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## **SPAM POLICY of Swisscom (Switzerland) AG ("Swisscom")**

This document regulates the terms for e-mail transmission via Swisscom's web hosting mail server and defines the conditions for the simultaneous transmission of e-mails to several recipients (newsletters, advertising).

### **Why are spam e-mails negative?**

All pending e-mails for transmission on the mail server end up in queue. If someone places illegal mass advertising e-mails in the queue, normal e-mails will be pushed to the back of the queue and will thus be sent with a considerable delay. In addition, many recipient mailboxes also still have a size restriction. Often, for example, when people are away on holiday, too many spam e-mails are received and their mailbox is thus filled up, causing normal e-mails to be rejected. On the other hand, spam e-mails make work for the recipients because they have to separate unsolicited e-mail from allowed ones.

### **What constitutes a so-called spam?**

Art. 30 of the German Unfair Competition Act (UWG) provides that unfair competition is committed by anyone who sends mass advertisement without a direct connection to requested content by means of telecommunication or instigates such transmissions and does not obtain the prior consent of the customer, state the correct sender or point out an unproblematic and cost-free way to refuse.

### **When is a mass transmission admissible and not a spam?**

Anyone who, when selling goods, works or services, obtains customers' contact information and points out a way to refuse is not acting unfairly if he sends this customer mass advertising without the latter's consent for his own similar goods, works or services. Without such a customer relationship between the web hosting customer and the e-mail recipient, the transmission of mass advertising is only allowed if the contact data used (e.g. e-mail addresses) was collected in the so-called "double opt-in process".

### **What does "opt-in" and what does "double opt-in" mean?**

"Opt-in" stands for the option of allowing yourself to be voluntarily registered on a list of recipients (e.g. for a newsletter). That is, anyone wishing to receive advertising from a specific company or organisation registers with it and receives advertising from this company in the future. This means that only consumers who expressly wish to do so receive advertising. Subsequent deregistration must also be possible at all times without any difficulty. In the case of opt-in address lists care must be taken to ensure that the list is not abused and that only people are included that have personally requested it. However, in the normal opt-in process the latter cannot be guaranteed. Unfortunately, in the case of the simple opt-in process there is a danger of misuse, as third parties can enter any e-mail address they want even if the stated e-mail address does not belong to them. For this reason, Swisscom demands the collection of e-mail addresses for mass advertising in the "double opt-in process" from its customers.

The first step corresponds to a simple "opt-in". In a further step, the registered e-mail address is assigned to an e-mail prior to the transmission of mass advertising. In this e-mail the recipient is requested to confirm his or her membership and wish to receive the corresponding mass advertising. This may, for example, be by clicking on a link or replying to the e-mail concerned. If the interest in receipt is not confirmed within a specific time period, the address may not be included in the database nor may further e-mails be sent to this address. It must be ensured that the system cannot be bypassed or abused. Furthermore, it is important that the confirmations of recipients are archived. Only by doing so can it be proven at all times that the addresses are effectively confirmed ones.



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### **What does “opt-out” mean and why should it also be applied?**

“Opt-out“ gives customers the opportunity, when receiving an advertising e-mail or a newsletter, to immediately unsubscribe to any further deliveries, as a rule with a link contained therein that leads to a “deregistration form” on the corresponding website. Alternatively, it is also conceivable that the recipient can cancel their name from the list of recipients by means of a reply with a special subject line (e.g. “unsubscribe”). The information explaining how to delete your name from the list of recipients must be visible in each e-mail.

### **What is the correct procedure for transmitting mass advertising e-mails?**

Mass advertising e-mails and newsletters may only be sent to persons or e-mail addresses which have explicitly requested them.

Therefore, it is recommended to correct the current master address database by, for example, sending an advertising-free e-mail to all e-mail addresses disclosed by the customer. Recipients must be informed that they should reply to this e-mail within a specified time period if they wish to continue receiving the sender’s advertising e-mails or newsletters. If interest in receipt is not confirmed within this period, the address must be removed from the master address database and no more e-mails may be sent to this address. Furthermore, it is important that the confirmations from recipients of mass advertising are archived. Only by doing so can it be proven at all times that the addresses are effectively confirmed ones.

If customers have to specify their e-mail address in connection with the purchase of goods, works or services, they must be informed that they can refuse receipt of subsequent mass advertising for similar goods, works or services.

If interested parties can specify their e-mail address on a website, it must be explained on the website what happens to this address. Should the address be used for advertising purposes at a later date, the interested parties must explicitly agree to it. To ensure that the interested parties have really subscribed themselves, Swisscom demands the “double opt-in process” (see definition above).

E-mail addresses may not be sold. The purchase and subsequent use of e-mail addresses conflicts with the legally required “opt-in” principle.

### **What requirements must newsletters or advertising e-mails satisfy?**

- Recipients must have given their consent in the double opt-in process that they may be contacted in this way.
- The correct sender must be stated (no old, falsified or invalid address – see also imprint obligation pursuant to sub-section 3.2 Service Description).
- The "To:" line should not contain several recipients. The recipients may not see who receives the newsletter. The addresses must consequently be entered in the "BBC:" field.
- Recipients must be able to unsubscribe from receiving further mass advertising simply and at no cost.
- An e-mail may only be sent to a limited number of recipients. Otherwise, the Swisscom mail server will state that the number is too high and will refuse to send all the e-mails.



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If there is concrete evidence of a breach of these provisions, Swisscom reserves the right to take measures based on the General Terms and Conditions of Business for Swisscom's services, the Web Hosting/Homepage Tool Service Description and the web hosting rules of conduct.