the lease, sale, rental, gift offer, or other disposition of any realty, goods, services, or extension of credit, that may only be viewed, purchased, rented, leased or held in possession by an individual 18 years of age and older.<sup>49</sup>

While the above discussion of state legislation contains a mere sample of what an anti-spam statute may entail, the analysis is

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<sup>44</sup> See, e.g., IOWA CODE § 714E.1(2)(e) (2002) (requiring sender to honor request within a “reasonable time, which in no event shall be more than five business days”); IDAHO CODE § 48-603E(3)(d) (2000) (requiring sender to honor request within five business days).

<sup>45</sup> See IOWA CODE § 714E.1(2)(e) (2002) (requiring sender to honor request within a “reasonable time, which in no event shall be more than five business days”); IDAHO CODE § 48-603E(3)(d) (2000) (requiring sender to honor request within five business days).

<sup>46</sup> WASH. REV. CODE § 19.190.020(1)(b) (2003); W. VA. CODE § 46A-6G-2(2) (1999).

<sup>47</sup> E.g., COLO. REV. STAT. § 6-2.5-103(4) (2002); CAL. BUS. & PROF. CODE § 17539.4(g) (West 2002); NEV. REV. STAT. 41.730(1)(c) (Michie 1997); TENN. CODE ANN. § 47-18-2501(d) (1999); 18 PA. CONS. STAT. ANN. § 5903(a.1) (2002).

<sup>48</sup> NEV. REV. STAT. ANN. 41.730(1)(c) (Michie 1997).

<sup>49</sup> CAL. BUS. & PROF. CODE § 17539.4(g) (West 2002); TENN. CODE ANN. § 47-18-2501(e) (1999); 18 PA. CONST. STAT. ANN. § 5903(a.1) (2002).

the same without mention of the various other provisions select states have enacted in addition to the discussed provisions. That analysis is this: state statutes can never truly remedy the spam problem because the lack of uniformity and limited scope of the typical legislation does not provide enough protection. The level and difficulty of enforcement also lend to significant problems in relying on this means to curb spamming. These concerns have led most to agree that if there is any hope for legislation to put a dent in the spam problem, it must be through federal legislation.

#### D. Federal Legislation

Currently, no federal legislation has been enacted dealing with the issue of unsolicited electronic mail messages. This fact has been brought into stark relief with the recent law passed in the European Union making it illegal to send unsolicited e-mail to individuals whose companies do not have a preexisting business relationship.<sup>50</sup> However, there are several bills pending in Congress intended to address this problem.<sup>51</sup> One example of pending federal legislation is HR 718, the Unsolicited Commercial Electronic Mail Act of 2001.<sup>52</sup> This Act mimics existing state legislation by the requirements it imposes on spammers. It would be a violation of the proposed statute to:

Intentionally initiate the transmission of any unsolicited commercial electronic mail message to a protected computer in the United States with knowledge that any domain name, header information, date or time stamp, originating electronic mail address, or other information identifying the initiator or the routing of such message, that is contained in or accompanies such message, is false or inaccurate.<sup>53</sup>

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<sup>50</sup> Brown, *supra* note 4. The law, passed in May of 2002, also requires marketers to seek permission before sending marketing messages. Seven European Union countries have already adopted the ban. Associated Press, *U.S. Brings Up Rear in Regulation of Spam*, MILWAUKEE J. & SENTINEL, Aug. 13, 2002, available at <http://www.jsonline.com/bym/News/aug02/65911.asp>.

<sup>51</sup> *E.g.*, H.R. 718, 107th Cong. (2001); H.R. 1017, 107th Cong. (2001); S. 630, 107th Cong. (2001); H.R. 3146, 107th Cong. (2001); H.R. 95, 107th Cong. (2001).

<sup>52</sup> H.R. 718, 107th Cong. (2001).

<sup>53</sup> *Id.*

The bill additionally requires the sender to include a valid electronic mail address, conspicuously displayed, in order for the recipient to opt-out of receiving further messages.<sup>54</sup> Like state legislation, this proposed Act would require the sender to honor the opt-out request within a “reasonable time,” although Congress leaves this term undefined.<sup>55</sup> Furthermore, the Act would require a label that is clear and conspicuous to the recipient that identifies the message as an unsolicited commercial electronic mail message.<sup>56</sup>

Although passage of federal legislation would eliminate issues dealing with the relatively small scope of state statutes, the proposed bills do little in the way of addressing the fact that consumers are still saddled with the responsibility of identifying a violation of the law. Granted, identifying potential violators is made simpler by the fact that geography would be irrelevant under a Federal statute. However, the proposed legislation places the burden on consumers to ask solicited marketers not to send further communication and to assure that the sender follows through with the request.

### E. FTC Action

The most recent developments in anti-spam action have had the spotlight focused on the Federal Trade Commission (“FTC”). The FTC, using existing fraud and deception laws, has brought more than 30 spam-related cases.<sup>57</sup> This number is “meager” according to some commentators considering that the agency receives 45,000 spam messages forwarded by the public each day.<sup>58</sup> Hopes were raised this past January when Howard Beales, director of the FTC’s Bureau of Consumer Protection, said that the agency would launch a “systematic attack” on deceptive spam and opt-out notices.<sup>59</sup> Beales added that the FTC would announce “law-enforcement actions” regarding spam in “a couple of weeks.”<sup>60</sup> In the wake of this

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<sup>54</sup> H.R. 718, 107th Cong. (2001).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> Associated Press, *supra* note 50.

<sup>58</sup> *Id.*

<sup>59</sup> Gwendolyn Mariano, *FTC to Hit Anti-Spam Campaign Trail*, CNET news (Jan. 31, 2002), at <http://news.com.com/2100-1023-827511.html>.

<sup>60</sup> *Id.*

announcement, the FTC named its first anti-spam action against a chain-letter scheme.<sup>61</sup> Subsequent cases have involved a business that used deceptive spam to sell worthless Internet domain names and another that lured consumers with the promise of a free Sony Playstation to an adult website in a matter of five clicks.<sup>62</sup> Though this pattern of litigation seems promising, even an FTC lawyer has admitted that FTC prosecution has focused on such offenses as sending chain letters requesting money, not on e-mail that merely contains deceptive addresses or headers.”<sup>63</sup>

The FTC’s approach to the spam problem in recent months resulted in a petition by a coalition of three consumer groups early in September.<sup>64</sup> In their petition, the coalition contends that the FTC’s definition of spam is too narrow.<sup>65</sup> While the current definition includes broadly fraudulent schemes, it does not include such gimmicks as disguised addresses or other misleading information.<sup>66</sup> The petition asked the FTC to adopt a rule that defines spam as “deceptive and therefore unlawful” if it “misrepresents the sender, misrepresents the subject or content of the e-mail or fails to provide reliable contact information about the sender.”<sup>67</sup>

The FTC issued a statement on response the same day that the groups presented the petition to the FTC.<sup>68</sup> Again, the FTC’s Director of the Bureau of Consumer Protection, Howard Beales, was the spokesperson. The FTC merely and concisely indicated that it looked forward to reviewing the petition, recognizing that vigorous law enforcement was key in any proposal.<sup>69</sup> However, Beales’ comment

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<sup>61</sup> Fed. Trade Comm’n, *supra* note 1.

<sup>62</sup> *Id.*

<sup>63</sup> Kantor, *supra* note 2.

<sup>64</sup> David Hayes, *Bits and Bytes: Should Uncle Sam Jam Spam?*, KAN. CITY STAR, Sept. 10, 2002, at D10, available at 2002 WL 26156223. The three consumer groups are The Telecommunications Research and Action Center, the National Consumers League, and Consumer Action. *Id.*

<sup>65</sup> Kantor, *supra* note 2.

<sup>66</sup> *Id.*

<sup>67</sup> Hayes, *supra* note 64.

<sup>68</sup> *Statement by FTC’s Director of the Bureau of Consumer Protection Howard Beales on Petition to Issue New Spam Rules* (Sept. 4, 2002), at <http://www.ftc.gov/opa/2002/09/spampet.htm> [hereinafter *Statement by Howard Beales*].

<sup>69</sup> *Id.*

that the FTC would continue to bring cases against deceptive and misleading spam practices makes it unclear whether the proposed change in the definition of unlawful spam will be expanded.<sup>70</sup> What is clear is that all eyes are on the FTC to lead the way in the anti-spam war.

#### **IV. Conclusion**

While spammers may be deterred by the existence of monetary damages imposed by state and proposed federal legislation, the reality is that they can weigh this potential cost against the probability of consumers actually taking the time and being able to collect the necessary information to bring an action and state a claim for relief. Moreover, while legislation gives the façade of empowering the consumer, realistically, consumers will likely be left with the one tool that is simple to operate and understand: the “delete” key. Given the vast scope of the Internet, a comprehensive solution is difficult to achieve. In order to regulate it, lawmakers must find a way to contain it. Because various federal bills have been pending in Congress for years, it is doubtful that consumers will be able to rely on any help that might be offered by legislation, at least anytime in the near future. Yet, consumer groups are unwilling to let the government off the hook so fast, indicated by the recent petition by a coalition of consumer groups to move the FTC into action. Whether the FTC has the resources to take on such a daunting task remains to be seen.

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<sup>70</sup> *Statement by Howard Beales, supra* note 68.