

CAN-SPAM: Unwanted Text Messages and E-Mail on Wireless Phones and Other Mobile Devices

FCC Consumer Facts

Background

Many consumers find unsolicited e-mail – also known as spam – annoying and time-consuming. In addition, unwanted messages sent to wireless phones and other wireless devices can be intrusive and costly. In 2003, Congress enacted the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act to curb spam. As required by the Act, the Federal Communications Commission (FCC) adopted rules that prohibit sending unwanted commercial e-mail messages to wireless devices without prior permission. This ban took effect in March 2005. In addition, the Federal Trade Commission (FTC) adopted detailed rules that restrict sending unwanted commercial e-mail messages to computers. To find out more about the FTC's rules, visit www.ftc.gov/bcp/edu/microsites/spam/rules.htm.

The FCC's CAN-SPAM Rules

The FCC's ban on sending unwanted e-mail messages to wireless devices applies to all "commercial messages." The CAN-SPAM Act defines commercial messages as those for which the primary purpose is to advertise or promote a commercial product or service. The FCC's ban does not cover "transactional or relationship" messages, or notices to facilitate a transaction you have already agreed to. These messages would include statements about an existing account or warranty information about a product you've purchased. The FCC's ban also does not cover non-commercial messages, such as messages about candidates for public office.

The FCC's ban covers messages sent to cell phones and pagers, **if the message uses an Internet address that includes an Internet domain name** (usually the part of the address after the individual or electronic mailbox name and the "@" symbol). The FCC's ban does not cover "short messages," typically sent from one mobile phone to another, that do not use an Internet address. Also, the FCC's ban does not cover e-mail messages that you have forwarded from your computer to your wireless device (but the FTC's rules may restrict such messages).

TCPA and CAN-SPAM

The CAN-SPAM Act supplements some consumer protections already put into place by the Telephone Consumer Protection Act (TCPA). Under the TCPA the FCC and FTC established the national Do-Not-Call list. This list contains telephone numbers that telemarketers are prohibited from calling unless they have an established business relationship with the called party or are otherwise exempt. FCC rules prohibit sending unwanted text messages to your wireless phone number if they are sent using an autodialer, or if you have placed that number on the national Do-Not-Call list.

Even if you have placed your wireless phone number on the national Do-Not-Call list, the TCPA does not protect you from receiving commercial messages sent to that number if:

- you have given your prior consent to the sender, or;
- you have an established business relationship with the sender.

For more information on the TCPA and the national Do-Not-Call list, see our consumer fact sheet at: www.fcc.gov/cgb/consumerfacts/tcpa.html.

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Express Prior Authorization

Under the FCC's rules, commercial e-mail messages may only be sent to your wireless device via the Internet if you have provided your **"express prior authorization."** Commercial e-mail senders may request that you provide this authorization orally or in writing (e-mail or letter). They must tell you the name of the entity that will be sending the messages and, if different, the name of the entity advertising products or services. All commercial e-mail messages sent to you after you've given your authorization must allow you to revoke your authorization, or "opt out" of receiving future messages. You must be allowed to opt out the same way you "opted in," including by dialing a short code. Senders have 10 days to honor requests to opt out.

Wireless Domain Name List

To help enforce its ban, the FCC required all wireless service providers to provide all Internet domain names used to transmit electronic messages to wireless devices. The FCC published this list on its Web site at www.fcc.gov/cgb/policy/DomainNameDownload.html. Non-exempt senders of commercial e-mail messages are prohibited from sending them to any Internet domain name on this list without the recipient's express prior authorization. These senders have 30 days from the date the domain name is posted on the FCC site to stop sending unauthorized commercial e-mail to Internet addresses containing the domain name. Wireless service providers must add new domain names to the FCC's list within 30 days of activating them.

FTC Rules/FCC Enforcement

The FCC can enforce the FTC's restrictions on any commercial e-mail message sent to a non-wireless device, such as a desktop computer, if:

- the sender is a communications company (telephone, radio, paging, cable, or television company), or;
- the message advertises or promotes a product or service of a communications company.

FTC Rules/FCC Enforcement (cont'd.)

The FTC's rules require:

- **Identification** – Unsolicited commercial e-mail sent to non-wireless accounts must be clearly identified as a solicitation or advertisement for products or services.
- **Offering a Way to Reject Future Messages** – Commercial e-mail senders must provide easily-accessible, legitimate ways for recipients to reject future messages from that sender.
- **Return Address** – All commercial e-mail, and e-mail considered transactional and relationship messages (about existing transactions), must contain **legitimate** return e-mail addresses, as well as the sender's postal address.
- **Subject Lines** – Commercial e-mail senders must use subject lines that are accurate. Using misleading or bogus subject lines to trick readers into opening messages is prohibited.

State Anti-Spam Laws

The CAN-SPAM Act is intended to preempt – or replace – state anti-spam laws, but states are allowed to enforce the parts of the CAN-SPAM Act restricting non-wireless SPAM. Also state laws prohibiting fraudulent or deceptive acts and computer crimes remain in effect.

What to Do If You Receive an Unwanted Commercial Message on Your Wireless Device

You may file a complaint with the FCC if you receive:

- an unwanted commercial message sent to a wireless device; or
- a telephone solicitation made to a wireless device for which the phone number is registered on the national Do-Not-Call list; or

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What to Do If You Receive an Unwanted Commercial Message on Your Wireless Device (cont'd.)

- any autodialed text message on your wireless device, or an unwanted commercial message to a non-wireless device from a telecommunications company or advertising a telecommunications company's products or services.

There is no charge for filing a complaint. You can file your complaint using an on-line complaint form found at esupport.fcc.gov/complaints.htm. You can also file your complaint with the FCC's Consumer Center by e-mailing fccinfo@fcc.gov; calling 1-888-CALL-FCC (1-888-225-5322) voice or 1-888-TELL-FCC (1-888-835-5322) TTY; faxing 1-866-418-0232; or writing to:

Federal Communications Commission
Consumer & Governmental Affairs Bureau
Consumer Inquiries and Complaints Division
445 12th Street, SW
Washington, DC 20554.

What to Include In Your Complaint

The best way to provide all the information the FCC needs to process your complaint is to complete fully the on-line complaint form. When you open the on-line complaint form, you will be asked a series of questions that will take you to the specific section of the form you need to complete. If you do not use the on-line complaint form, your complaint, at a minimum, should indicate:

- your name, address, e-mail address, and phone number where you can be reached;
- the phone number or e-mail address of the wireless device to which the message was sent, and, if a phone number, whether it is on the national Do-Not-Call list;
- date and time of the message;
- whether the message advertises or promotes a commercial product or service;

What to Do If You Receive an Unwanted Commercial Message on Your Wireless Device (cont'd.)

What to Include In Your Complaint (cont'd.)

- any information to help identify the sender or the individual or company whose products or services are being advertised or promoted, and whether any of this information was provided in the message;
- whether the message provided any contact information to allow you to opt out of receiving future messages;
- whether you gave the sender permission to send you messages; and
- a description of any actions you took NOT to receive messages from the sender or individual or company whose products or services are being advertised, and when you took them.

What You Can Do About Commercial E-Mail You Receive on Non-Wireless Devices, Such as Your Computer at Home

For commercial e-mail you receive on your non-wireless devices, you can file a complaint with the FTC. To file a complaint with the FTC or to get free information on spam issues in general, visit www.ftc.gov/spam/ or call 1-877-382-4357 voice; 1-866-653-4261 TTY.

What You Can Do to Prevent Spam to Your Wireless Device in Particular and Spam in General

You can reduce the amount of spam you receive by doing the following:

- Put your wireless phone number on the national Do-Not-Call list, and distribute it sparingly.
- Don't display your wireless phone number or e-mail address in public. This includes newsgroups, chat rooms, Web sites, or membership directories.

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What You Can Do to Prevent Spam to Your Wireless Device in Particular and Spam in General (cont'd.)

- If you open an unwanted message, send a stop or opt out message in response.
- Check the privacy policy when submitting your wireless phone number or e-mail address to any Web site. Find out if the policy allows the company to sell your information.
- Contact your wireless or Internet service provider about unwanted messages.
- Before you transmit personal information through a Web site, make sure you read through and understand the entire transmitting form. Some Web sites allow you to opt out of receiving e-mail from partners – but you may have to uncheck a preselected box if you want to do so.
- You may want to use two e-mail addresses – one for personal messages and one for newsgroups and chat rooms. Also, consider using a disposable e-mail address service that creates a separate e-mail address that forwards messages to your permanent account. If one of the disposable addresses starts to receive spam, you can turn it off without affecting your permanent address.

What You Can Do to Prevent Spam to Your Wireless Device in Particular and Spam in General (cont'd.)

- Try using a longer and unique e-mail address. Your choice of e-mail addresses may affect the amount of spam that you receive. A common name like “mjones” may get more spam than a more unique name like da110x110. Of course, it’s harder to remember an unusual e-mail address.
- Use an e-mail filter. Some service providers offer a tool that filters out potential spam or channels spam into a bulk e-mail folder. You may also want to consider filtering capabilities when choosing an Internet service provider.

For More Information

For information about other communications issues, visit the FCC’s Consumer & Governmental Affairs Bureau Web site at www.fcc.gov/cgb, or contact the FCC’s Consumer Center using the information provided for filing a complaint.

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To receive information on this and other FCC consumer topics through the Commission’s electronic subscriber service, visit www.fcc.gov/cgb/contacts/.

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8/11/09*

