



---

## **CAN(ning) SPAM: Sending Commercial Emails the Right Way**

Email is a useful and inexpensive way to correspond with constituents and promote an organization and its products and services. In this issue of In Brief, we remind you how to properly send email advertisements without running afoul of federal law.

Congress passed the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (the "CAN-SPAM Act"), which took effect January 1, 2004. The Federal Trade Commission issued regulations implementing the CAN-SPAM Act, most recently in 2008. The CAN-SPAM Act imposes a series of requirements on the distribution of "commercial email messages." Commercial email messages are defined as messages whose primary purpose is "the commercial advertisement or promotion of a commercial product or service."

The Act requires that *all* commercial electronic mail messages include:

- identification of the email as an advertisement or solicitation (with limited exception);
- notice of the recipient's opportunity to decline to receive future messages and a return email address or comparable mechanism allowing recipients to opt out; and
- the sender's physical address.

The Act also makes it a federal crime to:

- falsify transmission information;
- use deceptive subject headings; and
- continue to transmit commercial email to a person who has opted-out of receiving such email.

The Act applies to any "individual, group, unincorporated association, limited or general partnership, corporation, or other business entity" sending emails to third parties. In other words, when not-for-profit organizations send emails - the primary purpose of which is the advertisement or promotion of a commercial product or service - the recipients are entitled to the Act's protections and the organization must comply with all aspects of the Act.

The Act requires that all commercial email messages must contain the sender's "valid physical postal address." Under the rules, a valid postal address includes accurately registered post office boxes and private mailboxes, in addition to street

addresses.

Also under the Act, senders must provide email recipients the opportunity to "opt out" of receiving future commercial email from the sender. The rules specify that an email recipient cannot be required to pay a fee, provide information other than his or her email address and opt-out preferences, or take any steps other than sending a reply email message or visiting a single Internet Web page in order to opt out of receiving future email from a sender. In other words, the opt-out procedure cannot be used as a way to collect information about email recipients or subject them to additional advertising.

Finally, the rules provide for a way to determine who is responsible for complying with the Act's opt-out requirements when multiple parties advertise in a single email message. An association participating in a joint marketing campaign with its related foundation, subsidiary or other organizations may designate one of them as the "sender" of the commercial email for purposes of the Act. This allows the joint senders to provide a single opt-out mechanism, and one valid physical postal address in the email message (rather than information for each organization). When the products or services of more than one entity are commingled in a commercial email message, the entities can decide which party will be the "sender" of the message. The "sender" must meet the Act's definition of "sender" - any person who initiates a commercial email message and whose product, service, or website is advertised or promoted by the message. In addition, the sender must be clearly identified by including its non-deceptive name, trade name, product or service in the "from" line of the email, and the sender must comply with the Act's requirements regarding the transmission of commercial advertisements.

As a final note, if your association participates in joint marketing activities, it should make certain that there is a written agreement between the parties specifically addressing the responsibilities of the designated "sender" of any joint commercial emails. If the designated sender does not comply with the Act, all of the entities whose products or services are advertised in the email will be liable as "senders" under the Act.

If you have any questions regarding this newsletter, or would like a review of your organization's specific email policies or practices, please contact [any CLP attorney](#).

Chicago Law Partners, LLC | 333 West Wacker Drive, Suite 810 | Chicago, IL 60606 | [www.chicagolawpartners.com](http://www.chicagolawpartners.com)

## ***About Us***

Chicago Law Partners, LLC is a boutique law firm focused primarily on representing trade associations, professional societies, foundations, other types of not-for-profit organizations, and business entities. We serve as general counsel to a broad range of international, national, state and local organizations. We also represent a wide range of businesses in corporate and transactional matters.

[Click Here To Read More](#)

Please note that this publication should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents of this publication are intended solely for general purposes, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

Any tax advice contained in this publication is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

This publication is not intended and should not be considered as a solicitation to provide legal services. However, this publication or some

of its content may be considered advertising under the applicable rules of the Supreme Courts of the State of Illinois, the State of New York and certain other states.

© Copyright 2011 Chicago Law Partners, LLC

[Join Our Mailing List!](#)

