

SILVERPOP

Understanding CAN-SPAM and Taking the Necessary Steps for Compliance

CAN-SPAM now governs e-mail marketing. What do you need to know?

While we recommend that all marketers refer to legal counsel for full interpretation of the law, the team at Silverpop has created some guidelines and pointers for getting your e-mail marketing program ready for CAN-SPAM.

Getting Started

Perhaps the cornerstone of deciphering the new legislation is to gain full understanding of the difference between transactional and commercial e-mail.

What is Considered Transactional E-mail?

- Facilitates, completes or confirms a commercial transaction that the recipient has previously agreed to enter into
- Provides warranty, recall, safety or security information for a product the recipient purchased or uses
- Provides notices concerning a change in subscription terms, standing, status or account information involving ongoing purchase or use by the recipient of a product or service offered by the sender
- Provides information directly related to an employment relationship or related benefit plan participated in by the recipient
- Provides delivery updates or upgrades that the recipient is entitled to receive under the terms of transaction to which the recipient has previously agreed to

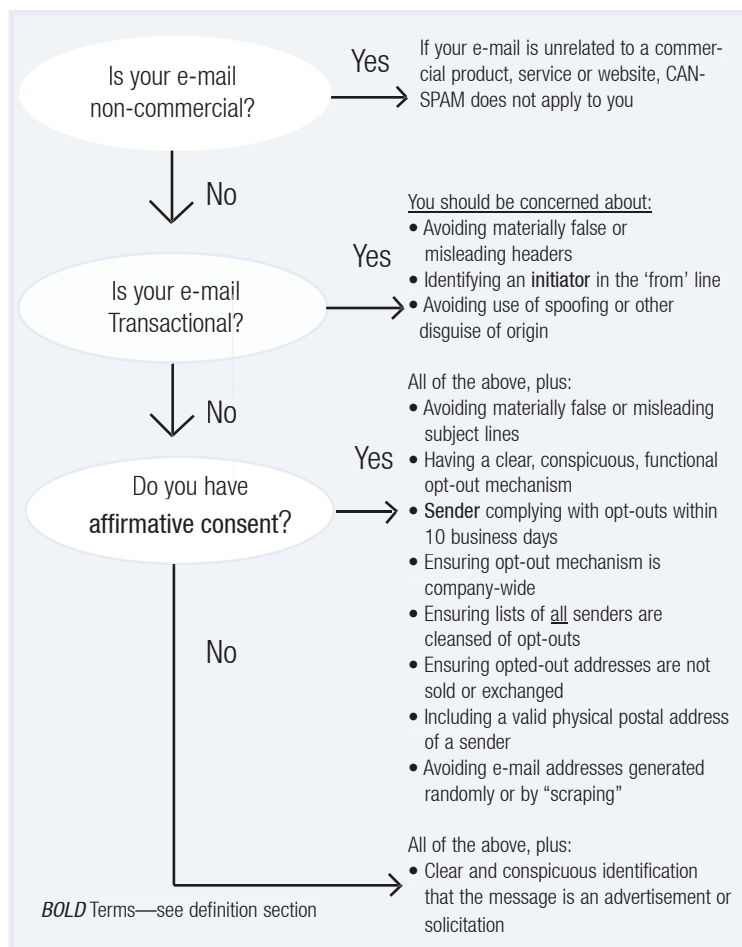
What is Considered Commercial E-mail?

- Any electronic mail message that is primarily an advertisement or promotion of a commercial product or service

Consider This...

Now that you know the difference between commercial and transactional e-mail and some basic definitions, there are three questions you should ask. The following chart outlines some key provisions each marketer should consider based on answers to each of these questions.

- Is my e-mail non-commercial?
- Is my e-mail transactional?
- Do I have affirmative consent?



Important Definitions in CAN-SPAM

It is very important to understand the language in the new law. Failing to do so could place your e-mail marketing efforts in violation. Below are some key definitions to consider in preparing for compliance.

Initiator— Originates, transmits or procures the origination or transmission of a message (can be more than one party)

Sender— An initiator whose product, service or website is advertised or promoted by the message

Affirmative Consent— Expresses consent to receive a message either in response to a clear and conspicuous request for such consent, or at the recipient's own initiative



Where Do I Begin?

A lot of marketers are scratching their heads and wondering where to start. Clients have asked us, "What do I need to put into place and where do I begin?" Following are six things you should do immediately to comply with the law and some things you may not have considered, but should.

Five Things You Need to Do Right Now

- Add a physical address to all mailings. Although the law is not specific, many experts are recommending against the use of P.O. box addresses.
- If your list does not meet the definition of affirmative consent, add a notice that your message is an advertisement or solicitation. The legislation does not specify where the notice must appear, only that it must be "clear and conspicuous".
- Review each of your mailings to ensure your opt-out mechanism is "clear and conspicuous."
- Review your opt-out process to ensure opt-outs are handled within the 10-day limit.
- Review your opt-out process to ensure you provide a global opt-out that covers the entire company. A "line of business" exception may apply in some cases—consult the legislation or your attorney.

The Half-Dozen Things You Need to Do Next

- This law applies to all e-mail that advertises or promotes a commercial product, service or website, and is not just limited to traditional, "bulk" e-mail. Who else in your organization uses e-mail for promotional purposes, even in small quantities (Sales? Product Support? Corporate Communications?)?
- Do you use a "passive" opt-in process—e.g., a pre-checked box that is not conspicuous? The legal requirement is for "clear and conspicuous consent," especially if you are doing co-registration with a partner.
- Thinking of changing your opt-out mechanism? Opt-out mechanisms must remain active for 30 days after a message is sent.
- Do you rent or borrow lists? List owners must be notified of opt-outs, so be sure to set up an appropriate mechanism to communicate in a timely manner.
- How this law affects viral and forward-to-friend campaigns is unclear. Until there is more clarity, design viral campaigns as if they are unsolicited commercial e-mail.
- The best defense against unintentional violation of the law is training and documentation. Does your organization have a documented e-mail governance policy in place? Assemble a policy and a training plan to ensure all involved parties understand their obligations.

Don't Worry, Just Sell It! – Right?

If a customer has opted out of your list, you can still extract value from that address by selling or lending it to someone else, right? Wrong! The law specifically prohibits transfer of known opt-outs.

What About State Legislation?

The act supercedes state and local anti-spam laws, but leaves in effect those specifically aimed at deception, trespass, contract, fraud or computer crime.

How is it Different from the State Legislation?

The new federal legislation differs significantly from previous legislation:

- There is no private right of action—only the federal and state governments and affected ISPs can bring action against alleged violators
- Existing business relationships and opt-ins are given comparatively less weight than in previous legislation
- Some of the more egregious violations carry criminal penalties, including imprisonment

More to Come

As The Smart Choice for E-mail Marketing, we look forward to bringing you more information on legislation and best practices as e-mail marketing continues to evolve.

Upcoming activities related to the new legislation include additional FTC rulemaking regarding labeling requirements (including the use of "ADV"), and the possibility of adjustments to the 10-day opt-out rule and the definition of "transactional". CAN-SPAM also includes provision for research of a Do Not E-mail list, similar to the Federal Do Not Call list. Although industry insiders consider it unlikely to come to fruition, Silverpop will continue to monitor this important issue on behalf of our clients.

In the meantime, we hope these suggestions will help prepare your e-mail marketing efforts for CAN-SPAM. For additional questions or information, please contact your Silverpop client services representative.

SILVERPOP

The Smart Choice for Email Marketing

For more information on our services or products, please contact us at:

866-SILVPOP (745-8767)
or info@silverpop.com

VISIT US AT WWW.SILVERPOP.COM



