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What You Need to Know NOW about Anti-Spam Legislation

by Mary Sullivan

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As the year draws to a close, we can be certain of at least one thing: There will be anti-spam laws on the books as of January 1, 2004. Both the State of California and the U.S. Congress have enacted legislation concerning unsolicited email, and one way or the other all businesses will be affected.

California's SB186 requires that recipients of e-mail advertising must have "opted-in", that is, explicitly chosen to receive it. Advertisers must either **obtain written permission** from the recipient before sending advertisements, or there **must be a pre-existing or current business relationship** between the recipient and the sender. SB186 not only illegalizes sending of unsolicited advertisements via e-mail, it permits recovery of damages by recipients from senders that violate the law. If SB186 succeeds in California, it will be the most far-reaching anti-spam legislation ever proposed anywhere.

The California law brings good news and bad news for B2B companies who would use e-mail to promote their products and services:

1. The good news: The law clearly defines the terms under which companies may legally send e-mail advertising. Following the guidelines affords protection against prosecution. The law details rules for acceptable commercial e-mail through use of opt-in (pre-approved) lists.

2. The bad news: E-mail is over as a way to reach prospective customers with whom companies have had no previous business relationship. The pricetag for violation can be as much as \$1,000 per e-mail up to \$1,000,000 per "incident" (group mailing).

Federal legislation might override California's law

Meanwhile the U.S. Congress hopes its own anti-spam legislation* will override the California effort. As of this issue of KickStart Accelerator, the federal law, called the CAN-SPAM Act of 2003, has not yet been signed by President Bush, but Congress hopes to have it signed into law before California's tougher law goes into effect on January 1, 2004.

The CAN-SPAM Act requires bulk e-mailers to label their messages, include legitimate return addresses, and provide a way to opt out of future mailings. It does not have the opt-in requirement of California's SB186, but does assign fines and criminal penalties to those who don't comply.

Protect your company!

- Suspend the planning of any e-mails to customers or prospects after that date until the law is fully understood in your organization.

- Ensure that everyone (and I mean everyone!) in your Sales and Marketing organizations knows about the law and the fact that it goes into effect on January 1, 2004.

- Become familiar with the language of these laws.
 - Get the full text of the California law at <http://www.sen.ca.gov/>. Click on Legislation and enter SB186 for "Privacy: unsolicited commercial e-mail advertising, sponsored by Sen. Kevin Murray".
 - Obtain the text of both Congressional bills at <http://www.spamlaws.com/federal/108s877.html>.

- Be prepared to clearly show existing customers in any e-mail you send them how they can "opt out" of receiving e-mails from you.

- Do not delay! Overhaul your e-mail marketing lists right away. For non-customer prospects, establish **and retain** proof that names on your list have intentionally "opted-in", i.e. granted you specific permission to send them e-mail advertisements.

For assistance with your lead generation activities contact KickStart Alliance at info@kickstartall.com.

*H.R.2515 passed on November 22, 2003 by the House of Representatives, and S.877 passed on November 25, 2003 by the U.S. Senate.

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