

**THE CAN SPAM ACT OF 2003:
WILL YOUR BUSINESS BE IMPACTED?**

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FIRM PROFILE: Blakeley & Blakeley LLP represents its creditor clients in the areas of creditor rights, commercial litigation and collection, credit documentation, e-commerce, bankruptcy and out-of-court-workouts. B&B's collective experience and legal and practical understanding of vendors' rights results in cost-effective representation and develops solutions to vendors' problems. B&B's attorneys have extensive experience working with vendors. Members of the firm routinely speak to national industry groups and trade associations concerning creditors' rights and frequently publish articles in national and regional publications concerning creditors' rights.

Scott Blakeley is a partner in the California law firm of Blakeley & Blakeley LLP, where he advises companies around the country regarding creditors' rights, commercial law, e-commerce and bankruptcy law. He was selected as one of the 50 most influential people in commercial credit by Credit Today. He is contributing editor for NACM's *Credit Manual of Commercial Law*, contributing editor for American Bankruptcy Institute's *Manual of Reclamation Laws*, and author of *A History of Bankruptcy Preference Law*, published by ABI. Credit Research Foundation has published his manuals entitled *The Credit Professional's Guide to Bankruptcy*, *Serving On A Creditors' Committee* and *Commencing An Involuntary Bankruptcy Petition*. Scott has published dozens of articles and manuals in the area of creditors' rights, commercial law, e-commerce and bankruptcy in such publications as *Business Credit*, *Managing Credit*, *Receivables & Collections*, *Norton's Bankruptcy Review* and the *Practicing Law Institute*, and speaks frequently to credit industry groups regarding these topics throughout the country. He is a member on the board of editors for the California Bankruptcy Journal, and is co-chair of the sub-committee of unsecured creditors' Committee of the ABI. Scott holds an B.S. from Pepperdine University, an M.B.A. from Loyola University and a law degree from Southwestern University. He served as law clerk to Bankruptcy Judge John J. Wilson.

CAN/SPAM ACT OF 2003

I. Introduction

A. Legislative History

1. Congress recognizes the important role of e-mail.
2. E-mail is now relied upon by billions of people daily for both commercial and personal communication.
3. Its low cost and global reach make it convenient and efficient.
4. The convenience and efficiency is being threatened by the volume of unsolicited commercial electronic mail.
5. The growth of unsolicited commercial electronic mail imposes significant monetary costs on providers of Internet access services and businesses.

II. Prohibition Against Predatory and Abusive Commercial E-Mail

A. The signing of the Can/Spam Act on by President George W. Bush amended Chapter 47 of title 18 of the United States Code.

B. The Can/Spam Act prohibits:

1. Accessing a protected computer without authorization and transmitting multiple commercial e-mails;
2. Using a protected computer to relay or retransmit multiple commercial e-mail messages, with the intent to deceive or mislead recipients or any internet access service as to the origin of such messages;
3. Materially falsifying header information in multiple commercial e-mail messages and intentionally initiates the transmission of such messages;

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4. Using information that materially falsifies the identity of the actual registrant.

III. Penalties

- A. The punishment for violation of the Can/Spam Act may be one of the following depending upon the violation:
 1. A fine or imprisonment for up to five years if:
 - a. The offense is in furtherance of a felony;
 - b. The defendant was previously convicted for transmitting multiple commercial e-mails.
 2. A fine or imprisonment for up to three years if:
 - a. The volume of e-mail messages transmitted exceeds 2,500 per day, 25,000 per month, or 250,000 per year;
 - b. The offense caused loss to one or more persons aggregating \$5000 during a one-year period;
 - c. If the entity or individual committing the offense obtained anything of value aggregating \$5000 or more during any 1-year period;
 - d. The offense was undertaken by the defendant in concert with three or more other persons with respect to whom the defendant occupied a position of organizer or leader.
 3. Forfeiture to the United States:
 - a. Any property traceable to gross proceeds obtained from such offense;
 - b. Any equipment, software, or other technology used or intended to be used to commit or to facilitate the commission of such offense.

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- IV. What are the Impacts on Vendors Which Use E-Mail for Collection Purposes?
- A. The intent of the Can/Spam Act is to limit unsolicited commercial advertisements and maintain the efficiency associated sending e-mail.
 - B. A "Commercial E-mail Message" is defined: any electronic message with the primary purpose is the commercial advertisement or promotion of a commercial product or service, including on an internet website operated for a commercial purpose.
 - C. The term "Commercial E-Mail Message" does not include a transactional or relationship message.
 - 1. An e-mail regarding outstanding invoices or the shipment of goods would constitute a transactional commercial e-mail not governed by the Can/Spam Act.
 - 2. A vendor transmitting emails regarding outstanding invoices or the shipment of goods may violate the Can/Spam Act by intentionally falsifying the header of the e-mail.