

You've got mail - again!

There was a time when mention of the word spam brought to mind images of processed lunch meat, but in today's world of fast-paced electronic communication, the connotations surrounding the issue are far less savoury.

Spam is a generic term used to describe electronic junk mail – unsolicited messages sent to people's email addresses or mobile phones.

Contrary to popular belief, spamming does not always involve bulk address lists, in fact, a single electronic message may constitute spam if it:

- is commercial in nature – ie it offers or promotes a particular good or service, encourages a commercial transaction, or simply directs the recipient to a location where a commercial transaction could take place;
- is sent without the express or inferred prior consent of the recipient;
- fails to include accurate information about the sender; and
- does not include an option to unsubscribe.

Some of the more destructive spam messages attempt to trick people into divulging their bank account or credit card details. Most people have received fraudulent notices from spammers purporting to represent banking and financial institutions, which on the face

of it appear legitimate. Spammers have become more sophisticated in their attempts to deceive and are now able to craft e-mails that include official bank logos, corporate design and cleverly masked hyperlinks. Others are just plain stupid, like the e-mail I received yesterday from the former Royal Ambassador to the Crown Prince of Nigeria imploring me to help offload more than 25 million American dollars: "Send your account details and the money will be deposited immediately. You have my word." Yeah right! And then there's the hundreds of commercial messages that arrive daily to clog my inbox with ads for everything from cheap Viagra to the latest and greatest investment opportunity.

But not all spam is illegal or even problematic. For many businesses, spam, in its legal form, is a valid and cost-effective way to direct market.

Why is spam a problem?

Spammers flood the Internet with billions of unwanted email messages every day which is a major problem for ISPs and email users. SPAM increases the processing and storage requirements of ISPs, which causes significant inconvenience to both individuals and businesses. It disrupts email delivery, jams computer systems, reduces productivity, annoys users and raises the cost of Internet access fees. And in some cases, spam messages are used to send



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Not all spam is illegal or even problematic. For many businesses, spam, in its legal form, is a valid and cost-effective way to direct market. The key is to ensure you have your **customer's permission** to send a commercially-based message and always offer recipients **the chance to unsubscribe** from future mail-outs.

offensive and illegal content or to spread computer viruses.

Australian law

In Australia the *Spam Act 2003* came into effect in April 2004 which defines spam as 'unsolicited commercial electronic messages'.

Under the Act it is illegal to send, or cause to be sent, unsolicited commercial electronic messages that have an Australian link. A message has an Australian link if it either originates or was commissioned in Australia, or originates overseas but has been sent to an address accessed in Australia.

In addition to e-mail, the legislation also covers mobile text messaging including SMS, MMS (multi-media messaging) and iM (instant messaging), with penalties of up to \$1.1 million a day for repeat corporate offenders.

How can I avoid sending spam?

Generally, best practice suggests that businesses should only send commercial email to their customers or to people who've indicated they want it.

Importantly, businesses should only send commercial email to people with whom they have an existing relationship or to people who have already said they want to receive commercial email. This means you may be able to send your existing customers an e-mail alerting them to an upcoming sale, provided you include sufficient opt-out functionality. And if they do unsubscribe, be sure to delete them from your mailing list as requested.

If you do not have an existing commercial relationship with a person or business, you will need their express permission before sending any commercially-based electronic message.

According to the Australian Communications and Media Authority, in order to comply with the nation's spam laws any commercial electronic message you send must meet the following conditions:

- consent – it must be sent with the recipient's consent. They may give express consent, or consent may be inferred from their conduct and existing business or other relationships.
- identity – it must contain accurate information about the person or organisation that authorised the message to be sent.
- an option to opt-out – it must contain a functional unsubscribe facility to allow the recipient to opt out from receiving messages from that source in the future.

They also offer this advice on how to avoid becoming an accidental spammer:

- use anti-virus software, and update it regularly;
- use personal firewall software;
- download and install the latest security patches for your computer system;
- attachments to email messages can be dangerous. Only open them if you know what they contain and who they're from, otherwise, delete them immediately. If you do need to open an attachment, run it through up-to-date anti-virus software first.
- use long and random passwords, and change them frequently.

The general rule for businesses wishing to minimise their commercial and legal risk in relation to spam, while at the same time maintaining strong customer relations, is to avoid sending customers unsolicited e-mail. Get your customer's permission first, and if they don't want to receive your information via e-mail, respect their decision.

