

# Laws to beat spamming

ICT specialist at law firm Wigley & Company, **Fiona Campbell**, offers some tips about the new anti-spam laws.

## TOP TIPS

**Q** What is the new anti-spam legislation about?

**A** The new Unsolicited Electronic Messages Act 2007 affects everyone who sends out commercial electronic messages. It comes into force on September 5, 2007.

**Q** What type of messages are caught?



**FIONA CAMPBELL**

**A** The Act applies to commercial electronic messages. So, if your message is in electronic form — such as email, text messages and instant messages, and they market or promote something — then the Act applies.

**Q** What are the new rules for commercial electronic messages?

**A** You may only send commercial electronic messages if you have the recipient's consent, have identified yourself as the sender and included your contact details, and have included an unsubscribe facility in it.

**Q** How do I get the recipient's consent for these purposes?

**A** You only have to get it once and it doesn't matter how you get it — over the phone, using a tick box on a form, or letting them add themselves to your mailing list and so on. Keep records on when and how you got it, and it's got to be real consent.

**Q** What if they gave me their business card. Does that constitute consent?

**A** That's deemed to be consent if you're sending them a message that relates to their job. Similarly, if they put their email address on their website you can send them messages relating to their job.

**Q** Do I have to go through my whole database to purge names?

**A** It will depend on the circumstances in which they were added in the first place. If you've genuinely got a business relationship with the person, you will often be able to infer their consent.

**Q** Can you explain what an unsubscribe facility is and how it works?

**A** This requirement means you have to tell your recipients, in the message, how they can remove themselves from your mailing lists. You must comply with their request within five working days.

**Q** What are the rules that apply to text marketing campaigns?

**A** The same rules apply. There are some ways around this, so if you're thinking of doing a text marketing campaign, get some advice.

**Q** Can I get around the Act by sending the messages from overseas?

**A** No. The Act applies whenever there is a NZ link, for example if either you, the recipient or the sending device are in NZ.

**Q** What are the penalties for breaking the law and how do I get more information?

**A** The Department of Internal Affairs can impose a range of penalties from formal warnings to fines up to \$2,000. Also, the DIA and anyone affected by the message can take the sender to court, where damages of up to \$500,000 can be awarded. Look out for the DIA's guidelines, which will be available before September. Also, the Marketing Association has some good material available on its website. Check out: [www.marketing.org.nz](http://www.marketing.org.nz)