

**Subject: University right to block spam upheld in federal court**

**From:** Dan Updegrave

**Reply-To:** The EDUCAUSE CIO Constituent Group Listserv

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Colleagues,

On March 22, 2004, United States District Judge Sam Sparks issued an important ruling supporting our university's right to block unsolicited commercial email (spam), even if the email is judged to be legal under the recently-enacted CAN-SPAM Act of 2003.

*Disclaimer: I am not an attorney. Seek advice of counsel in interpreting the ruling.*

In this case a company obtained over 50,000 UT Austin student, faculty, and staff email addresses last spring, via a valid state open records request, then used the addresses to promote the company's business (a dating service, "LonghornSingles.com"). After the company did not comply with a request to cease and desist such email broadcasts, UT blocked the site. The company sought and received a temporary restraining order to remove the block in state court, which order was rescinded soon after by a federal judge. The company then sought a permanent injunction, which was denied last week.

Although this case predated passage of the federal CAN-SPAM Act, the company asserted that its right to send such commercial solicitations was subsequently supported by the Act, since (a) its email headers were not fraudulent, (b) the company's identity was clearly labeled, and (c) the company claimed that it responded appropriately to requests by recipients to be removed from the mailing list. The University did not contest the legality of the messages, per se, but asserted its right to block their receipt on university servers. Our right to block was upheld.

This ruling may have broad applicability in higher education. Note that this company has identified numerous universities as prospects for its online singles services; <http://www.whitebuffalovenures.com/sites.html>.

The National Association of College and University Attorneys summarized the ruling as follows:

**White Buffalo Ventures, LLC v. The University of Texas at Austin  
(March 25, 2004)**

*Complete text of opinion by U.S. District Court (W.D. Texas) holding that the policy of the University of Texas to block or stop the transmission of unsolicited commercial email sent to email addresses ending in utexas.edu, and stored on the computer servers owned and operated by the University of Texas, is not preempted by the federal CAN-SPAM Act [15 U.S.C. Sec. 7707(b)(1)]. The court further holds that the University's action in blocking plaintiff's spam is not a violation of plaintiff's First Amendment right. The court observes that plaintiff's spam is clearly commercial speech subject to less protection than other types of speech; that the university has demonstrated a substantial interest in protecting its computer networks and servers from the increasing amount of spam being generated over the internet; and that*

*the University's system for stopping spam through the use of filters is sufficiently tailored and not more extensive than necessary to protect that interest. Finally the court holds that the fact that the University does not block all spam is not a violation of plaintiff's equal protection rights, because the university's policy is to block all incoming spam of which it is aware.* <<http://www.nacua.org/lrs/documents.asp>>

Text of Judge Sparks' opinion --

<[http://www.nacua.org/documents/WhiteBuffaloVentures\\_v\\_UofTexasAustin.pdf](http://www.nacua.org/documents/WhiteBuffaloVentures_v_UofTexasAustin.pdf)>

Press release from Texas Attorney General, which defended UT in this case --

<<http://www.oag.state.tx.us/oagnews/release.php?id=413&PHPSESSID=956f9b5ab2542a91afaded7c3092df20>>

Federal CAN-SPAM Act of 2003 -- <<http://www.spamlaws.com/federal/108s877.html>>

Regards,

Dan Updegrove

VP for Information Technology      Phone (512) 232-9610

The University of Texas at Austin      Fax (512) 232-9607

FAC 248 (Mail code: G9800)

P.O. Box 7407      <http://wnt.utexas.edu/~danu/>

Austin, TX 78713-7407 \*\*\*\*\* Participation and subscription information for this EDUCAUSE

Constituent Group discussion list can be found at <http://www.educause.edu/cg/>.