



LEGAL ALERT

SEPTEMBER 2020

**TIGHTEN ADVERTISING
THROUGH TEXT MESSAGES,
EMAILS AND CALLS**



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Tighten advertising through text messages, emails and calls

On August 14, 2020, the Government issued Decree 91/2020 / ND-CP on the combat against spam messages, spam emails, and spam calls ("**Decree 91**"). Decree 91 will take effect on October 01, 2020 and replace Decree 90/2008 / ND-CP and Decree 77/2012 / ND-CP amending Decree 90/2008 / ND-CP against spam.

Decree 91 can significantly affect advertising activities of businesses, especially businesses operating in the areas of real estate, finance, insurance, consumer sales, etc and will change the way businesses reach customers via text message, email or phone.

Decree 91 has the following new notable points:

1. Spam messages, spam emails and spam calls

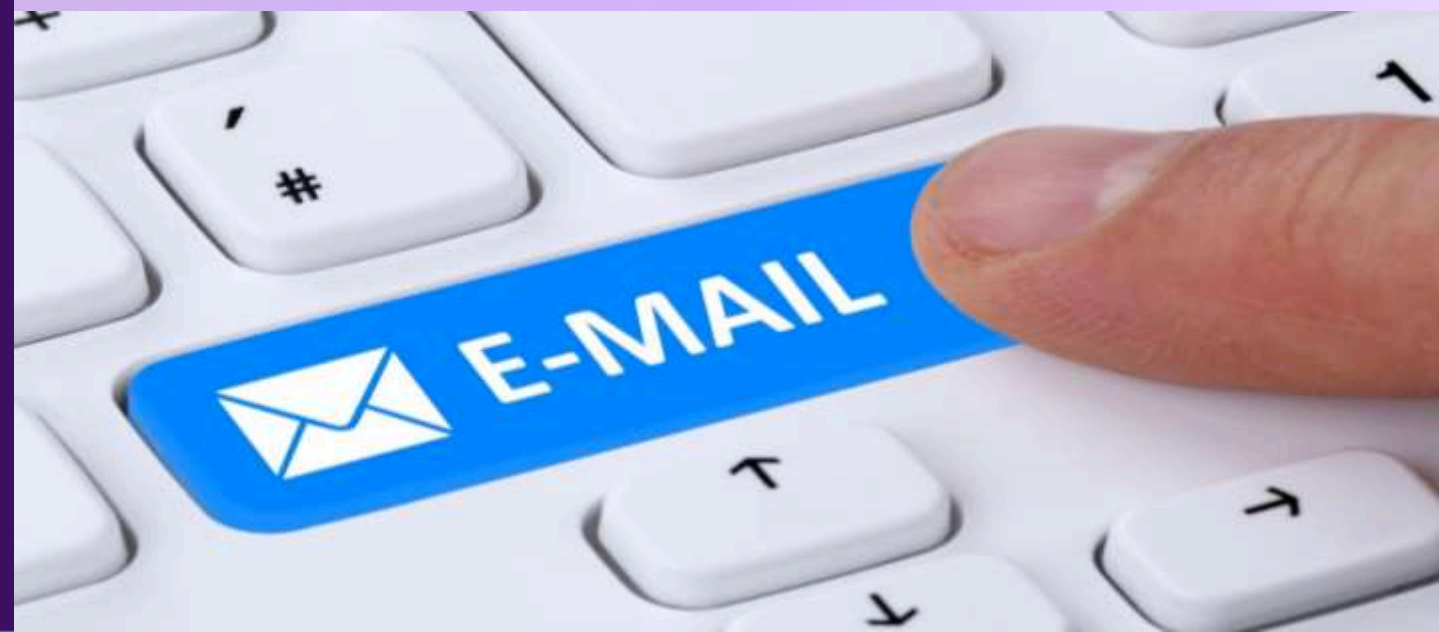
Pursuant to Article 3 of Decree 91, they will be considered to be spam messages, spam emails and spam calls when:

- (i) text messages, emails and calls are without the prior consent of the Users or text messages are in violation of the regulations on sending advertising text messages in Decree 91; or
- (ii) text messages, emails and calls violate prohibited contents as prescribed in Article 9 of the Law on Electronic Transactions, Article 12 of the Law on Information Technology, Article 12 of the Law on Telecommunications, Article 8 of the Law on Advertising, Article 7 of the Law on Cyber Information Security, Article 8 of the Law on Cyber Security.

More specifically, the contents are prohibited under Article 9 of the Law on Electronic Transactions, Article 12 of the Law on Information Technology, Article 12 of the Law on Telecommunications, Article 8 of the Law on Advertising, Article 7 of the Law on Cyber Information Security, Article 8 of the Law on Cyber security includes:

- ✓ *Article 9 of the Law on Electronic Transactions:* Impeding the choice of using electronic transactions; Illegally obstructing or preventing the transmission, sending or receiving of data messages; Illegally alter, delete, destroy, forge, copy, disclose, display or move part or all of a data message; Create or distribute software programs that disrupt, alter, or destroy operating systems or commit other acts to destroy the technological infrastructure of electronic transactions ...
- ✓ *Article 12 of the Law on Information Technology:* Impeding legal activities or supporting illegal activities in information technology application and development; Destroying information infrastructure, destroying information in the network environment; Supplying, exchanging, transmitting, storing and using digital information for the purposes of combating the State of the Socialist Republic of Vietnam, inciting violence, causing hatred among nations and peoples; Disclosure of state secrets, secrets regarding military, security, economic aspects and external relations; Infringement of intellectual property rights in information technology activities ...

- ✓ *Article 12 of the Law on Telecommunications:* Taking advantage of telecommunications activities to oppose the State of the Socialist Republic of Vietnam; Disclosure of state secrets, secrets regarding military, security, economic aspects and external relations; Collecting, eavesdropping, stealing information on telecommunications networks; stealing or illegally using telecommunications resources, passwords, encryption keys and private information of other organizations or individuals; Advertising, propagating, buying and selling goods or services is prohibited in accordance with the law, etc
- ✓ *Article 8 of the Law on Advertising:* Advertising prohibited products, goods or services; Advertisements reveal state secrets, causing prejudice to national independence, sovereignty, security and defense; Advertisements offend the reputation, honor and dignity of organizations and individuals; Advertisements using the words "best", "the best", "only", "number one" or words with similar meaning without legitimate documents proving so as prescribed by the Ministry of Culture, Sports and Tourism.; Advertisements with unfair competition contents in accordance with the competition law; Advertising in violation of intellectual property laws, etc
- ✓ *Article 7 of the Law on Cyber Information Security:* Spreading spam, malware, establishing fake and fraudulent information systems; Illegally collecting, using, distributing or trading personal information of others; taking advantage of loopholes and weaknesses of the information system to collect and exploit personal information; Disclosing information on civil cryptographic products, information about customers using the civil cryptographic products legally; Using and trading civil cryptographic products of unknown origin, etc.
- ✓ *Article 8 of the Law on Cyber Security:* Acts of using cyberspace, information technology, and electronic means to violate the law on national security, social order and safety; Inciting, manipulating, inciting others to commit crimes; Producing, putting into use tools, means, software or obstructing or disrupting the operation of telecommunications networks, Internet networks, computer networks, information systems, processing systems and information control, electronic means; distributing computer programs harmful to the operation of telecommunications networks, Internet networks, computer networks, information systems, information processing and control systems, and electronic means; unauthorized access to telecommunications networks, computer networks, information systems, information processing and control systems, databases, electronic means of others ...



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2. Guidelines in need of taking caution upon implementing advertising

According to Article 13 of Decree 91, when sending advertising text messages, advertising emails or calling advertising phone calls, the advertiser must comply with the following 8 principles:

- (i) Not allowed to send advertising text messages, advertising phone calls to phone numbers on the No Ads List or the User does not agree to receive advertisements before.
- (ii) For text ads and for phone numbers outside of the No Ads Lists, Advertisers are only allowed to send the first and only advertising registration messages.
- (iii) In case the User refuses to receive an advertisement or does not respond after receiving the first text message of registration, the Advertiser is not allowed to send any advertising registration message or advertising message to the phone number.
- (iv) To terminate sending to the User receiving advertising text messages, advertising emails or making advertising phone calls right after receiving the User's request for refusal.
- (v) Each advertiser is not allowed to send more than 03 advertising text messages to one phone number, 03 advertising emails to one email address, 01 advertising phone call to a phone number within 24 hours unless otherwise agreed with the User.
- (vi) Only send text messages from 07:00 to 22:00 per day, call advertising from 08:00 to 17:00 per day, unless otherwise agreed with the user.
- (vii) Advertising contents must comply with the law on advertising.
- (viii) Only sending advertising text messages or calling advertising phone numbers when assigned an identifier name and not allowed to use the phone number to send advertising text messages or call advertising calls.



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3. Manage the receiving system to reflect email messages, text messages, and spam calls with the number 5656

- According to Chapter III of Decree 91, the Ministry of Information and Communications (Department of Information Security) will develop and operate a receiving system that reflects spam emails, spam messages, and spam calls through the number 5656.
- When advertisers want to implement message advertising programs, it is required to send a copy of the promotional message to the number 5656 for checking, monitoring.
- Users of telecommunications, internet and email services can also reflect and provide evidence on 5656 if they encounter harassment by unwanted text messages, calls, or spam emails.
- Also through the prefix 5656, User can register his or her phone number to the No Ads List.
- In addition, the Department of Information Security will also issue a blacklist of IP addresses / domains that distribute spam emails, periodically updated and publicly available on the Portal / website of the Ministry of Information and Communication. Organizations, businesses and individuals can use this blacklist to block unwanted spam emails.

4. Increase penalties for violations of sending email, texting, calling advertising

- Advertisers may be fined from VND 5 million to VND 100 million for phone calls, text messages to users without consent, refusing or not responding to messages for advertising registration or texting advertising, call advertising to phone numbers on the No Ads List. In addition, the phone number and email account that committed the above violation will be revoked.
- For telecommunications and internet service enterprises, the fine can be up to 170 million dong for failing to take measures to prevent advertising messages and calls to the Non-Advertisement List; or fail to prevent or revoke electronic addresses used to distribute spam messages, spam emails, or spam calls at the request of competent state agencies.

5. Contents in need of guidance

The text message advertising under Decree 91 is limited to messages: SMS (Short Message Services), MMS (Multimedia Messaging Service) and USSD (Unstructured Supplementary Service Data). However, it is not clear whether the Government intends to extend the scope of Decree 91 to other types of messages other than SMS, MMS and USSD.

The next issue is how to express the prior consent of the user. Does advertisers need direct consent from users when sending text messages, emails or calling advertising or just needing users' indirect consent? For example, when a user visits a website and agrees to receive promotional emails from that website or a third party is a website partner, then when a third party sends advertising email to the user with consent of this website, whether or not advertising emails of third parties are considered spam emails.

The foregoing may be the issues that need further guidance.





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