



This article presents general guidelines for Ohio nonprofit organizations as of the date written and should not be construed as legal advice.

Always consult an attorney to address your particular situation.

Understanding CAN-SPAM: Key Considerations for Nonprofits

By Craig Buchholz*, Procter & Gamble and Barkha Patel, Staff Attorney, PBPO

Does your organization send emails to your mailing list asking recipients to register for your upcoming programs? Does it email invitations to fundraisers or requests for volunteers? If so, like most nonprofits, you are subject to certain notice and opt-out rules for these types of emails. While the steps to follow the law are rather straightforward, the penalty for non-compliance is steep—up to approximately \$40,000 per email.

What Is CAN-SPAM?

The CAN-SPAM Act is a law that accomplishes four core objectives:

1. It sets the rules for commercial email usage;
2. It establishes specific requirements for commercial emails;
3. It provides recipients of commercial email the right to remove themselves from mailing lists; and
4. It outlines the penalties for organizations that violate this law.

The technical name of the law is the Controlling the Assault of Non-Solicited Pornography And Marketing Act of 2003. Despite what the name may suggest, the CAN-SPAM Act does not just apply to bulk mail. Rather, **it applies to all commercial messages**. Under the Act, a commercial message is defined as “any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service.” This is distinguishable from a transactional or relationship message, such as an email confirmation that an order has shipped, a response from a customer service representative, or a newsletter generating awareness and seeking donations.

The law makes no exception for nonprofits, but fortunately, it is relatively straightforward.

How Can a Nonprofit Remain Compliant?

The Federal Trade Commission has published a [compliance guide](#) detailing the main requirements of CAN-SPAM. These rules apply equally to nonprofit and for-profit enterprises. Many of the

requirements have become best practices of email marketing since the law was first introduced. Therefore, it may not require a herculean effort for you to stay compliant.

1. **Stay away from false and misleading headers.** The “From,” “To,” “Reply-To,” section must be accurate and identify who initiated the message. This can be a person or an entity.
2. **Do not use deceptive subject lines.** The subject line should convey the essence of the email.
3. **Identify the message as an ad or solicitation.** This disclosure must be clear and noticeable.
4. **Include a valid physical postal address.** This can be your mailing address or a post office box that you have set up specifically for commercial correspondence.
5. **Ensure that every subscriber has opted-in, preferably twice.** Make it clear that the recipient elected to receive your emails.
6. **Make an opt-out method clear and conspicuous.** In every commercial email sent from your organization, include a simple way for the recipient to opt out. A common method is to include an “unsubscribe” link back to a monitored mailbox (make sure reply emails are actually received).
7. **Promptly honor opt-outs.** There are several important, very specific details regarding how to honor an opt-out request. First, there must be a 30-day window after your email during which a recipient can request to opt-out. Second, after opting out, the request must be honored within 10 days. Third, you may not charge a fee, require additional information from the recipient, or require any action beyond a return email or a visit to a single page to confirm the opt out. And finally, once email recipients have told you that they want to opt out, you may not sell or transfer their addresses to another party.

Summary

CAN-SPAM regulates commercial email. It applies equally to both nonprofit and for-profit enterprises. By taking the time to think through the elements of the FTC checklist, you should be able to stay well within the parameters of the law. If you need external resources, there are many third-party vendors who professionally manage email correspondence for nonprofits. Please note that because any service provider acting in such a capacity is your agent, it is still important for you to monitor what they are doing on your behalf.

Where Can I Get More Information?

- [CAN-SPAM Act: A Compliance Guide for Business](#), published by the Federal Trade Commission.

If you are a client and are interested in having an attorney advise you on CAN-SPAM compliance, please contact PBPO at info@pbpohio.org. If you are not a client and are interested in applying, please email us at info@pbpohio.org or call us at 513.977.0304.

** Craig Buchholz, Vice President, Global Company Communications at P&G, recently earned his JD from Drexel University and wrote this blog while participating in the NKU Chase College of Law Small Business & Nonprofit Law Clinic.*