

The Regulatory Gap

Consumer Protection Across Marketing Channels

KEY INSIGHT: Postal advertising mail is the ONLY major marketing channel with no federal consumer opt-out protection.

Table 1: The Problem at a Glance

Marketing Channel	Opt-Out Mechanism	Governing Law	Enforcing Agency	Year Enacted
Telemarketing	Do Not Call Registry	TCPA / TSR	FTC / FCC	1991 / 2003
Email	Required unsubscribe link	CAN-SPAM Act	FTC	2003
Text Messages	Prior express consent	TCPA	FCC	1991
Fax	Prior relationship required	Junk Fax Prevention Act	FCC	2005
Robocalls	Do Not Call + TCPA	TCPA / TRACED Act	FCC	1991 / 2019
POSTAL MAIL (EDDM)	NONE	No applicable law	N/A	N/A

Table 2: Penalties by Channel

Channel	Per-Violation Penalty	Private Right of Action	Maximum Recovery
Telemarketing (TCPA)	\$500-\$1,500	Yes	Uncapped
Email (CAN-SPAM)	\$53,088	No (ISPs only)	Per-violation cap
Text (TCPA)	\$500-\$1,500	Yes	Uncapped
Fax (TCPA)	\$500-\$1,500	Yes	Uncapped
Do Not Call	\$50,000+	Yes (via TCPA)	Uncapped
POSTAL MAIL	\$0	No	N/A

Key Takeaway: Laws with private right of action (TCPA, Junk Fax) are far more effective than those without (CAN-SPAM). Our proposed bill includes private right of action.

Table 3: Consumer Protection Features Comparison

Feature	TCPA	CAN-SPAM	Junk Fax	Do Not Call	Proposed Bill
Opt model	Opt-in	Opt-out	Opt-in	Opt-out	OPT-IN
National registry	No	No	No	Yes	YES
Private right of action	Yes	No	Yes	Via TCPA	YES
Per-piece penalties	Yes	No	Yes	Per call	YES
Class actions allowed	Yes	Limited	Yes	Yes	YES
State AG enforcement	Yes	Yes	Yes	Yes	YES
Physical indicator option	N/A	N/A	N/A	N/A	YES (sticker)

Table 4: International Comparison

Country	System	Type	Opt-Out Rate	Legal Status
United States	None	N/A	N/A	No protection
<i>Netherlands</i>	<i>JA-sticker</i>	<i>Opt-in</i>	<i>81%</i>	<i>Supreme Court upheld (2021)</i>
Germany	Keine Werbung	Opt-out sticker	Moderate	Legally respected
Austria	Robinson List	Opt-out registry	Moderate	Industry-run
UK	Mail Preference Service	Opt-out registry	~35%	Industry-run, voluntary
Canada	Do Not Contact	Opt-out registry	Partial	CMA-administered

Table 5: Why Our Bill Is Different

Feature	Failed Bills (2007-2008)	EDDM Consumer Choice Act
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Conclusion

1. 1. Postal mail is uniquely unprotected: Every other major marketing channel has federal opt-out or opt-in requirements.
2. 2. The TCPA model works: Laws with private right of action and per-piece penalties create effective deterrence.
3. 3. Opt-in is stronger than opt-out: The Netherlands proves opt-in achieves consumer protection goals.
4. 4. Our bill incorporates best practices: Opt-in (Netherlands), private right of action (TCPA), strong penalties (TCPA), FTC administration (Do Not Call).
5. 5. Past failures inform our design: We address every weakness of the 2007-2008 failed bills.

The EDDM Consumer Choice Act closes the regulatory gap by establishing an opt-in registry modeled on the Do Not Call Registry and TCPA.

Prepared by ZeroJunkMail.org | January 2025