

What the Federal CAN-SPAM Act Means for Commercial Email Marketers

Email Scenarios & CAN-SPAM Act

Situation:

You send email to an opt-in customer base. This email could include advertisements, statements, transactional information, or newsletter content.

Advice:

While it is not required by the law, we believe that all commercial emails should contain a proper, functioning opt-out mechanism. First, it will save you from hassling with complaints from consumers who don't remember opting into your list and think you're violating the law, but more important – if your customers don't want to hear from you by email any more, you will do more harm than good to your brand and your reputation by continuing to email them.

Situation:

You utilize third-party list providers to send email on your behalf.

Advice:

Email list rental is still permissible under CAN-SPAM. However, you are responsible for ensuring that the list provider or email sender is complying with the law. If they break the rules in any way that you could have reasonably known about or prevented, you can be help equally liable. We always encourage our clients to be particularly careful when approaching list rental to make sure the list they are renting comes from a highly reputable organization

Congress has passed the CAN-SPAM Act of 2003, and President Bush is expected to sign it into law by the end of the year. When it takes effect on Jan. 1, 2004, bulk commercial emailers – marketers, publishers, and e-billers – will have a new set of email standards.

Below are suggested guidelines for compliance with the CAN-SPAM Act, as well as some best practices companies should follow to be effective when using email to reach out to customers in this new regulatory environment.

Emails MUST Now:

- Include a viable Internet-based opt-out mechanism, which must be active for a minimum of 30 days after you send the emails (the law doesn't specify what type of Internet-based opt-out mechanism)
- Process any unsubscribe requests within 10 days
- Display the physical address of your company within the email
- Include a clear and conspicuous announcement that the email is an advertisement or solicitation in the subject line or content of the email
- Clearly label any sexually explicit material and make that email at least "one click away" from the main email

Emails Now MUST NOT:

- Use a false or misleading "from" address
- Use a subject line that masks the purpose of the email
- Harvest email addresses off the Internet or use dictionary attacks to guess email addresses
- Use open relays to send email

In addition, commercial emailers should follow these best practices:

- Implement a strong customer privacy policy. Take your customers' privacy seriously, and safeguard the personal information you collect from them. Disclose your information practices, and have them reviewed for compliance by TRUSTe and BBBOnLine - independent, non-profit organizations whose mission is to build users' trust and confidence in the Internet.
- Establish a proper, functioning opt-out mechanism. While not required by the law, this will save you from dealing with hostile consumers who don't remember opting into your list and think you're violating the law. And more importantly – if a customer doesn't want to receive emails from you any more, you will do more harm than good to your brand and reputation by continuing send them.

with appropriate permission; that the list hasn't been "over-mailed"; and that the list is targeted enough so that recipients of the email advertisements are highly qualified prospects that are less likely to be offended or irritated by the unsolicited email advertisement.

Situation:

You want to continue growing your list with opt-out email.

Advice:

While this is still acceptable if you are following CAN-SPAM guidelines, the FTC will be investigating the creation of a national "Do Not Email" list in 2004 that would likely make opt-out email a thing of the past. Regardless of the legalities, though, we have seen time and time again that opt-in email marketing is significantly more effective than opt-out marketing in terms of its ability to nurture enduring customer relationships, drive sales, and build your brand.

For more information, please contact Return Path at 866-362-4577 or visit www.returnpath.biz.

Return Path, is an email performance management company founded in 1999 to help improve the content, reach and delivery of permission-based email programs for such major marketers as Williams-Sonoma, Dell, Sprint, Gateway and Ebay.

Please note that this document is meant to serve as a guideline and is based on our informed interpretation of the laws referenced herein and the advice of our counsel. It is not intended to substitute for your own thorough review of the laws. Please consult with your own counsel for more specific advice on compliance for your organization.

- Make sure rental lists come from highly reputable organizations with appropriate permission. Email list rental is still permissible under CAN-SPAM. However, you are responsible for ensuring that list providers or email senders are complying with the law. If they break the rules in any way that you could have reasonably known about or prevented, you can be held equally liable. You should be particularly careful to check that lists haven't been "over-mailed," and that lists are targeted enough so that recipients are highly qualified prospects and thus less likely to be offended or irritated by unsolicited emails.
- Rid your email file of bad, undeliverable addresses. Up to 8 percent of the average email file consists of bad email addresses, whether they be data entry errors, garbage addresses or expired domains. Assess which addresses can be fixed, and which need to be erased. Sending to high volumes of bad addresses wastes marketing dollars and exposes you to ISP blocking.
- Keep your customers when they change emails. More than 31 percent of people change their email addresses annually. Use consumer-reported, permission-based change information to update 5-10 percent of files each year.
- Learn when your IP addresses are added to any of 200 blacklists. Monitor your outbound mail server addresses to see if you are put on a blacklist; if so, contact the ISP to remove your company from the blacklist.
- Continue growing your list with opt-in email. While opt-out is still acceptable within CAN-SPAM, the FTC plans to investigate creation of a national "Do Not Email" list in 2004 that would likely outlaw opt-out email. In any case, opt-in email is significantly more effective than opt-out in nurturing enduring customer relationships, driving sales, and building brands.
- Check for spam triggers before sending email. Commonly used filtering software incorrectly identifies up to 30 percent of legitimate opt-in messages as spam. Research the elements of email marketing campaigns that are most likely to trigger false-spam treatment and you'll get better delivery rates and improved campaign performance.

While most experts agree that the CAN-SPAM legislation will not solve the spam problem, it is a first step towards giving the Federal government the authority and the resources to prosecute the most egregious spammers. CAN-SPAM has another benefit - for the most part it supersedes state anti-spam legislation, making compliance significantly easier for commercial emailers. Already 37 states have conflicting anti-spam laws on the books and it's often impossible to determine which state is associated with any given email address.

Contrary to the opinions of some who think that government regulation means the death of legitimate commercial email, the CAN-SPAM Act will help legitimate email marketers by making fraudulent and deceptive email practices punishable by fines and jail time.