

EXHIBIT M



Email Sender & Provider Coalition

A division of the Network Advertising Initiative

ESPC Best Practices Guide

I. Introduction

Email is an excellent channel for mailers to establish and maintain valuable relationships with their subscribers. There are multiple stages of such a relationship, and in order to maximize the value of the relationship, mailers should be attentive to the application of best practices.

The ESPC Best Practices Guide is to be used in conjunction with the ESPC Membership Pledge. The Best Practices Guide enhances the Membership Pledge by outlining specific practices that are recommended for use by ESPC members. By following these recommended best practices, mailers will improve their relationship with recipients which in turn will reduce complaints and increase subscriber response. Equally as important, adoption of the best practices shows member support of the ESPC's efforts to be at the forefront of industry best practices.

II. Definitions

The ESPC Pledge establishes that commercial email must not be sent to an individual's email address unless one of the following situations exists:

1. Prior **affirmative consent**¹ of the individual has been obtained, as defined by the CAN SPAM Act of 2003; or
2. Prior **consent**² of the individual has been obtained as defined by the European Commission Privacy and Electronic Communications Directive

Below are commonly used industry terms within the context of the ESPC Pledge definition of consent and the best practices for their use.

- **Opt-out:** A person is added to a commercial email list. The person must actively request NOT to be included or retained on the list in order not to receive future communications.
- **Prior Business Relationship:** A person with whom the sender has a prior business relationship is added to an email list such as in the case of a transactional relationship being extended to include a commercial one.

Best Practice for Opt-Out Consent:

Relying on opt-out without a prior business relationship is tantamount to sending unsolicited commercial email, and is a violation of the ESPC Pledge. Even with a prior business relationship, the best practice is to notify the person of the sender's intent to communicate with him or her at the point of address collection or in the first communication to the person, and then to upgrade permission to opt-in status, preferably confirmed (closed loop), as soon as possible

- **Opt-in:** At the point of email address collection, a person has affirmatively requested to be included on an email list to receive commercial email.
- **Confirmed (closed loop) Opt-in:** Following an opt-in request, a confirmation email is subsequently sent to the person notifying him that some action is necessary before their email address will be added to the list. The person must respond or take other equivalent action to be considered "confirmed."



Best Practice for Opt-In Consent:

The best practice is to immediately notify the person that their request has processed and their email address has been added to the sender's email list.

In capturing opt-in consent, the best practice is to differentiate between consent that is Direct and Indirect:

- ***Direct:*** A person has requested to be included on a company or communication-specific list.
- ***Indirect:*** A person has requested to be included on a list that is not company or communication-specific, such as with affiliate programs, list rentals or other third parties. When using indirect opt-in consent, senders should capture this information in their database and seek to upgrade Indirect to Direct opt-in consent as soon as possible.

III. Best Practices for Address Collection

The process by which subscriber email addresses are collected sets the stage for a mailer's relationship with recipients. In this initial phase, senders should focus on the following three areas:

- Make the Consent Process Memorable
- Set Subscriber Expectations
- Ensure Brand Recognition

Make the Consent Process Memorable

Mailers should have a clear and conspicuously posted privacy policy and provide information or a link to that policy near the point of consent. If subscribers are permitting their data to be shared with third parties through the act of joining, be sure to provide information about the nature of the information that is to be shared (e.g., individually identifiable information including email address, name, and age), in addition to addressing any third party relationships, and the conditions for how third parties are allowed to use the data.

Ensure that your subscribers have a clear sense of what they are consenting to receive. Provide information about the nature of the mail in a location that a typical subscriber would be sure to see it rather than in places viewers may not reach. An example would be to place the information near the "submit" button in a web signup form rather than in an area of text that requires scrolling down. Use of font and colors can aid in drawing attention to the information and making it more readable.

The permission level recommended by the ESPC is opt-in at a minimum, and confirmed opt-in where appropriate. Confirmed opt-in can reduce erroneous mailings due to typo or forgery, and protects good will toward your company/brand. Senders may want to pursue opportunities to upgrade permission levels and to manage preferences.

When collecting subscription information record the IP address, date, and time of the initial consent and/or the level of permission granted at subscription. This facilitates research and resolution about the user's subscription.

Set Subscriber Expectations

To set the right expectations, ***tell your subscribers about the scope of your mailings.*** What type of mail should they expect to receive from you? How frequently will they receive each type of mail from you?

- If your subscribers will only get a one-time mailing from you, then say so. This may get people to subscribe who wouldn't want to get any further messages. Of course, honor that commitment.



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- If your subscribers are signing up for on-going mailings, tell them how frequently they will get your messages - daily, weekly, monthly, etc.

Ensure Brand Recognition

Consistently use standard From Addresses, From Names, and clear Subject Lines to increase recognition. This enhances the subscriber's ability to recognize your brand and messages. It is recommended that during the registration process, you inform your subscriber of the standard address from which you send and recommend that they add the address to their Address Book.

Adherence to these practices also reduces the likelihood that subscribers will be susceptible to phishing attacks using your brand.

IV. Best Practices for Initial and Ongoing Communication with Subscribers

After the collection phase, it is equally as important to apply best practices to ongoing communication with subscribers. With initial and ongoing communication, senders should focus on the following areas:

- Timeliness
- Maximize Recognition
- Confirm Relationship and Scope
- Upgrade Permission and the Recipient Address Book
- Provide Content Consistent with Subscriber Expectations
- Provide a Functional Unsubscribe
- Message Content

Timeliness

Ideally, you should **send new subscribers a "welcome" message immediately after consent or confirmation.** Timely notice of subscription confirmation aids in reaffirming your relationship with your subscriber. This is particularly important for confirmation messages, welcome messages, or the initial communication. If you wait too long before communication with a new subscriber, they might not recall giving their consent, and subsequently tag your message as spam.

Maximize Recognition

Consistently use standard and recognizable From addresses, From names, and clear subject lines. Use subject lines that are descriptive and recognizable. Leverage your brand and logo to increase recognition in the body and also use the name in the From and/or Subject line. Avoid vague or potentially misleading information in headers that isn't reflective of the content. For example, a From address that says only "Customer Service" is less recognizable than "Company Name Customer Service."

A more focused subject usually increases response and reduces complaints. For example, a Subject Line about purchasing an engagement ring or around a theme such as exercise is better than a less focused subject like offers from random or unfamiliar third parties.



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Confirm Relationship and Scope

Remind your subscribers why they are receiving mail from you. For example, reiterate to the subscriber that they asked to be added to your list on your Web site at the time of making a purchase or inquiry, or that the communication is confirming a transaction about an account. You may also wish to include the IP/date/time of the request in your communication to subscribers.

Remind your subscribers about the scope of your mailings in order to reinforce the expectations that you set during collection.

Make basic information such as "how to unsubscribe" prominent, and include the physical postal address as required for commercial email under the CAN-SPAM Act. Senders may further want to include the address the recipient is subscribed under in order to reduce frustration resulting from trying to unsubscribe the wrong address.

Upgrade Permission, the Recipient Address Book

Encourage your subscribers to confirm their subscription if they haven't already done so, and remind them to add your From Address to their address book to protect against accidental keyword-based filtering by ISPs. While this can increase delivery to the Inbox with on-going communication, it is particularly important at the point of collection and in the initial mailing to the subscriber.

Provide Content in line with Subscriber Expectations

Senders' content should be consistent with the expectations set at the time of consent. Be sure to provide information that reminds subscribers that they are getting the information because they requested it and reassures them that they can unsubscribe easily at any time.

Send content that is relevant to the subscriber's relationship with you and that keeps the subscriber engaged in their relationship with you.

Provide a Functional Unsubscribe

Always make it easier to unsubscribe than to "report spam". If your content is particularly lengthy, put the unsubscribe higher up in the message.

One-click unsubsribes are generally recommended for low-security mailings. A link or button with a difficult-to-derive token that is unique to the email account holder can prevent people from being able to unsubscribe someone just by knowing their address and the unsubscribe request format. A mailto: e-mail-based unsubscribe also allows recipients to unsubscribe easily. The key is to prevent subscribers from being frustrated by having to navigate through multiple pages in order to unsubscribe and from being alarmed by requests for passwords or other private information that may raise concerns about phishing.

Minimize unnecessary barriers to unsubscribing; avoid charging any fees to unsubscribe. Higher security situations, such as modifying brokerage account mailing preferences or other sensitive financial relationships, may require additional measures, such as passwords, to authenticate the user. Provide an acknowledgement to reassure that the request was processed. If you choose not to provide a way to unsubscribe from transactional e-mail, provide information about how to update their account preferences.

Senders that operate more than one list should offer a mechanism for subscribers to opt-out of all the lists operated by that sender. Emailers are also encouraged to offer unsubscribe instructions and an option to opt-out within the sender's website privacy policy.



Message Content

Make sure that a user never sees a blank or unreadable message due to security precautions in their mail client. In particular, unsubscribe instructions and compliance information such as a physical postal address should always be clearly displayed as text. Avoid HTML messages that only contain images.

Always include alternative text that will be displayed if the recipient's mail client disables the display of images and links, and consider use of alternate text in support of ADA compliance requirements.

V. Best Practices for Trusted Referral

A Trusted Referral occurs when person is sent a commercial email by a third party, such as with "Forward to Friend." ***In order to receive future email, the person must affirmatively consent to be included on the sender's list.*** Adding the person's name to the list without such consent constitutes unsolicited commercial email and violates the ESPC Pledge.

1 Affirmative Consent as defined by the U.S. CAN SPAM Act of 2003: The recipient expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative; and if the message is from a party other than the party to which the recipient communicated such consent, the recipient was given clear and conspicuous notice at the time the consent was communicated that the recipient's electronic mail address could be transferred to such other party for the purpose of initiating commercial electronic mail messages.

2 Consent as defined by the European Commission Privacy and Electronic Communications Directive: Within the context of an existing customer relationship (where a natural or legal person obtains from its customers their electronic contact details for electronic mail, in the context of the sale of a product or a service), it is reasonable to allow the use of electronic contact details for the offering of similar products or services, but only by the same company that has obtained the electronic contact details in accordance with Directive 95/46/EC*. When electronic contact details are obtained, the customer should be informed about their further use for direct marketing in a clear and distinct manner, and be given the opportunity to refuse such usage. This opportunity should continue to be offered with each subsequent direct marketing message, free of charge, except for any costs for the transmission of this refusal.

* Directive 95/46/EC: Consent shall mean any freely given specific and informed indication of his wishes by which the data subject signifies his agreement to personal data relating to him being processed.