

Flowmailer Email Code 2012

Last modified:
Januari 1, 2012



Code for Distribution of Advertisements by Email 2012

Article 1 General provisions

1.1 This Code applies to the distribution of unsolicited advertising messages by email.

1.2 The following definitions apply to this Code:

- a. Advertising by email: the public commendation by email of goods, services or concepts, as well as the solicitation of services. This does not include sending an invitation exclusively for participating in a research study for historical, statistic or scientific purposes.
- b. Advertiser: the person (individual practicing a profession or on behalf of a company or corporation) who has instructed to send an advertisement by email or who makes it possible that an advertisement is sent via email to a platform for which the advertiser is responsible. An advertiser who sends unrequested advertisements per email to his own (client) database is considered to be the owner of a database pursuant to this Code;
- c. Recipient: the person to whom advertising by email is directed;
- d. Owner of a Database: the party who has control over a database of email addresses. The owner of a database who distributes unsolicited advertising messages by email about his own products or services to his own client's database, is also considered an advertiser pursuant to this Code.
- e. Disclosure to third parties: the publication of email addresses or putting email addresses at the disposal of a third party with a view to sending advertising messages by email to those addresses. An executor who acts by order of the owner of a database or by order of an advertiser is not considered a third party.
- f. Label: brand and/or company name of the owner of a database under which permission for the distribution of unsolicited advertising by email is obtained.

1.3

- a. Email advertising is in principle permitted if the recipient of the email advertising has actively granted permission in advance to the owner of the database or if the database owner has obtained the email address within the scope of a sale to or donation by the recipient and is used for offering similar

products or services (including asking for donations by idealistic or charitable institutions), as long as no use is made of the possibility to unsubscribe in the same way as meant in article 5 of this Code (the Right to Object).

The obligation will not be met solely by including either a provision in the General Terms and Conditions or a privacy statement.

b. The Advertiser is obliged to make sure that the database owner and other intermediate parties called in by the advertiser observe the provisions of this Code and the applicable legislation and Regulation among which – but not limited to – the fact that the database owner has obtained the necessary permission to send advertising messages by email.

1.4 The content of the advertising message sent by email shall comply with the general rules set by the Advertising Code Authority.

1.5

1. If email advertising is sent via a platform which falls under the liability of the advertiser (tell a friend) on the initiative of a natural person not acting in the exercise of his profession or company, to a personal relation of that natural person, the advertiser is obliged to mention that natural person in the “From”-field.

2. If email advertising is sent in accordance with article 1.5 par. 1, the “Reply to” – field must contain the email address of the natural person on whose initiative the email was sent.

Explanation of the ‘Tell-a-friend’ systems

The Code makes further requirements to commercial emails sent by Tell-a-Friend systems. In ‘Tell-a-friend’ systems the controller of a website sends email on the initiative of and on behalf of an internet user to a recipient who has not given his prior consent to send him a once-only message (in the name of the sender).

The Code requires that the name of the friend be introduced in the ‘From-field’ and that the recipient may directly reply to the friend. In this way the recipient may directly report to the friend (who is the sender) whether he appreciates these messages or not. The joint Ruling over the Tell a Friend-system by the Dutch Data Protection Authority and the OPTA remains in full force.

Article 2 Identity and identification

2.1 Advertising by email shall be clearly identifiable as such by lay-out, presentation, content or otherwise.

2.2 The advertiser shall take care that the database owner identifies himself in each email in such a way that he is easily and actually accessible to the recipient of the email by means of the contact data of the database owner. At least his name, postal address and contact data shall be specified or an active link shall refer to these data.

2.3 The database owner must include his label in the "From" field. At the same time, his email must contain an active reply-address in the Reply to- field, where a response will be received.

Article 3 Technical email information

3.1 The maximum total size of attachments used for advertising by email is 150 Kb.

3.2 Should an advertising message sent by email include a URL to a directly downloadable file, the size and type of the file to be downloaded shall be given in the email.

Article 4 Compilation of email addresses

4.1.a. In the event the database owner is compiling email addresses, the advertiser shall take care that the person whose address is compiled shall clearly and in a simply accessible manner be informed about the following points:

- a. the email address will be used for sending advertising messages;
- b. the identity of the owner(s) of the database; and
- c. whether the database owner compiles the email addresses for his own use, or simultaneously on behalf of a third party, or for disclosure to a third party.

4.1.b. The obligation set forth in article 4.1.a. will not be met by solely including either a provision in the General Terms and Conditions or a privacy statement.

Article 5 The Right of Objection

5.1 The advertiser shall take care that the recipient is given the opportunity, in each message, to inform the database owner, free of charge and in a simple electronic way, that he wants to discontinue the use of his email address for the distribution of advertising messages. This Right of Objection must be made possible in a simple, clear and preferably uniform manner. The database owner shall take care of immediate compliance with the request.

5.2 The recipient must have the opportunity to effectuate the discontinuation as mentioned in art. 5.1. at least for the label, product, or service for which the email address was compiled. Discontinuation may refer to several or all labels, products or services.

Article 6 Complaints and supervision

6.1 Anyone who has the impression of having received email advertising messages that conflict with this Code may submit a complaint in writing and/or via the electronic complaint form (www.reclamecode.nl) with the Advertising Code Committee in compliance with the articles and Regulation of the Advertising Code Authority.

6.2. The complaint must contain the name, address and place of residence and email address of the complainant and if possible also copies of the complete email message(s) (including the so called 'headers') whereupon the complaint was based.

6.3. The Advertising Code Committee or Board of Appeal may, should the complaint be allowed, indicate to which party the infringement of the provisions of this Code can be attributed.

Article 7 Evaluation and entry in force

7.1 This code was drawn up and introduced to the Advertising Code Authority by:

- ✓ Dutch Dialogue Marketing Association (DDMA)
- ✓ Email Marketing Association Netherlands (EMMA-NL)
- ✓ Dutch Home shopping organization

The content of this Code was drawn up in collaboration with the VNO NCW, (a merger of the Federation of Netherlands Industry and Employers (VNO) and the Dutch Federation of Christian Employers (NCW) and SME Netherlands.

7.2 This Code is stipulated for a period of five (5) years and is in principle repeatedly extended for one year. At the end of each term, or earlier if there is a reason to do so, the Code will be evaluated by the Parties who have introduced this Code and by the Advertising Code Authority.

7.3 This Code was revised on 30 August 2011 and has become operative on 1 January 2012.