

Class Action

COMMENTARY

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Clearing the Five Hurdles of E-Mail Delivery Of Class-Action Legal Notices

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With more than 123 million e-mail users in the United States, according to Mediamark Research, many would not consider e-mail a new technology. Yet, e-mail is still an emerging method for delivering notice of pending litigation or settlement and must be managed correctly and with caution.

If the circumstances are right, e-mail can be an attractive alternative to first-class mail when issuing notice of class certification and/or settlement. It is cheaper, more efficient and more environmentally friendly. However, without proper planning and execution, the e-mail notice program can prove to be inadequate to effectively reach a sufficient percentage of the class.

Executing an effective notice program that includes e-mail messaging as its main source of delivery presents some challenges. Here is advice on clearing the five main hurdles to e-mail notification.

Getting 'Good Data'

At first glance, e-mail distribution lists all may appear to be in order; however, problems frequently emerge following more careful inspection. E-mail addresses may be flawed, possibly containing incomplete or even fabricated addresses because they are collected from different sources, including warranty cards, from Web sites and through call centers.

Before confirming e-mail as the direct-notice method, an experienced party, such as Epiq Systems, should review the e-mail database to eliminate all invalid addresses. This gives the settling parties a clearer picture of what percentage of the class might be reachable through e-mail and increases the likelihood that the class members will receive the e-mail notification.

Designing Notices That Get Accepted

Format and length are critical to ensure that e-mails go through to their intended recipients and do not bounce back or get rejected as spam. Craft a short, explanatory text message (no more than 100-150 words), including important dates and deadlines, with a link to the settlement Web site prominently featured. Fewer words mean less data for transmission, which speeds up the delivery process and reduces the possibility that e-mail programs will flag them as spam or junk mail.

Finally, providing recipients with the option to unsubscribe from receiving further e-mails must be included.

Ensuring Timely Delivery

Executing a large e-mail notice project takes time. Large e-mail service providers such as Yahoo, AOL and MSN must be notified in advance of any planned e-mailing. This "whitelisting" enables providers to review the e-mail content in advance so they can configure their filters not to reject the mailing.

However, large volumes still must be staggered over days or weeks to avoid being rejected as spam. Failure to take this step can get your domain name (the portion of the sending e-mail address after the @ symbol) "blacklisted" as a deliverer of spam, which can take a long time to undo and prevent the remainder of your mailing from being sent.

Dealing With 'Undeliverables'

Following the initial mailing, e-mail will fall into three categories: "successful deliveries," "true undeliverables" and "server-rejected undeliverables." The first two are

How to Use E-Mail Class Notification Effectively

1. Beware of invalid addresses.
2. Keep the notice short.
3. Warn e-mail providers of large projects.
4. Use first-class mail as a backup.
5. Make use of automation.

self-explanatory. The last one, which frequently occurs because an e-mail box is full or due to problems with the receiving server, almost always merits a second or even third delivery attempt. This can be done at negligible additional cost.

Frequently, an e-mail notice program is structured so that the final undeliverable list receives the notice via first-class mail, assuming physical addresses are available. Even a successful e-mail delivery to half of a list of class members can result in huge savings on print and postage costs over a mail-only program.

Streamlining the Claims Process

A real benefit of e-noticing is the flexibility one has in managing the class. In addition to providing a link to a dedicated settlement Web site where class members can receive additional information or even file claims, personal identifiers the Web site will recognize once the class member clicks through can be added in order to further streamline the claims process. Not only will an administrator know how many e-mail notice recipients visited the Web site, but identifiers enable submitted claims to be matched with any personal information on record for the class members. This automation can save time and money in the review process.

E-mail is not always an option for executing class-action legal notification. However, when managed correctly, it can be an efficient and cost-effective choice.

Cameron R. Azari is the director of legal noticing at Epiq Systems Inc., a leading provider of integrated technology solutions for the legal profession, where he oversees the legal notification and claims administration programs. He is a nationally recognized specialist on the creation of notification campaigns geared to comply with Federal Rule of Civil Procedure 23 and similar state class-action laws.