

Electronic marketing and internet use in India

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Electronic marketing and internet use

Electronic marketing

Are there rules specifically governing unsolicited electronic marketing (spam)?

India has no laws governing marketing through email or fax. In 2015 a badly worded provision to address spam was struck down by the Supreme Court as unconstitutional.

The IT Act does not cover electronic marketing. This is covered by the Telecom Commercial Communication Customer Preference Regulations set out by the Telecom Regulatory Authority of India (TRAI). Under the regulations, individuals can register their numbers on a do-not-call registry. Individuals can also register to receive certain categories of information, including information regarding:

- banking, insurance, financial products and credit cards;
- real estate;
- education;
- health;
- consumer goods and automobiles;
- communication, broadcasting, entertainment and internet technology; and
- tourism and leisure.

Further, text messages can be sent if the message is transactional in nature. Transactional messages cover only prescribed areas, which include information relating to:

- a banking, securities or insurance account;
- air and rail travel schedules and reservations;
- an educational institution; and
- e-commerce companies in relation to transactions.

The regulations also allow messaging by identified social media organisations such as Facebook and Yahoo. There are also limits on how many text messages a non-telemarketer can send a day.

Telemarketers that make marketing calls or send marketing messages must:

- be registered with the TRAI;
- obtain separate telecoms resources specifically for engaging in telemarketing;
- obtain separate telecoms resources for sending transactional messages; and
- synchronise their databases with the do-not-call registry regularly.

The law also requires telecoms service providers to have backend integration with the do-not-call registry. Thus, if a message is meant to be sent to a person on the do-not-call registry and is not transactional in nature or does not fall within a selected exception, the telecoms service provider's IT systems will automatically block the

message.

Various penalties have been prescribed where telemarketers violate the regulations. Fines range from Rs25,000 for a first violation to Rs250,000 for a sixth violation. On the sixth violation, the telemarketer will be blacklisted and prohibited from using any kind of telecoms resources in India.

Cookies

Are there rules governing the use of cookies?

Indian law does not directly deal with the use of cookies or equivalent technology.

Section 43 of the IT Act imposes a restriction on accessing, downloading, copying or extracting any data, computer database or information from any computer, computer system or computer network without the permission of the owner or the person in charge. The IT Act imposes both compensation and criminal penalties in case of a breach. The IT Act's language in this regard is broad enough to cover cookies and accordingly consent is technically required for the use of cookies.

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