

## Direct Marketing Guidance – Dos and Don'ts<sup>1</sup>

We (the “Company”) are committed to protecting the privacy of our customers and business partners’ personal information. This guidance sets out the dos and don'ts you should be aware of when conducting any direct marketing to customers in the European Economic Area (“EEA”).

This Guidance only applies where you're directing advertising or marketing to a particular individual (e.g. emails, SMS, mail shots, telephone calls, or direct messages over social media) (each, “Direct Marketing”). If you're conducting a campaign aimed generally at businesses or consumers where no individuals' personal information is used (e.g. billboard/TV ads, or social media posts not directed at individuals) this Guidance doesn't apply. However, other guidelines such as local advertising codes, regulations and standards may apply so please always check with your company's or RPM's legal department if you are ever in doubt.

Note that marketing to individuals working for a business will fall under the scope of these direct marketing rules. However, the rules are different for Business-to-Business (**B2B**) and Business-to-Consumer (**B2C**) marketing and we have made this distinction below. If you are unsure whether your marketing is B2B or B2C, please contact your company's or RPM's legal department.

In this Guidance:

- **Opt-in** – occurs where an individual takes a positive action, such as ticking a box or clicking a button (or similar) to confirm his/her consent to receive direct marketing as clearly explained to him/her.
- **Opt-out** – occurs where an individual ticks (or un-ticks) a box (or similar), or provides some other communication, to confirm that he/she does not, or no longer, consents to receiving direct marketing, but he/she will otherwise receive marketing if he/she does nothing.

**Soft opt-in** – This exception will only apply in limited circumstances where **all** of the following conditions are satisfied: (i) an individual has given personal details to the brand that is intending to contact him/her as part of making a purchase from that brand; **and** (ii) the marketing communication concerns a “similar” product or service offered by that brand to the one that the individual purchased; **and** (iii) the individual was given a simple means to opt-out from marketing communications at the time of providing his/her details and did not opt-out at that point; **and** (iv) all subsequent marketing communications contain opt-outs so that the individual can easily unsubscribe from future marketing communications.

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<sup>1</sup> This instruction is intended to act as a guide when engaging in Direct Marketing to consumers in the EEA. Each EEA territory will have its own, territory-specific regulations for Direct Marketing activities. Thus, in some instances, the below guidance may be insufficient to conduct Direct Marketing in a territory. You should always consult local outside legal counsel in the Country in which you are marketing before beginning a new marketing campaign.

## **Business-to-Consumer Marketing**



### **Dos**

- If you're sending marketing via email, SMS or social media, ensure that you have the individual's prior consent via an opt-in process unless the "soft opt-in" exception applies.
- In some EEA territories, you need prior consent via an opt-in to telephone individuals with marketing offers. Therefore, please be aware of the local requirements in any EEA territory in which you plan to conduct marketing.
- When using an online form, avoid confusing language when obtaining consent (see the attached Consent Language Instructions [RPMConsentLanguageMarketing.rpminc.com]. Opt-outs should be avoided unless the "soft opt-in" exception applies. Pre-ticked boxes should also be avoided as they can be confusing for consumers.
- Separate the marketing consent from other consents, e.g. consent to Terms of Use, or to receive marketing from a third party.
- Ensure that you keep a record of each individual's marketing choices, so that each can be used to screen any subsequent marketing campaigns. Keep such a list with the relevant personal data so the scope of how that data can be used is clearly understood and identified. You should also keep a "suppression list" (i.e. a list of those who have opted-out) to screen marketing campaigns and ensure individuals on the suppression list do not receive marketing, if for example their contact details appear on a rented marketing list.
- "Soft Opt-In": Only send marketing to individuals via email, SMS or social media without an opt-in if the "soft opt-in" exception applies.
- For emails and social media messages, include an 'unsubscribe' link at the bottom of each message to allow users to opt-out of further marketing. For SMS marketing, allow users to text 'STOP' to a number (and the only cost to the customer should be the cost of the message) to opt-out of further marketing.
- In the event you plan to rent/buy a marketing list, find out (and obtain evidence of) (i) how the information was obtained, (ii) when the list was compiled and last updated (iii) what, if anything, was communicated to the individuals on the list, (iv) what was the scope of any consents obtained (e.g. was it limited to emails or SMS only and did it allow disclosure to third parties), and (v) whether the list been screened against any applicable national opt-out register. Only use such a list for the specified purposes communicated to you for which it may be used.
- Seek contractual assurances from the supplier of marketing lists that the information has been obtained in compliance with all applicable law.
- When sending marketing emails, include the Company name, place of registration, registered number and registered office address in the email.

- Before sending any postal marketing, the addresses should be screened against any local opt-out register (in the UK this is the MPS, see <http://www.mpsonline.org.uk/mpsr/>). Similar rules apply to live telephone marketing where the numbers should be screened against any local opt-out register (In the UK this is the TPS, see <http://www.tpsonline.org.uk/tps/index.html>). If the address or number is on the relevant register, you cannot send marketing to the individual unless he/she gives you his/her specific consent.



## Don'ts

- Don't make consent to marketing a condition of receiving some other service or offer from the Company. For example, you should not make consenting to marketing a condition for entry into a competition.
- Where an individual opts-out of marketing, it's generally better to block use of their data and include them on a "suppression list" rather than to delete that individual's details entirely, otherwise you can't be sure that he/she will not subsequently receive marketing if his/her contact details appear on a rented-in list or you obtain their Personal Data by another means (e.g. if they subsequently register on a site).
- Don't rely on a consent to market that was obtained more than 2 years ago where the Company has had no contact with the individual since the consent was obtained.
- Don't include any marketing content in a "service communication" (i.e. a communication merely telling an individual something they need to know about a product or service), such as a communication confirming an order, or a message informing the recipient of an update to terms and conditions.
- In the event you plan to rent or buy a marketing list, you should not rent/buy more information than you need for your purpose. For example, if the intention is to send postal or email marketing, there should be no need to purchase telephone numbers.
- Do not send direct marketing emails to individuals you know are under 16, without seeking legal advice from local legal counsel in the country in which those individuals are located.
- Don't ever surprise an individual. Their Personal Data should only be used for the purposes for which it was collected. If you think he/she will be surprised by how you use his/her data then there is a risk you may be breaching data protection laws.

## **Business-to-Business Marketing**



- Consider whether consent is the appropriate legal basis to conduct marketing. It may be that it is in the legitimate business interests of the Company to market to another business, provided the interests of that business aren't adversely affected.
- In some EEA territories, you need prior consent via an opt-in to contact individuals with marketing offers. Therefore, please seek local legal advice to ensure you are aware of the local requirements in any EEA territory in each you plan to conduct marketing.
- When using an online form, avoid confusing language when obtaining consent. Pre-ticked boxes should also be avoided.
- Ensure that you keep a record of each individual's marketing choices, so that this can be used to screen any subsequent marketing campaigns. Keep such a list with the relevant Personal Data so the scope of how that data can be used is clearly identified. You should also keep a "suppression list" (i.e. list of those who have opted-out) to screen marketing campaigns to ensure individuals on the suppression list do not receive marketing, if for example their contact details appear on a rented marketing list.
- For emails and social media messages, include an 'unsubscribe' link at the bottom of each message to allow users to opt-out of further marketing. For SMS marketing, allow users to text 'STOP' to a number (and the only cost to the customer should be the cost of the message) to opt-out of further marketing.
- In the event you plan to rent/buy a marketing list, find out (and obtain evidence of) (i) how the information was obtained, (ii) when was the list compiled and last updated (iii) what, if anything, was communicated to the individuals on the list, (iv) what was the scope of any consents obtained (e.g. was it limited to emails or SMS only and did it allow disclosure to third parties), and (v) whether the list been screened against any applicable national opt-out register. Only use such a list for the specified purposes communicated to you for which it can be used.
- Seek contractual assurances from the supplier of marketing lists that the information has been obtained in compliance with all applicable law.
- When sending marketing emails, include the company name, place of registration, registered number and registered office address in the email.
- Before conducting live telephone marketing, numbers should be screened against any local opt-out register (In the UK this is the Corporate Telephone Preference Service, see <http://www.tpsonline.org.uk/tps/whatiscorporatetps.html>). If the address or number is on the relevant register, you cannot send marketing to or call the individual unless you have his/her specific consent.

## Don'ts

- Where an individual opts-out of marketing, it's generally better to block use of his/her Personal Data and include him/her on a "suppression list" rather than to delete that individual's details entirely, otherwise you can't be sure that he/she will not subsequently receive marketing if his/her contact details appear on a rented-in list or you obtain his/her contact details by another means (e.g. if they subsequently register on a site).
- In the event you plan to rent or buy a marketing list, you should not rent/buy more information than you need for your purpose. For example, if the intention is to send postal or email marketing, there should be no need to purchase telephone numbers.
- Don't ever surprise an individual. Their data should only be used for the purposes for which it was collected. If you think they will be surprised by how you use their data then there is a risk you may be breaching data protection law.