



TELECOMMUNICATIONS

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CAN SPAM: What You Can Do About Unwanted Text Messages

In 2003, Congress enacted the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN-SPAM) Act to help stop spam. The law created a uniform federal law to help stop spam by replacing state anti-spam laws. However, states may enforce parts of the CAN-SPAM Act which restrict non-wireless SPAM. Additionally, state laws prohibiting fraudulent or deceptive acts and computer crimes remain in effect.

In 2005 the FCC enacted rules prohibiting unwanted commercial e-mail messages to wireless devices without prior permission. The Federal Trade Commission (FTC) also adopted rules restricting sending unwanted commercial e-mail messages to computers. The FCC's ban on sending unsolicited e-mail messages to wireless devices applies to all "commercial messages." Commercial messages are those messages for which the primary purpose is to advertise or promote a commercial product or service.

However, there are a number of loop holes in the FCC's rules. For instance, the rules do not cover "transactional or relationship" messages which means companies that you have done business with may continue to contact you about your past transactions or warranty information. Additionally, non-commercial messages, such as political campaign messages are not prohibited.

Moreover, the FCC's ban only covers messages sent to cell phones and pagers "if the message uses an Internet address that includes an Internet domain name." That means that "short messages" sent from one phone to another without using an Internet address are excluded. E-

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mail messages that you choose to forward from your computer to your phone are also excluded, although the FTC's rules may restrict these messages.

The FTC rules require that unsolicited commercial e-mails sent to non-wireless accounts be identified as an advertisement; there must be a clear way to reject future solicitations; the message must contain a legitimate return e-mail address and the sender's postal address; and subject lines must not be misleading. To file a complaint about commercial e-mail you receive on your non-wireless devices you can file a complaint with the FTC free of charge.¹

If you receive an unwanted commercial message on your wireless device, a telephone solicitation made to a wireless device for which the number is registered on the Do-Not-Call list, or any autodialed text message or unwanted commercial message to a non-wireless device from a telecommunications company or advertising a telecommunication company's products or services you may file a complaint online, by phone, fax, or mail with the FCC free of charge.²

The FCC recommends registering your cell phone number on the Do-Not-Call registry to stop unwanted cell phone solicitations. However, it is important to remember that just because your phone is registered on the Do-Not-Call registry, it will not stop political calls or calls related to previous business relationships. Therefore, if you do put your cell phone number on the Do-Not-Call registry, you may actually see a spike in political solicitation calls and from other charities and businesses which are exempt from the Do-Not-Call registry restrictions.

Overall, it is very difficult to stop unwanted e-mail, phone, and text message solicitation. Even though the FCC and FTC have mechanisms to file complaints, enforcement is often difficult. Consumers and business must be careful about distributing their information to websites and businesses and always be careful about responding to an unfamiliar e-mail, call, or text message.

We welcome your thoughts. Please feel free to comment at our interactive blog at blog.tlgdc.com.

If you have questions about this issue, or if we may be of assistance to you, please feel free to contact us.

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¹ For additional information about the FTC complaint process visit www.ftc.gov/spam.

² The online form is located at support.fcc.gov/complaints.htm.