

# CAN SPAM and Do-Not-Call

Presented by:  
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**This event is scheduled for  
Thursday, July 6, 2006 2:30 PM (EST)**

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- compliance
- insurance
- signature
- signature recovery
- ES&A
- marketing
- audit
- information security
- risk assessment
- fraud prevention
- training
- time management

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## Agenda

- CAN SPAM
- Do-Not-Call
- Do-Not-Fax

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## CAN SPAM Agenda

- Background
- Permission to spam
- Definitions
- Technical requirements
- Penalties
- Action plan

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## Spam Stats

- 60B emails are sent daily worldwide
- Estimate 82% of all U.S. email is spam
- Choking out legitimate messages
- Damaging reputations of legitimate emailers
- Minimal costs as compared to postage
- False positives cost \$3.5 Trillion

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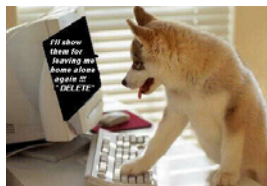
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## Permission to Spam

- State anti-spam laws preempted
- May now be legitimate/legal
- Senders comply w/opt-out message
- Do Not Spam registry
- NOT a silver bullet



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## Key Definitions

- Spam
- Electronic mail message
- Electronic mail address
  - andyz@bankersonline.com
  - Not internal email addresses
- Commercial electronic mail message
  - Advertise a commercial product or service

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## Key Definitions (2)

- Primary purpose
- Transactional or relationship message
- Protected computer
- Header information

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## Header Sample

<editor@bankersonline.com>  
Received: from ms-mta-03 (ms-mta-03-smtp.texas.rr.com [10.93.38.33])  
by ms-mss-03.texas.rr.com  
(iPlanet Messaging Server 5.2 HotFix 2.10 (built Dec 26 2005))  
with ESMTP id <0J1M001BQPThSW@ms-mss-03.texas.rr.com> for  
azavoina@hotmail.com;  
Thu, 29 Jun 2006 11:01:50 -0500 (CDT)  
Received: from clmboh-mx-01.mgw.rr.com (clmboh-mx-01.mgw.rr.com [65.24.7.10])  
by ms-mta-03.texas.rr.com  
(iPlanet Messaging Server 5.2 HotFix 2.10 (built Dec 26 2005))  
with ESMTP id <0J1M0077IPUBON@ms-mta-03.texas.rr.com> for  
azavoina@hotmail.com  
(ORCPT azavoina@hotmail.com); Thu, 29 Jun 2006 11:01:35 -0500 (CDT)  
Received: from mx001.bankersonline.com ([216.219.244.212])  
by clmboh-mx-01.mgw.rr.com with SMTP; Thu, 29 Jun 2006 12:01:23 -0400...

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## Key Definitions (3)

- Recipient
- Messages covered
- Each mail address = another person
- Who is the sender
- Who initiates a message

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## Technical Requirements

- Header cannot be false or misleading
- Subject cannot be false or misleading
- Cml email must contain an opt-out
- Identify as an advertisement
- Incl. a physical address

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## Sample Subject Line

*Ambiguous sender*

This message was sent with High importance.  
From: Sales [Sales@post.com]  
To: Andy  
Cc:  
Subject: I forgot this when we spoke... *Misleading subject*

You can get a free mortgage quote online or by telephone.

Call us at 1-800-BR-549

*Doesn't say it is an ad.  
Doesn't provide physical address  
Doesn't match the subject  
Doesn't provide an opt-out*

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## Opt-Out Mechanism

- Use a special address
- Use a web form
- Processing
- Honoring



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## Do Not Email Registry

- Authorized, not required
  - FTC to report on feasibility, effectiveness and cost by June 2004
- May be to difficult



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## Record Retention

- No statutory requirement
- Be prepared to defend yourself
  - Policy/procedures
  - Opt-out list in order
  - Samples
- Opt-out is out, forever, less rescission



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## Penalties

- Criminal offenses
  - Up to 5 years in prison
  - Unlimited fines
  - Seizure of the equipment
- Civil actions by States
  - Actual damages
  - Up to \$750 per message, \$6MM cap
  - Attorney fees
    - Bob Vila, CA – 1<sup>st</sup> case

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## Enforcement

- Violations are Unfair and Deceptive Trade Practices
- Your regulator, FTC to other entities

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# Questions?



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## Action Plan

- Know that CAN SPAM may apply
- Situation assessment
- Understand the risks
- Determine if you need changes
- Policy/Procedures
- Controls and monitoring

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## Perform a Situation Assessment

- Who uses email now?
  - Marketing
  - Vendors
  - Business lines
  - Branches



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## Perform a Situation Assessment (2)

- Why do they use email
  - Promotional messages
  - Newsletters
  - Rate sheets
  - Good customer notices



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## Perform a Situation Assessment (3)

- Remember the exemptions
  - e-Statements
  - Servicing messages to accountholders
  - Messages delivered within closed systems
  - Informational messages (holiday schedules, new & closed branches, financials, etc.)
  - Announcements to business partners
    - New or revised products
    - Interest rate sheets (but to a consumer this would be an advertisement)

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## Risks

- Enforcement actions
  - Fines
  - Seizure
- Reputational



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## Policy/Procedures

- Review for accuracy and compliancy
- Does it address training
- Does it address controls and monitoring



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## Controls and Monitoring

- Automated reports
- “Sniffer” programs

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## Controls and Monitoring (2)

- Audit the effectiveness of your actions
- Test the opt-out mechanism
- Honor opt-out requests as though your reputation depends on it
- Consider moving promotional messages from email to a web page and promote in traditional ways (inserts, on-hold messages, take-ones and word-of-mouth)

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## Resources

- <http://www.ftc.gov/bcp/online/pubs/buspubs/canspam.htm>
- <http://www.ftc.gov/bcp/online/pubs/alerts/remvalrt.htm>
- [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108\\_cong\\_public\\_laws&docid=f:publ187.108.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=108_cong_public_laws&docid=f:publ187.108.pdf)

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## 5 Minute Break, Watch your Watch

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## Do-Not-Call - Agenda

- Requirements
- Practices

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## Do Not Call and Banking

### ■ Telemarketing Sales Rules

- 16 CFR 310
  - 1995
  - Jan. 29, 2003
- Who does it apply to
  - FCC rules vs FTC rules
- What is "telemarketing"
  - Outbound & inbound calls
  - Consumer, not commercial customers



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## Major Provisions of the TSR

- DNC list
- Require disclosures of specific information
- Prohibit misrepresentations
- Limit when telemarketers may call consumers
- Require transmission of Caller ID information
- Prohibit abandoned outbound calls
- Require record retention of two years

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## Exceptions to DNC Coverage

- Relationship in last 18 months
- Inquiry in last 3 months

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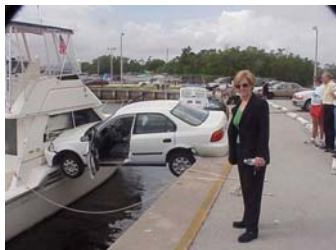
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## DNC Considerations

- Federal DNC list
- State DNC list
- Company's own DNC list



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## Outbound Calls Oral Disclosures:

- Seller's identity;
- Purpose of the call is to sell;
- Nature of the goods or services offered;
- No payment or purchase is necessary to win if a prize promotion is offered.

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## All Transactions, Written or Oral Disclosures:

- The cost and quantity of the goods or services offered;
- Any material restrictions, limitations, or conditions;
- Any "no-refund" policy; if a refund policy is mentioned, the material terms and conditions of the refund policy must be disclosed;
- Prize promotion disclosures.

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## A Telemarketer Cannot:

- Call again once asked not to or if your phone number is on the National DNC list;
- Call before 8:00 a.m. or after 9:00 p.m.;
- Withdraw money from a checking account without express, verifiable authorization;
- Misrepresent the offer;
- Seek payment for credit repair, recovery room or advance fee loan/credit services until these services have been delivered.

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## Cost for DNC List

- Raised in Aug. 2004
- Free to those not required to use it
- First 5 area codes are free
- \$45 per area code, max \$11,000

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## Penalties

- Federal DNC list, \$11,000 per call
- State laws can vary
- You can be responsible for a vendor



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## DNC Litigation

- Scenario
- Action
  - Assessment
  - Policy  
<http://www.bankersonline.com/policycentral/>
  - DNC list
  - Train

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## DNC Resources

- [http://www.bankersonline.com/dnc\\_project/areyoutelemarketing.html](http://www.bankersonline.com/dnc_project/areyoutelemarketing.html)
- [http://www.bankersonline.com/dnc\\_project/dnc\\_fccrulessummary.html](http://www.bankersonline.com/dnc_project/dnc_fccrulessummary.html)
- [http://www.bankersonline.com/dnc\\_project/donotcall\\_definitions.html](http://www.bankersonline.com/dnc_project/donotcall_definitions.html)
- [http://www.bankersonline.com/dnc\\_project/donotcallsteps.html](http://www.bankersonline.com/dnc_project/donotcallsteps.html)

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## Junk Fax Agenda

- General rules
- Definitions
- Opt-out requirements

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## Rules Under-

- Telephone Consumer Protection Act
- Rules effective Aug. 1, 2006

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## Definitions

- Unsolicited advertisement
- Established business relationship

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## General Rule

- May not send unsolicited faxes, period.
- EBR exception
  - Get their fax number directly from them
  - Get the fax number from their own directory
  - Get it from a 3<sup>rd</sup> party directory where it was properly obtained
  - July 9, 2005 – exception date
- Include an opt-out

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## Junk Fax Opt Out

- Clear and conspicuous notice on page 1
- Tell them you have up to 30 days to comply
- Cost-free mechanisms open 24x7

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## Consumers Opting Out

- Identify the fax number
- Be told where/how to opt-out

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## Junk Fax Rules

- Liability on the part of the “sender”
- DNC doesn’t apply, but must have permission or EBR

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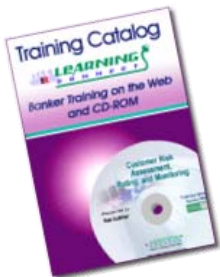
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## Question Break – Please Send in Your Questions



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