

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>	81%	<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

Opt model	Opt-out	OPT-IN
Private right of action	No	YES (\$500-\$1,500)
Maximum penalty	\$10,000	\$500,000
Political mail exempt	Yes	NO
Charity exempt	Broad	Narrow (60-day disaster only)
Physical sticker option	No	YES
Phase-in period	Not specified	24 months
Small sender delay	No	YES (6 months)

Visual Summary: The Regulatory Gap

MARKETING CHANNEL PROTECTION COMPARISON

PHONE CALLS

PROTECTED

Do Not Call Registry + TCPA

EMAIL

PROTECTED

CAN-SPAM Act (unsubscribe required)

TEXT MESSAGES

PROTECTED

TCPA (prior consent required)

FAX

PROTECTED

Junk Fax Prevention Act

POSTAL MAIL (EDDM)

PROTECTED

NOT

No applicable law

Conclusion

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