



CMA E-mail and Internet Marketing Guidelines

A recognized leader in ethical marketing and industry self-regulation, the Canadian Marketing Association's Code of Ethics and Standards of Practice establishes operating best practices for marketers in Canada. The following guidelines are intended to supplement Section N5 of the CMA Code of Ethics and the requirements for e-mail and Internet marketing.

Introduction

The Canadian Marketing Association's (CMA's) Code of Ethics and Standards of Practice establishes a standard for marketers in Canada and includes important directives related to e-mail and digital marketing. The Code reflects the introduction of new technologies and marketing techniques and attempts to mitigate both increased consumer annoyance and government attention on spam e-mail and other digital marketing practices. Self-regulation is effective in helping to prevent unwarranted government intervention in the marketplace and positions CMA members as responsible, ethical marketers.

Increasingly, Internet service providers (ISPs) and e-mail service providers (ESPs) are looking for ways to stop spam by using filtering and black and white lists. As a result, they are inadvertently blocking legitimate e-mail messages before they reach their intended recipients. The practices required in the CMA Code help the marketing community to ensure that legitimate e-mail messages will continue to reach their intended recipients and make it clear that spam has no place in ethical Canadian marketing.

The CMA Code requirements surrounding e-mail and other digital marketing practices are intended to compliment existing Canadian laws that govern spam, privacy, e-mail marketing and marketing to children. For example the *Personal Information Protection and Electronic Documents Act* (PIPEDA) establishes the obligations of those who collect, use and disclose personal electronic-mail addresses. CMA recommends that this guide be read in conjunction with CMA's Privacy Compliance Guide. Other relevant acts include the *Competition Act*, the *Telecommunications Act* and the *Criminal Code of Canada*. Organizations should make themselves aware of these laws and govern their activities accordingly.

CMA Code

N5.1 Collection of E-mail Addresses: Marketers must identify the purpose for which an e-mail address is being requested prior to or at the time the e-mail address is collected.

The e-mail address that has been collected can be used only for those purposes identified, subject to N5.3.

Commentary

Consistent with the requirements under Canada's privacy laws, were it is not otherwise transparent, CMA Members are required to identify to individuals – through a dialogue box or prominent notice backed up by a more detailed privacy policy – why an e-mail address is being collected and the intended purposes for which that e-mail address will be used. This must be presented to an individual prior to or at the time the e-mail address is collected. The e-mail address that has been collected can be used only for those purposes identified. (For more information see CMA Privacy Compliance Guide, particularly Principle 2, Identifying Purposes.)

A “use” could include the sending of warranty or product information or marketing offers related to the original purchase or transaction.

CMA and Canadian privacy laws recognize that it may not always be possible to identify the purposes at or before collection, for example where the information has already been collected and an organization would like to use it for a new purpose. In that case new consent is required. For example, marketers’ customer-acquisition efforts may include the collection of e-mail addresses in connection with other forms of communication, such as responding to a consumer’s request for product or service information. While, as per the Code’s definition of “existing customer”, a marketer would have implied consent to use that e-mail address to market related goods and services, where the e-mail is used for marketing of an unrelated good or service, an opt-out opportunity would have to be provided to establish consent.

CMA Code

N5.2 Published Business E-mail Addresses: Published business e-mail addresses should only be used for marketing communications relevant to the business of the e-mail recipient.

Commentary

Federal privacy law stipulates that an organization may, without the knowledge or consent of the individual, use personal information only if it is publicly available and exempted by the Act by regulation. In regulation, exempted publicly available information includes that which appears in a professional or business directory, listing or notice, that is available to the public, and permits the collection, use and disclosure of the personal information where it relates directly to the purpose for which the information appears in the directory, listing or notice.

This section of the Code reflects a March 31, 2005 precedent setting finding by the Privacy Commissioner of Canada on (PIPEDA Case Summary #297) in which she interpreted business e-mail addresses as “personal information” where it applies to marketing offers (for more information see CMA Bulletin # 186).

This finding holds that business e-mail addresses are not covered by the exemption for business contact information in the federal privacy legislation and as such are subject to the law and to CMA Code Section J *Protection of Personal Privacy*. As personal information, knowledge and consent of the individual are required for the collection, use or disclosure of business e-mail addresses unless the address is publicly available, and used in a way related directly to the purpose for which the information was publicly available.

Privacy law requires that if a marketer finds a publicly available list of business e-mails on a website business directory, the marketer cannot send marketing e-mails to those addresses that are entirely unrelated to the intent of the employee directory. Marketers can continue to send e-mail messages to individuals listed in business and professional directories, provided the products and services are related to the business or theme of the directory.

CMA Code

N5.3 E-mail Consent: Marketers must not send e-mail marketing communications without the consent of the recipient, except where there is an existing business relationship.

In cases where a consumer has provided his or her e-mail address to a marketer, the marketer has implied consent to e-mail that consumer.

Commentary

Reflecting consumer sensitivity to receiving e-mail marketing messages, the CMA requires that marketers have the consent of the recipient to send e-mail marketing.

The internal process used to obtain consent should be clear and transparent. Internal processes should be in place that records proof of consent, including the date, time, originating Internet protocol (IP) address and location (including URL), where the address collection occurred, and whether consent was obtained via another medium (e.g. a business card, contest form, telephone, verbal communication, or through a paying subscription to a list). Organizations should be able to provide this information to a recipient upon request.

Where there is an existing business relationship and the consumer has provided his or her e-mail address to a marketer, the marketer has implied consent to e-mail that consumer marketing offers related to the original purchase or transaction. However, as per section N5.4, marketers must honour an individual's request to be removed from e-mail lists, including requests of existing customers.

Note that as per the *Glossary of Terms* found in the CMA Code, an existing business/consumer relationship or current customer relationship exists where a consumer has made a purchase or donation, has rented, leased or contracted for, or has otherwise participated in a organization's provision of products or services within the past 18 months, or a period consistent with that organization's normal buying cycle. An existing business/consumer relationship is also defined as continuing for six months from the date of an inquiry or application from a consumer.

Under Canadian privacy laws, where an individual has, for example, made a donation or registered online for a product and has provided his or her e-mail address as part of the transaction, the organization has the implied consent to e-mail the individual marketing offers related to the original transaction. Nonetheless, as per N5.5 of the Code, every marketing e-mail must provide an opt-out (see below).

It is important to remember that any new use of an e-mail address – for example to market a product or service unrelated to the original transaction – requires that marketers obtain new consent. This can generally be achieved through opt-out language detailing the new use in the initial e-mail or communication related to the new use.

There is an exception for sending e-mail messages outside of an existing business relationship, or to an inactive customer who no longer meets the “existing customer” qualifications. If the organization has service, warranty or product-upgrade information, or if there are health and safety issues related to a product purchase, the organization may send e-mail messages to its customers. However marketers should use discretion in doing so as customers may view the communication as spam if the organization uses it as an opportunity to up or cross-sell products.

Finally, marketers, list brokers and list owners should take reasonable steps to ensure that the addresses on their e-mail lists were obtained with proper consent. Where a marketer, list broker or list owner knew or should have known that the proper consent was not obtained, they could be accountable. Some examples of reasonable steps that an organization can take to ensure clean lists include: reviewing the privacy policy of the broker/owner of the list; reviewing the consent procedures used to obtain the e-mail addresses; and as per CMA Code section J6 *List Rental Practices* having the

broker or owner sign a contract warranting that they have complied with the requirements of applicable Canadian privacy laws and with Section J3 *Protection of Personal Privacy* of the CMA Code.

CMA Code

N5.4 Internal Do Not Contact List: At the request of a consumer or business, including a current customer, marketers must promptly add e-mail addresses to an internal do not contact list and cease marketing to that e-mail address. E-mail addresses must be retained on the internal do not contact list for three years.

Commentary

The CMA Code requires that marketers maintain internal do not contact (or “opt-out”) lists for consumer and/or business contact information for every channel by which they market. The Code’s *Glossary of Terms* defines internal do not contact list as follows:

Internal do not contact list: A list of current customer, consumer or business contact information of those persons or businesses who have requested that they not be contacted by the marketer’s organization. It is used to cross-reference and purge that information from any list to be used for any marketing campaign by that organization. Often referred to as an “internal deletion list”, this Code requires that internal do not contact lists must be maintained by every organization that markets for every channel by which they market and that the information must be retained on the list for three years.

Organizations must not send e-mail marketing messages to consumers or businesses who have indicated they do not wish to receive e-mail messages from the organization. Marketers should ensure that they have the means to honour opt-out request on a timely basis and to scrub their lists accordingly. While marketers may send e-mail messages during an existing business relationship, they must honour an individual’s request to be removed from e-mail marketing lists at any time. The most likely source of such requests are through the opt-out opportunity CMA requires be provided in every e-mail message sent (see N5.5 below).

CMA Code

N5.5 E-mail Marketing Opt-Out: Every e-mail message must clearly identify the marketer and source of the e-mail and provide the recipient with a simple and easy-to-use click-through means to opt-out from receiving further e-mail marketing communications from the marketer.

Commentary

This section reflects the need for transparency in the online marketing activity of marketers.

First, CMA requires that every e-mail message must clearly identify the marketer sending the communication and the source of the e-mail. Because opt-out opportunities are becoming increasingly automated, often to the point of excluding correspondence with the marketer, beyond identifying the marketer, CMA requires that marketing e-mails provide a “source” that provides the recipient with a method to contact the marketer on any matter related to the e-mail. That is to say that the phrase “source of the e-mail” is not meant to imply disclosure of a third party subcontractor such as a data processor or e-mailing agent, but rather a reasonable contact point for the receiver of the e-mail to contact the marketer. This could be in form of:

- The option for the receiver to contact the marketer by hitting “reply”. An example of language might be “To contact us, reply to this e-mail”
- Other instructions for contacting the sender, such as:
 - A “contact us” link forwarding the user to instructions for contacting the marketer. Such a link may contain a number of different e-mail addresses for specific questions or even a telephone contact number. Examples of appropriate language include “Please do not reply to this email. Click [here](#) to contact us.” or “Please do not reply to this message. It was generated from an account that isn't monitored, so replies to this e-mail will not be read. You are welcome to get in touch with us through the [Contact Us](#) page of our website.”
 - A “feedback” link that allows the receiver to contact the marketer on any matter related to the e-mail.

The identification of the sender and source of the e-mail must be clearly and obviously specified. Whenever possible it should be placed in that part of the e-mail that is visible without scrolling. Requiring that both the marketer and the source of the e-mail must be clearly identified gives consumers greater ability to control the amount of e-mail they receive. Please note that, in all cases, use of the phrase “source of the e-mail” is not meant to imply the necessary disclosure of a physical address.

Second, CMA requires that every e-mail marketing message must contain an easy to use click-through opt-out opportunity. In effect, with every marketing e-mail, marketers re-establish consent to use the e-mail address for marketing purposes.

The opt-out opportunity should not be buried in the e-mail message and must, at minimum, be website and/or e-mail enabled. Language used in the opt-out may be as simple as: “If you no longer wish to receive marketing offers from this organization, please [click here](#) or e-mail: info@anycompany.com”. By way of best practice, marketers should confirm by e-mail that the opt-out request has or will be implemented without requiring further action by the consumer.

It is important for marketers to actively monitor consent and “do-not-send e-mail” requests from all consumers and businesses, including their existing customers. As per CMA Code section N5.4, when a consumer or business opts-out, marketers must promptly add e-mail addresses to their internal do not contact list and cease marketing to that e-mail address.

CMA Code

N5.6 E-mail Disclosure: Marketers must not misrepresent the source of any message or use false or misleading “subject” lines in e-mail marketing communications. The subject line and body text in e-mail marketing communications must accurately reflect the content, origin and purpose of the communications.

Commentary

This requirement parallels a key concept that appears repeatedly throughout the CMA Code of Ethics and Standards of Practice: Marketers shall not attempt to disguise their offerings, or attempt to deceive consumers as to the nature of their offering or solicitation.

Even in cases where the content related to the subject line is accurate, marketers are cautioned against using subject lines which refer to “free offers” or “winning prizes”. This is especially important in an online context and becomes even more important as marketers, Internet service providers, regulators and consumer advocates attempt to deal with growing consumer annoyance over spam. Use of deceptive “from,” or “subject” lines will make this effort less effective, and thereby reduce the value of this important medium for responsible marketers. Further, some spam filters use such keywords to signal that the message is spam and potentially filter legitimate e-mail communications.

CMA Code

N5.7 Privacy Policy: Marketers must clearly display a privacy policy on their website that articulates the organization’s policy with respect to the collection, use and disclosure of personal information that might be gathered from consumers. The privacy policy must advise consumers what personal information is being collected, used and disclosed. Access to the privacy policy must be provided in every location, site or page from which the marketer is collecting such data.

Commentary

The language of this section reflects CMA’s recognition that marketers may use a wide variety of techniques to gather personal information. Accordingly, it is an “umbrella” requirement that obliges marketers to adopt a significant degree of transparency in disclosing their personal information gathering and handling practices.

Marketers must, through an online privacy policy, explain the intended use and disclosure of any personal information which might be gathered through “click stream” means or other website monitoring techniques.

It is best practice that every e-mail marketing communication provides a link to the sender’s privacy policy.

Elements of the privacy policy might include the type of information collected/used; whether information is disclosed to third parties; the use of “cookies” or other passive means of data collection; and procedures for security, accountability and enforcement. The privacy policy should also include an active link to an opt-out mechanism.

For more information, see the CMA Privacy Compliance Guide.

Related sections of CMA Code

M1.5 E-commerce: Marketers selling products and services online must:

- a. provide a clear order confirmation process that allows the consumer to confirm his or her interest in buying, see all relevant details of his or her order, confirm the accuracy of the details and print the details of the order as submitted;
- b. send a separate confirmation e-mail as soon as possible after the online portion of a transaction has been completed; and
- c. provide an online “click-through” mechanism for consumers to contact the marketer.

Other Considerations

E-marketing to Children and Teenagers

Marketers should use a high degree of discretion and sensitivity in sending e-mail marketing to children or teenagers (defined in the Code's *Glossary of Terms*). Marketers should refer both to the CMA Code sections K *Special Considerations in Marketing to Children* and L *Special Considerations in Marketing to Teenagers* and to the CMA Guidelines to Marketing to Children and Teenagers for guidance on this issue.

The ways in which those under the age of majority perceive and react to e-mail marketing communications are influenced by their age and experience, and the context in which the message is framed. For example, e-mail marketing communications that are acceptable for teenagers will not necessarily be acceptable for younger children. There is no way to verify the age of any person who signs up to an e-mail subscriber list. Marketers should use discretion and sensitivity when marketing to those under the age of majority, and should seek to engage parental permissions in such communications.

Related Resources

- In May 2004 the Government of Canada announced the launch of *An Anti-Spam Action Plan for Canada* and established a government-private sector task force to oversee and coordinate its implementation. CMA was an active participant on the task force which, in May 2005, released a paper *Stopping Spam - Creating a Stronger, Safer Internet: Report of the Task Force on Spam*. In their paper the task force called on the federal government to “establish in law a clear set of rules to prohibit spam and other emerging threats of the Internet (e.g. botnets, spyware, keylogging) by enacting new legislation and amending existing legislation as required”. Many of the specific legislative steps recommended are reflective of the CMA Code, which provided a model for their work and prepares CMA members for potential regulation.
- ***Staying 'On-side' When Advertising On-line***: A Competition Bureau Guide to Compliance with the Competition Act When Advertising on the Internet (<http://www.competitionbureau.gc.ca>, “Enforcement Guidelines”)

Publications from the Office of the Information and Privacy Commissioner, Ontario

Link: www.ipc.on.ca

- ***Best Practices for Online Privacy Protection***
An educative tool designed to help companies identify and implement appropriate practices for protecting the privacy of their online customers. *Released June 2001.*
- ***Privacy: The Key to Electronic Commerce***
Provides an overview of privacy issues, and their possible solutions, in the context of electronic commerce (Internet based commercial transactions). *Released April 1998.*

The CMA Code of Ethics and related guidelines do not purport to replace legal advice or to provide legal guidance. Marketers should inform themselves about relevant laws that apply in their jurisdiction including, but not limited to, the federal Competition Act and consumer, privacy and language laws in Canada.

These guidelines are effective January 1, 2007

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