

Are you CAN-SPAM compliant?

A couple of weeks ago, I went to a networking event and met a public relations “professional.” We exchanged business cards. I sent him a follow up email (nice to meet you, etc.) to which he didn’t respond. Instead, he added me to his enewsletter list. I was peeved. This guy, who didn’t have the basic courtesy to respond to a personal email, just threw my email into his marketing list without asking me. I quickly opted-out.

Other than being rude, was this guy doing something illegal? Was he being compliant with the CAN-SPAM Act (the very good acronym for *Controlling the Assault of Non-Solicited Pornography and Marketing*)?

The CAN-SPAM Act aims to reduce unsolicited direct marketing email. There are several parts to making your business compliant (you can read the seven main requirements on the FTC website and you can download a PDF with all the pertinent information).

If you distribute an electronic newsletter, you need to be CAN-SPAM compliant. You can get booted off most of the email marketing platforms if you are not, and most of them make it easy to comply.

According to the Act, the main requirements for compliance are these:

- Don’t use false or misleading header information
- Don’t use deceptive subject lines
- Identify the message as an ad
- Provide a physical location address
- Provide a way to opt out of further mailings
- Honor opt-out requests within 10 days

It turns out that CAN-SPAM does not spell out who can be added

to your email list (opt-in). In fact, the requirement is directed only at opting out. You must include a way to unsubscribe, and you must honor that request quickly. However, if you do business with Canada or the European Union, things are a bit stricter. Both Canada and the EU require people to OPT-IN by giving consent. If you have a newsletter, I suggest you familiarize yourself with the opt-in laws for North America and Europe.

So, it seems rude PR guy was, in fact, compliant with CAN-SPAM requirements since his newsletter did have an opt-out. Had I been Canadian though, he would have been in trouble.

Here's the thing, just because something is legal, does not mean it's right. Although the US does not have the same stringent opt-in requirements as Canada or the EU, marketers should be aware of why those requirements may be a good idea. People don't want unsolicited email. It clogs up inboxes, which are already being inundated with real spam (somehow, these laws do not seem to inhibit the scammers and spammers).

Why not make sure you are asking people to opt-in to your newsletter instead of only asking them to opt-out? All you have to do is have a sign-up form on your website. You can also ask people if they want to be added. Seriously, don't you want to communicate with people who are interested in your message instead of annoying people and then forcing them to opt-out?

What are your thoughts? How do you handle subscribing people to your newsletter?

UPDATE

Upon further research, I came across a section in the FCC website that seems to imply marketers should get consent to send emails. It says:

Giving Your Consent

Under the FCC's rules, texts and commercial email messages may be sent to your mobile phone if you previously agreed to receive them. For texts that are commercial, your consent must be in writing (for example, in an email or letter); for non-commercial, informational texts (such as such as those by or on behalf of tax-exempt non-profit organizations, those for political purposes, and other noncommercial purposes, such as school closings) your consent may be oral.

For commercial email, your consent may be oral or written. Senders must tell you the name of the entity that will be sending the messages and, if different, the name of the entity advertising products or services. All commercial email messages sent to you after you've given your authorization must allow you to revoke your authorization, or "opt out" of receiving future messages. You must be allowed to opt out the same way you "opted in," including by dialing a short code. Senders have 10 days to honor requests to opt out.

Notice it says your consent MAY be oral or written. It does not say it MUST be. So, it is unclear to me if as a marketer, you HAVE to ask for consent.