

C O M M U N I C A T I O N

WORLD

THE MAGAZINE FOR COMMUNICATION MANAGEMENT

IABC INTERNATIONAL ASSOCIATION OF BUSINESS COMMUNICATORS | OCTOBER-NOVEMBER 2002 | U.S. \$45.00

w@rning

What you should know
about e-mail regulations
before you press send

w@rning

What you should know
about e-mail regulations
before you press send

by John Heineman

This two-part series covers legal issues that can affect e-mail communication campaigns, critical operational and technical considerations as well as tactics, tools and best practices to optimize results and simplify the process.

If you're like most communication professionals, you've run your share of e-mail communication campaigns—newsletters, surveys, event notices, press releases, promotions, ads, etc. But did you know...

- There are numerous regulations defining how you should manage your e-mail campaigns—and when you break these laws, you're potentially liable for fines.
- Your e-mail can be blacklisted by Internet Service Providers (ISPs) such as Yahoo!, AOL and MSN. Once this happens, your e-mail may not get through to the people you're sending it to—even if they have requested it.
- Sending e-mail campaigns from your own non-dedicated servers can negatively affect individual e-mail being sent from these servers.

Most communication professionals recognize the tremendous marketing platform and opportunity that e-mail represents: low communication costs, ease of distribution and delivery, and ability to gather and analyze data quickly. That's why this medium is growing exponentially, and why our e-mail inboxes are overflowing.

But as e-mail communication multiplies, it's also increasing in complexity. In the early days of commercial e-mail communication, there was less competition, less consumer and political backlash, and less technology to interfere with your efforts. Today, simply blasting out a message to a list doesn't work so well—and worse yet, it can cause legal and operational problems.

Managing e-mail communication campaigns requires understanding the legal ramifications, technical and operational considerations, and methods for optimizing the medium.

COMMERCIAL E-MAIL LAW

The explosion of unsolicited commercial e-mail in the last few years has led to a complaint heard around the world: "I'm sick of getting so much spam!" In response to this public outcry, governments have erected new legal barriers that define how unsolicited commercial e-mail may be used.

Although most of us welcome these laws in hopes they will reduce the amount of garbage in our in-boxes, they also create explicit and implicit requirements for those of us managing solicited and unsolicited e-mail communication. To understand how these laws affect your e-mail communication, you must first understand the difference between "solicited" and "unsolicited" e-mail.

Solicited commercial e-mail is generally recognized as promotional e-mail you send to people you have done business with or who have requested information from you, and who through this existing relationship expressly or implicitly give you permission to communicate with them. Unsolicited commercial e-mail is generally defined as promotional e-mail you send to people you have not done business with or who have not requested information, and who have thus never given you outright or tacit permission to communicate with them.

If the contacts on your e-mail list fall into the unsolicited category, you will have to weave your way through many international laws (*see sidebar, page 10*). In this case, legal consultation is advisable.

If your list is limited to solicited, or "permission-based," contacts, fewer legal restrictions apply. But to define your list legitimately as solicited or permission-based, you will need to

ensure that it meets the requirements described below.

RULES OF THUMB FOR SOLICITED E-MAIL

Most compliance failure by communication professionals managing solicited or permission-based commercial e-mail is not the result of intentionally ignoring any laws. Instead, errors usually come from being unaware of the implicit requirements for permission-based lists. Although standards are evolving rapidly and much of the legal landscape still seems relatively gray, following some simple, smart practices and guidelines will help keep you out of hot water.

Post your privacy policy. Most companies and organizations post their privacy policy on their web sites for three reasons:

- *To ensure trust* with customers or members.
- *To provide some level of protection* should someone complain about how you are using his or her information. When ISPs or anti-spam groups get complaints about you, one of the first places many of them may look is your privacy policy.
- *To minimize trouble.* Having a clear, easy-to-understand privacy policy can go a long way in preventing problems before they arise (*see sidebar, page 10*).

Manage your permission-based list. List management is one of the most important and potentially problematic areas of running e-mail campaigns, yet many commercial e-mail communicators and marketers often overlook it. You should always:

- Give the recipient of any e-mail you send a clear, easy way to opt out of receiving future commercial e-mail.

THE COMPLEXITIES OF E-MAIL LAW: A SNAPSHOT OF ONE STATE'S ANTI-SPAM LAWS

Like many states and countries around the world, California has enacted laws designed to reduce unsolicited commercial e-mail. Here is a sampling:

- In California, unsolicited commercial e-mail must include a toll-free number or return e-mail address that allows the recipient to opt out of further e-mail.
- The law also requires 'ADV:' as the first four characters of the message's subject line, or 'ADV:ADLT' for advertisements that peddle adult material.
- California law provides additional protection for "electronic mail service providers," allowing providers to enforce "no unsolicited e-mail advertisements" policies against unsolicited commercial e-mailers. Once an unsolicited commercial e-mailer is put on notice that an e-mail service provider does not wish to receive e-mail advertisements, it must cease or face a potential penalty of US\$50 per message, up to a maximum of US\$25,000 per day.

FINDING INFORMATION ON E-MAIL LAWS FOR YOUR AREA

For more detailed information on international e-mail laws, visit www.spamlaws.com and www.euro.cauce.org/en/index.html (the European branch of the Coalition Against Unsolicited Commercial E-mail).

Sources: David E. Melaugh, Morrison & Foerster LLP, Megan Auchincloss, Morrison & Foerster LLP, www.euro.cauce.org, www.spamlaws.com.

- Have a reliable technical solution in place that allows you to manage and catalog this opt-out process automatically.

Manage e-mail communication campaigns beyond your permission-based list. When you want to communicate with new prospects and potential customers or members via e-mail, you need to expand beyond your existing permission-based list. The best way to do this is through permission-based list rental or partnerships. Permission-based list rental or partnering allows you to have your e-mail communication sent as solicited or permission-based to a targeted prospect list that fits your profile. Essentially, you're renting the right to send your communication to someone else's list.

Although this can be an effective approach to expanding your e-mail communication campaign, you should take some precautions:

- *Always research your lists thoroughly.* Is it truly a permission-based list you are renting? Does the privacy policy behind the list support the opt-out rights the list owner claims it does? What service provider(s) is handling the list management and e-mail delivery for this particular list? Make sure they have a good reputation.
- *Ask if there is a standard permission qualifying statement* in the e-mail, such as, "You are receiving this e-mail because you registered with xyz." If there isn't, ask them to put one in.
- *Tread carefully if you are considering buying a list* as opposed to renting it. This is where people often get into trouble. Unless this is an exclusive sale and you can verify the list source and quality, permission-based status of contacts, and transferability of list owner rights, buyer beware.

Be careful when renting your list to third parties. When you rent your organization's list through a list broker, that broker will begin renting the list to

third parties. If the list-management process is not set up correctly, you can run into major operational problems that can lead to legal problems. Make sure you have one integrated list-management system that supports both your internal campaigns and third-party rental campaigns.

TECHNICAL AND OPERATIONAL ISSUES

When managing commercial e-mail campaigns, you must also consider a number of important operational and technical concerns:

Invest in automated list management. Be sure to use a list-management solution that provides effective, automated list and log maintenance. Are opt-ins and opt-outs collected, logged and managed automatically? Does the system prevent duplicates from being entered or sent? Automated list management should ensure that your e-mail lists are clean and accurate, minimizing potential for consumer complaints and decreasing deployment costs associated with sloppy e-mail data.

Avoid ISP blacklisting. One of the ways ISPs and IT professionals minimize spam is to identify sources of spam e-mail and "blacklist" them, preventing any e-mail from that source from reaching the intended recipients. You don't actually have to send out spam to get blacklisted; if enough people complain, justifiably or not, you may find yourself blacklisted. It's tough getting off blacklists, and your ability to reach your audience may be further hampered if the blacklisting spreads to other ISPs and networks. To avoid blacklisting, you can develop and deploy an internal monitoring and outreach program to help ensure that ISPs understand your policies and keep you off their lists, or use an e-mail management solution provider that provides this level of service.

Ensure proper e-mail formatting. Make sure you are using an e-mail delivery solution that recognizes the recipient's e-mail client and provides the appropriate e-mail formatting for that recipient. There are three primary e-mail formats: HTML, plain text and America Online (AOL). If you use a one-size-fits-all approach, many of your recipients will receive an unprofessional-looking e-mail that won't help your campaign results and could damage your organization's reputation.

Beware of potential internal server issues. Using internal bandwidth to run your e-mail communication campaigns can slow down your network and consume internal resources. If you run campaigns from a non-dedicated internal server, you run the risk of ISP blacklisting, which can affect all personal e-mail being sent from your servers.

Take advantage of tracking, data mining and analysis. Smart e-mail communication campaigns never run blind. Make sure you are set up and prepared not only to track the performance of your

e-mail communication campaigns—how many people opened your e-mail, read it, clicked through or took action—but also to store the individual recipient data with each individual record. Capturing e-mail communication data over time provides valuable intelligence and data mining opportunity for you to continually improve e-mail campaign performance and winnow down targeted prospects on the basis of previous campaign activity.

Don't forget optimization. Anti-spam technology can affect your permission-based e-mail as well. For example, the word *free* in an e-mail you send might automatically trigger anti-spam software, pushing your permission-based e-mail into recipients' junk e-mail boxes where they will never see it. Ask your technology providers or consultants about optimization techniques that may improve performance.

E-MAIL COMMUNICATION CAMPAIGNS

Managing your e-mail communication campaigns can seem complex,
(continued on page 32)

© GETTY IMAGES



When you want to communicate with new prospects and potential customers or members via e-mail, you need to expand beyond your existing permission-based list.

AUSTRALIAN COMMUNICATORS TAKE ACTION ON PRIVACY by Barbara Palframan Smith

In December 2001, the Privacy Amendment (Private Sector) Act came into effect in Australia, setting 10 National Privacy Principles that prohibit companies from retaining personal information unless it is necessary for their functions or activities. This act draws a fine line between personal information that can be collected and that which requires initial consent from the individuals concerned. For instance, information contained on a business card is excluded by the act. But if a company finds out details about a client's family, sporting preferences, etc., this information can't be retained without prior consent.

Anna Brown, national communications manager for Deloitte Touche Tohmatsu in Sydney, was one of the communicators who had to learn about the act quickly and helped spread the word.

"As well as organising employee briefings and face-to-face training, we developed a page about the privacy issue on our intranet to ensure that all our people became aware of the need

to comply with the act," she says. "In addition, we had to ensure that Deloitte's clients were informed that we had the following in place: a privacy policy, a privacy complaints procedure, open access to private information held about an individual, consent and disclosure in all data collection mechanisms, and an 'opt-in' mechanism for direct mailings."

To find out more about Australia's privacy laws, visit the following web sites:

- The Australian Privacy Commissioner
www.privacy.gov.au
- Guidelines to the National Privacy Principles
www.privacy.gov.au/publications/nppgl_01.pdf
- "Good Privacy, Good Business" – Office of the Federal Privacy Commissioner
www.privacy.gov.au/publications/pia.pdf

Barbara Palframan Smith is regional editor for *Communication World* in Australia/New Zealand.

Warning

(continued from page 11)

but there are solutions that make it relatively easy:

In-house. Managing your e-mail communication campaigns entirely in-house from beginning to end can work well with small lists and low e-mail campaign frequency rates. The problem with handling campaigns in-house is limited time and resources. Once you get past a certain list size and e-mail frequency, it pays to have support to stay abreast of laws, monitor ISP blacklisting and access the most effective e-mail campaign technology. You get better results and actually lower administration costs.

In-house with outside support. The most logical solution for most companies is a compromise between doing it all in-

house and outsourcing the whole thing to an agency. Numerous e-mail management solution providers offer turnkey technology and expertise to address critical issues, but be careful whom you select. Providers vary greatly in quality, effectiveness and cost. Before you make your selection, talk it over with a commercial e-mail management consultant who can point out important differences and give you objective feedback.

Outsourced. You may choose to outsource communication campaigns to an interactive or e-mail marketing agency. These companies handle all your e-mail communication needs from creative and technology issues through implementation and data warehousing. Most organizations don't need this level of service, however, nor is it the most cost-effective. In certain instances, it can be justified

for very large organizations. If you do choose this path, test the performance of any agency you consider. There's no need to take an agency's word for how great it is—it should be able to prove its claims.

John Heineman is managing partner at The LeadGen Group, an organization dedicated to identifying and implementing cost-effective, best-of-breed marketing tools and campaigns. His career spans more than 15 years' experience with industry leaders, including Guerrilla Marketing International, Microsoft and Summation Legal Technologies. To learn more about The LeadGen Group visit www.leadengroup.com or e-mail jheineman@leadengroup.com.

In the December/January issue of *Communication World*, we'll look more closely at how communication professionals are optimizing e-mail campaign performance by using the most effective e-mail marketing tricks and techniques.