January 27, 2016

An Overview of Global Email Marketing Compliance Requirements

We hope you enjoy today’s webinar. The speakers’ presentations and comments represent their own viewpoints and do not necessarily represent the views of the DMA or eec.
Your presenters:

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Director of Deliverability, Sales Fusion

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Director of Deliverability and Industry Relations, Mailjet SAS

James Koons
Chief Privacy Officer, dotmailer
What do you see when you see an Email Address?
Converging global privacy sentiment

- Protect data abroad or localize processing
- Higher standard of specific, informed, unambiguous consent
- More authority
- More accountability
Challenges facing global brands

How do we collect email addresses and mail within “X” jurisdiction? What can we do vs should we do?

When data privacy, security and fraud are top concerns how do we build trust with consumers and ISP partners?

What can we do to achieve higher quality of engagement in today’s era of decreasing attention?

How can we optimize marketing operations to mitigate risks of non-compliance?
Risks of non-compliance

➤ Court of Public Opinion
• Consumers, bloggers, advocates
• Social media backlash
• Blacklisting

➤ PR Nightmares
• Scandals, reports & investigations
• Bad press + negative opinions
• Loss of industry standing

➤ Regulatory Actions
• Significant legal costs
• Penalties and settlement terms
• Potential for erosion of brand trust

➤ Legal Exposure + Liability
• 3rd party lawsuits / consumer actions
• Responsibility for representatives
• Lack of documentation
Am I sending ‘spam’?

- How can I legitimately communicate with a recipient?
- Do I need them to first say “Yes”?
- How do I capture consent?
Understanding “Consent”

Consent Continuum

LOW QUALITY
- UNSOLICITED
  - Email Unsub Link from CoReg, eAppend
  - 3rd Party Opt-Out Consent
  - No Relationship, No Email Unsub Link

ASSUMED
- Auto Consent
  - Transaction w/ Marketing Disclosure
  - Negative Option Consent
  - Transaction w/ Pre-checked Box

SOLICITED
- Informed Consent
  - Transaction w/ “By clicking I agree to...”
- Express/Affirmative Consent
  - Consent w/ Email “Click here to confirm...” Request
- Engaged Consent
  - Consent w/ Email Open/Click-through Behavior
- Confirmed Consent

POOR PRIVACY PRACTICE
- SPAM
  - No Prior Opt-In or Opt-Out
- US CAN-SPAM Act
  - No Prior Opt-In
- ESP/ISP AUPs
  - Opt-In

BEST PRIVACY PRACTICE
- EU Directives, CASL
  - Opt-In
- Best Practices
  - Confirmed Opt-In
Email consent baselines around the world

**EUROPEAN UNION**
Informed Consent w/ limited exceptions + member-specific nuances. GDPR…

**RUSSIA**
No federal spam law – ISPs “self-regulate”

**CHINA**
Express consent w/ limited exceptions.

**JAPAN**
Express consent w/ limited exceptions

**SOUTH KOREA**
Opt-Out, unless by IT Service Provider then Opt-In

**SINGAPORE**
Implied consent for private sector

**CANADA**
Opt-In w/ limited exceptions.
Pre-checked boxes restricted.

**UNITED STATES**
Opt-Out but ESPs/ISPs, industry groups set higher bar.

**LATIN AMERICA**
Landscape varies but Mexico, Argentina, Brazil, Chile set higher bars.

**ISRAEL**
Express consent w/ limited exceptions.

**AUSTRALIA & NEW ZEALAND**
Express consent w/ limited exceptions.
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<tr>
<td>Italy</td>
<td>Opt-In, unless implied Consent and no prior objection exist.</td>
<td>No</td>
<td>As Implied Consent</td>
<td>Unclear</td>
<td>With prior notice and opportunity to object.</td>
<td>Yes, prior opt-in expected.</td>
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<td>Jersey</td>
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<td>Kazakhstan</td>
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<td>Kyrgyz Republic</td>
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<td>No</td>
<td>Un unclear</td>
<td>Yes</td>
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<td>Latvia</td>
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Am I informing or promoting?

- Are there differences between message types?
- Is there a bright line between message types?
- What do I do if a recipient country doesn’t offer guidance?
Intent over content! No ‘Primary Purpose Rule’ outside the US.

Promotional Message:

• Encourages commercial activity or otherwise solicits commercial activity from the recipient.
• May or may not be triggered.
• Must fully comply with consent, disclosure and opt-out requirements.
• Examples: Deal of the Day, Abandoned Cart, Refer-A-Friend, Coupon, etc.

Factual Message:

• Provides information related directly to a transaction or business relationship.
• May or may not be triggered.
• Exempt from some consent, disclosure, and opt-out requirements.
• Examples: Password Reset, Order Confirmation, Membership Alert, etc
Can I run Refer-A-Friend campaigns?

- Can I incentivize referrals?
- Can I add the recipient to my marketing list?
- Does it matter who is in the ‘from’ line?
RAF not OK in some regions

- Do not presume consent where none has been given.
- End-recipients should not be added to marketing lists unless they consent or transact.
- Brand typically responsible for ensuring consent
- Practically impossible in Germany! …difficult in the rest of Europe.

See Certified Senders Alliance guidance for more information on permissible email marketing in Germany, Australia and Switzerland.
Can I send automatic messages to website users?

- Are these messages promotional or transactional?
- Is complying with the spam law enough?
- What do I do if a recipient country doesn’t offer guidance?
Mind EU’s ‘Cookie Directive’!

FRANCE:
• Implied consent with unavoidable notice is permitted for 'non-intrusive' cookies

U.K.:
• Implied consent with unavoidable notice is permitted for 'non-intrusive' cookies

GERMANY:
• Unclear, still being disputed.

NETHERLANDS:
• Express consent but legislative proposal to accept implied consent sent to Parliament.

SPAIN:
• Implied consent must be given through some kind of specific action: accepting T&Cs/Privacy Policy, continuing to use the site, downloading content, configuring the browser to accept cookies, etc

Mind EU’s ‘Cookie Directive’!
Remarketing involves online + email behavior

UK & FRANCE
- Insure privacy policy discusses ‘marketing use’.
- Provide Opt-Out Box in shopping cart.
- **Best practice:** Have ‘abandoned cart’ -specific language in the privacy policy.

GERMANY
- Insure privacy policy discusses ‘marketing use’.
- Provide Opt-In Box in shopping cart.
- **Best practices:** Send a confirmation email to the abandoner and to have ‘abandoned cart’ -specific language in the privacy policy.

OTHER EU STATES
- Insure privacy policy discusses ‘marketing use’.
- Provide Opt-In Box in shopping cart.
- **Best practices:**
  - send a confirmation email to the abandoner, and
  - to have ‘abandoned cart’ -specific language in the privacy policy.
...How do I wrap my arms around all these rules?

- Look at the landscape holistically.
- Understand what regulators expect from you.
- Choose a management approach that makes sense for you.
## Bucket laws into types

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<thead>
<tr>
<th>Archetype</th>
<th>Characteristics</th>
<th>Similar Countries</th>
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<tbody>
<tr>
<td><strong>US</strong></td>
<td>• Regulates unsolicited email.</td>
<td>Singapore, Malaysia</td>
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<td>• <strong>Choice management.</strong></td>
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<td>• Business-friendly regulations.</td>
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<td><strong>Canada</strong></td>
<td>• Prohibits unsolicited messages of any kind.</td>
<td>Germany, EU General Data Protection Regulation. Japan</td>
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<td>• <strong>Consent record management.</strong></td>
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<td>• Highly prescriptive, pro-consumer law.</td>
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<tr>
<td><strong>UK</strong></td>
<td>• Regulates unsolicited messages.</td>
<td>France, Australia, Hong Kong</td>
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<td>• <strong>Expectation management.</strong></td>
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<td><strong>Argentina</strong></td>
<td>• <em>Habeas data.</em></td>
<td>Colombia, Mexico, Chile, Brazil</td>
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<td>• Broad <strong>personal data protection.</strong></td>
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<td>• Courts interpret privacy law in spam cases.</td>
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<td><strong>Russia</strong></td>
<td>• <strong>No spam filtering laws/regulations.</strong></td>
<td>India, Saudi Arabia</td>
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<tr>
<td></td>
<td>• Broad <strong>personal data protection.</strong></td>
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<td>• ISPs responsible for controlling spam.</td>
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‘King of the Hill’ vs Regional compliance programs

King
- Linear management
- Uniform practices
- Opportunity costs

Regional
- Complex management
- Tailored practices
- Compliance costs
Practical first steps

» Accurately identify location of recipients
» Account for any applicable exemptions from express consent
» Ensure collection touch points include needed disclosures
» Obtain appropriate consent for 1st party and 3rd party uses
» Confirm consent to strengthen records
» Standardize footer language and unsubscribe templates
» Segment and send based on consent type & message type
» When in doubt, go to the actual text (and counsel)
Where to buy/get it

https://emailexperience.org/email-resources/eec-global-email-marketing-compliance-guide/
Get the eecEXPERIENCE

This webinar has been brought to you by the eec Advocacy Subcommittee in our efforts to educate and elevate email marketing practices.

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• Elevate your email marketing knowledge
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For more information contact Lisa Brown Shosteck, Managing Director, eec: lshosteck@the-dma.org or go online: http://emailexperience.org
Spotlight: Upcoming eec Events

» March 30-April 1, 2016

• 2016 Email Evolution Conference in New Orleans
• Follow-up presentation on the Gude at the conference!
• The Hilton New Orleans Riverside Hotel: http://emailevolution.org/