

## **Information on the CAN-SPAM Act of 2003**

### **Purpose**

This document is intended to provide summary information on the National CAN-SPAM Act of 2003. This summary is provided for general information only, and should not be used in place of qualified legal counsel. The complete text of the CAN-SPAM Act is available from Digital Advocate upon request, or via the Internet.

Following in this summary, we will attempt to explain the basic intent of this legislation as it may apply to business communications on the Internet, and Digital Marketing in general. We will begin at the basic level and provide subsequent detail thereafter. If you should need additional information, please feel free to contact us.

### **Overview**

The CAN-SPAM Act received its name from “Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003”. Signed into law on December 15, 2003 by President Bush, it went into effect January 1, 2004. Its objective is to prevent the practice of Unsolicited Commercial Email (UCE) or “Spam”, as well as to put a framework around Internet communications, particularly those of business in regard to the promotion and solicitation of commerce.

### **SUMMARY: The Basic Practices of The Act to Follow –**

Below is an executive summary of the basic practices prohibited or required by the law for business Internet communications such as email or eNewsletters. The CAN-SPAM Act:

1. Prohibits falsifying transmission (header) information. This especially applies to the “From:” line – you must provide the name of your company or an actual person.
2. Prohibits false and misleading “Subject:” lines for commercial emails.
3. Requires that commercial emails include a clear and conspicuously displayed mechanism for recipients to object to receiving emails (opt-out) and requires senders to comply with objection requests (remove them from your distribution list) within 10 days of the request.
4. Requires clear identification that the email is a solicitation when applicable (somewhere in your email – for example in the subject or body text).
5. Requires that senders provide a valid postal address (your business address).
6. The Act establishes liability for promotions involving commercial email sent with false or misleading transmission information. This is irrespective of whether the business itself is sending the email messages. If the business should have known that email was being sent in violation of the act and failed to take reasonable action to prevent or report such actions, it can be held liable.

## **Additional Considerations and Implications**

1. Commercial email, if practiced properly, can continue to be used as a mainstream marketing channel. In fact this legislation will help business by providing clear and safe guidelines regarding Internet communications.
2. The CAN SPAM Act will preempt and override the nearly 40 state laws that currently exist or are pending on unsolicited commercial email, including the recently-passed California law.
  - Even though critics claim the legislation will do little to halt unsolicited email (especially UCE that is sent from overseas), this legislation *is* a win for businesses and organizations that have had difficulty complying with the confusing patchwork state laws.
3. The FTC, or any State Attorney General is authorized to bring action under the Act. An Internet Service Provider (ISP) may request action via the above parties.
4. There is no private right of action, such as class actions by consumer groups or other individuals, permitted. Under some parts of the Act, only the FTC may bring action.
5. The FTC is authorized to study and, only if it determines to do so, establish and enforce a "do not email" registry, similar to the highly publicized "do not call" registry. Please note that the FTC is *not required* to establish a "do not email" registry.

## **Recommendations**

Digital Advocate highly recommends that, if you currently promote or plan to promote any business offerings through any Internet media, you also do following:

1. Review all of your email lists and, if possible, get expressed consent from each of the individual email accounts on those lists.
  - This could actually present an opportunity to establish and qualify your formal outbound Digital Marketing practices if you have not done so already
  - Your end users will appreciate your diligence in making this a part of your standard business practice
2. When sending any commercial email, take steps to label and identify the email properly.
  - Do not use "Bcc:" for mass distribution
  - Send emails and eNewsletters to individuals if possible (this is where using your own a robust, commercial Email Distribution System is very helpful)
  - Use your Company Name or your name in the "From:" line
  - Be direct and concise in your "Subject:" line, no misleading statements

3. When sending any commercial email, make sure that the source of the email is clear to the recipient. In other words, do not send any commercial email that contains false header information or other false or misleading data. The CAN SPAM Act takes an extremely harsh view of commercial email designed to deceive or mislead recipients.
  - If you use Rented Lists or other external distribution systems, be sure they are in compliance with CAN-SPAM
  - Insure that everyone in your company is informed of the basics of these provisions
4. Include a clear “Opt-out” capability. Having an opt-out email address is a minimum.
  - A one-click link or email address that will permit any recipient to "opt-out" of any future communications
  - A statement as to when the request will be honored, and/or a follow-up response (auto-responder system) is helpful
5. Once a recipient opts out, you must refrain from sending that recipient any additional commercial email. You may be required to provide such opt-out requests to your business partners as well to insure their compliance in any joint ventures.
6. Include a physical postal address in each commercial email. This should be in your standard email footer.
7. Supply a reason the recipient has received your commercial email or eNewsletter.
8. Create a standard, company wide email footer for your emails that addresses points 4 –7 above. Provide your employees with guidelines on when to use the footer.
9. Investigate the use of commercial Email Distribution Systems for broadcast campaigns. They are inexpensive, very effective, will help insure your CAN-SPAM compliance, and provide many other benefits.

### ***A Sample Email / eNewsletter Footer***

The following is provided as a sample footer for commercial Internet media. If you have concerns regarding any of your corporate communications, we recommend that you seek legal counsel to help you determine how the CAN-SPAM Act might affect your business and Internet marketing activities.

You have received this Email because you have provided your Email address to “*The Company*”, most likely in the course of business activities, attendance of a meeting or seminar provided by “*The Company*”, and/or for purposes of receiving additional information about the “*The Company*”. To unsubscribe from this mailing list, please [click here](#), or reply with the word “Unsubscribe” as the subject line. Your request will be honored within (1 to 10 days, put your response time here) business day(s) upon receipt. Our business address is 999 Z Street, Suite 9999, San Diego, CA 92999. Thank You.

### ***For More Information...***

As previously described, the CAN-SPAM Act is quite lengthy and this document is in no way intended to replace or substitute a thorough understanding of the law.

Should you desire additional assistance, Digital Advocate can provide the following:

- For a copy of the CAN-SPAM Act in PDF format, please email us at [info@Digital-Advocate.com](mailto:info@Digital-Advocate.com), and request it
- Visit our Website at [www.Digital-Advocate.com](http://www.Digital-Advocate.com) and go to the Resource Center (it's under "Our Services", click the Power button) and you may download a free copy of the CAN-SPAM act, as well as a PDF copy of this Document
- Visit [www.SPAMLAWS.com](http://www.SPAMLAWS.com) for global information
- Digital Advocate offers 30 minute interactive seminars for your Company Employees, as well as consultative services and guidelines on how to insure company wide compliance for your outgoing Internet communications

### ***About Digital Advocate***

Digital Advocate was created to assist your business to define and enable your strategy to acquire, set-up, and execute best of class technology resolutions to enhance your company's business performance via Digital Marketing. Digital Advocate works with its clients to ensure that all their Internet communications are in compliance with current legislation.