

Business Advice



Business Matters

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Reminder - Personal Property Securities Act (PPSA)

As its been 5 years since the PPSA came into force you may not be aware that financing interests (interests) automatically expire 5 years after registration, therefore many existing interests have already, or will shortly expire. To maintain your priority you need to renew you interest **before** it expires.

If you have any registered interests it is important that you check the expiry date and re-register these where required. This can be done at www.ppsr.govt.nz and click on "PPSR renewals".

Associated Persons Legislation Postponed

The IRD's National Office have advised that the proposed legislation to change the definition of associated persons (see our March 2007 newsletter) has been postponed

to a 2008 tax bill, with any amendments taking effect from 1 April 2009 i.e. after the election.



Anti Spam Laws - Are You Ready?

All businesses should by now be prepared for the 'Unsolicited Electronic Messages Act 2007', (the Act) which takes effect on 5 September 2007.

Why?

Because all businesses **must** comply with the Act to ensure any electronic messages they send are not considered spam. The Act defines spam as 'unsolicited, commercial, electronic messages', and sets out the rules for sending commercial electronic messages legitimately.

The Act also prohibits address-harvesting software being used to create address lists for sending unsolicited commercial electronic messages

What if I don't?

You are basically "guilty until proven innocent". Under the Act the onus is on the sender of a message to prove consent, whether it be express, inferred or deemed.

The penalties for breaching the Act range from formal warnings to infringement notices and court actions (with a maximum fine of \$500,000 for an organisation or \$200,000 for an individual).

Also a 'spammer' could also be ordered to pay the victims compensation up to the amount of loss suffered and/or damages up to the amount of profit that was made as a result of sending the spam.

Is my message spam?

Your message is only spam if it is *electronic, commercial and unsolicited*

Electronic messages encompass emails, instant messaging, SMS, multimedia message services and other mobile phone messaging (but does not include voice or fax). A single message may be spam – it does not need to be sent or received in bulk.

Commercial mean things like marketing or promoting goods, services or land, or directing the recipient to a location where a commercial transaction can take place (such as a website). It is important to note that providing a hyperlink to a company web page

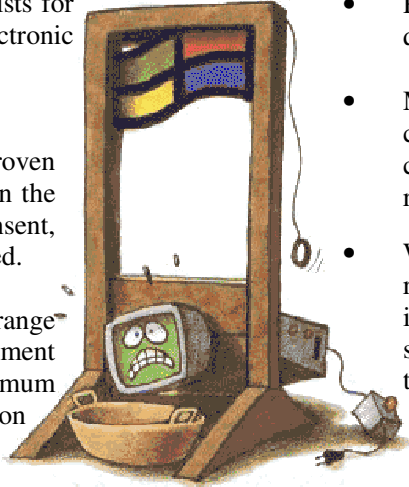
in the signature of an otherwise non-commercial email would make it commercial

Unsolicited means the recipients consent to receive the message has not been obtained.

There are still a large number of commercial electronic messages that can be sent legitimately.

Which messages are not commercial electronic messages?

The Act provides that the following common messages between organisations and clients/customers are not commercial electronic messages:



- Responses to a request for a quote or estimate
- Messages that facilitate complete or confirm a commercial transaction that the recipient previously agreed to
- Warranty information, product recalls and safety and security information about goods or services used or purchased by the recipient

- Factual information about a subscription, membership, account, loan or similar ongoing relationship
- Information directly related to employment or a related benefit plan in which the recipient is currently involved
- Delivers goods and services that the recipient is entitled to receive under the terms of a previous transaction.

If messages fall into any of the above descriptions then it is not spam and doesn't have to contain information about the sender or a functioning unsubscribe facility.

What do you need to do?

When sending a commercial electronic message there are 3 steps you must take:

Step 1 - Consent

There are three types of consent outlined in the Act – express, inferred and deemed.

Express consent is a direct indication that the person you wish to contact wishes to receive messages and covers things like ticking a box on a website or a phone/face-to-face conversation.

Inferred consent is when the person you wish to contact has not directly instructed you to send them a message, but it is still clear that there is a reasonable expectation that messages will be sent. For example, the address-holder provided their email address when purchasing goods and services in the general expectation that there will be follow-up communication.

If someone has been on your existing address list and has not 'unsubscribed', it does not mean that consent can be inferred. Inferred consent is limited in its application eg if people join a tennis club you can infer consent to send them a tennis newsletter, but you could not infer consent to send them an investment newsletter.

Deemed consent is when someone *conspicuously publishes* his or her *work-related* electronic address (e.g. on a website, brochure or magazine). However if a publication includes a statement that the person does not want to receive unsolicited commercial electronic messages at that address, consent cannot be deemed.

There also must be a strong link between the message and the recipient's business.

Businesses should keep a record of all instances where consent is given, including who gave the consent and how. This means that existing client address lists and databases will need to be checked to ensure each client has consented to receiving electronic messages. It is also advisable to verify that

consent has come from the actual holder of a particular electronic address.

If you are using an existing database of addresses and you are not sure if you have the consent of the people listed you will need to obtain it (even if you have been sending electronic messages to these customers for years).

Step Two - Identify

Commercial messages must always clearly identify the business responsible for sending the message and how they can be contacted – even if you are using a third party to sent the messages.

Step Three - Unsubscribe

Commercial messages must contain a functioning unsubscribe facility, allowing people to state that they do not want to receive commercial messages in the future. It needs to be clearly presented and easy to use. It could be as simple as a line in your message saying, 'If you do not wish to receive future messages, send a reply with "unsubscribe" in the subject line. It need not be an automated process, but should be reliable.

However, if you have an ongoing arrangement/contract with the recipient of your message waiving this requirement, you will not need to include an unsubscribe function.

You must action a request to unsubscribe within five working days.

Your identification details and the unsubscribe facility must be reasonably likely to be accurate for a period of 30 days after the message is sent.

In addition to the requirements of the Act, businesses must always comply with the [Privacy Act 1993](#) and be familiar with the Privacy Principles. Passing on email addresses, without permission, to another organisation or business may breach the Privacy Act.

For those who would like to know more about the requirements of the Act either contact us on (09) 430 2301 or visit www.antispam.govt.nz, and on the Business Info page there is the 'Unsolicited Electronic Messages Act 2007 Guide for businesses' – but read the disclaimer

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