

Opt-in or you're out

Introducing the New Electronic Marketing Regulations

On 25th June 2003, the Communications Data Protection Directive (CDPD) came into force - and radically changed the rules for anyone who uses eMail or text message based marketing. The directive complements the E-Commerce Directive 2000/31 and the Distance Selling Directive 97/7, which already regulate unsolicited commercial communications.

This Directive was implemented on 11 December 2003 and the good news is that although individuals and sole traders must "opt-in" before electronic messages can be sent (e.g. they must have signed up to receive eMail), eMail to corporate bodies can be on an opt-out basis (e.g. please don't send me any more eMails). A sensible decision.

Opt-In: You need to ensure that any form of electronic communication to consumers and sole traders in the UK is sent only to people who have "opted-in" in advance.

Opt-Out: You need to ensure that any form of electronic communication to companies and partnerships in the UK includes an effective way to opt out.

Existing customers: You can use electronic contact details gathered when selling to customers to market similar products and services. BUT you can't pass these details to another seller. And your customer must have the opportunity to object at the point of sale or any time afterwards to their electronic contact details being used in this way. This is referred to as "soft opt-in".

Technologies covered: eMail, fax, text SMS, text MMS, auto calling machines - with potentially more technologies to follow.

Who is protected? Individuals, sole traders and partnerships, but the CDPD requires that national laws ensure that the legitimate interests of corporate recipients are sufficiently protected.

Return to Sender: All eMail must show the details of the sender

Location Services: Again the recipient must "opt in" and even then the user must be able temporarily to block the processing of their location data at any time.

Cookies: Electronic tracking on websites is permissible (e.g. welcome back by name, usage tracking etc) but only if the visitor is informed about the cookies and is given the opportunity to reject them.

Security: Service providers and network operators must keep traffic and billing data secure (subject to rights of the security services) and new rules grant individuals rights to determine what contact details are included in public directories.

For more information contact: Mike Fieldhouse
mike@realityhouse.co.uk

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