

What is spam?

It's spam if the message is:

- Electronic.
- Commercial.
- Unsolicited.



It must fit all three criteria for it to be considered spam. Note that a single message can be spam: it doesn't need to be a bulk message. It applies to emails, SMS (text messages) and instant messaging.

Spam got its name from a canned meat product manufactured by Hormel Foods, adopted in a song in a Monty Python sketch: "Spam, spam, spam, spam, spam, spam, spam, spam, lovely spam! Wonderful spam!"
Until told to shut up. Hence the meaning of the spam: something that keeps repeating to great annoyance.

What is not considered spam?

This law does not apply to postal, fax, or voice communications. The following are also not spam:

- Responding to a request for a quote or an estimate.
- Messages facilitating, completing or confirming a commercial transaction the recipient previously agreed to.
- Warranty information, product recalls, and safety and security information about goods or services used or purchased by the recipient.
- Factual information about a subscription, membership, account, loan or similar ongoing relationship.

Why is spam a problem?

Spam tends to be circulated by criminals: it often contains viruses, scams, offensive or illegal content. 80% of internet traffic is spam: that's a huge amount of resources, and it is us paying for this. So the Government has created legislation to enable them to prosecute spammers – and there are a few simple things every business needs to make sure they're implementing to ensure they stick to the right side of the law.

When does the law come into force?

On 5 September 2007, so you need to **act now!** Use our compliance checklist in this document to get started.

What are the penalties for breaking the law?

- First step: a formal warning is issued.
- Second step: Infringement notices are issued, up to \$2,000.
- Finally court actions may be held, with a maximum fine of \$500,000.

... so it's worth following the guidelines – and the good news is that it isn't too onerous.

What about viral marketing?

Viral marketing are emails encouraging recipients to “tell a friend”, or “email a friend”. Technically these break the new law, but the Department of Internal Affairs, who enforce the Act, are looking for ways to solve this, as they realise this is an important marketing tool for any businesses. FX Marketing will keep you posted on this via our email newsletter.

Other Laws

In addition to the requirements of this Act, you should always comply with the Privacy Act 1993 and other applicable laws.

Where can I get more information?

The Department of Internal Affairs have more information on their website (www.antispam.govt.nz), and are happy to answer individual questions. For legal advice, a lawyer should be sought.

Your compliance checklist

Read the following information, and tick the boxes where you comply. Get help with any unticked boxes – FX Marketing would be pleased to point you in the right direction.

1. Consent

Make sure you have consent from the people you wish to communicate with. There are three types of consent:

- **Express consent (the best type)**

Where the person you wish to contact has said that this is OK with them. This can be from:

- Filling in a paper form.
- Ticking a box on a website.
- A phone or face-to-face conversation.

- **Inferred consent (pretty good too)**

Where the person hasn't directly instructed that it's OK for you to contact them, but where there's a reasonable expectation that messages will be sent, for example:

- The email address has been provided in the general expectation that there will be follow-up communication.
- Swapping business cards.

- **Deemed consent (OK)**

When someone conspicuously publishes their work-related email address or phone number, e.g. on a website, brochure or magazine, provided that this doesn't include a "no spam" type statement.

However, the message sent must be relevant to the recipient's business.

If you aren't confident that the existing relationship is strong enough to infer consent, you should obtain express consent.

Do you have consent from all the people you wish to communicate with?

If not, this consent should be sought. If it's for email communications, you could send everyone on your database an email asking them to confirm that they want to keep receiving emails from your business. It's OK for your business to incentivise people for doing this.

However, you must do this BEFORE 5 September 2007: after that date, you will fall foul of the law.

Note that the step needs to be a positive step where recipients opt in: asking them to opt out is not sufficient.

The onus is on you to be able to prove when and how consent was given, whether electronically, verbally, on forms, or business cards you've collected. The best way to do this is to keep forms and business cards, as well as recording all this information in a database.

Do you have a record of when and how consent was given?

2. Identify yourself

Your message must contain contact details, i.e. your business name and contact details (phone number, physical address, email address). These details must be reasonably likely to be accurate for a period of 30 days after the message is sent, so that the recipient has a reasonable chance of being able to contact you. (Problem spammers tend to move around rather a lot, hence this requirement.)

Do you identify yourself with full contact details in all commercial electronic messages?

3. Unsubscribe

There must be a functioning unsubscribe facility which is clearly presented and easy to use. It doesn't need to be automated, but it does need to be reliable.

The unsubscribe facility must be available using the same technology as the way the message was sent, so if you're sending emails, recipients must be able to unsubscribe by email, and if you're sending text messages, the unsubscribe facility must be by text message.

Do you have a functional unsubscribe method for all your communication methods?

There must be no cost to the recipient for unsubscribing. So if you send promotional text messages, the cost of unsubscribing must be reverse-billed to your company.

Is your unsubscribe method free of charge for all electronic communications?

Here is an example of how to (a) identify yourself, and (b) offer an unsubscribe facility in text messages. This would need to be included at the end of every message, with the cost of the reply reverse billed to your company:

XYZ Company. Reply OPT-OUT to unsubscribe.

Unsubscribe requests need to be honoured within five working days.

Do you honour Unsubscribes within five working days?

Your checklist summary...

- Do you have consent from all the people you wish to communicate with?
- Do you have a record of when and how consent was given?
- Do you identify yourself with full contact details in all commercial electronic messages?
- Is there a functional unsubscribe facility for all your communication methods?
- Do you have an unsubscribe method for all your communication methods?
- Is your unsubscribe method free of charge for all electronic communications?
- Do you honour Unsubscribes within five working days?

List your action points here...

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