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TECHNICAL GUIDE No. 7

Responsible Use Of Email Marketing

Everybody is now probably aware of the potential that email marketing has as a tool to promote your business. But with the increasing frustration and technical problems that junk email (or spam) is causing, if you don't go about it in the right way it could end up doing your companies reputation more harm than good. Worse still, you could easily find yourself facing prosecution for breaking one of the many laws being introduced to govern these new technologies.

On 11 December 2003, the Government's new Privacy and Electronic Communications Regulations came into force. They translate an EU Directive of the same name into UK law and have widespread implications for the use of email for direct marketing. This doesn't mean the end for email marketing, but as the Direct Marketing Association explains in its legislation summary, the onus is on you to make sure you comply…

These new regulations make it illegal to send unsolicited direct marketing email to individual subscribers, unless the recipient is your existing customer or has previously subscribed to receiving messages from you.

You must also make sure your identity is not disguised or concealed and your companies name should appear in the 'From' box of any unsolicited email.

You must also provide an address to which the recipient of the email can send requests to unsubscribe, and this address must be valid. The regulations don't make it clear whether this should include a postal address, but the DMA advice is to include a postal address as well, to make sure you are covered.

I only market my business to other businesses – so can I ignore this new legislation?

No, the regulations use the term individual subscriber and the definition includes consumers, partnerships, sole traders, and the employee's of either. Many businesses, even some large ones, are formed as a sole trader or partnership, especially common with professions such as solicitors, accountants and similar.

The new regulations specify that businesses must obtain prior consent of the customer, but they do not give any actual definition of what consent is. You need to take caution here, as little things can make a difference. For example the DMA believes that if a subscribe box on a form is pre-ticked, it will not be sufficient to indicate consent, as the consumer hasn't physically done anything to action the tick in the box.

The EU 1995 Data Protection Directive defines consent as: any freely given specific and informed indication of his wishes by which he signifies his agreement to personal data relating to him being processed.

What about my current customer list?

If your intended recipient is already a customer, then you may continue to send them email provided that you obtained their details in the course of a sale, and that your marketing only contains similar products and services offered by your own company. You must also ensure that your customer has had the option of not receiving your marketing, and that this option is re-offered every time you collect data in the future. You must also ensure that the facility to opt out is available on every email you send them, and that the process of opting out, is both simple, and free of charge.

The new regulations do not make any specific provisions for information collected prior to them coming into effect, so as long as the data that you already hold about your customers was collected fairly, within the bounds of the 1998 Data Protection Act, then there should be no reason why you cannot continue to use this, so long as you work within the new legislation with regard to your future mailings to those individual consumers.

What about cookies?

If your website uses cookies to store information about the consumer, you must tell all users effected how you will use the information you have collected. One way of achieving this, is to have a website privacy policy that contains this information, and you ensure that the privacy policy is clearly available to all visitors of the website. A useful source of information about website cookies is www.aboutcookies.org – you could possibly reference these sites from within your privacy policy. Although you must offer consumers the right to refuse to accept cookies, you are perfectly entitled to prevent access to the website if they decline.

What about buying new lists?

Because customers have to give their consent before their details are sold to a third party, you should be cautious when buying a mailing list from a third party. As the obligation to ensure this has been done correctly is yours, you should ensure that the list owner has complied with the new legislation when the data has been initially collected, and that a customer's consent for the sale of his details has been given, and is suitable. You should also consider building indemnities and warranties into the contract for purchase or use of the list.

The use of email as a direct marketing tool should still be very effective and cost efficient, if it's use is reasonable and within the new legislation. These new directives should help all of us to reduce the amount of completely inappropriate junk arriving in our inboxes everyday.