



Data Protection Good Practice Note Electronic mail marketing

The Privacy and Electronic Communications (EC Directive) Regulations 2003 place restrictions on how companies can carry out unsolicited direct marketing by electronic mail. This guidance explains how the Regulations apply to electronic mail, which activities they cover and gives some good practice recommendations. This guidance does not cover marketing by fax.

The rules covering electronic mail apply to any message that consists of text, voice, sound or images. In other words, email, text, picture, video, voicemail and answerphone messages will be covered.

The Regulations

The Regulations apply to direct marketing. Direct marketing (referred to as marketing in this guidance) includes messages trying to sell goods or services, as well as those promoting the values or beliefs of a particular organisation.

Consent and Choice

You can only carry out unsolicited marketing (that is, marketing which has not specifically been asked for) by electronic mail if the individual you are sending the message to has given you their permission.

There is an exception to this rule, which is known as the 'soft opt-in', which applies where:

- you have obtained the individual's details in the course of a sale or the negotiations for a sale of a product or service to that person;
- the messages are only marketing your similar products or services; **and**
- the individual is given a simple opportunity to refuse the marketing when their details are collected and, if they do not opt out, you give them a simple way to do so in every future message.

The opt-out option should allow the individual to reply directly to the message. In the case of text messages, an individual could opt out by sending a stop message to a short code number, for example, text 'STOP' to 12345. The only cost should be the cost of sending the message.

Individuals can opt out of receiving marketing at any time and you must comply with any opt-out requests promptly.

Your identity and contact details

You have to tell the recipient of marketing who has sent the message. You also have to provide a valid address so that the individual can contact you if they want to stop the marketing.

When providing a valid address it may be just as easy for you to provide a Freephone number as well or allow individuals to reply to messages they have received and opt out that way. In other words, the simple method you should use for the 'soft opt-in' could be used in all messages.

Corporate subscribers

The rules on email do not apply to emails sent to organisations except that you must still identify yourself and provide an address.

However, it serves little purpose to continue to send unsolicited marketing messages to those who have gone to the trouble of telling you they do not want to receive them. Therefore, we strongly recommend that you respect requests from organisations not to email them. Further, many employees have personal corporate email addresses (e.g. Joe.Soap@ANother.co.uk) and individual employees have a right under the Data Protection Act 1998 to require you to stop using that address for marketing.

Good practice recommendations

- Try to go for permission-based marketing as much as possible. This way you are only contacting customers who want you to contact them.
- Provide a statement of use when you collect details. Put this in an obvious place or make sure it has to be read before individuals submit their details.
- Make sure you clearly explain what individuals' details will be used for. For example, explain to individuals why you might use their email address in the future.
- Do not have consent boxes already ticked.
- Provide a simple and quick method for customers to opt out of marketing messages at no cost other than that of sending the message.
- Promptly comply with opt-out requests from everyone, not just those from individuals.
- Have a system in place to deal with complaints about unwanted marketing.
- When you receive an opt-out request, suppress the individual or company details rather than deleting them. This way you will have a record of who not to contact.

For more detailed guidance see our section on the Privacy and Electronic Communications regulations (<http://www.informationcommissioner.gov.uk/eventual.aspx?id=35>) which is available on our website www.ico.gov.uk.