

# The CAN-SPAM Act of 2003: An Analysis

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## What is spam?

Definitions of the term “spam” vary widely. Dictionary.com’s definition seems widely accepted: *“Unsolicited e-mail, often of a commercial nature, sent indiscriminately to multiple mailing lists, individuals, or newsgroups; junk e-mail.”*

## Why is it called spam?

It is generally accepted that the origin of the term “spam” referring to unsolicited email was the Monty Python sketch entitled *“SPAM”* from episode 25 of *“Monty Python’s Flying Circus.”* In the sketch, a couple tries to order food in a restaurant that serves only dishes that include SPAM. While discussing the possibility of ordering an item without SPAM in it, a group of Vikings in the restaurant sing a song about SPAM very loudly, drowning out all other conversation.

In the mid 1980s or early 1990s, a multi-user gamer created a keyboard macro typing *“SPAM SPAM SPAM SPAM SPAM”* which he invoked every few seconds until he was kicked off the system by irritated gamers. Unsolicited e-mail and newsgroup postings later became known as spam, since they were unwanted and seemed to effectively drown out normal communications.

## SPAM vs. spam

Hormel Foods owns a trademark for the word **“SPAM.”** Notice the use of upper case. Use of the word **“spam”** (all lower case) to refer to unsolicited e-mail doesn’t diminish the Hormel trademark. The word SPAM was originated in 1937 by the winner of a contest to choose the name of a new product and is short for *“SPiced hAM.”* The official SPAM website,

<http://www.spam.com>, provides a great deal of interesting information about the history of SPAM.

## Economics of spam

The cost for sending a paper brochure could be as much as \$1.00 per item. On the other hand, to send about 1 million e-mails costs around \$100.00, or \$0.0001 per item. In order to profit from the mailing of paper brochures, at least a 5% response rate is required to cover costs. Less than 0.001% response is required to cover the costs of e-mailing.

The real cost of spam is borne by its recipients, their employers, ISPs, and Internet Backbone carriers. The *Radicati Group* claims that the 2004 e-mail security market of \$20 billion will reach \$200 billion by 2008.

## Legal issues

Before the CAN-SPAM Act took effect, there were no federal laws against spamming. Early cases involving spam mostly targeted unfair business practices and fraud. Employers have a great deal of liability for protecting their employees from spam containing pornography and other things that may create a hostile working environment.

Approaches to combat spam are many, and are largely unsuccessful. While many would like it if commercial e-mail were banned altogether, it seems unlikely this type of law would succeed. Some claim working with other countries to unify the fight against spam is the only way to solve the problem.

## The CAN-SPAM Act of 2003

Effective on January 1, 2004, the real name of this piece of legislation is "*The Controlling the Assault of Non-Solicited Pornography and Marketing Act.*" One of ten bills aimed at regulating spam in the 108<sup>th</sup> Congress (2003), the CAN-SPAM Act took much less drastic steps than the other proposed legislation. Its key provisions include:

- E-Mail Advertising is Permitted
- Applies to Commercial E-Mail Messages
- Recipients Must be Allowed to Opt Out
- Must Not be Sent to Recipients Requesting Not to Receive Them
- Most Prohibitions Don't Apply to Transactional or Relationship E-Mails
- Can Not Mask Origin of Messages
- Must be Identified as Ads
- Most State Anti-Spam Laws are Preempted
- Recipients Can't Sue Spammers
- ISPs Can Sue Spammers

Among the strongest supporters of this law are the Direct Marketing Association (DMA), the US Chamber of Commerce, and large ISPs. Among its opponents are most anti-spam organizations in the country, most consumer groups, and a number of anti-spam companies.

Understanding the divide between those supporting and opposing the law is simple: the law favors the marketing industry to the detriment of consumers.

## Outcomes

The effective outcome of the CAN-SPAM Act is negligible as spam continues to clog e-mail boxes, possibly more than ever. Unfortunately, the law took power away from states to enforce their previous laws. On the positive side, ISPs are suing hundreds of spammers, and the FTC has brought charges against a handful of spammers they've managed to find. In the year plus since the law took effect, only one conviction has been achieved!

Outside the United States in the fight against spam, Australia and the European Union seem to be leading the way. Most laws enacted in other countries are much stricter and provide heavier penalties than CAN-SPAM.

The Federal Trade Commission (FTC) provides requirements for businesses that wish to send commercial e-mail (<http://www.ftc.gov/bcp/online/pubs/buspubs/canspam.pdf>). The following guidelines summarize the rules:

- Don't hide your identity
- Don't hide your purpose/subject
- Give a way to opt-out

## Legal/ethical e-mail marketing

In addition to the rules from the FTC, there are many groups and individuals who provide ideas for ethical commercial e-mail. Here are some of the ideas they share:

- Make it really easy to opt-out
- Use only opt-in lists (double opt-in is much better) and be sure those who opt-in know what they are going to receive
- Never share, sell, or buy address lists
- Don't send from free accounts (hotmail, etc.), even if they belong to you
- Don't include spyware in your messages or in the sites linked to from your messages

## Tips for spam recipients

- Don't put your e-mail address on web pages
- Never put Personal Identifiable Information (PII) in an e-mail or in a web form linked to from an e-mail
- On forms requesting e-mail address, use a fake or alternate e-mail address
- Don't reply to spam or use opt-out links on messages from questionable sources
- Don't get angry, just delete it!
- Use a spam filter

## Conclusion

The only good CAN-SPAM comes from Hormel!