

Understanding The SPAM Act 2003

The use of any Third Screen Media systems, API s or applications that enable customers to manage and create messages requires the customer to fully comply with the SPAM Act 2003. The SPAM Act 2003 and information on interpretation and how it applies to mobile can be found on the ACMA Web site at www.spam.acma.gov.au. Where messages are being delivered internationally, it is important to understand and adhere to the legislative requirements of that country.

COMMERCIAL MESSAGES

In principle, the SPAM Act covers commercial messages sent via Email, SMS or MMS. It is important to appreciate that service messages and informational messages are not covered by the Act. Such informational messages include (but are not limited to):

- appointment reminders
- payment due/overdue notices
- changes in trading hours or terms
- changes in procedures
- expected service interruptions

Service or informational messages cannot in anyway promote, sell, advertise or encourage a person to engage with the company either directly or via a link; in this case it s a commercial message and covered by the SPAM Act.

Where a message is deemed to be of a commercial nature there are three minimum requirements that must be met without exception:

- Consent must have been given to send the message
- Clearly identify who is sending the message
- Contain *opt out* or "unsubscribe" information

CONSENT

Consent can be made in a number of ways:

1. "Express Consent"
 - a. When an individual or organisation provides their email address or mobile telephone number, and you plan to send them a commercial electronic message, you must first obtain their express consent.
2. "Inferred consent"
 - a. an existing business or other relationship (member, loyalty club, regular customer, agent, supplier)
 - b. a subscriber to a service
 - c. when someone conspicuously publishes their work-related electronic address/number but only commercial messages that relates directly to that person's line of work can be sent
3. Purchased Lists
 - a. list provider must provide evidence of the consent with ultimate liability remaining with the user/promoter doing the actual sending.

Be aware that if the relationship with the customer ends then that customer is deemed to have removed consent. For example, it would be reasonable to send a message inviting someone to renew a membership or to rejoin a club after expiry but any further contact could be deemed as SPAM.

IDENTIFICATION

Every message sent must clearly identify to the consumer, who authorised the sending of the message. This can be either in the text of the message or by having the name in the <from> part of the message. Recipients of the message must easily

identify the sending organisation. Using the name in the *from* part of the message means that a “reply” call to action will not work.

“OPT OUT” UNSUBSCRIBE

Every message falling under the jurisdiction of the SPAM Act 2003 must include Opt Out or unsubscribe instructions that are deemed enough for a recipient to easily avoid receiving further messages. Such requests must be actioned within 5 days. All commercial electronic messages must contain this functionality. Regarding mobile messaging this is often referred to as a STOP request or Opt Out mechanism.

Including an Opt Out in SMS or MMS Messages.

As mentioned all commercial messages must include an „Opt Out or unsubscribe function. Industry guidelines highlight the use of the word STOP as the trigger to unsubscribe for SMS and MMS communication via SMS.

The mobiPOST system has an inbuilt STOP function that when receiving a STOP request the user will automatically be flagged and will not receive messages from your account into the future. This is automatic, however notifying people of this in your messages is not. Your mobiPOST account can include an inbound line that allows for receiving STOP requests however you will need to announce this function in your messages, here is a guide as to how to do this:

Note: For automatic Opt Out management to work your account must be assigned an inbound number or line. Please contact TSM to check whether you have and inbound line or to set one up.

SMS Opt Out Examples

If sending from your business name, so that the message appears to come from your business name rather than a phone number, you will need to include a phone number to respond to. Eg.

Message arrives from: **BUSINESS**

Example Opt Out: “**Opt Out SMS STOP to 041XXXXXXX**”

“**SMS STOP to 041XXXXXXX**”

Your business name will be the default „From field and will be displayed next to „From: in the *new message* page

If sending from your inbound line it is possible for the recipient to simply reply

Message arrives from: **+614XXXXXXXX**

Example Opt Out: “**Opt Out reply STOP**”

To implement this method of sending to will need to select you inbound line number (displayed as 614XXXXXXXX) as you the From field. When in the „new message page in mobipost select your inbound number from the drop down list next to the „FROM: field. All responses can then be seen in the „inbox . When sending from your inbound line your message text must make clear who the message is coming from.

If sending an MMS message users need to be told where to respond to and that the STOP request must be by SMS. Eg.

MMS arrives with content and text.

Example opt out Text: “**Opt Out SMS STOP to 04XXXXXXXX**”

OPT OUT FUNCTION FOR EMAIL

As with mobile communication all email sends must include an „Unsubscribe link. This can now be easily added in mobiPOST. When creating an email under the actual message field simply select „[Insert 'Opt Out' Link](#) to include an opt out link. This link will appear in the sent email and when clicked will result in an automated opt out.

MANUAL OPT OUT – ADDING SOMEONE TO YOUR ‘BLACKLIST’

As mentioned mobiPOST maintains an automatic list of people who have responded to your communications via STOP requests or an email „Opt Out link. It is now possible to also manually add an Opt Out to this stored „Blacklist . This may prove useful if you receive a request via a phone call or a personal request to stop receiving your communications. Simply

log into the mobiPOST system and hit the „OptOuts menu item found under the inbound menu block. From here you can easily upload a CSV file or list of people you wish to stop receiving your messages or stop a single user. Simply add their mobile number and/or email and hit save. This person will no longer receive your messages into the future.

FOLLOW UP MESSAGES

When a person responds to a trade promotion or message there is implicit consent to the company to send another message (excluding where the person has sent a STOP or unsubscribe request of course). With most promotions this follow up message is a “thanks for entering” style message. Follow up messages after this initial interaction needs to be done with care.

Follow up messages after a promotion need to relate directly to that promotion and be done within a timeframe that is reasonable for the person to recall why they are receiving the message; “XYZ competition has been drawn. Sorry you didn t win...” If the message content is unrelated to the original promotion that the person responded to with a new commercial offer and after a period where the person has no recollection of consenting to the communications then the message could be deemed as SPAM.

Most SPAM complaints come about firstly from the lack of information about who is sending the message and secondly as to why they are receiving the message. If a person knows the company, has a relationship with the company and can link the message to some interaction with the company then it avoids complaints (baseless or legitimate).

CUSTOMER INFORMATION

All trade promotions, memberships, associations, clubs etc require some form of terms and conditions. Firstly ensure that any promotion is in accordance the legislation in each state covering such promotions including the possible requirement for a permit, and next ensure that the anticipated communication is clearly documented to avoid SPAM concerns.

On any forms notify the member that you communicate through electronic means and that consent is given by executing the form. Be clear about when and how you ll contact them and if you occasionally promote third party products. In competitions inform them you ll contact them a minimum of “3 times” with additional promotions as part of the conditions of entering.

If you document your intent (on the basis that the terms are reasonable and lawful) and make consumers aware of what they are expected to receive then again, this can avoid SPAM concerns.

MORE INFO

For a more thorough explanation of the SPAM act and other information on this topic please visit the following resources:

The ACMA SPAM website:

www.spam.acma.gov.au

A practical guide to SPAM for business:

www.acma.gov.au/webwr/consumer_info/frequently_asked_questions/spam_business_practical_guide.pdf

This document is intended for reference purposes only and must not be relied upon solely. This document does not constitute a detailed explanation of the SPAM Act 2003. TSM strongly suggest that proper advice be sought in regard to any messages where the compliance with the Act may be in question.