



**CHINA'S REGULATIONS
ON INTERNET
EMAIL SERVICES**
INSIGHT BRIEF

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China's Regulations on Internet Email Services

On March 30, 2006, complicated new regulations governing commercial email went into effect in the People's Republic of China. In this Insight Brief, we are pleased to offer you a complimentary analysis of the new regulations in China, and our exclusive recommendations for compliance.

Do the New Anti-Spam Regulations in China Apply to You?

The new anti-spam regulations in China, the "Regulations on Internet Email Services," will affect senders whose emails contain commercial advertising content and who send their messages from servers located within China to email addresses of individuals in the territory. We believe that it is also prudent to follow the obligations of these regulations with respect to email originating *outside* of China that is directed to known Chinese addresses.

China is the world's most populous country, with over 1.3 billion citizens who are increasingly "connected." In fact almost one in ten Internet users worldwide resides in China, which translates into the second-most at-home Internet connections of any nation. As the country continues to rapidly modernize, the Chinese market presents global marketers with an increasingly attractive opportunity, and the impact of these new regulations is therefore potentially very wide-reaching.

What Do the Regulations Say?

The regulations are substantially more restrictive than the legal framework prescribed by the CAN-SPAM Act in the United States. The following summarizes the key obligations imposed on senders of commercial email under the new regulations:

- ❑ **Clear and definite consent is required before sending messages containing commercial advertisements.** Senders of email messages containing commercial advertisements are required to obtain recipients' consent prior to transmitting such email messages. The regulations do not specify opt-in, but we have obtained verbal confirmation from officials in Beijing's Ministry of Industry Information that their intent is opt-in with affirmative consent.

Definitions:
 - **Consent.** Although not clearly specified in the regulations, we recommend acquiring, at the very least, "Affirmative Consent," as defined within the CAN-SPAM Act.
 - **Commercial.** The regulations appear to *apply to any message containing advertisements*. This is different from the CAN-SPAM Act where the law applies to messages with a "primary purpose" that is commercial in nature. Therefore even messages that are mostly "transactional or relationship," but which contain *any* promotional content should be compliant with the regulations.
- ❑ **Recipients must be able to opt-out of commercial email.** Recipients who have consented to receive commercial email must have the ability to opt-out of receiving such messages in the future. To facilitate this, senders of commercial email must provide their contact information within their messages, including email addresses and clear instructions on how to unsubscribe. This information and mechanism must remain valid for at least 30 days after sending the message.
- ❑ **Commercial Email Must Be Labeled With "AD" in Subject Line.** All commercial email must be labeled through the inclusion of "AD" (or 广告 in Chinese) in the subject line.
- ❑ **Mailers must obey specified content restrictions.** Commercial email cannot, under any circumstances, include content in violation of Article 57 of the *Regulations on Telecommunications of the People's Republic*

of China or engage in “activities that jeopardize network security or information security as prohibited in Article 58 of the *Regulations on Telecommunications of the People’s Republic of China*.” While this may require further analysis for your own business compliance, our understanding is that prohibited content generally translates into what would be considered “adult” content. Specifically prohibited content may include email advertisements for pornography, firearms, gambling, tobacco, and illegal drugs, but not necessarily alcohol.

What Are the Penalties For Violations?

Senders of email messages containing commercial advertisements that are in breach of these regulations are required to rectify violations and are also subject to fines of up to CNY 10,000 (U.S. \$1,250 based on our current currency conversion). Additionally for cases involving unlawful proceeds, fines may be levied up to CNY 30,000 (U.S. \$3,750).

It is worth noting that the regulations will be enforced under a “report-based” system requiring consumers and/or ISPs to lodge an official complaint with the relevant Chinese authorities to initiate regulatory action.

Recommendations

- ❑ **Audit databases** for customers that may be located in China.
- ❑ **Ensure compliance.** Marketers that advertise products or services to individuals known to be located in China should ensure that their messages to these individuals comply with all provisions of the new regulations, as outlined above.
- ❑ **Acquire Chinese email addresses through affirmative consent.** Marketers seeking to grow their businesses in China should implement affirmative consent practices in order to acquire the email addresses of citizens located in China. Also, never send email to known Chinese addresses that are already on your lists unless you can verify that they were obtained via affirmative consent.
- ❑ **Clearly separate marketing from transactional messaging.** Marketers should optimize their communications efforts by ensuring that promotional content is not included in what would otherwise be unregulated transactional and relationship messaging.
- ❑ **Work with Epsilon.** For our clients, especially those in China, if you are concerned about the potential for your company to be affected by these new regulations, please immediately inform your Epsilon representative. In addition, you should consider seeking outside legal counsel.
- ❑ **Monitor this important issue.** Because these regulations have just come into effect, no enforcement actions have been taken to-date, and they should therefore be viewed as “untested.” How the Chinese government actually goes about enforcing the new regulations can potentially be precedent-setting and have significant long-term implications for global marketers as the Chinese market continues to grow.

If you have any questions, or for more information about how Epsilon can help you navigate the global legal and regulatory compliance challenges that are facing today’s email marketers, please contact us at apac-info@epsilon.com.

Notice

This is not legal advice and cannot be relied on as such. Epsilon is unable to provide any guarantee that the adoption of its recommendations will result in compliance with global laws and regulations. In addition, the overview of the People's Republic of China's Regulation on Internet Email Services provided in this Insight brief does not take into account other potentially relevant laws and regulations that may impose additional obligations on covered entities and their activities. Clients should consult with their own legal advisors regarding compliance with laws and regulations.

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