

CMA 2006 National Convention & Trade Show

ADDRESSING PRIVACY ISSUES FOR A SUCCESSFUL EMAIL MARKETING STRATEGY

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What is Spam?

- They are sent in a largely untargeted and indiscriminate manner, often by automated means
 - Their purpose is fraudulent or deceptive
 - In breach of privacy laws
 - The originator of such messages may send messages opting out of receiving such messages

Internet Privacy: Spam

- Intrusion of Privacy Issues
- Nuisance and Costs Relating to Spam:
 - Radicati Group: Spam cost US companies more than \$20.5 billion in 2003
 - Message Labs: spam represents, on average, more than 73% of email messages Internet users get in 2004
- Technology Response: Anti-Spam Software
- Business Initiatives

International Response to Spam

Spam is an international issue

- Canada: No specific Anti-Spam Law
- U.S.: *Can Spam Act* (2004)
- France: *Loi pour la confiance dans l'économie numérique* (2004)
- U.K.: *Privacy and Electronic Communications Regulations* (2003)
- Australia: *Spam Act* (2003)

Canadian Response to Online Spam

- Governmental Response – Industry Canada:
 - Internet Report (1999)
 - Email Marketing Discussion Paper (2003)
 - Canada Anti-Spam Action Plan (2004)
 - Report of the Task Force on Spam (May 2005)
 - *Best practices for email marketing*
- Industry Response:
 - CMA Guidelines
 - Canada e-Commerce Code of Practice of 2003

Canadian Privacy Legal Framework

- Canadian Privacy Legal Framework:
 - Federal: PIPEDA
 - Provincial legislation: QC, BC and Alberta
- What is personal information?
 - *“information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization.”*
- Challenge on the Internet:
 - Business Email addresses (Michael Geist case)

Successful Email Marketing Strategy

**ADOPTING ANTI-SPAM BEST
PRACTICES USING THE STRINGENT
PRIVACY AND ANTI-SPAM LEGAL AND
INDUSTRY FRAMEWORK**

1- Disclosing the Email Policy

- Openness Privacy Principle:
 - Making readily available to individuals specific information about its personal information handling practices
- Implementing and Adequate Privacy Policy:
 - Access without unreasonable effort:
 - Display of the website policy
 - Using a form generally understandable:
 - Language and Length of the policy
 - Content of the policy

2- Obtaining Consent Prior to Collection

- Identifying Purposes Privacy Principle:
 - The purposes of collection shall be identified at or before the time of collection
- Avoiding Illegal Collection / Use of Addresses:
 - Information Voluntarily Provided
 - Purchase of (or Merge With) Third Party Lists
 - Cookies, Spyware, Web bugs
 - Public Spaces on the Internet
 - Mail Server or Dictionary Attacks

2- Obtaining Consent Prior to Collection

- Identifying Purposes Privacy Principle:
 - If Personal Information collected is to be used for a purpose not previously identified, new purpose shall be identified prior to use
- Depending on the Use Made of the Data:
 - Internal Secondary Uses
 - Marketing Back
 - External Secondary Uses
 - Transfer or Disclosure

3- Adequate Method for Obtaining Consent

- Consent Privacy Principle:
 - The way to seek consent may vary depending on the circumstances
- Method of Gathering a User's Consent:
 - Opt-in vs. Opt-out
- Keeping a record of consents received

4- Contacting Only Certain Online Users

- Only With Online User's Prior Consent:
 - Canada: Opt-out
 - United States: Opt-out
 - Australia: Opt-in
 - European Union: Opt-in
 - Czech Republic, Denmark, Finland, France, U.K. Netherlands, Norway, etc...

4- Contacting Only Certain Online Users

- The Notion of «Pre-existing Relationship»
 - Canada:
 - Canadian Code of Practice for Consumers Protection in Electronic Commerce (2003)
 - CMA Guidelines
 - United States:
 - U.S . *Can-Spam Act*
 - Europe:
 - Directive 2002-58-EC

5- Identifying Email

- Identifying the Email Subject
- Identifying the Email Content
- Identifying the Email Source
 - Main physical postal address
 - Certification

6- Providing a Removal Procedure

- Providing a Procedure to Opt-out in the Email
 - Using a Simple and Easy-to-find Procedure:
 - Canadian Code of Practice for Consumers Protection in Electronic Commerce (2003)
 - CMA Guidelines
 - Report of the Task Force on Spam (May 2005)
 - U.S. *Can-Spam Act* (2004)

6- Providing a Removal Procedure

- Honoring the Requests to Opt-out:
 - Building Lists
 - Web Bugs
- Honoring Within a Reasonable Period:
 - 10 business days ?
- Honoring for a Reasonable Period:
 - No expiration?

Questions?

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