

Federal Anti-Spam Legislation: Documentation of Compliance

.....
(List Manager Name)

Intent of Legislation – Summary:

The Federal CAN-SPAM Act of 2003 was signed into law and will take effect on January 1, 2004. It is very important (List Manager Name) keeps you informed on the new guidelines in order to educate the marketing community on how to move forward with these new regulations.

IMPORTANT: THE FOLLOWING INFORMATION IN THIS MEMO IS BEING PROVIDED TO YOU FOR THE PURPOSES OF EXPLAINING THE STEPS THAT (LIST MANAGER NAME) HAS TAKEN WITH REGARD TO COMPLIANCE WITH THE FEDERAL CAN-SPAM ACT OF 2003. IT IS NOT LEGAL ADVICE TO YOU OR ANYONE ELSE BUT SIMPLY WHAT (LIST MANAGER NAME) IS DOING TO COMPLY WITH THE FEDERAL CAN-SPAM ACT OF 2003. YOUR INTERPRETATION OF THE FEDERAL CAN-SPAM ACT OF 2003 AND THE ACTIONS YOU TAKE TO COMPLY WITH THE SAME IS STRICTLY YOUR RESPONSIBILITY AND SHOULD BE MADE IN CONSULTATION WITH YOUR LAWYER.

The purpose of the law is to require that advertisers and list owners identify the advertisement and themselves within the electronic message and provide a working unsubscribe or “opt-out” to recipients from receiving future e-mails. Marketers cannot harvest addresses or use any other automated means to create an e-mail list. They also cannot use misleading or false subject lines.

This legislation enables the following:

- ~ Gives the Federal Trade Commission (FTC) the primary responsibility for enforcement and additional rulemaking to implement the Act.
- ~ Mandates further studies and reports related to spam, including requiring the FTC to prepare a plan for establishing a nationwide Do-Not-E-Mail registry within six months of the bill’s enactment.
- ~ Provides the causes of action to State Attorney Generals, ISPs and the FTC.
- ~ Provides no individual right of action.
- ~ Does not apply to transactional or relationship messages.
- ~ Preempts all existing state law’s regulation of commercial e-mail, except to the extent that such laws regulate false or deceptive e-mails.

The bottom line of the intent of this law is that you can send anyone an e-mail once and if they then ask you to take them off and you do not comply with this request, you’re put at risk for legal action.

Requirements of Commercial E-Mail Messages – Summary:

One of the most important components of the bill is the definition of the “sender”. By definition in the Act, the sender is the person who initiates the message AND whose products, service or web site is being

advertised or promoted in the message. This means that in the case of third-party e-mails, it can be interpreted that this is the list owner and the advertiser.

Senders are required to do the following for third-party e-mails:

- ~ Clearly and conspicuously identify the electronic message as an advertisement.
- ~ Use subject lines that are not misleading.
- ~ Clearly and conspicuously provide a working unsubscribe or “opt-out” mechanism for both the list owner and the advertiser. The “opt-out” should appear prominently below the original message in at least as large a font size as the original message.
- ~ Provide a physical postal address to contact both the list owner and the advertiser. This must contain a street address according to the DMA’s guidelines.
- ~ When the unsubscribe is requested, the recipient must be taken off within 10 days.

Key Definitions:

- ◆ Commercial Electronic Mail Message: An electronic message whose primary purpose is the commercial advertisement or promotion of a commercial product or service including content on a commercial web site. Please note, however, that the inclusion of a reference to a commercial entity or a link to a web site of a commercial entity in an e-mail message does not, by itself, cause the message to be treated as a commercial e-mail for the purposes of the bill if the contents or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or services.
- ◆ Transactional or Relationship Messages: E-mail messages that facilitate commercial transactions and include:
 - ~ Warranty, recall, safety or security information
 - ~ Customer service notices
 - ~ Subscription status or account information
 - ~ Information related to employment relationship or benefits
 - ~ Confirmation of delivery of goods or services including updates and upgrades
- ◆ Affirmative Consent: Recipients who have expressly consented to receive e-mail messages in response to a clear and conspicuous request or at the recipient’s own initiative. If, however, the message is from a party other than the party to which the recipient communicated such as consent (i.e. third-party advertisers) the recipient must be given clear and conspicuous notice at the time the consent was communicated that their e-mail address could be transferred to or used by such other parties for the purpose of initiating commercial e-mail messages.
- ◆ Sender: The person who initiates an electronic message AND whose product, service or web site is advertised or promoted by the message.
 - ~ Separate lines of business or divisions may be treated as single senders
 - ~ In the case of list rentals, this can be interpreted as both the list owner and the advertiser

What This Means for Third-Party List Rentals – Compliance:

The following is documentation for all lists that are managed by (List Manager Name) to show compliance with the CAN SPAM Act of 2003.

- ◆ Affirmative Consent that is Clear and Conspicuous: This addresses the issue of how we qualify the permission to receive third-party information. According to the definition in the law, in order to be compliant, it is irrelevant as to whether the question is asked in a positive or passive manner as long as it is clear and conspicuous to the recipient that they are giving permission. Presently all list owners present the permission question in a clear and conspicuous manner on all qualification and online registration forms – whether subscribing to a publication or online newsletter.

If you would like to receive a document on the statements of the permission questions, it will be gladly presented upon request.

- ◆ Unsubscribe: Our policy is to have two unsubscribes – one for the list owner and one for the mailer – provided by the mailer. If an unsubscribe link from the mailer is not available, then our service bureau, Commerce Register, will provide one for a small fee of \$50 flat. Two unsubscribes will be necessary as the intent of the recipient's unsubscribe needs to be clear in terms of no longer hearing from the individual mailer and/or the list owner.

For the list owner unsubscribe, the recipient will be taken off immediately. All list owner unsubscribes are also sent back to the individual circulation service bureaus for reintegration at the circulation source.

For the mailer unsubscribe, it will be the responsibility of the mailer, whether they provide their own unsubscribe or it is provided for them and the names are forwarded, that it is understood that the requirement of the law is that unsubscribes are to be taken off their database within 10 days and included in their own Do-Not-E-Mail list. It is also required that all links associated with the transmitted e-mail be live for 30 days.

All unsubscribes must be Internet based meaning either by electronic reply or a link.

If an unsubscribe occurs on an (List Manager Name) Database transmission, that individual will automatically be taken off of **all** sources immediately.

- ◆ Suppress File from the Advertiser: It will be our policy to only accept e-mail rentals from companies that can provide a suppression file of individual e-mail addresses that do not want to receive e-mail transmissions from them. In light of this policy, the present suppression fees will be reduced from a \$250 flat minimum to \$150 flat minimum for up to 100,000 records. Over 100,000 records is an additional \$1/M.

- ◆ Header: It is a requirement of this law to identify all third-party or commercial e-mails as such. All Header language has been reviewed and is compliant with this requirement. A header for labeling purposes is not required if the permission is opt-in.

- ◆ Physical Address: Due to the definition of the sender, a physical address will be present for both the list owner and the mailer. These physical addresses will appear under the unsubscribe links. DMA guidelines require that this address must contain a street address. If the transmission is from an (List Manager Name) Database, the physical address will be (List Manager Name).

- ◆ Falsification of Subject Line: It is understood that all subject lines submitted for list rental are not falsified in any way.

- ♦ Harvesting: (List Manager Name) managed lists or databases have not been obtained from harvesting or any other unlawful electronic collection of e-mail addresses.

If you have any further questions about compliance issues with (List Manager Name) managed lists, please do not hesitate to contact us.

By my signature below I agree that I am an authorized representative of the Company named on the signature line below (“Company”) and I have read this compliance document and I and the Company understand all the issues stated that are required by the law for compliance with the CAN SPAM Act of 2003 which include procedures and associated pricing. The Company agrees that it is responsible for any noncompliance by the Company with the CAN SPAM Act of 2003 and the Company will indemnify and hold harmless (List Manager Name), its parents, subsidiaries, clients, affiliates, and their respective officers, directors, agents, employees and representatives for any noncompliance by the Company with the CAN SPAM Act of 2003.

List Renter hereby agrees that the above stated conditions are in effect for the full calendar year of 2007 and that these conditions apply to every order placed within that calendar year.

This Compliance Document is a supplement to your List Rental Agreement.

Company Order #: _____

(List Manager Name) Order #: _____

.....
E-Mail List Renter/Company Name:

Authorized Signature: _____

Title: _____

Date: _____

IMPORTANT: THE FORGOING INFORMATION IN THIS MEMO IS BEING PROVIDED TO YOU FOR THE PURPOSES OF EXPLAINING THE STEPS THAT (LIST MANAGER NAME) HAS TAKEN WITH REGARD TO COMPLIANCE WITH THE FEDERAL CAN-SPAM ACT OF 2003. IT IS NOT LEGAL ADVICE TO YOU OR ANYONE ELSE BUT SIMPLY WHAT (LIST MANAGER NAME) IS DOING TO COMPLY WITH THE FEDERAL CAN-SPAM ACT OF 2003. YOUR INTERPRETATION OF THE FEDERAL CAN-SPAM ACT OF 2003 AND THE ACTIONS YOU TAKE TO COMPLY WITH THE SAME IS STRICTLY YOUR RESPONSIBILITY AND SHOULD BE MADE IN CONSULTATION WITH YOUR LAWYER.