



The CAN SPAM Act of 2003

A Checklist for Nonprofits

The CAN SPAM Act of 2003 went into effect in January of 2004, aiming to wipe out illegitimate email practices that threaten the growth and success of the Internet marketplace. For nonprofit organizations, the Internet is a new frontier for advocacy efforts, member involvement member relations and fundraising, and many organizations already have had great success in reaching online funding and membership goals.

Congress certainly did not intend to eradicate this new form of communication. Instead, it sought to crack down on misleading and fraudulent activity by unscrupulous spammers. Note that the new CAN SPAM law relates primarily to commercial, not nonprofit, activities. The law applies to all commercial email whose primary purpose is defined as trying to sell a product or service — it does NOT apply to informational email such as account balances or bills due. It also does not apply to pure fundraising appeals that solicit funds and other contributions.

Since many organizations do sell products and services, and may at times cross the line between commercial and non-commercial activities, it is better to tread carefully with email practices rather than face regulators or further legislation aimed directly at nonprofits. Currently, the Federal Trade Commission is studying the creation of a Do Not Email list, and many states have spam laws in the works that would be enforced by state attorney general's that may be even more stringent than the federal CAN SPAM Act.

The Direct Marketing Association (DMA) and the DMA Nonprofit Federation have a stringent set of ethical guidelines applicable to email marketing that go further than federal law in some instances. Here is a checklist of some guidelines to follow as you communicate with the public via email marketing:

- If you are sending a commercial email, make sure that you communicate that the email is an "offer" to the recipient. The sender can accomplish this by using "advertisement" or "solicitation" in the body copy of the email; specific language is not required by law.
- Provide a valid postal address. The law is unclear about whether a Post Office Box or mail drop constitutes a physical address. However, the DMA guidelines require that marketers provide a physical street address, not a PO Box.
- Provide an honest, rather than a misleading, subject line.
- Provide an easy-to-use, Internet-based mechanism for recipients to remove themselves from your mailing list. If you are using a service provider, you should have a written procedure since your organization would ultimately be responsible. (VeraData provides this service with all e-mail campaigns)
- "Remove" means remove. The electronic remove feature must be reliable, functional and prompt.
- If a recipient removes himself/herself from a marketing list via an email service provider, that email address does not have to be removed from all future campaigns, unless the service provider is represented in the "From: Line." The DMA recommends that the email service provider who is listed in the "From: Line," but who may be sending an email on behalf of a marketer, should also honor the removal request.
- DMA has a prohibition against "harvesting" email addresses — there should be no surreptitious acquisition of email addresses via automated mechanisms without the consumer/customer's awareness and agreement. This includes a prohibition on "dictionary" attacks or other mechanisms for creating email addresses without the awareness and private approval of the addressee.
- Your message text should be consistent with the subject line text.
- The FROM: line should not be ambiguous and should be a valid return email address.
- Email lists must not be sold or provided to unrelated third parties unless the owner of the list has provided notice and the ability to be removed from such transfer to each email address on the list. Related third parties include other brands/subsidiaries within the same parent company as well as outside affinity partners as a reasonable consumer is likely to perceive them.
- A commercial email should contain the sender's privacy policy, either within the body of the email or via a link.

For questions or comments, contact us at data@veradata.com or at (800) 561-9927.

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