

## **LEGAL REGULATION OF ELECTRONIC MARKETING**

There are common European Union rules in relation to unsolicited contact by automatic means. The rules cover not only e-mail but also other automatic means of communication such as telephone, fax and telemarketing.

In the e-mail context, the purpose is to suppress SPAM or so called unwanted unsolicited emails which might otherwise threaten to overwhelm email inboxes. SPAM comprises significant amount of internet traffic. SPAM can be organised in such a way as to operate via viruses and so called worms or trojans which can turn a recipient computer into a so called zombie drone. The recipient computer could be hijacked and used as a source for sending further SPAM.

### **Data Protection Act**

If a business processes personal information, it must comply with the Data Protection principles. They require that personal information is to be processed fairly for one or more lawful purposes (and not otherwise) in a way that is consistent with the original purpose for which it is collected and that it is accurate, relevant and not excessive. It is necessary to keep the information accurate and up to date. An e-mail address with personal names in it would be personal information. A non personal e-mail address will not necessarily be so.

Where personal email addresses are gathered, there is an obligation to inform those who are the data subjects how it is intended to process the data concerned. Where personal information is to be used for marketing, the individuals concerned must be told the identity of the relevant business, what their information will be used for and anything else necessary to ensure that the information will be used fairly. This includes any proposal to pass marketing lists to other organisations.



There is no prohibition on using a third party provided e-mail marketing list. However, it is necessary to ensure that the above rules have been complied with. The businesses which compile the lists must have the consent of the individuals concerned.

Individuals have rights to stop their personal information being used for direct marketing. The request must be made in writing and the business must comply within a reasonable period. When information is collected from persons with whom a business is in direct contact, (e.g. phone call or website) they must be given an opportunity to object to future contacts. There is an obligation to find out how they would like to be contacted in the future.

Where contact details are provided by customers in the context of a sale of a product, then these details may be used by the vendor for direct marketing of only its own similar products or services. Customers must be clearly and distinctly given the opportunity to object to such marketing. An opt-out should allow the individual to reply directly e.g. texting.

Consent is not required for an e-mail sent to an organisation or a business. Details of the sender must be provided in the e-mail together with particulars of a valid address where an opt-out can be sent. If an e-mail address contains an individual's name, this will be personal information and cannot be used for direct marketing.

### **Privacy and E-Commerce Regulations**

The Privacy and Electronic Communications Regulations derive from a European Union Directive. They deal with the conduct of marketing by electronic means such as email, telephone, fax, voicemail and similar automatic means.

The Regulations require a business to identify itself when carrying out marketing and to provide appropriate contact details when sending marketing details. It is an offence for a person to send an electronic mail for the purpose of direct marketing which disguises or conceals the identity of the sender on whose behalf the communication is made or



without a valid address to which the recipient may request that the communication shall cease. The nature of the communications must be identifiable on the subject line of the e-mail without the need to read the rest of the message.

An unsolicited commercial communication by a “relevant service provider” must be identified clearly as soon as it is received by the recipient, by stating that it is an unsolicited commercial communication. A “relevant service provider” is any service normally provided for remuneration at a distance by electronic means other than at the individual request of the recipient.

Such communication must:

- be identified as the communication that is part of a relevant service
- identify the person on whose behalf it is made
- prominently display on the website in places such as registration forms
- give details of how natural persons may register their choice regarding unsolicited commercial communications (i.e. may opt out of receipt of further communications)

The Regulations allow users to choose whether they want Cookies on their PC. Cookies can contain personal details about shopping and equivalent history

### **Telephone and Fax**

The Privacy and Electronic Communication Regulations also regulate direct marketing by telephone and fax. The telephone preference service and fax preference service were established under the predecessor of these regulations and are monitored by the Information Commissioner.

It is not permitted to make an unsolicited telephone call to an individual who has informed the business that they do not wish to be contacted or have registered with the Telephone Preference Service. The Telephone Preference Service maintains a website.

Businesses can register with the Corporate Telephone Preference Service. It is not permitted to make automatic calls i.e. pre-recorded phone messages without getting the individuals consent first.

The Corporate Telephone Preference Services is a central opt out register that enables corporate subscribers to register their wishes not to receive unsolicited sales and marketing telephone calls to any of their organisations telephone numbers. A corporate subscriber includes companies in the UK, limited liabilities or partners.

Organisations cannot send unsolicited marketing faxes to individuals unless they have agreed to receive them. It is not permitted to send faxes to individuals or organisations who have registered their number on the Fax Preference Service.

It is unlawful under Irish law to use any publically available electronic communication services to make an unsolicited call for the purpose of direct marketing to companies or State institutions where the sender has been notified that the subscriber does not consent to the receipt of such calls or the information is recorded in the National Directory database.

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.