

# CAN-SPAM

Hi, I'm Dan Smith of DPS Legal Counsel and welcome to today's video.

Today, I'm going to be talking about a topic that should be of interest to just about any business, whether it's a business that operates out of a traditional location--a brick-and-mortar store, a retail location--or whether the business is solely an online business, providing its goods, and services through sales online.

Because all businesses need to advertise and market their business and a lot of advertising and marketing is done through email and so you have to make sure that your email marketing is compliant with federal law.

Now in 2003, Congress passed a law that is known by its acronym of CAN-SPAM.

The CAN-SPAM of 2003 is an acronym for Controlling Access to Non-Solicited Pornography and Marketing Act and that's the acronym CAN SPAM.

In effect, it sets forth a certain number of requirements that any electronic email communication that is commercial in nature, has to comply with.

First of all, what are the types of commercial messages that CAN-SPAM applies to?

It's any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service.

That is going to cover just about everything when you send out emails, advertising or marketing your business.

There are emails that are considered non-commercial. There are emails that are considered transactional or relational which would often be the case of an email with an existing customer or client, where you're not marketing specifically your products or services to that recipient, but perhaps sending an email about an existing order, or an existing transaction or relationship you have with that recipient. But if the primary purpose of the email communication is advertising your business, then you have to comply with CAN-SPAM.

There are just a handful of requirements that you have to meet, but you do need to meet them because violations of CAN-SPAM bring potentially, at least, the possibility or the spectre of severe monetary fines up to more than \$42000 per violation. And each separate email that you send that's in violation of CAN-SPAM is a separate violation.

So what are the requirements?

Well, the first requirement is that the header of your email has to be accurate--where you provide to whom the email is being sent and who the email is from and the routing information about the email itself--all that information needs to be accurate, and correct.

In addition, the second requirement is the subject line has to be accurate and not misleading.

In other words, what the email is about needs to be described in the subject line, not something that is tricky, that is intended to get the recipient to open the email, but it really has nothing to do with the email itself. So the header and the subject line need to be correct, accurate, and not misleading or deceptive.

The third requirement is that the email should contain a reference in the email to the fact that this is an advertisement. You just need to provide somewhere in the email of that. The email itself is an ad.

The fourth requirement is you need to tell the recipient of your email where you are physically located. Where the sender of the email is physically located. So you would typically provide the street address of your company.

That needs to be on the email itself. It needs to be correct and accurate.

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Fifth, you need to tell recipients that they have the right to opt out if they don't want to receive any further emails from you and you provide a conspicuous and clear manner in which they can opt out by sending you another email to a particular email address or some way of that sort to opt out if they don't want get any further emails from you.

And then the next requirement is that you have to honor those opt out requests.

For example, if you send an email today and you get an opt-out request within the next 30 days, you need to honor that opt-out request, and you have to honor the opt-out request in a timely manner, which means you have to honor it within 10 days of receiving the opt-out request.

And finally, if you contract out your email marketing to another company, you need to be watching to make sure that they are complying with CAN-SPAM because you are responsible for any email correspondence--commercial email--that is sent on your behalf by someone with whom you contract.

So watch that as well. Make sure that not only the emails that you send out directly as commercial emails advertising your business are compliant, make sure that if you do contract your email marketing to another company that what they are doing is also compliant with CAN-SPAM.

So that's it for today.

I hope this helps and thanks for listening.