

FTC Opts Out of Updating Anti-Spam Rule

Alysa Z. Hutnik, Alexander I. Schneider

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The Federal Trade Commission (FTC) [announced this week](#) that it would not update its anti-spam rule, completing the agency's first 10-year review of the regulation.

The FTC last updated the rule, known as the CAN-SPAM Rule, in 2008. The rule requires, among other things, that commercial e-mail messages have a mechanism for allowing the recipient to opt out of future messages.

As part of the FTC's review process, the FTC sought comments on whether the agency should update the definition of "transaction or relationship messages," shorten the time period for honoring opt-out requests, or add to the statutory list of aggravated violations.

Ultimately, the Commission chose to keep the 2008 rule. Despite the advent of social media, increasingly sophisticated processes for identifying spam and managing opt-outs, and never-ending threats to a clean inbox, the FTC repeatedly declined to take up commenters' suggestions for changing the CAN-SPAM Rule, citing unclear cost-benefit analysis outcomes, lack of evidence, and limited Congressional authority. Here's some examples:

- **On shortening the time period for opt-out requests:** "[N]one of these comments provided the Commission with evidence showing how or to what extent the current ten business-day time-period has negatively affected consumers, nor did they address the concerns noted by other commenters that such a change may pose substantial burdens on small businesses."
- **On commenter suggestions to modify opt-out requirements:** "[N]one of the comments provides the Commission with information about the costs and benefits of these proposed rule changes."
- **On comments asking the FTC to require consumer permission before transferring or selling a consumer's email address to a third-party, and blocking all unsolicited spam from servers outside the US:** "The Commission also declines to consider the remaining proposed modifications because each would be inconsistent with the Commission's circumscribed authority under the Act."

The FTC voted unanimously to confirm the CAN-SPAM Rule. If you have any questions about your obligations pursuant to the CAN-SPAM Rule, please contact [Alysa Hutnik](#) or [Alex Schneider](#) at Kelley Drye.