



Membership Discussion Forum

Your CAN-SPAM Questions Answered

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PANELISTS:

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MODERATOR:

Hope Hopkins, Membership Content Manager

Transcript

MODERATOR: Good afternoon everyone, and welcome to our third membership discussion forum. Today's discussion will focus on answering your CAN-SPAM questions.

So let's start by introducing our three panelists, who have been kind enough to donate their time this afternoon.

Chris is a senior reporter here at Marketing Sherpa. He covers the email marketing and B-to-C marketing beat for Marketing Sherpa. If you get our email newsletter, you will have seen an article written by him this morning, in fact, on CAN-SPAM and how MarketingSherpa has addressed new CAN-SPAM rules in the last couple of weeks.

As the director of privacy and deliverability, Al works with anti-spam blacklist groups, Internet service providers and industry groups to help both senders and receivers address spam, list management and deliverability issues.

Al has had an active role relating to stopping spam for more than ten years. Prior to joining ExactTarget in 2006, Al worked for a large e-commerce service provider, managing coordination and oversight of spam and deliverability policy across the company's many subsidiaries, as well as working with direct clients to ensure legal and best-practice compliance, troubleshoot deliverability issues, and define and implement practices for email campaign execution. Additionally, Al designed and implemented tracking, reporting, and automation tools for various online marketing programs.

Prior to that, Al worked for anti-spam group MAPS (Mail Abuse Prevention System), creating one of the service's popular spam blocking tools, the Relay Spam Stopper.

Al continues to be an active member of the anti-spam community, with involvement in various anti-spam projects, tracking of spam trends, and publishing statistics on how blacklists work in the real world.

Sundeep Kapur authors a daily blog on eMarketing best practices at www.emailyogi.com – this repository offers insight on trends impacting the industry and features over 350 searchable posts. Sundeep has vast experience in the B2B and B2C retail, financial, travel, entertainment, healthcare, and international markets.

Without any further ado, I'm going to turn the platform over to them. As mentioned in prior communications, we're going to handle this as a Q&A session tackling questions that many of you provided to us in advance. If you do want to contribute, please feel free to use the Q&A box on your go-to webinar screen as well as hitting "star one" if you'd like to ask a question verbally. We can un-mute the phone line and allow you to do so. So thanks again, and here we go.

Question 1: Please provide a high-level overview of the differences between fax & email spamming

SUNDEEP KAPUR: I'll start off with what fax has to do with this. Basically the Telephone Consumer Protection Act of 1991 actually came about making it a violation of Federal law for a person to send unsolicited ads from any fax machine, computer, or any other device to a fax machine. And in 1991, basically, they gave private citizens the

right to sue, to seize future transmissions, recover \$500 bucks in damages for each junk fax, or even more, and then even issue an injunction and put in challenges.

Essentially an unsolicited ad was defined as any material advertising the availability or quality of property, goods, or services without the recipient agreeing to receive the information. And, you know, going back to that timeframe, essentially they even [specified] that fax machines built after a certain year had to comply with date/time stamp information so you knew where it was coming from.

A lot of this leads into the email spamming that takes place and, you know, the differences with that. Al, why don't you talk a little bit about how this compares with email spamming?

AL IVERSON: Thank you, Sundeep. Let's see... Let's compare it to the U.S. Federal Anti Spam Law, CAN-SPAM. The CAN-SPAM law applies only to commercial messages sent via email. Doesn't apply to transactional messages. It forbids things like falsifying header information, using deceptive subject lines, hijacking computer servers to send your email, using things like open relays and open proxy servers. It requires that a sender have a working, unsubscribed mechanism, and that that mechanism is clearly presented in the message. Senders must respect unsubscribes, must handle them within ten days. The valid postal address of the sender must be included.

And they've recently clarified, the FTC recently clarified, that a P.O. Box is

okay there. And the most important bit probably is that there is a standard of affirmative consent, in that under CAN-SPAM, you either have to have affirmative consent or you must label your message as an advertisement. And that's a very important consideration, where if you look at the technicalities of the law, it does indeed allow spamming.

But it also allows some other very important things that block spam, that stop spam. ISPs are allowed to block whatever they want under the law – in their best efforts to stop spam. So, as my colleague at Yahoo has told me many times, they block millions of CAN-SPAM compliant messages a day. So what that means, is that even if you're complying with the law, but you don't have that affirmative consent, you don't have permission from recipients to send them mail, you're going to find that mail blocked in droves. And you're not going to have any legal recourse under the law.

Question 2: If a subscriber opts-in to receive an eNewsletter, is it safe to send promotional offers or cross-promotions from the company?

SUNDEEP KAPUR: Sure. In fact, I'll start off with an example of this. Three weeks ago, we bought barbecue gear on sale from a home improvement type catalogue. And the very next day, after I got my transactional message from the barbecue company thanking me for the purchase, I got an offer from a home décor gift company. And it was almost instantaneous. And I did some digging around and I picked up the phone and I called up that company. And when I called up that company, I asked the CSR, why was I the recipient of the email? And keep in mind that the same parent company owned both these brands.

And their answer to me was, "Gotcha." And it literally came down to them telling me that, "Hey, if you had taken the time to read the privacy policy, you should understand that we own seven to ten brands. And we have the right to market to you through any of those brands." Having said that, I will say this, that legally, all you're required to do is to state in your privacy policy that you own multiple brands. And if a person signs up for one brand, they're automatically subscribed to all others.

That being said, if someone unsubscribes from any email you send, you need to diligently remove them from the other lists. The suggestion I would make with this is, while this legal or what the law says, I would clearly tell them what they are signing up for. Because it saves you a lot of grief. One, it saves your call center the aggravation of explaining things to customers, and two, just like Al said earlier, if the ISPs are happy with you, it solves a whole lot of problems.

MODERATOR: Sundeep, one question that has just come in from our audience was, could you please clarify what you mean by, 'email must be labeled as an advertisement'? Does that refer to specific wording, graphics? Is it in the small print or some sort of large banner, or in the subject line?

SUNDEEP KAPUR: Okay. I'll start off with the answer and I'll let Al chime in on that. He mentioned this as well. But in some instances, when you are putting out an email message, certain states specified initially that you had to put in the word "ADV" or "advertisement" in the subject line of your email. However, if you sit down and – You know, if you're putting out a transactional email to a customer, like I got the barbecue stuff and I got a thank you email from that particular cataloguer, if in that transactional email, more than half was a commercial for something else, then it may be considered an advertising email versus a commercial email. But within your privacy policy area, within the email, if all you could do was essentially say that, "Hey, this email is being sent by us because we put out specials on products, promotions, et cetera," that's considered good enough for being an advertisement. Al?

AL IVERSON: Yeah, specifically under CAN-SPAM, in instances where you do have to label the message as an advertisement (and that's an important distinction that I'll touch on more in a second) the law doesn't specify a specific identifier. It says simply that the message needs to provide a clear and conspicuous identification that the message is an advertisement or solicitation.

So it's not as specific as saying, footer versus header versus subject line, et cetera. But again, this is only in the case of when you lack that affirmative consent. So if you are opt-in, if registrants or if consumers are registering directly to receive emails from you and you're telling them that you're going to be sending them emails, what you're doing in a very general sense is indeed opt-in. And you are therefore exempt from that requirement.

Of course the devil's in the details. You know, if a specific opt-in practice is iffy enough or not clarifying enough, perhaps it doesn't qualify. But for most good companies, good actors, good senders, if you have a very straight ahead, very clear opt-in process, you're exempt from that requirement to identify the message as an advertisement.

MODERATOR: Terrific, thank you. Very helpful. Any questions regarding anything that's been discussed so far? All right, we do have a question that's just come in. In the case

of sending a pre-show participation promotion, do we need to note that it is an advertisement? The show management has provided us with the contacts email, and we are simply sending a pre-show offer and information.

AL IVERSON: Potentially, yes. I mean, if you're getting a list of email addresses from somebody else and the people on that list didn't sign up to hear from you directly and weren't told at the time that their email address was given that they're going to receive emails from you specifically, that ultimately is spam and would need to be labeled as an advertisement.

And boy, that's just really not a bad practice, setting aside the law for a second. If you take a list from somebody else and you send email to it, and those individuals on that list didn't expect to hear from you specifically, they report that mail in high numbers, and that is a fast path to ISP blocking and blacklisting issues.

MODERATOR: And a follow-up to that question, gentlemen: if they've been told their email information was being provided by show management, is it okay?

SUNDEEP KAPUR: Let's assume that ABC Company is putting on a big marketing event. And the three of us on this phone call are the panelists. Each one of us has our own booth and we are exhibiting. And we have paid to receive a list to sit down and target people with offers. It kind of goes back to what we've been talking about earlier, that if in the beginning when the people signed up, you know, in the privacy policy, they did tell the people who signed up for that particular ABC event show that, hey, by you guys coming here and signing up, you are agreeing to receive one to five or, you know, 'x' number of offers from our partners, it's fuzzily acceptable. But it creates more problems than it is worth.

AL IVERSON: I agree. And I think it really boils down to, it's potentially legal, but certainly not best practice. I guess, you know, in the interest of not necessarily getting off into the weeds on a specific single issue, I think it really boils down to, if you have a single specific instance where you're unsure about the clarity of the law, that is the time to engage specific legal advice from a lawyer.

MODERATOR: What if a subscriber opts-in for a product line from a company that also says the company is allowed to send them other emails from their other product lines, then when they unsubscribe to one product line, do they need to be allowed to unsubscribe from all the others?

AL IVERSON: That's a very good question. My understanding there is -- and guys, feel free to chime in as well -- you definitely should be offering the opportunity for the end consumer to unsubscribe from every type of email from you possible. My understanding of the specifics of the law is such that it's all about unsubscribing from emails from the sender.

Now, it's certainly okay to drive somebody back to a simple profile center, a single page where they can choose which emails to receive. But ultimately, recipients need to be given the opportunity to decline emails, future emails from you overall, and not specific to a single product line or event or list.

SUNDEEP KAPUR: And so specifically to the question you asked, the barbecue company, the big conglomerate, in their privacy policy, it said that by me signing up to receive emails from one of their catalogues, they reserve the right to use and market to me across any of the other six or seven catalogues that they have, because when I signed in, I signed in under that agreement. Therefore, in the opt-out stage, they should be removing me from all of them, or at least as a best practice, give me the option to get out of the ones I don't want.

AL IVERSON: Yeah, and what's really interesting there is that one of our clients who's a large clothing retailer with multiple brands did originally work in a similar fashion, where you register with one site, and suddenly you're getting emails from all three sites. And in that case specifically, it pretty quickly led to blocking at AOL, Yahoo, and a couple other ISPs. In fact, it ended up angering one of the people who filter spam for AOL directly, because they bought off of one site, and suddenly they're getting emails from this other site.

And it's very clear to somebody like you or I with a significant marketing background who knows how companies work, that buried in the privacy policy, that because this is the same company, they're going to spread this information around. You and I might know that Store 1 and Store 2 and Store 3 are owned by the same company. But it's not clear to the end consumer. And even if it is legal, it can still drive spam blocking. That company actually ended up moving away from that practice as a result.

MODERATOR: One more follow-up question for you guys, the question is, do they need to be able to unsubscribe from all emails on one page? Or can they unsubscribe from other emails another click away? And I think that brings us nicely into what we learned recently here at MarketingSherpa about new regulations that we should know about for CAN-SPAM. Chris?

CHRIS HEINE: Yes. Well, first and foremost, I don't think it's any kind of requirement to allow your subscribers to opt-out of individual newsletters on one page. But using a preference center is largely held to be a best practice if you are sending multiple newsletters. And for those of you who read the email Sherpa article from this morning, we recently ran into a little bit of a snafu with that because basically one of the key provisions in the new CAN-SPAM addition is that you have to enable your subscribers to opt out with a single webpage.

And what this means is, if you have a preference center which requires a log-in, well, that's going to entail at least two pages. So we were in that situation a few weeks ago. And our IT people jumped on it as soon as we figured out that we needed to make some changes. And essentially we cut out the middle step. So when people hit the unsubscribe button now in a Sherpa newsletter, it immediately logs them into their preference center where you see all of our newsletters. It allows people to essentially uncheck or to opt out of any of the individual newsletters, and then save their changes.

Not to get too technical, but our IT people use what's called API code, application-- I don't have the-- Does anyone--

SUNDEEP KAPUR: --programming interface.

CHRIS HEINE: Thank you very much, Sundeep. And basically the API code enables us to send people right from the unsubscribe link to the preference center. And we're now fully CAN-SPAM compliant. But if anyone is in a similar situation, that's something you need to do as well to be fully compliant.

But moving onto the other key provisions, first of all, they bold on the definition of a "sender". A sender is now defined as the entity whose goods, services, business, or organization is advertised in a commercial email message. This clarification makes it simpler to know which of multiple parties advertising in a single email is responsible for complying with CAN-SPAM's opt-out requirements.

Second, a "sender" can now use a post office or private mailbox as their physical postal address in the message. In the prior rules, it wasn't made clear whether or not that was okay. But now it is. And thirdly, the FTC also defined what or who is a "person". A "person" is now not limited to a human being. It also includes groups, institutions, unincorporated associations, businesses of all sizes and non-profits, as well as people or human beings. The definition definitely leaves no doubt that non-profits must abide by CAN-SPAM. There was some discussion before whether or not CAN-SPAM applied to non profits. This provision cleared that up completely.

Fourthly, brands doing 'forward to a friend' viral emails, where participants are rewarded, incentivized, or induced to forward their emails to friends, must adhere to CAN-SPAM rules. What this means is, they must honor opt-out requests and provide a physical address to people who receive the forwards. But really the most important thing, I think, from these provisions, was the single webpage language when it comes to the opt-out process for people who have preference centers. And I think preference centers are good because they clear up situations like Sundeep was in with the barbecue cataloguer. But you have to make sure that people can go directly from the unsubscribe button to the preference center page. And also, another aspect to this area of the provision is that you have to allow people to opt out of your newsletter if they hit the reply button and request to be opted out. And that's a rundown of the key provisions in terms of what has changed compared to what it used to be.

MODERATOR: Thanks, Chris. Do we know if anything has changed in terms of the opt-out rules for third party emails in terms of where the email is sent to, if it's a rented list using a company's HTML? Are two opt-outs necessary? And what is the ramification of someone who appears on an opt-out list that is not on the marketer's list? I guess the first part of that question is, are there any changes to third party emails? And perhaps you could review quickly the opt-out rules for third party emails.

CHRIS HEINE: Well, the new provisions also allow multi-party email campaigns to designate a sender. In terms of the physical address part of the question, the designated sender is the "sender" for the multi parties. And the designated sender's physical address must be included in the campaign. Some people think that all parties represented in an email should have a physical address at the bottom. As far as I know, that's definitely not necessary. But I've heard some people say that they believe that's the next step in the best practice area of this conversation. Al, do you have anything to add?

AL IVERSON: Yeah. I mean, third party affiliate marketing is not specifically my area of expertise. But I have a vague recollection of the FTC taking issue in the past with people that continue to receive emails advertising a specific product after they've opt-

ed out from emails advertising that product. And I'm phrasing it that way on purpose, so that if you have a travel site that's advertising candy bars, and if you unsubscribed previously from that candy bar sender, and they are contracting with the travel agency to have an email sent out advertising those candy bars, my interpretation there is that that person should not be getting the travel-sent email advertising candy bars.

You know, again, it's not necessarily my area of expertise. So it certainly would require a little more research. But I do have a vague recollection of the FTC taking issue with a scenario very similar to that, so I think my take on that is, an opt-out from both the list owner's list and the party being advertised in the message is probably still a best practice and potentially still required under the law.

SUNDEEP KAPUR: One of the things that we give everybody as a link is, I like what The Washington Post does. They list advertising guidelines for their partners. And you can draw some of the answers for that. I think there's a lot of detail in the question that's been asked. So maybe what we can do also offline is, Hope, if you get the question to us, we can give you the detail, and also make that link available to everybody so they can draw from it.

MODERATOR: That's an excellent idea. I will definitely do that. Just one last question that does sort of pertain to regulations. If an email is sent via a list broker, who is ultimately responsible for honoring the opt-outs resulting from the email sent?

SUNDEEP KAPUR: The list broker.

MODERATOR: Unfortunately, we're going to have to move on, just so that we can make sure we get in all the questions that were provided prior to this forum.

Question 3: Do CAN-SPAM rules require that commercial emails to non customers may only be sent if the recipient has opted in?

AL IVERSON: Yeah. And in fact, it ties into a lot of what we were just talking about. The answer there is effectively yes, right? Under CAN-SPAM, you need that affirmative consent, or you must label your mail as an advertisement. And if you do label the message, you're making it easier for ISPs to block it. And ISPs want to block mail. They want to block mail that is being sent to people who didn't sign up for it. So if you don't have that affirmative consent, you are effectively spamming in the ISP's eyes. And they're going to look to block that mail any way they can, so.

You know, as Sundeep mentioned before, avoiding issues like this are how you find delivery success. And if you're just going to prospect via email without getting upfront permission to email those people, ultimately it's not going to be a path to success.

MODERATOR: Great. And this is an interesting twist – what happens when you get a customer that flags an item as spam rather than bothering to unsubscribe? How do you get around that?

AL IVERSON: That's a good question. The way you get around that is, don't send email to people who don't want it. And it sounds like I'm being a little simplistic. But ultimately, that's what it boils down to, right? When you have somebody who reports your

message as spam... I know every sender in the world is thinking, "Well gosh, we gave them the opportunity to unsubscribe." And the point is that the ad recipients are choosing to do something else. They're choosing to report that message as spam. And so what's happening there is the ISP is getting a vote about you from that recipient. They get enough of those votes, those negative votes, those reputational black marks against you, that's what makes your mail go to the bulk folder or get blocked.

I mean, this is very similar, even in my own personal email stream. Another industry publication that I subscribe to (I will say upfront that it's certainly not Sherpa) where I want a specific newsletter from them every week, and they just send me tons of unrelated stuff for conferences, for webinars, for third party offers, for 'I need to join this association or that association.' And I cannot figure out how to work their profile center to get just what I want. So in my GMail account, I report a spam every time it comes through. And after the second or third time I did that, those messages started going to the spam folder automatically. So that's an area where their poor practices have allowed me to damage their ability to send mail.

And if you amplify me by all of the other recipients on their list who are probably similarly unhappy, enough of those pebbles against you, and suddenly you have a boulder rolling down the hill at you that's really going to damage your ability to send mail.

MODERATOR: Quick clarification, Al, when you say "block email from the sender", are you referring to blocking all email from that company or any that are indicated as an advertisement from that same company?

AL IVERSON: Well, as far as an ISP choosing to block your mail, they will definitely block or bulk folder all mail from your sending IP address. And in some cases, they will choose to block or bulk folder all mail that contains references to your domain. So they are not making a distinction between transactional or advertising or third party versus first party offers. And all of your mail can suffer.

SUNDEEP KAPUR: I'll give a technical answer to what you just asked. And within every... You know, I get stuff and I'm upset with some people. So I hit, "This is spam." And when I click on, "This is spam," AOL is told that Sundeep mail blocked this guy. And within the email, AOL actually lets the sender know that they had 'x' number of instances that were bad. And what happens is, there's something called VERP, variable envelope reply processing, which takes my ID and lets the sender know that this ID said, "You're spam." But they won't tell him my ID is not my email ID. So they have to run a process on their end to try and figure out, does this ID account to Sundeep.Kapur (at)Gmail(dot)com? And then based on that, you run a [clean] and basically show the ISP that, hey, we're blocking folks. But that needs to be done diligently. Otherwise, like Al said, you're in a lot of trouble.

AL IVERSON: And on AOL in particular, who's really the leader in this sort of feedback loop technology where they collect this data, this voting from end consumers, they've told me that they have a very efficient process there, where they take all of this data and they come up with rankings for senders. And so if you are at the good end of that ranking with the fewest complaints, you're most likely to go to the inbox. But if you are near the bad end of that, where you get the most complaints on a percentage basis of your sends, your mail is most likely to be blocked.

MODERATOR: Great, thank you, guys. And we're going to have to move on in the interest of time.

Question 4: Is it recommended to use such systems as Salesforce.com for sending emails out to prospects?

SUNDEEP KAPUR: Sure. Tools like Salesforce.com, they make it easier to target prospects and customers with personalized email messaging. And they have inherent templates within them that make your email, or the job of sending the email, very easy.

The challenge, though, is the unsubscribes. Basically if someone were to unsubscribe from the communiqué, as a company, you have to make sure that you have a process to promptly remove that person from your master list. And I'll give you a slightly different scenario.

Two salespeople or two mortgage officers from the same company might share one prospect. If that prospect unsubscribes from salesperson A's email message, how do you then ensure that salesperson B doesn't send them that message? Because now, are you enforcing consistency from a company's perspective? Are you enforcing it from an individual's perspective?

So personally, at the end of the day, I think it should be centralized too. At the very minimum, you should have a strategy in place to process these unsubscribes and the clickthroughs, and make the reporting available to a larger group of people.

MODERATOR: Terrific, thank you.

Question 5: Are there any statistics on litigation? How many cases are there? How many have been judged against a business?

CHRIS HEINE: As far as we know, there aren't any statistics on litigation. And from what we know, there have been about seven or eight CAN-SPAM violations that have led to charges and prosecution. And all the cases, really were dealing with truly illegitimate emailer situations. I could go over what happened to a few of these people in terms of fines and jail time, and all of that. But that would unduly scare our audience, I think.

The thing you have to remember is, if you are following best practices, you're going to be okay. If you're doing permission-based email marketing, you're going to be okay. The FTC is not trying to hunt down legitimate marketers. But at the same time, you know, attorneys general, state attorneys general, they like to get in the headlines for this type of stuff. And so you want to mind your Ps & Qs at the same time so your brand stays out of that kind of negative publicity.

SUNDEEP KAPUR: Yeah. Specifically, I mean, I got involved trying to research six instances where the sender was sued by the recipient for either unsolicited emails or for not honoring an unsubscribe request. And in three of these instances, the state attorney general got involved and they fined the sender. In one case, they warned the

sender and just let them off. In the other two instances, the sender was basically told, "No problems." And in one of those instances, they actually went after the person that filed the complaint because they found a pattern out there that this person had done it to try and evoke some money out of the situation.

At the end of the day, just like Chris said, you use your reasonability hat and take it from there. There is no witch hunt in place out to get people, as long as you are being duly diligent to take people out.

MODERATOR: Terrific, thank you. Next question.

Question 6: If someone submits a price request or downloads a whitepaper, do they qualify to be added to our mailing list?

SUNDEEP KAPUR: Okay. I'll take a shot at that one. Basically yes, but only if you expressly state that they're being added to your list for other marketing purposes. And in the past, what had happened here was it was okay to sit down and hide this type of information in the privacy policy. But if you go back to what Chris was talking about, the changes in laws, and what Al and Chris have both emphasized, that you have to be careful about false headers, falsifying the headers, and, you know, being deceptive.

As long as it's not being considered deceptive, you can use this strategy to sit down and take care of other types of messages. So it kind of goes back to, don't hide it in the privacy policy. Sit down and include it in the actual offer – you know, by this person getting this email, they're acknowledging that they're going to receive other marketing messages or other messages from you.

You know, as a base qualifier, a couple of suggestions I would make is, one, offer a one-click unsubscribe to the people who want off this list. So make life easy for them if they ever want to unsubscribe, and it'll help you out with your ISPs. And the other one is if you're not sure of the source of your names, as to where they've come from and why these people have signed up, it's not a bad idea to, every once and awhile, put out an email saying, "Hey, we send out communiqués to you guys. If you find them useful, click here or click anywhere on this list. Or if you want to get off our list, click anywhere, and we'll take the trouble of taking you out." Helps in two ways; one, from a customer service perspective, it's awesome. Two, you can actually, if you ever get into trouble with an ISP you can show the types of campaigns you run to be a better marketer. And it helps out overall.

AL IVERSON: Yes, absolutely.

MODERATOR: I just want to interject here; I think we've done a terrific job scaring the audience, so how does one find out if they've been reported?

SUNDEEP KAPUR: You know, Google is King, right? You can even Google yourself and find out all the complaints that are out there with you. But there are a number of providers, companies like Return Path and Habeas, who have now merged. They have safe sender lists. And you can go log in. I think it's for free, where you can essentially put in your information and ask and see what your sender ID ranking is, or your sending ranking is, to see what types of issues you've had. There's also SpamHaus.org

and (inaudible) lookup. There's a list of other sites as well that one can go to, to see if you're on a blacklist.

AL IVERSON: Yeah, I mean, it really boils down to how you send your mail. If you're a direct sender, sending off something on your own network with your own IP address doing this, then if you're a good, savvy sender, you've already got feedback loop set up with ISPs. You've already got that data coming back in that's going to tell you in your list management tool how many people are complaining and in what instances.

If you work with an email service provider, they are generally the focal point of that information. And that's who you'd work with to find that out. Now, in either of those scenarios, if you have your own dedicated IP address that is only used for your mail and not for any other purpose, then it's very useful to go to tools like SenderScore.org, which is that [turnpath?] service that can help you tell what your reputation is, or if there are significant spam complaint issues, or SpamHaus, as Sundeep mentioned, and look up and see if there are blacklist issues that are attributable to you.

But again, if you're working with somebody who helps you manage your lists or a specific tool, they are probably the best place to start with more specific guidance on that front.

CHRIS HEINE: Al, do you have regular reputation management meetings with your clients? Is that something you would recommend to marketers?

AL IVERSON: Oh heck, yeah. Definitely. It's a case of measure, test to make sure everything's okay, figure out where stuff's not okay. And part of it is really reassurance, peace of mind where a customer, like the question reflects, a customer doesn't know what their reputation is or where potential issues are. So we guide them on what we see, what third parties see, what we can measure for them, what we can measure for them or what they can measure on their own, and try to get them to a clean bill of health or guide them on how to address issues to get them to a clean bill of health.

And then, you know, in scenarios like that, it's often a case of some significant upfront discussion, resolving any issues, and then just periodic follow-up to make sure that nothing has gone off the rails on either end to damage good deliverability.

MODERATOR: Great. Thanks, Al. Moving right along—

Question 7: Are emails retrieved through servers such as ZoomInfo and Jigsaw governed by opt-in requirements of CAN-SPAM?

AL IVERSON: Yeah. And the answer is, oh, heck yeah, I mean, definitely. Again, it comes back to, you need affirmative consent or you need to label your message as an advertisement if you're going to add somebody to an email list. And this applies regardless of where an email list is coming from or an email address is coming from. Contacts in Jigsaw or ZoomInfo or other services like that haven't opted in to receive emails from you. People that get on there, they're going to report your mail as spam and it's going to get you blocked and blacklisted. And I certainly had discussions with clients and prospects in the past where they'll say, "Hey, wait a minute. But, you know, Jigsaw is just B-to-B lists. This is not B-to-C. This isn't like sending through Yahoo."

But in the business-to-business realm, CAN-SPAM still applies. And a lot of the pitfalls that apply in business-to-consumer sending still apply in business to business. B-to-B filters like Barracuda, Postini, and MessageLabs, and so on; they work very similar to how Yahoo, Hotmail, AOL, GMail, et cetera, work. Right? They get reports from unhappy recipients clicking on the, "This is spam" button in their Outlook plug-in. And they look at reputational measures just like the ISPs do. And they block you just like the ISPs do.

And in fact, the B-to-B world, it can be a little worse, right? If you're blocked at Yahoo, you know specifically you're blocked at Yahoo. But if you're blocked by Postini, you're blocked by the hundreds of thousands of companies that use Postini as their spam filter. So it's a much broader, a much more diffused issue. And it can be much more difficult to troubleshoot and resolve.

MODERATOR: Thank you, that was really useful. I'm going to pick up the pace a little bit with the questions that we have, because I do have a number in queue from people on the call today

Question 8: If you are sending to a list smaller than 25, is it considered bulk email?

CHRIS HEINE: The answer to that question is yes. Volume really doesn't affect what is considered as "bulk." It doesn't matter if you're sending to 25 people or 25,000. The number is insignificant. The important distinction is that if you're sending commercial email, even if it's non-profit, organizational, promotional email, as opposed to personal email, you need to adhere to CAN SPAM. I think it's really that simple. Volume isn't an issue in terms of what is considered bulk.

MODERATOR: Thank you Chris.

Question 9: If a partner wants to run an email campaign to their clients promoting our product, can we use their name as the sender?

AL IVERSON: Yes, you definitely can use their name as the sender. But in the case of CAN-SPAM violations, ultimately both you and the sending party could be on the hook. As Chris clarified before, the FTC's new guidance starts with the fact that the sender can be or is identified as the person, the party in the 'from' line. So that's good guidance and that's a good starting point.

But my understanding based on some of our legal guidance is that in the case of a CAN-SPAM violation, just about every party involved in the email message could be liable. So the person in the 'from' line and the product being advertised could both be on the hook for a problem. So what's probably more important there is make sure the message is clearly branded with the list owner, and that the people on that list all opted in to get messages from that list owner. And also, if no sender is identified in the 'from' line, that's really bad. If who you are, as a sender, is unclear from the 'from' address, it does appear to many folks as though you're trying to skirt CAN-SPAM requirements. And it's probably akin to painting a bullseye on your forehead.

MODERATOR: Great. Thanks for that. Next question —

Question 10: Where can I find a concise and comprehensive list of CAN-SPAM rules and regulations?

Sundeep, you talked a little bit about some of these houses that they could go to, to find out if they're blacklisted. Do you have any other resources?

SUNDEEP KAPUR: Right. So, essentially from a legal perspective, the FTC has two links. They have a summary link and they have a detailed link. And I'll put those out to you, Hope, so, you know, I'm not repeating that entire link on the phone call, if people can sit down and access it. Then Marketing Sherpa did a very good summary in a post that was, I think, June 14th as to the changes with the CAN-SPAM regulation. I've taken some of these and I've basically put them out on my blog. I'll give you the address later on. Hope gave that to you as well. But a couple of things I'll throw out as ideas.

One is, common sense reigns out here. That's a lot of what it is. And if you were to rewrite a book by Emily Post on email marketing, it's essentially honoring unsubscribes, making sure that you clearly identify who you are, take people off the list, don't charge them money to get them off the list, things along those lines.

But a key thing I would highlight is – and this helps out a lot with spam –

is one of the mistakes a lot of folks who run email marketing programs do. They do not train their frontline people about spam and about capturing email IDs and what it can do, and even how to answer questions. If you folks were just to randomly pick up the phone and call up end cataloguers and ask to get on their spam list or their bulk email list, they'll gladly add you to that, because the CSR on the phone has not been trained to answer that kind of question.

So the suggestion really is that I'll make these links available. And use common sense and try and train as much [as possible]. Because I'm sure as the FTC and the FCC get more and more involved in this, there are going to be some new additions that are coming to this. And they want everybody's feedback as they sit down and define new law.

MODERATOR: Thank you Sundeep. Now on to the last question that was submitted prior to this forum.

Question 11: Does the opt-out message itself need the address-phone? Or is it sufficient enough to put it on the website they are redirected to?

AL IVERSON: The opt-out message on the email, first of all, must contain the mailing address, as we stated before. You can use a P.O. Box address now if you want to. But a phone number is not required by CAN-SPAM. But the important distinction here is, the opt-out message and your physical address have to be on every email campaign that's sent. And Sundeep, we communicated a little bit before. You thought it wasn't a bad idea to have the opt-out message on the confirmation email that is sent back to the user.

SUNDEEP KAPUR: And the rational behind that is, if I unsubscribe and I get a confirmation email, some people do that saying that, "Hey, you're now off the list," why not put in the contact information there? Because even if accidentally, I don't get off that list for whatever issue it is, it's considered a good practice just to have it there. But it's legally not required.

AL IVERSON: Yeah, definitely the more friendly contact points you make available, the less likely you are to get screaming, angry complaints or spam reports about you.

MODERATOR: Great. We just had a really good question come in from an audience member. Does the panel have recommendations for building a solid opt-in list?

SUNDEEP KAPUR: Ask people. Tell them exactly and precisely why. In fact, I'll kind of turn this around. And if I could ask, if I was to ask everybody on this phone, "Why should I sign up for your email program?" I guarantee you, one of the answers is going to be a loud, "Um, were you going to stop and think about why?" So a suggestion I make to a lot of folks is sit down and write down the reasons why. List those reasons. Let your people, let your sites, let everybody know clearly. And bring it all back to one page – a preference center, where you get people to sign up, and also to opt out, and honor that commitment.

AL IVERSON: I couldn't agree more. I mean, that's solid. That's excellent advice. I mean, it really comes down to, why do people want to be on your list? It's not, how do you trick people into getting them on there. It's how do you show value that's going to drive consumers and recipients to sign up for you?

And there's certainly a lot of strategy there as to how best to position yourself to utilize search traffic and other methods to drive people to signup pages, or whom to partner with to advertise with on somebody else's site to drive a specific sign-up to you. But boy, that's some pretty deep knowledge or pretty deep strategic guidance that's probably a little bit beyond a two-minute summary on a phone call.

CHRIS HEINE: The only thing I'd add kind of builds on what Sundeep was talking about: you want to give people options in terms of the content and the promotions that they're going to receive. I know a lot of emailers out there, for the last year or two, have been testing frequency options. How often do you want to get an email from us? Do you want to get one every week? Every month? Every two weeks? Those types of options probably could only help you build a really good opt-in list.

MODERATOR: Great. And any final words of wisdom for our marketers here, panelists, before we let you off the hook?

Okay, again, for those of you who did not have your question answered, I know there are still a couple that are quite lengthy to answer in the last four minutes. Please feel free to email me directly at [hopeh\(at\)marketingsherpa\(dot\)com](mailto:hopeh(at)marketingsherpa(dot)com). And I will in turn submit them to our panelists so we can keep this discussion going offline. Thanks again to all our members for your participation this afternoon. And again, panelists, thank you so much.