



TouchBasePro

Impact of the Consumer Protection Act on your Email Marketing

31 May 2011

The CPA & your email marketing practices:

Executive Summary

Never before in South Africa has one industry been hit by so many Laws. It is understandable that the direct marketing industry may seem under threat from the introduction of new regulations like the Consumer Protection Act and Protection of Personal Information Bill. However, historically around the world the regulation of industries tends to lead to a more mature industry where most companies follow good practices. This leads to strong growth in quantity and quality, resulting in increased success levels for companies employing best practices. The regulation and discouragement of spam practices (unwanted or unsolicited commercial mailing) increases the success rates of email marketing by reducing clutter and consumer annoyance.

Email Marketing continues to be among the most inexpensive and effective ways to reach your customer base [Econsultancy, Jan 2011, Customer Engagement Report 2011]. For most business models, repeat customers will generate the most business and as a result customer retention is key. It is 6-7 times more expensive to gain a customer than to retain a customer, so retention mailing strategies remain of utmost importance. What's more, on average it takes several customer touches (interactions through channels such as call centers, websites etc.) before a sale occurs. Email provides a cost effective mechanism for staying connected with leads and prospects on a mass scale; encouraging ongoing positive brand interaction and converting leads into paying customers.

The biggest change to email marketing regulation introduced by the CPA is the mandatory compliance with an official "do not contact" list that will pre-emptively block direct marketing to consumers who put their names on the list. At the date of writing this the "do not contact" list tender has just closed, but we can expect that it will take up to a year before this facility is implemented and available to consumers. It is however more important than ever before to provide recipients with a clear and easy to use mechanism for unsubscribing from future correspondence. Currently the DMA-SA provides a service to consumer for opting out (www.optout.co.za), this list is made available to DMA members on a monthly basis.

Additionally, the CPA provides specific rights to consumers if they are purchasing products as a result of or after direct marketing. For example, the consumers right to a cooling off period following any direct marketing. The impact of this provision can be very far reaching especially for marketing products where a refund after the product has been used is not possible (such as motor vehicles).

Certain email subscription services (eg: news & finance update subscriptions) will not fall under the new definition of direct email marketing provided they are not considered an inducement to buy any products or services. There is a need to differentiate between email subscription services and direct email marketing, as email subscription services will not be subject to the CPA regulations for direct marketing.



TouchBasePro

The simplest message distribution service

Stronger regulation of commercial emailing has a positive long term effect on the email marketing industry:

The adoption of stricter legislation regulating email marketing in the United States and Europe (most notably the US Can Spam Act of 2003 and European Privacy and Electronic Communications Directive of 2002) preceded a very strong growth curve in email marketing spending in these countries.

Strong, yet sensible, regulation of commercial emailing (electronic direct marketing) leads to a more mature industry where most companies follow good practices. This leads to strong growth in the amount and also quality of email campaigns and this results in increased success levels for companies employing this marketing medium.

Opt-in permission based email marketing is beneficial as subscribers trust the content, therefore strengthening brand loyalty. This medium addresses consumers' lack of trust and overall lack of attention to traditional advertising. The regulation and discouragement of spam practices (unwanted or unsolicited commercial mailing) increases the success rates of email marketing by reducing clutter and consumer annoyance.

Acquisition mailing has been and will remain an important part of the email marketing strategy of many companies. The new CPA will enforce tighter standards on the practice of data collection. This will affect the way customer information is gathered by making it mandatory to receive active (rather than passive) opt-in permission from consumers, and will require that they are properly informed in plain language about what their contact information will be used for and by whom. Companies that specialise in collecting consumer data and providing this to companies will need to be completely transparent about the companies that the data will be provided to and the type of communications that the consumer can expect to receive from those companies when they grant opt-in permission.

Much of the focus of the new CPA is directed at the terms and conditions of service that suppliers operate under. Provided that the terms and conditions of trade are fair and that the marketing tactics used are transparent and respect the wishes of the consumer the overall effect of the act will be positive in the long term:

- Transparency leads to “free market” principles in the consumer market
- Promotes freedom of choice
- Gives the power back to the spender of the money
- Creates a dialogue
- Gives birth to the true attainment of a commercial social partnership
- Transparency and disclosure are integral to corporate governance
- The Consumer is tired of being spoken at and now demands a conversation and dialogue with the brands the new consumer is an “Audience of One!”

Email Marketing Trends:

Direct email marketing is being utilised by a broad range of businesses from large listed entities to micro enterprises and across a variety of industries as an essential for approaching, informing and retaining customers. It is also invaluable as a means of providing customer relationship services complimented by way of mail, telephone or internet interactions.

According to the study done by Forrester Research (June 2009) the following major trends are shaping the growth of email marketing:

- Email remains the primary online communication tool despite social inbox use
- Consumers to receive 9,000-plus email marketing messages annually by 2014
- Email's overwhelming cost-effectiveness will continue to drive spending
- Faced with increased clutter, marketers must get serious about relevance
- Retention email (one-third of all marketing messages in consumers' inboxes by 2014)
- Self-service basis, the growing complexity associated with data integration and new tactics to increase relevancy will drive healthy growth in use of email service providers
- Spending on ad-sponsored or ad-supported newsletters will double over the next five years as traditional print publishers face falling circulation and ad revenue
- Over the next five years, marketers must bridge the gap between social and traditional inboxes with social sharing tools

Although social media is playing an increasing role in customer engagement; Econsultancy found in their Customer Engagement Report, that email marketing remains by far the most important customer engagement tactic. The real power of the integration of social media and email marketing lies in the ability to engage customers in conversation.



TouchBasePro

The simplest message distribution service

Legislation applicable to direct email marketing:

International Legislation:

There is a long list of international laws that regulate spam in different countries around the world. The two bills that have the most impact on the practices of companies in South Africa are:

- the CAN Spam Act of 2003 (USA); and
- European Privacy and Electronic Communications Directive of 2002.

The impact that these laws have on marketers in South Africa is indirect, but very real. Most of the Anti-Spam services are based in Europe and the US. These Anti-Spam companies supply software which runs on, or integrates with, mail servers throughout South Africa as well as on the servers of all upstream internet service providers that South African ISP's integrate with internationally.

If your mailers, IP addresses or domains are blacklisted by international Anti-Spam houses your deliverability drops through the floor. So, although companies in SA may not be prosecuted or fined according to international laws, it is important for your email marketing that you comply with international standards to protect your sender reputation. For more about sender reputation and bulk email deliverability see the following report: <http://www.touchbasepro.com/Bulk-Email-Deliverability-Report-South-Africa-2011>

South African Legislation:

There are a number of South African laws that may have an impact on your email marketing strategy [DMA-SA]:

- the Constitution and Bill of Rights Act 108 of 1996;
- the Promotion of Access to Information Act no 2 of 2000;
- the Promotion of Administrative Justice Act no 3 of 2000;
- the Electronic Communications and Transactions Act no 25 of 2002;
- the Electoral Act of 1998;
- the Identification Act of 1997;
- Unfair Discrimination and Promotion of Equality Act of 2000
- Unfair Businesses Act of 1988 (repealed but still used as a yard stick)
- The Lotteries Act no 57 of 1997
- the National Credit Act 34 of 2005;
- the Consumer Protection Act 68 of 2008;
- the Protection of Personal Information (PPI) Bill (B9-2009)

All of these acts and bills may have an effect on your mailing practices but those with the most rules directed specifically at email marketing are the Electronic Communications and Transactions Act no 25 of 2002; and the Consumer Protection Act 68 of 2008.

Breakdown of the Consumer Protection Act:

Background

Consumer protection is important in every market, particularly in the South African context. The more vulnerable consumers are the more protection is required. The Act acknowledges the reality of many South African consumers: high levels of poverty, illiteracy and other forms of social and economic inequality; living in remote or low-density population areas; being minors, seniors or other similarly vulnerable consumers; having a limited ability to read and comprehend advertisements, agreements, instructions, warnings, etc. as a result of low literacy levels, vision impairment or language impediments [Preamble of the Act]. The Act refers to the need to "fulfill the rights of historically disadvantaged persons and to promote their full participation as consumers".

The CPA provides South Africans with a number of new rights as consumers. Provisions of the Act have been released so that businesses will have time to adjust their trading practices to comply. The Act clearly spells out the rights of consumers and the responsibilities of suppliers of goods or services. By codifying the common law in relation to consumer rights, South Africa is not only following in the footsteps of many first-world countries, but also aligning itself with United Nations and European Community guidelines on consumer protection.

The act is largely focused on giving consumers the right to fair, just and reasonable terms and conditions (for example, fair contract terms) and the right to fair value, good quality and safety (for example, product liability). Much attention in the act is directed to the practices of businesses and the terms and conditions under which they operate. Suppliers will have to evaluate whether their business practices comply with the Act and make the necessary changes to their terms and conditions. We cover this further under the section "Prohibited Terms and Conditions". Additionally, specific attention is paid to **direct marketing** and consumers are granted a number a new rights concerning the restriction of un-wanted marketing and returning of goods purchased as a result of direct marketing.

Pre-emptive blocking of direct marketing:

South African laws in the past have always been less strict on spam and unsolicited direct emailing than those of the US and Europe. According to the letter of the law in South Africa prior to the release of the new CPA, it was legal to send unsolicited emails even without obtaining opt-in permission so long as:

- You provide recipients with a means of removing themselves from your mailing list (opt-out); and
- Upon request you are to provide the recipient with details of where you obtained their information.



TouchBase Pro

The simplest message distribution service

The new CPA takes regulation of commercial emailing a step further by **granting consumers the right to preemptively block unwanted direct marketing** (of any sort). A consumer is entitled to demand that any company or person who has approached him with a view to direct marketing immediately retract such an approach and not contact the consumer again.

In essence the main direct affect of the new act on email marketing will be the implementation and compliance with a mandatory “Do Not Contact List” – all senders of commercial emails (and other types of direct marketing) will need to enforce a pre-emptive block for consumers who have entered their name on the “Do Not Contact List”. Although the act comes into full force in April, government has yet to recognise or implement an official “Do Not Contact List”. The implementation of this “Do Not Contact List” has gone out to tender, and as of this writing, is still to be awarded to a service provider. Building the registry is no small task, as it needs to allow companies who engage in direct marketing to quickly query it electronically on a regular basis, so it may take another year or so to set up, at best. The CPA “Do Not Contact” registry will override previously given explicit consent to companies for direct marketing messages. Once government has established an official “Do Not Contact” list, companies that send direct marketing communications will need to be sure that they do not contact people who have added themselves to this list regardless of permissions received through any other means.

There may be technical limitations of the do not contact mechanism, particularly for smaller companies, for examples having to regularly query the database and block sending to these consumers. Local Email Service Providers should be able to solve this problem for their clients by integrating with the registry in real time and enforcing the block proactively for all their clients.

The Direct Marketing Association of South Africa (DMA-SA) runs a national opt-out register, and the names on this register are made available to paid-up DMA members on a monthly basis. So for now this is a good starting point, though it is not the officially recognised list as required by the CPA.

The following technical features will now become more important on your company’s bulk email delivery system or that of your Email Service Provider. You will need to audit the operation of these mechanisms with your Email Service Provider or administrator of in-house email systems:

- Ability to exclude a list of addresses from the list of campaign recipients reliably (for example the entire “Do Not Contact” list or an entire list of previously unsubscribed recipients)
- Reliable and transparent operation of opt-out mechanism, “unsubscribe” link should allow recipients to remove themselves from all future communications without fail
- Ability to export all opt-outs that occur on email campaigns so that these consumers can be excluded from future direct marketing efforts that utilise other channels like postal, sms or telemarketing
- Additionally it is necessary to have a procedure in place internally whereby if an email recipient replies to an email asking to be removed from the list (instead of using the unsubscribe mechanism supplied); that they can be reliably removed from all future correspondence. This can be challenging as you may not know all of the lists that the subscriber exists on so a global suppression feature is needed.
- Data collection points or electronic contact forms need to include an option for the consumer to accept or reject subscription to future communications, and this mechanism should operate reliably and automatically to respect the consumers preferences.
- Additionally, in terms of Section 12 of the CPA, a supplier cannot carry out direct marketing directed at a consumer at home for any promotional purposes during a prohibited period. The prohibited period times are to be published by the Minister in the Government Gazette and may include specific days, dates, public holidays or times of days. It is important therefore that your direct messaging systems are able to restrict delivery only to certain times.



TouchBase Pro

The simplest message distribution service

Some safety measures:

The effect of implementing the above features and procedures on your company will be minimal if you already follow a strict anti-spam policy (you have opt-in permission from the recipients on your databases). However it may be necessary to implement some safety measures as a courtesy to the consumers on your current databases. For example sending out a mailer to your entire subscribed database that informs them that they are currently on your mailing list and explains the type of communications they can expect to receive, and provide them with an easy to use opt-out mechanism. For example:

“Dear [NAME], you are currently subscribed to your mailing list because you have done business with our company in the past, or have made an enquiry on our website and have previously agreed to receive communications from us. We hope you enjoy and value the monthly updates, news and special promotions that we send to you. We understand however that you may wish to unsubscribe from this service and you may do so by clicking on the link below or replying to this mail with STOP.”

It is not a requirement to get your entire database to opt-in again (or to build up your mailing list from scratch). However if your company is uncertain of the opt-in source or the permission given by recipients on some of the lists currently in use then it may be a good idea to send an opt-in request to these lists and only continue communications with recipients who respond. Something like the following may be required:

“Dear [NAME]. You have previously been subscribed to our mailing list to receiving our updates, exclusive offers and special discount packages. If you would like to continue to receive these please click on the SUBSCRIBE link below, otherwise your free subscription will be discontinued.”

It is not a legal requirement to send a mail like one of the examples given above to everyone on your database, but many companies are sending this type of “courtesy” mail as a precaution. If your company is unsure about the historical opt-in permission given by the consumers on your database then this is recommended.

Returning goods:

CPA provides specific rights to consumers if they are purchasing products as a result of or after direct marketing. The following points are important to note:

Cooling off period:

The consumer is entitled to a cooling off period after direct marketing. This is covered in Section 16 of the CPA. A consumer can rescind a transaction resulting from any direct marketing without reason or penalty by notice to the supplier in writing within 5 business days of the date of conclusion of the transaction or the date on which the goods were delivered to the consumer. The supplier must then return any payment received from the consumer within 15 business days after receipt of such notice. Suppliers who are selling by way of direct marketing to consumers must inform the consumer that he or she has the right to rescind that agreement as provided for in the CPA.

Purchasing goods via internet or phone:

Section 22 deals with catalogue marketing. This scenario contemplates a consumer purchasing goods or services without having had the opportunity to inspect the goods beforehand. Here a supplier must disclose the information listed in Section 33(3) of the CPA to the consumer in plain language. The act requires the display of the price of goods or services; product labeling and trade descriptions in certain circumstances; disclosure of reconditioned or grey market goods; written sales records and proper identification of deliverers



TouchBase Pro

The simplest message distribution service

and installers of goods. If a consumer is purchasing via a website or after receiving an email marketing message, without ever entering a physical store, these conditions will certainly apply to the transaction.

Viral marketing or competitions:

Promotional competitions are dealt with in Section 36 of the CPA. Again, there are stringent requirements in terms of this Section for full transparency and disclosure. Again because of the wide definition of “promote” and “direct marketing” a competition that offered by means of direct marketing, including receiving a viral email or electronically distributed internet campaign. A consumer receiving a promotion that has been forwarded to him by one of his friends for example could be considered advertising using direct marketing (approaching the person using electronic communication). And the consumer would be entitled to a cooling off period should he make a purchase after receiving such a campaign, and must be informed of this right to rescind any purchase he makes.

Impact on marketing practices in general:

It is important to note that in Section 1 of the CPA the word or practice “promote” is given a very wide meaning. It covers advertising or displaying goods or services, making any representations regarding such goods or services or engaging in any other conduct in the ordinary course of business that may be construed to be an inducement or attempted inducement to a person to engage in a transaction. Any such action must conform to the following regulations.

Discriminatory marketing:

The practice of “discriminatory marketing” is specifically dealt with in Section 8 of the CPA. This Section, in general terms, provides that no supplier may either directly or indirectly treat any person differently from any other in its marketing or sales practices. More specifically in Section 8(1) a supplier of goods or services must not unfairly exclude any person or category of persons from access to the goods on offer, grant exclusivity to one class of person over and above another or supply a different quality of goods or services to one type of person or category of persons over and above another. The concept behind this Section is to create equality in marketing practices. There are so-called “reasonable grounds” for differential treatment of certain persons or categories of persons in specific circumstances. For example, a supplier can refuse to sell or confer services to a minor in law. Discriminatory marketing is not the same as targeting marketing messages, so segmenting email communications to send tailored marketing message to specific demographics or locations is not a problem.

False or misleading information:

Section 29 of the CPA has a general provision stipulating that marketing must be conducted in a fair and responsible manner. All forms of marketing that are reasonably likely to imply a false or misleading representation are prohibited. All forms of fraudulent or deceptive marketing are targeted by the CPA. Also in terms of Section 30 so-called “bait marketing” is prohibited. So a supplier must not advertise any particular goods or services as being available at a specified price in a manner that may result in consumers being misled or deceived in any respect relating to the actual availability of those goods or services from the supplier at that advertised price.

Automatic renewals or upgrades:

Negative option marketing is precluded in terms of Section 31. So a supplier may not promote any goods or services on the basis that the goods or services are to be supplied unless the consumer declines such an offer

or inducement, this can be taken to include upgrades and renewals of service. Agreements entered into as a result of such negative option marketing are void.

Promotional offers:

Section 34 of the CPA covers promotional offers and stipulates that any document setting out a promotional offer must clearly state:-

- The nature of the prize, reward, gift, free goods or service, price reduction or concession, enhancement of quantity or quality of goods or services or other discounted or free thing being offered;
- The goods or services to which the offer relates;
- The steps required by a consumer to accept the offer or to receive the benefit of the offer; and
- The particulars of any person from whom, any place where, and any date and time on or at which, the consumer may receive the prize, reward, gift, free goods or service, price reduction or concession, enhancement of quantity or quality of goods or services or other discounted or free thing.

Promotional competitions:

Promotional competitions are dealt with in Section 36 of the CPA. Again, there are stringent requirements in terms of this Section for full transparency and disclosure. Section 41 is a general prohibition against deceptive or misleading marketing representations. It is an offence to commit such deceptive marketing actions.

Loyalty programs:

Due to the very wide definition of “promote” given by the act loyalty schemes, discounts on tickets and the like would constitute promotions in terms of the CPA. Also, Section 35 deals with customer loyalty programmes. Any document setting out a loyalty programme offer must clearly state:-

- The nature of the programme, credit or award being offered;
- The goods or services to which the offer relates;
- The steps required by a consumer to participate in the programme or to receive any benefit in terms of the programme; and
- Any person from whom, any place where and any date and time on or at which the consumer may gain access to the programme, or to any loyalty credit or awards in terms of the programme.

Electronic “statement stuffers”:

Is there a difference between e-billing (sending a bill to a customer by email), and e-billing with accompanying marketing in terms of the Consumer Protection Act? There are some interesting questions that arise from the sending of marketing material to customers that have provided permission to receive their bill from that company by way of email:

- If a client gives permission to receive a bill by email, does it give a company permission to send marketing with that bill?
- Can they send marketing separately from the bills by email?
- Is permission given to receive communication by email considered permission to receive a bill as well, and visa versa, is permission given to receive a bill electronically, permission to receive marketing?

At this stage there do not appear to be cut and dry answers to these questions. It seems that companies who distribute e-billing documentation to their customers (that may or may not be accompanied by marketing material), do not fall foursquarely into the category of direct marketing.

However, further clarity from various authorities, like the Department of Trade and Industry and case law, may view such communication as tantamount to direct marketing (inducement to purchase) with the associated protections being afforded to the consumer under the CPA.

It may therefore be prudent for companies who wish to communicate with their customers via email and who are unsure of their position and obligations under the act, to rather err on the side of caution by ensuring greater disclosures and more detailed based permissions from customers.

The following suggestions may be of assistance but cannot be a guarantee of compliance:

- Ensure that permission, in a recorded and verifiable format, is requested and received from the customer for their e-billing together with accompanying and/or stand alone marketing by email.
- Include an opt-out or “unsubscribe from marketing messages” button in emails for both standalone marketing and marketing accompanying a bill to customers.
- Marketing that accompanies a bill by email ought not to be treated in isolation and should be included as part of the frequency and quantity count of total marketing in a period.
- The trend towards customer specific targeted marketing through data mining, may add a dimension of concern to the consumer and this may need to be addressed as part of the informative process and permission requesting from the customer.
- The email being sent to a customer might be subject to one or more legislated consumer rights in order to protect their privacy and confidentiality in respect of unwanted or unsolicited correspondence, such as:
 - the right to refuse unwanted sms's, telephone calls, letters or 'spam' e-mail;
 - the right to discontinue receipt of direct marketing at any time;
 - the right to preemptively block unsolicited direct marketing services by a particular supplier or marketer through a national opt-out registry.

Is it worth the effort? The explosive growth of email and mobile users has made the receipt of electronic bills a quick and highly cost effective mechanism of delivery. Emails containing invoices, statements and order confirmations carry a greater legitimacy (as a replacement to a paper based bill) and they tend to have much higher open and read rates than pure marketing emails.

As these emails are perceived as important, informative and beneficial to the customer, intelligently placed marketing that enhances rather than detracts from the bill receipt process can be a powerful marketing channel that may be thoroughly enjoyed by, and beneficial to, the customer. The upfront concern shown by the company to the customer relating to the company's respect for customer's privacy and choice as it relates to the receipt of accompanying marketing, provides a positive experience and increases the chances of compliance as opposed to complaint.

Prohibited terms and conditions

One of the primary objectives behind Section 51, is to unequivocally outline the fact that any contract, term or condition which ultimately defeats the purposes, provisions, policy, consumer rights and suppliers' obligations set out in the Consumer Protection Act is prohibited. Thus, practically, parties are not allowed to contract out of the provisions set out in the Act.

It should also be noted that in terms of Section 4 any standard form contract or other document prepared or published by or on behalf of a supplier can be subject to scrutiny in terms of the CPA. It is crucial for the terms and conditions of such a document to be drafted in accordance with the CPA. If not, penalties will follow.

Although the Section begins in these broad terms, it does ban certain specific types of contracts, terms or conditions. These include instances where:

- The Supplier of goods/services contracts out or alternatively limits their liability for any loss which occurs as a result of their gross negligence. Cases where the Consumer specifically assumes the above risk or is obliged to pay for damages, ultimately assuming the risk of handling any goods displayed by the Supplier is also included.
- Contracts, Agreements or Transactions resulting out of negative option marketing. This is when the agreement automatically comes into existence, unless the Consumer specifically declines the offer made by the Supplier.
- Contracts, Terms or Conditions which hinder, in any manner, the Consumer's right to claim against the Guardian's Fund.
- There is a provision in the Contract which falsely states that: the Supplier made no representations or warranties to the Consumer in connection with the Agreement prior to the Agreement being made; or that the Consumer has received goods/services or a document required by this Act.
- The Consumer has to surrender money to the Supplier should they enforce any aspect of this Act alternatively pay money over to the Supplier, where the Supplier is not entitled to such money in terms of this Act.
- The Consumer authorises the Supplier to enter any premises to take goods which relate to the Agreement; the Consumer undertakes to sign documentation in advance which relates to the enforcement of the Agreement, regardless of whether the document has been completed or not; the Consumer agrees to a predetermined amount pertaining to the costs relating to the enforcement of the Agreement.
- The Consumer agrees to leave with the Supplier any of the following: ID document, credit card, debit card, bank account card, an automatic teller machine access card or anything similar alternatively provides a personal identification code/number which can be used to access an account (such as a bank account).

Whether one realises it or not, as many people do not fully read through the ins and outs of all the contracts they sign, many of the above provisions feature in a wide variety of agreements. Certain conditions feature predominantly in specific industries, while others occur in a large percentage of 'everyday' contracts. It is important to set out the terms and conditions in plain and understandable language and to highlight any crucial parts of the agreement, so that it can be understood without any undue effort.

Industry wide exemptions:

The Act provides for a mechanism in terms of which a regulatory authority may apply to the Minister of Trade and Industry for an industry wide exemption from certain provisions of the Act. The application for such an exemption must be based on the fact that there is an overlap between the provisions of the Act and the regulatory scheme administered by the relevant regulatory authority.

For example in the case of the telecommunications industry there is an overlap between ICASA's regulations and those of the CPA which may cause ambiguity. The Minister may only grant an exemption if the applicable regulatory scheme provides better, or at least similar, consumer protection than the protection provided for in the CPA.

Conclusion:

Best practices vs. minimum legal requirements

There is a need to differentiate between email subscription services (eg: news & finance update subscriptions) and direct email marketing. Provided that an email subscription service does not fall within the definition of “promotion” as given under the CPA then the delivery of this service via email will not be subject to regulations for direct email marketing under the CPA.

If your bulk emailing messages fit the description of a “promotion” then in order to comply with the requirements of the new CPA and enjoy positive results from your email marketing efforts your company needs to:

- Provide the consumers on your email database with a reliable and easy to use opt-out mechanism. If your subscriber opts out on one of your direct communication channels he should be removed reliably from all of your databases. The new act makes it the company’s responsibility to ensure that consumer’s details are removed from all future direct marketing attempts, and failure to respect this can land you in hot water.
- Once the official “do not contact” registry is available your bulk email system will need to query this registry on a regular basis and preemptively block all sending to addresses on this list.
- Spell out all terms and conditions of service (as well as conditions for any promotions or competitions) in clear and uncomplicated language. Provide a simple summary of the applicable terms and conditions and then also provide the full long winded legal explanation as well. Make sure there is nothing unexpected hidden in the full terms and conditions that is not highlighted in the plain language summary. Provide an easy to find link to the terms and conditions of any offer.
- Inform recipients of their right under the CPA to cancel their order or contract within five days if they are unsatisfied and receive a refund.
- Only send out direct marketing messages in the allowed time periods (once again these times have not yet been agreed upon)

Email marketing is not just about getting your product offers in front of consumer’s eyeballs. It also important to provide a brand interaction that consumer’s value and enjoy. In order to ensure good results from your email marketing you should avoid any practice that will result in spam complaints.

Only send to consumers who have provided opt-in permission to receive communications from your company. Care must be taken to audit the data collection procedure of any list brokers you use to check the actually and perceived permissions given by the consumers on that database.

Follow best practices with an opt-in permission based direct email marketing strategy and you will continue to see good results from email marketing and avoid any negative repercussions.

About this document and the authors

This document has been published by TouchBasePro, (a South Africa based Email Service Provider) in collaboration with Email Connection and the Direct Marketing Association of SA.

The purpose of this document is to help foster an understanding of legislative requirements for email marketing, and promote best practices for email marketing in South Africa.

Published date: 15 April 2011

Written by: Cordell Brewer, B.Eng Elec & M.EM IAM
(TouchBasePro – www.touchbasepro.com)

Edited by: Greg Phillips, B.Sc Hons Comp Sci & B.Sc IT
(TouchBasePro – www.touchbasepro.com)

David Markman & Darryl Richard
(Email Connection – www.emc.co.za)

Brian M. Mdluli
(Direct Marketing Association of SA – www.dmasa.org)



Copyright information:

This report in its entirety or extract thereof may be shared or reused freely provided that: TouchBasePro is credited as the publisher of the report; and the entire paper is referenced using the following link:

<http://www.touchbasepro.com/Consumer-Protection-Act-Email-Marketing-2011>



Disclaimer:

This paper is intended for informational and educational purposes. It is not intended to replace legal advice from a lawyer regarding your company's business practices or marketing strategies.

Please consult a lawyer to ensure that your company's strategy, agreements and practices comply with current legislation. If you need help with this you can speak to one of the legal team at Dewey De Souza Attorneys: [DDS Legal Team](#)

You can download or read the full Consumer Protection Act here: <http://www.dti.gov.za/ccrd/cpact09.pdf>

References:

1. Consumer Protection Act, 2008. <http://www.dti.gov.za/ccrd/cpact09.pdf>
2. Econsultancy (January 2011). Customer Engagement Report 2011. Report available for download at: <http://econsultancy.com/us/reports/customer-engagement-report>
3. Explanatory Memorandum on the Objects of the Consumer Protection Bill 2008
4. Direct Marketing Association of South Africa (DMA-SA), www.dmasa.org.

Think Outbox Think TouchBasePro

To trial TouchBasePro for free visit
www.TouchBasePro.com

or contact sales on

+27 11 447 9716

+27 10 500 0024



TouchBasePro