

# Circulation Code of Preferred Practices

## OVERVIEW

American Business Media, in furtherance of its goals to foster high standards of publishing ethics and practices, has established a code of policies and procedures for the various functions that circulation departments provide.

Business-to-business publications have earned the highest level of trust among their readers. Many surveys have shown that executives and managers believe b-to-b publications provide the most accurate and credible information available.

That trust is a high compliment, and one that must be reflected in the way we communicate with our current and prospective subscribers.

All areas of publishing face ethical issues. But circulation is also faced with many legal issues, ranging from how direct marketing promotions are worded to complying with postal regulations.

The Circulation Code of Preferred Practices will therefore cover both Ethical Practice and Legal Issues.

There are many rules and regulations with which circulators must comply. They include all Periodicals (formerly called "Second Class") postal regulations, Standard mail regulations for direct marketing efforts, audit rules, and self-regulated direct marketing and privacy policies.

This guide will not attempt to detail all these rules and regulations. Instead, it will give basic guidelines and examples of what to do and what to watch out for.

Circulators are strongly encouraged to consult with experts whenever in doubt, especially when undertaking new or atypical applications like initiating a new marketing effort, developing a polybag insertion program for advertisers, or launching a new publication or service. Experts may include an in-house distribution manager, legal counsel, colleagues, the postal service, consultants and associations. American Business Media's Postal Counsel is available to assist members at no cost to the member. A resource list is included at the end of this guide.

Sections include:

LEGAL ISSUES  
ETHICAL PRACTICES  
RESOURCES

# Circulation Code of Preferred Practices

## LEGAL ISSUES

Legal issues include postal regulations, and FCC and FTC regulations relating to direct marketing.

### Periodicals Class Postal Regulations

**The most important area of concern to circulators is Periodicals Class postal regulations.**

To qualify for Periodicals Class rates, you must meet certain threshold eligibility requirements and obtain a permit granting Periodicals entry from the Postal Service. In addition, you must comply with a host of content and format restrictions that, if not met, can render that issue subject to higher rates or jeopardize your Periodicals permit. Below are some of the most important Periodicals eligibility and content rules. Please note that this list cannot be considered a substitute for knowledge of the lengthy and complicated rules set forth in the Postal Service's Domestic Mail Manual.

### Eligibility Requirements

There are two general types of publications eligible for Periodicals rates: "general" (or paid) and "requester" (formerly called controlled circulation). The basic eligibility rules apply to both.

#### **Periodicals must:**

- ?? Be published at a stated frequency at least four times per year.
- ?? Have continuity of style, theme or subject matter.

- ?? Consist of "printed sheets" (which does not include CDs or disks).
- ?? Display the title prominently on the front cover.
- ?? Contain an identification statement with specified information.
- ?? Not be published for advertising purposes or "essentially" to promote another business of the publisher (i.e., no "house organs").
- ?? Have a "legitimate list" of subscribers or requesters that represent more than 50% of the publication's distribution by any means, not just through the mail.

*This last requirement—known as “the 50% rule”—is the one that is the most difficult to meet, and causes the most problems.* Publishers must maintain detailed and specific records that permit the Postal Service to conduct an initial audit to determine whether to grant Periodicals status to an applicant and that prove continuing qualification if and when additional audits are performed. Proof of paid subscriptions is relatively straightforward, because the money can easily be traced. A subscription is considered paid, however, only if the subscription price is at least 50% of the "regular" subscription price listed by the publisher in the identification statement. Establishing proof of requests has caused frequent problems, especially as requests have changed over time from signed request cards, typically containing the demographic information required by the publisher, to requests obtained via telemarketing or the Internet. American Business Media is working with the Postal Service toward a change in the way that initial audits are

# Circulation Code of Preferred Practices

conducted to make it easier to prove the validity of telemarketing and Internet requests.

## Content Restrictions

There are two content restrictions that differ between paid and requester publications:

- 1) Requester publications must contain at least 16 pages; there is no page minimum for paid.
- 2) Requester publications must have a minimum of 25% non-advertising content in each issue. Paid publications must have a minimum of 25% non-advertising content in at least half of the issues each year.

The remaining content-related restrictions are far too numerous to list. The most common problems and questions arise in the context of permissible enclosures and attachments.

For example, some material, such as subscription “blow-in” cards or subscription bills, may be enclosed and mailed at the Periodicals rate. Loose advertisements and most letters from the publisher, however, must pay a separate Standard (or the new RideAlong) rate, if the host publication is bound. If it is unbound, then loose advertisements, etc., are permitted at the Periodicals rate.

Even material that is attached or bound into the publication can result in the payment of a separate Standard rate. Catalogs are not permitted to be bound into the publication, and the use of the word “catalog” is dispositive. In addition, “products”—for example, samples of actual products (as opposed

to “renditions” of the products), floppy disks, blank calendars, and printed pages that are available for sale separately—may not be mailed at Periodicals rates.

Other content and construction rules cover such items as supplements, protective covers, wrappers, and definitions of advertising. These and more can be found in the Domestic Mail Manual and in Customer Support Rulings.

## Forms

There are several forms that must be filled out by Periodicals mailers, including the Form 3541 mailing statement that accompanies each mailing, and Form 3526, the annual statement. These forms contain information on circulation that the Postal Service and the Postal Inspectors monitor to determine continued compliance with the rules. These forms must be filled out accurately. If a problem arises, the Postal Service can and will accuse the publisher of fraud, which can lead to back postage payments and even civil and criminal penalties.

## Other Postal Classes

Publishers use other classes of mail as well, but these classes have fewer and less complex rules. Aside from size and weight limits, there are few restrictions for First Class mail, which is the most expensive (except for Priority and Express Mail).

Standard mail, mostly advertising mail, also has few restrictions, other than the exclusion of mail that must be sent First Class and most Periodicals. There is a

# Circulation Code of Preferred Practices

16-ounce weight limit and minimum presort requirements are imposed.

Reply Mail consists of mail that provides return envelopes and cards for mailed responses requested from the recipients. Business Reply Mail (BRM) is the term used when businesses pre-pay the postage for the replies. For all BRM services, the business pays the postage as well as a fee to the USPS for each piece of mail that is returned. When designing a BRM piece, it is important to consult with the local post office. The mail piece must conform to a very specific format, which includes a ZIP+4 digit code assigned by the post office, bar codes and identification marks. All these requirements must be printed on specific parts of the mail piece.

Business Package Services mail excludes material that must be sent First Class and most Periodicals, and includes several subclasses:

- ?? **Parcel Post** has few restrictions.
- ?? **Media Mail** consists of books, film, printed music, sound recordings, test materials and other like items. It is used for qualifying material because the rates are lower than Parcel Post rates.
- ?? **Bound Printed Matter**, as the name implies, must be bound and printed and, unlike Media Mail, can include advertising.
- ?? **Library Mail** rates, the lowest in this class, can be used for the same types of matter qualifying for the Media Mail rates when mailed between libraries, schools, museums and various nonprofit organizations as well as by those entities to their members (or readers) or, on a

more limited basis, by publishers or distributors to such entities.

## FCC rule regarding faxes

The Telephone Consumer Protection Act (TCPA) prohibits sending unsolicited ads by fax to businesses and residences. Faxes transmitted using a computer, a fax machine or any other device are prohibited. The law was passed in 1991 to allow fax recipients to control the amount of paper used and the amount of time their machines were in use.

Based on this rule, publishers should not send unsolicited faxes promoting subscriptions and other services. Those who violate the prohibition are subject to payment of damages to the recipient in the amount of \$500 for each fax, \$1,500 if the violation is “intentional.”

According to a Federal Communications Commission (FCC) order, if the recipient has an “established business relationship” with the person or entity sending the message, an invitation or permission to receive fax advertisements is presumed to exist, unless and until permission is withdrawn. According to the FCC, the recipient has an established business relationship with a person or entity if that recipient has made inquiry, application, purchase or transaction regarding products or services offered by such person or entity. Past and present subscribers, advertisers, show exhibitors, etc., would meet this test.

However, even though bto-b publishers have “established business relationships” with their current subscribers, many American Business Media members have been forced to settle threatened lawsuits a result of their sending faxes to

# Circulation Code of Preferred Practices

subscribers and others. Attorneys representing recipients of faxed advertisements have argued that the FCC's regulation is unlawful, because it allows a presumption to replace the law's requirement for "express" permission.

resources you can contact to be sure you are complying with the rule, including your legal counsel, telemarketing vendors and The Direct Marketing Association.

## **Recommendation on how to limit exposure to the FCC's TCPA rule**

In the absence of a judicial ruling affirming the validity of the "established business relationship" defense, there are only two ways to assure that you will not be exposed to a lawsuit by fax recipients: either do not fax anything that meets the expansive definition of an "advertisement," or fax advertisements only to those from whom you have received written permission for sending advertisements by fax. Written permission to send, without specifying by fax, will not provide full protection. The best protection is on an "opt-in" basis, although an "opt-out" notification on written material may suffice.

Contact American Business Media for more information on the FCC TCPA rule and how to protect yourself.

## **FTC rules on telemarketing**

If you telemarket across state lines, whether by making outbound calls or by receiving calls in response to advertising, you may be subject to the provisions of the Federal Trade Commission's (FTC) Telemarketing Sales Rule. This rule applies primarily to marketers who call consumers. However, in some cases bto-b publishers call people at their homes if that is the phone number they have given for their business. There are many

# Circulation Code of Preferred Practices

## ETHICAL PRACTICE

Publishers have the obligation to be honest and straightforward when soliciting new subscriptions and renewing current ones. In addition, publishers are obligated to represent truthfully the quantity and quality of their magazine's circulation to its advertisers.

### Audit Bureaus

The audit bureaus, BPA and ABC, serve to verify publishers' circulation data. Their primary function is to make sure advertisers are reaching the audience they have been sold.

The main information reviewed and verified in the audit process is as follows:

- ?? The quantity of subscriptions served for each issue of the publication, as well as the average for the six and twelve month period.
- ?? For paid publications, the price paid and how many subscriptions were sold above and below the basic price.
- ?? The source of all subscriptions (mail, telephone, Internet, etc.) and how many are requested by the subscriber versus taken from a list or directory.
- ?? The aging of subscribers (how recently the publisher communicated with the subscriber, or the date of the directory the name came from).
- ?? Demographic information, which usually includes type of business and job title or function, and can

also include such information as products purchased, dollar volume of business, number of employees, and other relevant demographic data to describe the subscriber audience.

- ?? Geographic analysis of state or country distribution of subscribers.

Some of the ways audit bureau rules help keep publishers ethical:

For direct request subscribers, the audit verifies that the publisher made contact with the recipient (or someone authorized to speak for the recipient), that the subscription was actually requested and that the demographic information provided was properly recorded and reported by the publisher.

For example, on a written subscription request, the subscriber's signature is required; on a telemarketing or Internet request, a personal identifier is asked of the subscriber in place of the signature. Further steps may be taken to assure accuracy.

In every annual audit, a random sample of subscribers is chosen and individually reviewed to verify this information. The audit requires review of documents that support the printing of the number of copies claimed in the circulation, as well as postal and distribution receipts for the delivery of those copies to subscribers. The audit also verifies that there is minimal or no duplication among subscribers on the publication's file.

# Circulation Code of Preferred Practices

## Direct Marketing

Circulators are also direct marketers and, as such, need to be sure they don't mislead subscribers when making subscription offers. There is a fine line between clever marketing and deception. However, if all marketing decisions are viewed from an ethical standpoint the right option will be clear.

When promoting subscriptions:

Make sure subscription offers are clear and the prospective subscriber knows what magazine or service you are soliciting them for.

When collecting demographic data, don't ask leading questions—you want honest answers.

If you are selling a paid subscription with a free trial offer or using some other technique that could cause confusion, be sure your wording clearly states the offer. Don't present a request for an order that appears to be an invoice.

When collecting email addresses and phone and fax numbers, state how they will be used and provide a way to opt in or out.

Make sure your vendors—such as telemarketers, subscription agents, etc.—follow ethical practices.

The Direct Marketing Association has an excellent set of Ethical Guidelines that are available to both members and non-members. Excerpts from these guidelines that are relevant to b-to-b circulation are printed below. For the full DMA Guidelines, visit [www.the-dma.org](http://www.the-dma.org) or contact the DMA directly at

212-768-7277, 1120 Avenue of the Americas New York, NY 10036-6700.

## **Excerpts from the Direct Marketing Association's Ethical Guidelines:**

### **The Terms of the Offer**

#### HONESTY AND CLARITY OF OFFER

All offers should be clear, honest and complete so that the consumer may know the exact nature of what is being offered, the price, the terms of payment (including all extra charges) and the commitment involved in the placing of an order.

#### ACCURACY AND CONSISTENCY

Simple and consistent statements or representations of all the essential points of the offer should appear in the promotional material.

#### PHOTOGRAPHS AND ARTWORK

Photographs, illustrations, artwork and the situations they describe should be accurate portrayals and current reproductions of the products, services or other subjects they represent.

#### ACCESSIBILITY

Every offer and shipment should clearly identify the marketer's name and postal address or telephone number, or both, at which the consumer may obtain service. If an offer is made

# Circulation Code of Preferred Practices

online, an e-mail address should also be identified.

## POSTAGE, SHIPPING OR HANDLING CHARGES

Postage, shipping or handling charges, if any, should bear a reasonable relationship to actual costs incurred.

## **Special Offers and Claims**

### USE OF THE WORD "FREE" AND OTHER SIMILAR REPRESENTATIONS

A product or service that is offered without cost or obligation to the recipient may be unqualifiedly described as "free." If a product or service is offered as "free," all qualifications and conditions should be clearly and conspicuously disclosed, in close conjunction with the use of the term "free" or other similar phrase. When the term "free" or other similar representations are made (for example, 2-for-1, half-price or 1-cent offers), the product or service required to be purchased should not have been increased in price or decreased in quality or quantity.

### TESTIMONIALS AND ENDORSEMENTS

Testimonials and endorsements should be used only if they are:

- a. authorized by the person quoted;
- b. genuine and related to the experience of the person giving them both at the time made and at the time of the promotion; and

- c. not taken out of context so as to distort the endorser's opinion or experience with the product.

## **Collection, Use and Maintenance of Marketing Data**

### COLLECTION, USE AND TRANSFER OF PERSONALLY IDENTIFIABLE DATA

Consumers who provide data that may be rented, sold or exchanged for marketing purposes should be informed periodically by marketers of their policy concerning the rental, sale or exchange of such data and of the opportunity to opt out of the marketing process. Should that policy substantially change, marketers have an obligation to inform consumers of that change prior to the rental, sale or exchange of such data, and to offer consumers an opportunity to opt out of the marketing process at that time. All individual opt-out requests should be honored.

### COMMERCIAL SOLICITATIONS ONLINE

Marketers may send commercial solicitations online under the following circumstances:

- The solicitations are sent to the marketers' own customers, or
- Individuals have given their affirmative consent to the marketer to receive solicitations online, or
- Individuals did not opt out after the marketer has given notice of

# Circulation Code of Preferred Practices

the opportunity to opt out from solicitations online, or

- The marketer has received assurance from the third party list provider that the individuals whose e-mail addresses appear on that list

-have already provided affirmative consent to receive solicitations online, or

-have already received notice of the opportunity to have their e mail addresses removed and have not opted out. In each solicitation sent online, marketers should furnish individuals with a link or notice they can use to: 1) request that the marketer not send them future solicitations online, and 2) request that the marketer not rent, sell, or exchange their e-mail addresses for online solicitation purposes.

The above requests should be honored in a timely manner.

Only those marketers that rent, sell, or exchange information need to provide notice of a mechanism to opt out of information transfer to third-party marketers.

Solicitations sent online should disclose the marketer's identity, and the subject line should be clear, honest, and not misleading. A marketer should also provide specific contact information at which the individual can obtain service or information. The marketer's street address should be made available in the e-mail solicitation or by a link to the marketer's website.

## Privacy

Privacy is a very important issue that most marketers are handling via self-regulation. The DMA has extensive information on privacy, and its Privacy Promise is summarized below.

1. Provide customers with annual **notice** of their ability to opt out of information exchanges. For online marketing, provide notice to both customers and prospects in each solicitation;
2. **Honor customer opt-out requests** not to have their contact information transferred to others for marketing purposes;
3. Accept and maintain consumer requests to be on an **in-house suppress file** to stop receiving solicitations from your company; and,
4. Use **The DMA Preference Service** suppression files for e-mail lists.

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## Written by:

**Priscilla Garston Circulation Solutions, Inc.**  
P.O. Box 1412  
Bridgehampton, NY 11932  
T 631.329.4960  
pgarston@aol.com

**CL Pace Associates**  
11628 82<sup>nd</sup> Ave. NE  
Kirkland, WA 98034-3400  
T 425.821.8250  
F 425.823.6375  
charlespace@aol.com

## RESOURCES

**American Business Media**  
675 Third Avenue  
New York, NY 10017-5704  
T 212.661.6360 x3329  
F 212.370.0736  
www.americanbusinessmedia.com  
[info@abmmail.com](mailto:info@abmmail.com)

**Thompson Coburn (ABM Postal Counsel)**  
David Straus, Partner  
1909 K Street NW  
Washington, DC 20006  
T 202.585.6900  
F 202.585.6969  
dstraus@ThompsonCoburn.com

**Direct Marketing Association**  
1120 Avenue of the Americas  
New York, NY 10036-6700  
T 212.768.7277  
F 212.302.6714  
[lrc@the-dma.org](mailto:lrc@the-dma.org)  
www.the-dma.org

**BPA International**  
Two Corporate Drive, Suite 900  
Shelton, CT 06484  
T 203.447.2800  
F 203.447.2900  
www.bpai.com

**Audit Bureau of Circulations**  
900 N. Meacham Road  
Schaumburg, IL 60173-4968  
T 847-605-0909  
F 847-605-0483  
www.accessabc.com

## Postal/Circulation Consultants

**Peter J. Moore and Associates**  
703 Fourmile Canyon Drive  
Boulder, CO 80302  
T 303.449.1908  
F 303.443.1966  
[pjm@petermoore.com](mailto:pjm@petermoore.com)

**Fred Seymour & Associates**  
9 The Landmark  
Northfield, IL 60093  
T 847.446.0438  
F 847.446.0368  
fredmour@aol.com

**American Business Media  
Circulation Committee Members**  
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Business Media  
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Eric Rutter – Reed Business Information  
Bruce Shriver, Jr. – Lebhar-Friedman, Inc.  
Donna Sickles – Quadrant Media Corp.  
Ken Turtoro – Chemical Week Associates  
Joanne Wheatley – VNU Business Media  
John R. Wengler – The McGraw-Hill Companies  
Deborah Walsh – Bio-IT World