

Office of Policy Planning
Bureau of Consumer Protection
Bureau of Economics

March 31, 2006

The Honorable Carol Fukunaga
State Senator
Eleventh District
State Capitol
Honolulu, HI 96813

of such a registry. SB 2200 may provide pedophiles and other dangerous persons

Under the Gramm-Leach-Bliley Act, the Commission has also implemented rules concerning financial privacy notices and the administrative, technical, and physical safeguarding

In recent years, the FTC's privacy agenda has included the Commission's "Do Not Call" Registry," which provides consumers with a simple, free, and effective means to limit unwanted telemarketing calls.¹¹ The Commission has also worked vigorously to combat mass email

"spam." In addition, the Commission has taken steps to address the growing problem of identity theft.

technologies.¹⁶

Notably, in one of the FTC's congressionally-mandated reports – a June 2004 report entitled *National Do Not Email Registry, a Report to Congress* (“Do Not Email Report”)¹⁷ – the Commission analyzed the issues identified in the 15 2006 letter to the President.

contact points. . . .”²² These contact points would include: instant message identities; wireless communications device numbers; fax numbers; email addresses; or other electronic addresses

subject to rules adopted by the Department.²³ A parent, guardian, individual, school, or other

contact point with the Department.²⁴ Such a registration would last for up to three years and expire upon a minor’s eighteenth birthday.²⁵

Under SB 2200, “[a] person shall not send, cause to be sent, or conspire with a third party to send a message to a contact point that has been registered for more than thirty calendar days with the department if the primary purpose of the message is, directly or indirectly, to advertise or otherwise link to a message that advertises a product or service that a minor is prohibited by law from purchasing, viewing, possessing, participating in, or otherwise receiving.”²⁶ The

another person information contained on the registry, selling or using the registry for any reason other than to meet the requirements of the bill, or accessing or attempting to access the registry except as provided under the bill.³¹

SB 2200 would make “an intentional or knowing violation” of the bill a computer crime

crime statute.³² A civil action based on such a computer crime could also be brought by an

authorized individual or the parent of the contact point on behalf of a minor who has received

prohibited message, a person through whose facilities such a message was transmitted, or the

...of Hawaii children. As the Do Not Email Report concluded, "It is possible that such a

B. Email Addresses on the Proposed Registry are Unlikely to Receive Less Spam and May Actually Receive More Spam, Including Adult Content

1. A Registry Could Provide Spammers With a List of Valid Children's Email Addresses For Spam Marketing

As mentioned above, SB 2200 would create an extensive directory of active children's

email addresses. As technology stands today, it is impossible to know whether any particular

stated email address is actively used by an actual user, until it is tested to verify that it is valid.⁴⁰

A registry of email addresses, such as the one proposed by SB 2200, would eliminate that

technological hurdle, one of the few remaining barriers that can slow spammers down.

receiving spam with links to pornographic websites.⁴³ The Commission has found no data to suggest that spammers are currently targeting children to receive specific types of spam,

children generally receive the same types of spam that adults receive.⁴⁵ This fact is not surprising because spammers and others currently have no way of knowing that particular email addresses

belong to children, unless the children have divulged their ages and email addresses, or otherwise indicated their minor status by signing up with an SB 2200-type registry. Thus, because such a registry cannot be effectively monitored for abuse, it may have the unintended consequence of providing spammers with a mechanism for verifying the validity of email addresses. This may

a. **Centralized Scrubbing Would Not Prevent Registry Misuse**

the hands of pedophiles or other dangerous persons, some have proposed that a registry could instead require email marketers to submit their distribution lists to the registry to be scrubbed of registered contact points.⁴⁶ The state could then return a list purged of registered email addresses. But such centralized scrubbing would not prevent spammers from using the registry to obtain valid email addresses. Although central scrubbing by the registry might prevent spammers from obtaining a full copy of the registry, spammers would simply have to scrape their own scrubbed

c. Seeding the Registry Would Not Prevent Misuse

The Do-Not-Email Report also analyzed the utility of seeding a registry with secret

registry-controlled addresses designed to detect spammers (“canary addresses”).⁵¹ To ensure that

3. Senders of Offensive Spam Will Be Difficult to Locate and Prosecute

The FTC's experience in its spam cases shows that the primary law enforcement challenge is identifying and locating the targeted spammer. As the Do Not Email Report explains, the ability of spammers to hide their identities by using false headers, open relays, open proxies, zombie drones, and foreign servers makes tracing an email's path "an often fruitless task."⁵⁵ Thus, "[t]racing an email almost always leads to a dead end because spammers rarely send messages from their own email accounts. ISPs which, like the Commission, have

zombie drones and other camouflage tactics."⁵⁶

Unable to identify a spammer based on the email trail, law enforcement and ISPs must locate spammers by tracing the flow of funds from victims to spammers. The experience of

The cost of such scrubbing and monitoring can be substantial for legitimate marketers,⁵⁸ who are generally unlikely to use email to target minors for products they are prohibited from purchasing.⁵⁹ Marketers of certain types of products, such as sexually explicit content, are already subject to substantial legal penalties if they do not comply with laws that protect minors (and adults who do not wish to view such content).⁶⁰ Spammers are unlikely to honor any such registry of prohibited contacts and may in fact misuse such a list to spam the children in it. The

email campaigns altogether.⁶¹ The aggregate effect of SB 2200 might be to close off the

United States, not just for Hawaii residents, and for all consumers, not just minors.⁶² Thus, SB 2200 would likely have a greater effect on sellers that rely on email contact points in lieu of a

Conclusion

IV. 11/20/2009

messages that advertise products or services they are prohibited from purchasing or contain adult advertising or link to adult content. By compiling a list of children's contact points that cannot