

## Best Practice Standards for Email Marketing

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### Scope

The Marketing Association's eMarketing Network (eMN) champions the adoption of industry-wide standards of best practice and ethical conduct regarding the use of email for marketing purposes. We believe this will promote consumer confidence in eCommerce and ensure that proper account is taken of consumers' right to privacy.

This document outlines guiding principles for email marketing in New Zealand and is complementary to the Unsolicited Electronic Messages Act 2007 (UEM). By adopting the principles outlined in this document, marketers will be recognised as ethical email marketers - in intent, in principle and in action. This document will be reviewed on a regular basis in the light of developments internationally and locally.

### Definitions

A full list of eMarketing terms can be found in the Dictionary of Terms section at [www.emarketingnetwork.co.nz](http://www.emarketingnetwork.co.nz).

The Marketing Association's eMarketing Network has designed 6 Guiding Principles for eMail Marketing to safeguard people from receiving unwanted, erroneously labelled, or intentionally deceptive email. Each of the Principles complements the next and should be viewed as a collective entity. In brief they are:

- 1. Send only relevant offers to consenting recipients**
- 2. Include an unsubscribe function**
- 3. Tell the recipient who you are**
- 4. Apply the basic "truth in advertising" doctrine**
- 5. Do not abuse permission**
- 6. Do not harvest email addresses**

### **PRINCIPLE 1: Send Only Relevant Offers to Consenting Recipients**

Unconditional best practice demands that marketing communication via email only be undertaken to a person/address with whom you have a relevant prior business or personal relationship, or from whom you have obtained express or inferred consent.

Key requirements:

- A relevant business or personal relationship
- Express consent – express permission directly from the recipient
- Inferred consent – relevant prior business or personal relationship exists

NB : The UEM Act 2007 also provides for deemed consent, i.e. where an email address is conspicuously published without a "do not email" proviso. Sending unsolicited email

messages to such an address is not regarded as best practice email marketing.

- Permission is not transferable - email addresses submitted by referees do not become permission addresses for your future use unless authorised by the addressee
- Best practice requires the development of an audit trail detailing how and when a recipient opted in/out – it is advisable to create or maintain a 'source' field in your database to quickly supply proof of permission if required

***It is acceptable for marketers to email:***

- customers who have supplied their email address but not been previously emailed - Principles 2 and 5 must be applied. All emails will require an opt out facility.
- prospects who have entered a competition with the understanding (specified in the competition Terms & Conditions of entry) that they will be contacted by email. This should be considered as a temporary contract between the competition's commencement and completion, unless it is clearly specified at the point of acquisition that ongoing offers/promotions will be sent
- customers to update the status of an order – this is regarded as a transactional email communication
- customers regarding invoices or receipts – this is also regarded as a transactional email communication
- to acknowledge receipt of communications

***It is NOT acceptable for marketers to email:***

- a list of recipients whose email addresses have been harvested (see Principle 6)
- persons who have not given permission
- offers which are not relevant to the recipient
- a third party's database unless permission has been received from each person listed in that database

### **Third Party Lists**

The Marketing Association's Code of Practice for Direct Marketing in New Zealand makes specific reference to third party lists in Principle 4.

"4(b). 5 Third party lists: Marketers using third party lists must ensure the list complies with the requirements of the Privacy Act 1993."

If you intend to make personal data available to third parties for inclusion on their lists, you must notify individuals of your intent at the time of collecting the data, and obtain their positive consent through opt-in.

### **Friend-get-Friend Marketing**

This covers the practice of asking receivers of an online communication to forward it to other people. The Marketing Association's Code of Practice for Direct Marketing in New Zealand makes specific reference to list referral in Principle 4:

"4(b).4 Marketing list referrals: Marketers must not allow individuals to sign others up to receive marketing offers without their permission."

Before carrying out friend-get-friend marketing, you must notify the person who provides another person's email address that their name will be advised to the person they have referred to you.

If you are provided with an individual's email address through the referral of another person, you are permitted to send the referred individual one email, which should:

- include the name of the person who provided that person's email address to you
- invite that person to subscribe to a specified list or lists
- ensure that personal data is neither used nor retained unless the recipient opts in to receiving further emails

Individuals should NOT be encouraged to forward an email to an entire address book. When briefing a friend-get-friend marketing concept to an agency or preparing for this type of strategy, you should only encourage the recipient to invite one or a few friends to subscribe, making invitations more targeted and relevant.

**NB :** It should be noted that this advice is based on verbal discussions with the Anti-spam Unit of the Department of Internal Affairs. The legislation has not yet been tested in law.

## **PRINCIPLE 2 : Option to Unsubscribe**

All email marketing messages must include an option for the recipient to unsubscribe from receiving future messages and must include a genuine reply email address. All requests to unsubscribe must be actioned within 5 working days.

Key requirements :

- Commercial email messages must include a mechanism for recipients to unsubscribe from the list or from a specific type of communication
- The unsubscribe function must not be obscure but presented in a clear and conspicuous manner
- The unsubscribe facility must be functional and requests to unsubscribe be actioned within 5 working days
- If multiple communications are being sent to individuals, also offer the opportunity to unsubscribe from individual communications
- Always action unsubscribe requests prior to sending further emails
- It is recommended that marketers send an "unsubscribe confirmation" message

***It is acceptable for marketers to:***

- gain an understanding as to why a customer has chosen to unsubscribe

***It is NOT acceptable for marketers to:***

- have poor compliance systems in place which do not allow the marketer to accurately and immediately (with 5 working days) unsubscribe a customer from their database
- ignore a customer's action to unsubscribe and thereby resend emails to that same email address
- resubscribe recipients who have previously opted out – this is acceptable ONLY when written or emailed permission by that person has been received. (This must be maintained on file in case of a subsequent complaint).

## **PRINCIPLE 3 : Tell The Recipient Who You Are**

Email communications must state your company details, physical address, a genuine reply email address and subject line. Do not falsify domain names or use a non-responsive Internet Protocol (IP) address.

Key requirements :

- Header information includes the domain, IP address, and any other routing information that enables a user to determine the originator of the email
- Information is required to be valid for at least 30 days after the message is sent
- Email content must include the sender's company or trading name – the addition of the sender's website and phone number will further increase the credibility of the communication
- It is good practice to refer to the origin of the relationship when first emailing a new contact.

***It is acceptable for marketers to:***

- Use either an individual's email address, or a company's or company department's email address as the displayed "sender address"

***It is NOT acceptable for marketers to:***

- Hide or falsify the sender's email address, website address, physical address or phone number

#### **PRINCIPLE 4: Basic "Truth In Advertising" Doctrine**

Senders should not falsify the subject line to mislead readers and deflect them from the content of the email message.

Key requirements :

- Apply the basic 'truth in advertising' doctrine
- Pick a subject which highlights your business relationship with the recipient
- Avoid phrases like "Free offer" or subject line content that may be susceptible to incoming mail filtering.

***It is acceptable for marketers to:***

- Employ effective teaser copy within the subject line but not intentionally contain fraudulent information
- Insert merge fields, e.g. a person's first name, into a subject line as a further method of personalisation

***It is NOT acceptable for marketers to:***

- Use RE: or FW: in the subject line

#### **PRINCIPLE 5: Do Not Abuse Permission**

Senders should inform the respondent at the time of collection about the purpose for which their email address will be used (inform them either online or via email).

Key requirements :

- Emails must be relevant to the relationship between sender and recipient
- Senders should respect the privacy of individuals
- Do not over-communicate
- Offer recipients a choice of frequency and type of communications

- Organisations should have a published privacy policy linked to emails to provide users with information about how they can exercise the following :
  - the right to access to the personal data held about them. This should be supplied without excessive delay or expense to the individual and in accordance with any statutory time limits
  - a simple means for contesting, correcting or deleting inaccurate or incomplete personal data. The list owner must ensure that their list is accurate and up to date.

Visit <http://www.emarketingnetwork.co.nz> to view a recommended privacy statement.

## **PRINCIPLE 6: Do Not Harvest Email Addresses**

Email addresses must not be harvested for the purpose of sending bulk unsolicited commercial email. This practice is expressly forbidden under the UEM Act 2007 and you may be liable for Civil Action taken by the Department of Internal Affairs.

Harvesting email addresses is defined as “compiling email addresses through anonymous collection procedures such as via a Web Spider, through chat rooms, or other publicly displayed areas listing personal or business email addresses.”

Key requirements :

- Respect the privacy of individuals
- Do not collect email addresses without the owner's consent