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CAN-SPAM Legislation [1]

By using the CU eComm system for communicating with CU constituents, communicators are automatically in compliance with the federal CAN-SPAM Act of 2003. Violators of this federal law can incur steep fines. If you're a CU communicator and not using the eComm system, you are likely a violator.

Why? Because if you send an email via a tool like Constant Contact or MailChimp and someone opts out of receiving emails from CU, but then receives an email from CU via another source (like eComm, which doesn't share data with those other tools), that is a violation. The eComm system is the master source for maintaining email preferences and where CU constituents (via CU's our online communities [2]) manage their preferences.

The CAN-SPAM Act

Congress signed the “Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003” (“CAN-SPAM”) into law in January 2004. The purpose of CAN-SPAM is to provide relief from unwanted spam e-mail messages. The law covers both unsolicited e-mails, as well as electronic communications where the recipient has initiated the exchange. Non-compliance with CAN-SPAM constitutes “unfair or deceptive acts or practices” that may result in both criminal and civil penalties.

Below are a few highlights of the bill that all CU communicators should be aware of:

- Q & A
- Examples
- Fines
- Consent
- Information to Include
- Solution
- More info

Does CAN-SPAM apply to University of Colorado e-mail?

Yes. There is no general exception to CAN-SPAM for nonprofits or institutions of higher education. However, CAN-SPAM only applies to e-mails that are “commercial” in nature.

What are Commercial E-mails?

A commercial e-mail is “any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service (including content

on an internet website operated for a commercial purpose.)" This would include e-mails that promote for profit or revenue generating activities.

Examples:

- Tickets for a play, movie, or event where there is a charge for admittance. It does not matter whether the event is on or off campus.
- E-mails sent to prospective students. This applies even if the prospective student initiates the e-mail communication.
- An emailing offering to sell computers, cars, furniture, etc. This applies whether you are offering the item through your capacity as a University employee or using your e-mail account for personal use.
- E-mails sent by an external organization on behalf of the University. For example, a marketing or publishing company that sends e-mails that contains promotions for a commercial product or service such as an athletic event, play, or exhibit.
- An e-mail that has a web link to a University site that promotes a product or service.

How do I know whether the primary purpose of the e-mail is commercial?

CAN-SPAM only covers e-mails whose primary purpose is commercial. If an e-mail contains only commercial content, then the primary purpose would be commercial. However, if an e-mail contains both commercial content and non-commercial material (i.e. transactional or relationship content) the primary purpose is commercial if:

- The subject line of the e-mail message would lead a recipient to conclude that the message advertises or promotes a product or service; or
- The body of the e-mail does not set forth the message's transactional or relationship content at the beginning of the message; and
- A recipient's reasonable interpretation of the body of the e-mail would lead the recipient to conclude that the primary purpose of the messages is to advertise or promote a product or service.

Factors for evaluating the body of the e-mail include:

- The placement of the commercial content in the body of the e-mail
- The proportion of the message that is dedicated to the commercial content
- The color, graphics, type size, and style the e-mail used to highlight the commercial content

What are the Legal Requirements for Commercial E-mails?

CAN-SPAM requires commercial e-mails have the following characteristics:

Opt-Out link

• The body of the e-mail must provide recipients with a clear and conspicuous opportunity to decline ("opt-out") receiving future messages.

• The University must honor the opt-out or unsubscribe requests within 10 business days of receiving the request.

Valid Return Address

• The e-mail must contain a valid return e-mail address or Internet-based reply mechanism to comply with the opt-out option. This must work for 30-days past the send date of the message.

Valid E-mail Information

• The header and subject line must be accurate.
• The subject line must accurately reflect the content of the e-mail.
• The “from” line must be accurate. You cannot use anonymous, fictitious, or misleading addresses.

What types of electronic communications are not subject to CAN-SPAM?

CAN-SPAM does not apply to e-mail that is directly related to an employment or transactional relationship or is non-commercial. A transactional message must contain a proper routing or tracking number.

Examples:

- Human resources sending e-mail directly related to benefit plans in which the recipient is currently involved, participating, or enrolled. An e-mail describing changes in benefits would be exempt, while an e-mail describing discounts for products or services would require the characteristics described above.
- Financial Aid sending e-mail related to loans and grants for which the student is either currently receiving or has applied for consideration.
- Post-registration event communications (Registration confirmation, Event Reminder, Post-Event Message/Survey)
- An electronic message that details charges owed to the University.
- Announcements of free events or services. If any money is collected, whether or not it is clearly indicated in the e-mail, the law applies and would require the characteristics described above. Additional campus policies provide guidelines regarding the appropriate use of communication channels for events and services.
- An electronic newsletter sent by an external organization on behalf of the University that does not contain any solicitation or advertisement of product or services.
- While e-mail that is clearly not commercial in nature is exempt from the disclaimer, it may be prudent to offer individuals an opportunity to opt-out from your list. This would not be applicable to e-mails that involve a transactional relationship

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Violations are costly.

CAN-SPAM defines certain fines from $25 up to $2,000,000 or more. According to the Federal Trade Commission, each separate e-mail in violation of CAN-SPAM is subject to penalties of up to $53,088.

CU constituents are automatically opted-in because of their relationship with CU.

We opt constituents in to receiving emails from CU *based on their affiliations*, either as an alumnus, donor, employee, etc. or at the recipient's own initiative (by signing up to receive CU communications via CU's online communities [2]). For example, alumni from the CU-Boulder School of Arts & Sciences will not receive emails from UCCS (except in cases where there's a previous relationship).

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Send your emails through eComm, which globally, accurately and automatically tracks un/subscription preferences.

Request access today [3]

Learn more about the CAN-SPAM Act of 2003

https://www.ftc.gov/tips-advice/business-center/guidance/can-spam-act-compliance-guide-business [4]
https://en.wikipedia.org/wiki/CAN-SPAM_Act_of_2003 [5]

Groups audience:
eComm

Source URL:https://www.cu.edu/ecomm/can-spam-legislation

Links
[1] https://www.cu.edu/ecomm/can-spam-legislation [2] https://alumnicommunity.cu.edu [3] https://www.cu.edu/ecomm/forms/request-access [4] https://www.ftc.gov/tips-advice/business-center/guidance/can-spam-act-compliance-guide-business [5] https://en.wikipedia.org/wiki/CAN-SPAM_Act_of_2003