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CAN-SPAM ACT OF 2003 REQUIRES CHANGES TO BUSINESS EMAIL

Barely 3 weeks ago, Congress passed the "Can Spam Act of 2003," Pub. L. No. 100-187. The President signed it December 16 and it becomes effective January 1, 2004. The Act criminalizes bulk and pernicious spam under amended 18 U.S.C. §1037 and sets out new requirements for "commercial" email (with accompanying civil enforcement provisions, largely by the FTC). "Commercial" email excludes consensual emails in the course of relationships or transactions.

As set out in the Congressional Research Service summary, the Act sets forth protections against spam that include:

- (1) a prohibition against false or misleading transmission information
- (2) a prohibition against deceptive subject headings;
- (3) mandatory inclusion of a return address or a comparable mechanism in commercial electronic mail;
- (4) a prohibition against transmission of spam after objection (including a prohibition against transferring or releasing an email address after an objection);
- (5) mandatory inclusion in spam of information identifying the message as an advertisement or solicitation, notice of the opportunity to decline to receive further unsolicited messages from the sender, and the sender's physical address;
- (6) a prohibition against initiating transmission of spam to a protected computer, or assisting in the origination of such message through the provision of addresses, if the person knows or should have known that the recipient's address was obtained from an Internet website or proprietary online service that included a notice that the operator will not provide addresses for initiating unsolicited messages;
- (7) a prohibition against using automated means to register for multiple email accounts for the transmission of spam; and
- (8) a prohibition against relaying or retransmitting an unsolicited message that is unlawful under this section.

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Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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