

SPAM ACT - WHAT SMALL BUSINESSES NEED TO KNOW

The Australian Spam Act comes into force from 11th April. These notes were drawn from a presentation by Gordon Cramer of Actif Communications.com to the Pine Rivers Chamber of Commerce. There are severe penalties for anyone who breaches the Act, so here are the key points that small businesses need to know.

What does it cover?

- All emails
- mobile text messaging and
- other electronic messaging.

What is excluded?

- Voice to voice telemarketing
- Faxes

Definition of spam

It either offers a commercial transaction or directs the recipient to a location where a commercial transaction takes place.

The message must have been sent without the recipients consent.

Who is covered?

Everyone except:

- Registered political parties
- Charities
- Religious organizations
- Educational institutions directed to attending and former student and their households where the message relates to goods or services and the body authorizing the message is the supplier of the goods or services.

Most likely areas affecting small businesses

- Newsletters
- Email direct mail outs advertising services or sales
- Follow up of business cards from networking events
- Websites

Penalties

- Single unsolicited email - \$440 to \$22,000 in a single day for an individual
- Single unsolicited email from \$2200 to \$110000 in a single day for a body corporate
- Maximum fine is \$1.1million for a single day repeat offenders.
- Plus - the person may have to surrender any financial benefit they gained.

What do you need to do to comply?

Emails:

1. You need to add an “unsubscribe” link at the bottom of all your emails. Something along the lines of “if you no longer wish to receive email from this company, please send a blank email to (company email address) with the word unsubscribe in the subject heading”.
2. You need to include accurate information about the person authorizing the sending of the email. This includes name, business not postal address, phone numbers for contact and email address. This must be included even if you have someone else send the email on your behalf. The information must be reasonably likely to remain correct for 30 days after the sending of the message.
3. Purely factual messages (eg: confirming appointments or attaching invoices) are excluded from the legislation. If you add a sales message or motto, then you are covered.

Data lists:

1. It is illegal to purchase or use Harvesting software
2. If someone conspicuously publishes their electronic address, then in restricted circumstances this may imply consent to receive emails of a commercial nature.
3. If you receive a business card, you need to ask the person if they consent to receiving email from you. Note it on the card and keep the card!
4. You need to build in a “double opt in” into your websites. This means people have to click on the subscribe button. You should then send an email to their address requiring them to confirm that they wish to receive mail from you before adding them to the list.
5. You need to remove people who ask to be unsubscribed within 5 working days of their request (in the USA this is within 10 working days).
6. Given there is different legislation covering the USA, Europe and Australia, if your website does business overseas, you need to add in a field requesting country of origin. This will help you to work out what legislation you need to comply with.
7. You are required to keep a list of all unsubscribed names (by default you should also keep a list of all subscribers, the method used to subscribe and the date and time)

Risk Management:

Prudent companies should do the following before 10 April.

1. Review any privacy policies in place and update them to discuss sharing of information and email addresses.
2. Ideally you should have a customer profile that includes customer preferences in relation to communication (i.e. newsletters, adverts etc). Customers should be able to access and edit their profile.
3. Write up procedures for handling spam complaints and unsubscribe processes.
4. Review all reseller & affiliate marketers’ agreements to ensure that they comply.
5. Send an email to your total database stating that in compliance with the Act you wish to confirm that they are still interested in receiving email from you. Ask them to click on a link to send a blank email of confirmation. If you do not receive a response, then phone or send a hard copy letter to follow up until you get a response.

6. Train your staff in your new procedures
7. Never borrow or lend out your mailing list.
8. Exercise extreme caution if considering renting or buying a list. These lists have gained email addresses and sold them to you. You do not know the people on the list and they have not given consent to receive mail from you.
9. Consult your legal adviser if you send emails and newsletters on a regular basis.

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