

# Advertising Advisory – E-mail Marketing and CAN-SPAM Compliance

The IPA has recently received inquiries regarding the legality of e-mail marketing, specifically, what rules do newspapers need to follow to make sure that they are in compliance with the law.

Please see the advisory below, which details the Controlling the Assault of Non-Solicited Pornography And Marketing Act of 2003 (CAN-SPAM).

## Applicability

CAN-SPAM defines a "commercial electronic mail message" as "any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content on an Internet website operated for a commercial purpose)." It exempts "transactional or relationship messages."

If the subject line and body content are majority invoicing information, a sales receipt, account information, etc. then the offer is considered transactional. An offer or advertisement can be placed in a transactional message so long as it is placed in a non-prominent position.

The law permits e-mail marketers to send unsolicited commercial e-mail as long as they adhere to 3 basic types of compliance defined in the CAN-SPAM Act: unsubscribe, content and sending behavior compliance:

### Unsubscribe compliance

- A visible and operable unsubscribe mechanism is present in all emails.
- Consumer opt-out requests are honored within 10 days.
- Opt-out lists also known as suppression lists are only used for compliance purposes.

### Content compliance

- Accurate from lines (including "friendly froms")
- Relevant subject lines (relative to offer in body content and not deceptive)
- A legitimate physical address of the publisher and/or advertiser is present.
- A label is present if the content is adult.

### Sending behavior compliance

- A message cannot be sent through an open relay
- A message cannot be sent to a harvested email address
- A message cannot contain a false header

There are no restrictions against a company emailing its existing customers or anyone who has inquired about its products or services, regardless of whether or not these individuals have given

permission, as these messages are classified as "transaction/relationship" messages under CAN-SPAM.

If a user opts out, the sender **has ten days to cease sending** and can only use that email address for compliance purposes. The legislation also prohibits the sale or other transfer of an e-mail address after an opt-out request. The law also requires that the unsubscribe mechanism must be able to process opt-out requests for at least 30 days

CAN-SPAM prohibits sending sexually-oriented spam without the label later determined by the FTC of "SEXUALLY EXPLICIT."

CAN-SPAM also makes it a misdemeanor to send spam with falsified header information or not including a legitimate physical address.

### **Recent Changes**

16 C.F.R. part 316, "Definitions and Implementation Under the CAN-SPAM Act; Final Rule" went into effect July 7, 2008 and changed the original CAN-SPAM Act of 2003 by:

- (1) Adding a definition of the term "person";
- (2) Modifying the term "sender";
- (3) Clarifying that a sender may comply with section 7704(a)(5)(A)(iii) by including a post office box or private mailbox and
- (4) Clarifying that to submit a valid opt-out request, a recipient cannot be required to pay a fee, provide information other than his or her email address and opt-out preferences, or take any other steps other than sending a reply email message or visiting a single page on an Internet website.