



THE UNIVERSITY
of ADELAIDE

Legal Compliance Education and Awareness

CRICOS PROVIDER 00123M

Spam Act 2003

(Commonwealth)

adelaide.edu.au

seek LIGHT

What is Spam?

- Spam is any unsolicited **Commercial Electronic Message** sent by email, SMS, MMS or instant messaging
- A message is deemed to be 'commercial' if it has a commercial purpose, such as;
 - advertising the supply of goods, services or business opportunities
 - promoting a supplier of goods, services or business opportunities (even if it is just via a hyperlink in the message)
 - assisting someone to dishonestly obtain a commercial advantage or other gain from another person
- **Commerciality** of a message is determined by considering;
 - the purpose, content & presentation of the message itself, or
 - content that can be located using the links, telephone numbers or contact information set out in the message
- For a message to be considered Spam, it must originate or be commissioned in Australia, or originate overseas but be sent to an address accessed in Australia
- A message will be considered spam regardless of whether it is sent to one person or many

What does the Spam Act do?

- Regulates the sending of Commercial Electronic Messages
- Prohibits the supply, acquisition & use of address harvesting software (software that searches the Internet for email addresses to be added to a database)
- Prohibits the use of any lists produced using such software where it is intended to be used to send unsolicited commercial electronic messages
 - even if the lists were procured from a third party
- Enforced by the [Australian Communications & Media Authority \(ACMA\)](#)

How does the Spam Act apply to the University?

- The University sends commercial electronic messages to staff, visitors & past or present students & their families for a variety of purposes, including;
 - *Promotion of University Programs*
 - *Invitations to University events*
 - *Special offers*
- Staff & students receive spam almost daily to their University email accounts
 - *email filters are in place to capture most spam*
- The ACMA has clamped down on spam & issued significant penalties in 2010, so spam is an issue that all staff & students must be mindful of

Commercial Electronic Messages must meet the following conditions

Consent of the recipient

- This could be through **express** consent from the person you wish to contact or **inferred** consent based on a business or other existing relationship with the person, or conspicuous publication of the person's email address
- In the University context, the students, employees, affiliates, title-holders & contractors who appear on **mandatory membership email lists** (from which members cannot unsubscribe) imply their consent due to their relationship to the University

Identify the sender

- The message must include accurate information about the person or organisation responsible for sending the message that is valid for at least 30 days after the message is sent

Commercial Electronic Messages must meet the following conditions (cont.)

Unsubscribe facility

- The message must contain a process by which the sender can opt out of receiving future messages, for example:
- *“To unsubscribe from this email list, and no longer receive the messages sent to members of the list, please click on the following link: <INSERT URL HERE>”*
- Any requests to unsubscribe must be actioned within 5 days

University exemptions under the Act

- **Designated Commercial Electronic Messages** can be sent without recipient consent & do not require an unsubscribe facility
- Universities can send factual messages relating to the University's goods & services to current & former students or members of their households, but;
 - the message **must** be authorised by the University & include the standard University footer

“For the purposes of the SPAM Act, this email is authorised by The University of Adelaide”

- Purely factual messages with name, logo & contact details must not contain any links to commercial websites
- Commercial messages about the services provided by affiliated bodies, such as the University Union or Bookshop, are not exempt

What can happen if I don't comply?

Penalties in respect of each breach of the Act will be awarded according to;

- the nature & extent of the contravention
- the nature & extent of any loss or damage suffered as a result of the contravention
- the circumstances in which the contravention took place
- whether the person has previously been found to have engaged in any similar conduct in Australia or overseas

What can happen if I don't comply? (cont.)

Individual Consequences:

- Fines of up to \$2,200 per **each** unsolicited commercial electronic message
 - A maximum penalty of \$44,000 per day applies
 - The maximum penalty rises considerably for repeat offences
- A breach of the Act may be considered misconduct under the University's Enterprise Agreement

University Consequences:

- Fines of up to \$220,000 for a single day's contraventions, or up to \$1.1 million for a subsequent contravention of the same provision
 - the maximum penalty rises considerably for repeat offences
- Formal warnings & infringement notices from the ACMA
- Legal & administrative costs
- Negative publicity
 - Damage to the University's reputation
 - Attraction & retention of staff & students is compromised

University obligations under the Act

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University obligations under the Act (cont.)

- Do not send an email, or text message which advertises the University's goods or services unless;
 - it is a Designated Electronic Message; or
 - you have express or implied consent from the recipient
- Only use voluntary membership lists (from which recipients may choose to unsubscribe) for commercial messages sent within the University
- Ensure that all outgoing messages contain accurate & up-to-date sender information
 - Instructions for doing this are available on the [University website](#)
- Ensure that all outgoing commercial messages contain a functional unsubscribe facility unless they are a Designated Electronic Message

University obligations under the Act (cont.)

- **Remember:** a message may be commercial, even if the content is not, such as if it contains a link to a commercial website
- Do not send messages to persons whose addresses you have obtained from a third person
- Do not supply, acquire or use address-harvesting software
- Familiarise yourself with the University of Adelaide [Business Rules for Spam Act compliance](#)

If you maintain a mailing list of non-University staff or students (eg. List of attendees for an Open Day)

- Send an annual 'confirmation of consent email' to members of the list seeking their consent to continue to receive emails

"This email has been sent to you on behalf of (INSERT NAME OF GROUP or SOCIETY) by (NAME and position)

The purpose of writing to you is to confirm that you wish to continue to subscribe to our mailing list, and receive information via email, including newsletters, invitations and other communications from this email address.

To remain on our distribution list you do not need to do anything. If you do not reply, we will continue sending you relevant information.

If you would prefer not to receive further messages from us please click on the following link: <INSERT URL HERE>. Please note that you can unsubscribe at any time.

- If a recipient requests to unsubscribe, remove him/her from mailing list within 5 days

The University's email filtering system

- To aid in protecting students, staff and affiliates from the threats present within fraudulent ([Phishing](#)) & nuisance ([Spam](#)) e-mails, the University has implemented an e-mail filtering system
- Whilst the majority of malicious e-mails entering the University network can be stopped, occasionally users may receive unsolicited e-mail in their inbox
- To ensure these e-mails are prohibited from entering the University, users are encouraged to forward them, **as an attachment**, to bad@mailguard.adelaide.edu.au
- Submissions to bad@mailguard.adelaide.edu.au will be manually analysed & filtered where deemed appropriate

What should I do if I suspect I have received spam?

- Don't reply or click on any links including 'unsubscribe'
 - doing this may result in receiving even more spam or lead to malicious software being installed on your computer
- Forward all Spam email **as an attachment**, to bad@mailguard.adelaide.edu.au

Refer to the following guides:

- [Microsoft Outlook 2007](#)
- [Microsoft Outlook 2003](#)
- [Apple Mail](#)
- [Mozilla Thunderbird](#)
- [Google Mail](#)

What should I do if I consistently receive spam?

- Delete the message without opening it
- If the source seems genuine, contact the business to make a complaint
- Make an enquiry or complaint to the ACMA by completing the [online form](#)
- Contact the [ITS Helpdesk](#) helpdesk for assistance in setting up email filters

Additional Resources

- [Jonathan Churchill](#) Associate Director (Technology)
 - 8313 4531
- ITS Helpdesk
 - 8313 3000
- [Australian Communications & Media Authority \(ACMA\)](#)
 - Spam & e-security issues
- [University of Adelaide Spam Act Compliance Business Rules](#)
- [Spam Act 2003 \(Cth\)](#)



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Disclaimer

The content of this material is intended only to provide a summary & general overview of the *Spam Act* as it applies to the University of Adelaide.

It is not intended to be comprehensive nor does it constitute legal advice.

Please contact *Shuichi Sakai, Manager, Risk & Security (Technology Services)* or Legal & Risk if you are unsure of your compliance obligations under the Act.