

How to Comply with the CAN-SPAM Act

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Email is ubiquitous in modern life with billions of emails – wanted and unwanted – sent each day. Since its enactment in 2003, the Controlling the Assault of Non-Solicited Pornography and Marketing (“CAN-SPAM”) Act has attempted to curb the number of unwanted emails and impose some rules on a largely unregulated frontier. When followed, CAN-SPAM Act’s restrictions give email recipients some control over their inboxes and also maintain fairness in how emails present themselves. Failure to follow the CAN-SPAM Act can lead to penalties of up to \$16,000 per violation.

As a practical matter, many organizations use vendors for their email marketing and other email services, and those vendors often assist the organizations in complying with the requirements of the CAN-SPAM Act. Nonetheless, the party whose content is promoted via email must supervise the conduct of its vendors and employees in abiding by CAN-SPAM, or else risk possible sanctions.

The basic requirements of CAN-SPAM are:

1. Does your email message include: (a) complete and accurate transmission and header

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information; (b) a “From” line that identifies your business as the sender; (c) a “Subject” line that accurately describes your message; and (d) an effective “opt-out” mechanism?

2. Does your email either contain an email address, physical address, or other mechanism that the recipient may use for opting-out of future marketing emails?

3. Is your opt-out mechanism effective for at least 30 days after your email is sent?

4. Do you honor all requests to opt-out within 10 days?

5. Does your mailing list include any recipient that has asked not to receive email from your business (opted-out)?

6. Have you tested the effectiveness of your opt-out mechanism?

7. Have you reviewed your vendor contracts to determine each party’s responsibilities with regard to CAN-SPAM compliance?

8. Are addresses of people that have opted-out transferred outside of your organization?

9. Does your organization use open relays or open proxies to send marketing email?

The following provides snapshot information concerning email marketing.

<div>\$44.25</div> <div>Average return on each dollar of email marketing investment.¹</div>	<div>139.4 billion</div> <div>Projected number of daily business emails in 2018.²</div>
<div>2.5 billion</div> <div>Estimated number of email users.³</div>	<div>9,185</div> <div>Number of complaints received by the FTC in a year concerning unsolicited email.⁴</div>

[1] Amanda Nelson, 25 Mind Blowing Email Marketing Stats, Salesforce Blog, (July 12, 2013), <https://www.salesforce.com/blog/2013/07/email-marketing-stats.html>.

[2] Sara Radicati, Email Statistics Report, 2014-2018, (April 2014), <http://www.radicati.com/wp/wp-content/uploads/2014/01/Email-Statistics-Report-2014-2018-Executive-Summary.pdf>.

[3] Id.

[4] FTC, Consumer Sentinel Network Data Book for January – December 2014, (February 2015), <https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-january-december-2014/sentinel-cy2014-1.pdf>.

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