

Spam, your business and the law

How to make sure your email marketing is not breaking the law. By LAWRENCE SMITH.



SPAM. We all get it, we all hate it, you'd love to not have any. Well, from September 5 this year the Unsolicited Electronic Messages Act comes into effect. This will change the way you think about spam.

So does this finally mean an end to spam? Unfortunately not, but the Act has significant implications on how you promote your business electronically. One wrong click and you could cost your business a great deal more than a few troublesome emails in your inbox. Think a significant fine.

The intention of the Act is to reduce bulk spammers, however the legislation doesn't just catch those peddling Viagra, it catches every person sending an email containing a commercial or marketing message.

The term "commercial electronic message" includes electronic messages (email, SMS text, instant messages, but not voice calls or facsimile). If you send even one email to a person without first gaining their consent, you might be breaking the law.

From September 5, think consent. Every commercial electronic message you send will need the recipient's consent. If they are already on your mailing list and you can prove consent then you are OK. If you can't prove it then you will need to gain that consent again. A positive, or opt-

in, consent is required, meaning the old trick of "tick this box if you don't want to receive email" will no longer work.

Three forms of consent have been defined by the Act - "express" (if you gave permission), "inferred" (if you have an existing business relationship) or "deemed".

Deemed is interesting as potentially you could send unsolicited mail where:

- the recipient's electronic address has been published;
- the publication is not accompanied by a "no spam" type statement; and
- the message being sent to the recipient is relevant to the recipient in a business or official capacity.

So how do you make sure you don't run foul of the law? There are some simple steps.

1. Make sure you have appropriate consent for sending the message.
2. Make sure all messages include a link to a functional "unsubscribe" option.
3. Ensure all messages identify the person who authorised sending the message and how that person can be contacted
4. Consider implementing professional

email campaign software as these are more likely to incorporate the necessary safeguards than the old fashioned bcc field in Microsoft Outlook.

And what should you be doing now to your existing mailing lists?

1. Make sure you do have consent from people on your lists.
2. If not, you need to contact them and ask for it. Expect a drop out rate.
3. Develop a process of updating and maintaining your lists.
4. Ensure you keep accurate records of all consents, as well as those who have unsubscribed.
5. Make sure your contact details and unsubscribe functions are up to scratch.
6. Make sure people within your business know about the Act and only send to those people who have consented.

In principle the law has good intentions, but there is now a considerable burden for all business, large and small, who choose to communicate via email.

With good record keeping and process- es email remains a viable and cheap form of communication. If you're poor at both of those or worried about the risks, well, most other forms of communication including fax, phone, direct mail are still unregulated so go for your life. Crazy but true!

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