

Who's Liable For Vendor's CAN-SPAM Violation?

October 31, 2012

Perhaps your organization uses a marketing company or other servicer that sends out email on your behalf. What happens if that vendor is alleged to violate the federal CAN-SPAM Act and your organization gets sued as a result? The answer will likely depend on the terms of your contract with that vendor.

The Ninth Circuit Court of Appeals, in *Gordon v Commonwealth Marketing Group, Inc.*, upheld a marketing services company's duty to defend and indemnify its advertising client who was sued by a third party alleging violations of the CAN-SPAM Act. Because the underlying contract between the company and its vendor included an express indemnification for breaches of the CAN-SPAM Act, the court found that the duty to defend arose "unambiguously" when the third party claim was filed. This decision underscores the importance of having enforceable contract terms, tailored to the services being provided and protecting your organization in the event of third party lawsuits. To review the Ninth Circuit decision, click here: <http://dockets.justia.com/docket/circuit-courts/ca9/11-35877/>