

California Court Considers CAN-SPAM Applicability on Social Networks

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A California court recently held that unwanted commercial solicitations transmitted through Facebook to friends' "walls," "news feeds," inboxes, and/or external email addresses registered with Facebook are "electronic messages" subject to the restrictions of the CAN-SPAM Act. In a case filed against MaxBounty, Inc., Facebook alleged that MaxBounty used Facebook to create fake pages intended to redirect unsuspecting Facebook users to third-party websites through a registration process that required a Facebook users to invite all of his or her friends to join the page. The invitations were then routed to friends' "walls," "news feeds," Facebook inboxes, and/or external email addresses. Adopting an expansive view of the scope of the CAN-SPAM Act, "in accordance with its broad legislative purpose," the court determined that these communications, which required routing by Facebook, were "electronic messages" as defined under the Act and, thus, subject to the Act's restrictions. The court did not give any indication as to how compliance with CAN-SPAM could actually be achieved with respect to these messages.

TIP: Social networking messages that are transmitted either by an advertiser or by a consumer who has been induced by the advertiser to send a message should be considered electronic communications that are subject to CAN-SPAM.

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