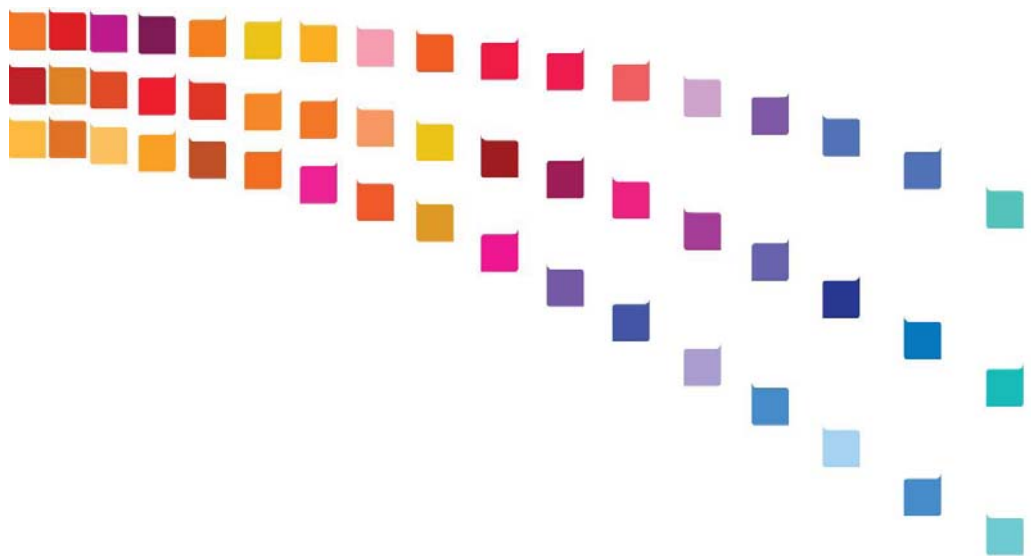




FAQs: Mobile marketing data





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What is mobile marketing?

Mobile marketing refers to the process of marketing campaigns delivered via the mobile medium.

Mobile has a number of unique benefits for marketers – it is 'always on, always there' and with messaging, it is 'always read'. UK penetration of mobile has now reached over 90% of the population hence the reach is exceptional. Moreover, mobile's virtues in dynamically tracking response and its immediacy in responding to events are key in making the medium ideal for direct marketers.

The medium itself encompasses a number of technologies, of which the key ones are:

- i. Messaging – SMS and MMS
- ii. Mobile web
- iii. Apps
- iv. Proximity marketing – Bluetooth and near field communications (NFC)

Additionally, mobile technology channels may also include mobile payments, quick recognition codes, location-based services (LBS), mobile social media and augmented reality.

What are the compliance considerations for collecting data via this channel?

When collecting personal data, which includes a mobile number, data users should:

- Comply with all requirements of the Data Protection Act 1998
- Only ask for the information that is reasonably necessary for the purpose of which the data is being used
- Have a clear notice providing all requisite data protection notices and a link to, or full details of, a suitable privacy policy at the point of collection
- Gain the data subject's consent to send unsolicited commercial mobile messages (for example with the use of an opt-in check box) unless the soft opt-in exception applies (detailed below)
- Comply fully with the requirements of the data protection notices and privacy policy as outlined below.

Soft opt-in exclusion

Individual subscribers must always have provided their express consent to receive mobile marketing communications, subject to the limited exception known as "soft opt-in" which applies only where:

- i. The mobile marketer has previously obtained the contact details of the recipient in the course of the sale or negotiations for the sale of a product or service to that particular recipient
- ii. The mobile marketing communication to be sent relates to the marketer's similar goods and services only



- iii. The mobile marketer has given the recipient a simple means, without charge, at the time of initial collection of the data to refuse (or opt out of) the use of his contact details for direct marketing purposes
- iv. Included in each subsequent message to the recipient is included a right to opt out of future direct marketing sent by the medium of mobile.

These are the only circumstances where the soft opt-in exception can be relied upon. However, it is important for marketers to understand consumer expectation. Although a soft opt-in may be within the regulatory guidelines, there may not be an expectation from the consumer to receive this type of communication. Thus, where possible, it is recommended that marketers seek a hard opt-in from consumers. In all other circumstances, consent to use of data for mobile marketing must be obtained to comply with the obligations within data protection legislation.

Data protection notices

When collecting a mobile number, the information (data protection notices) needs to be prominently displayed at the point of data collection – this can be expressed in the message or on a site (eg mobile web).

Adequate information needs to be provided relating to:

- The identity of the data user
- How the mobile number will be used
- The identity of any third parties who will gain the information disclosed
- What other data may be held about the individual
- Whether the data will be transferred to any other countries.

Privacy policy

Given the nature of these guidelines, the disclosures suggested above naturally focus on transparency at the point of data collection regarding the likely future uses of mobile phone numbers. There will doubtless be other data protection-related notices that the data user will wish to make as a matter of law and best practice.

Since it may be inconvenient to provide this more extensive data protection notice at the point of data collection, general data protection Best Practice allows these other notices to be made elsewhere, by way of a clear and easy to understand privacy policy.

This is on condition that if the mobile phone numbers and other personal data are being captured on line, the privacy policy will be accessible in one click by way of a prominently flagged link above the submit button (as opposed to a privacy policy link in amongst various other general links to terms and conditions etc, or in a sidebar or only visible after scrolling to the very bottom of a web page). It should also be clearly accessible via a link from every communication delivered.

Obtaining positive consent

(Notify at point of obtaining details that information will be used by third parties, opt-in, soft opt-in)

Opt-out consent

This is where customers have been advised – at the point of collection of personal contact details (including mobile phone number) – that mobile (or electronic) marketing messages will be sent to them unless they object. Remember a mechanism for objecting at that point of data collection must be given. Simply sending a marketing message containing an opt-out mechanism as the first point of objection does not comply with legal requirements.



An individual has the right at any time by written notice to a data controller to ask it to cease, or not to begin, processing their personal information for the purposes of direct marketing. Data protection legislation states that this right relates to marketing "by whatever means", so would cover all forms of mobile marketing just as it does mail, fax, telephone and email marketing. As far as mobile communications are concerned, the Information Commissioner permits the use of short codes as a valid address provided to consumers for marketing communication opt-out/unsubscribe requests. It is best practice to enable consumers to object to future direct marketing with the minimum effort and cost possible. If short codes are to be used for this purpose then it must be ensured that:

- The identity of the sender is clearly identified within the message
- The use of any such short code does not incur a premium rate charge for the consumer
- The short code is valid at the time the SMS is sent.

The Information Commissioner has recommended that if a short code is to be used, consumers are informed of this short code in the body of the marketing message, for example:

"[Company name] - 2STOPMSGSTXT'STOP'TO (add applicable 5 digit short code)".

Where it is clear that a recipient of a message wants to unsubscribe from further messages even if they have not strictly followed the unsubscribe instructions provided correctly (such as if they text "unsubscribe" instead of "STOP") it is best practice to unsubscribe them nonetheless.

It is also possible to give consumers the option of opting out of communications relating to a particular service rather than marketing messages in general. The opt-out message could therefore refer to a particular service identifier also (such as a particular word or number). That way you are not prevented from continuing to send messages on other services that they do still wish to receive.

In the event that customers are signed up to long-term promotions or seasonal services (such as those associated with sporting seasons) as well as providing them with the option to opt out each time a communication is sent, it is best practice to also contact them at the start of each season to remind them what they have subscribed for, that the promotion/service is about to restart and an opt-out mechanism is given.

Opt-in consent

This is where the mobile marketer gives customers the opportunity to actively choose to receive marketing messages from them. For this type of consent to be valid, not only must customers positively indicate that they wish to receive marketing messages, BUT if appropriate the notice that the mobile marketer provides must clearly explain that those marketing messages may contain information about other companies' products and services.

What are the considerations for renting data collected via this channel?

Renting lists is a problematic area for mobile due to the personal nature of the medium. Careful targeting to specific demographics is required, along with clear processes for opting in to further marketing, and opting-out procedures.

As a very immediate and responsive channel, the consumer has the ability to react quickly, thus any poor procedures will be quickly felt and lead to reputational damage.

What are best times to communicate via mobile?

Generally avoid sending messages that the recipient will receive between the hours of 2200 and 0700. The obvious exceptions here are services that are time sensitive and for which the recipient has specifically opted-in.



What are the specific considerations for communications linking to websites?

Even on the most up-to-date handsets, the mobile web experience will be different from the PC web experience for a number of reasons:

- Different capabilities. For example many mobile browsers cannot handle Flash content
- Different screen sizes. As well as smaller screens and different ratios to PCs, mobile sites are typically viewed in portrait rather than the landscape format used in the fixed web
- Different interaction. A typical PC interaction will be a mouse and keyboard. For the mobile web, touch screens and scroll buttons are more common
- Different intent: Google estimates that one third of all mobile web searches have some form of local intent. Mobile users browsing the web will be looking at brand sites for different reasons to browsing on the fixed web
- Different data plans. Although around 40% of mobile users have a price plan which includes data access, a majority of users will pay additionally to access the mobile web. Brands should make users aware of the potential charges to a mobile site. Where that access is prompted by a free channel, such as a link in an SMS, brands would be recommended to pre-pay the data, and zero rate it for the user.

What are the specific considerations for communications linking to apps?

Mobile apps are additional software which adds to the mobile phone's functionality. Apps may be accessed either through app stores, or by direct download to handsets. The precise method of delivering the app to the handset will depend on the handset manufacturer or operating system. Similar review processes apply to each app store. Some may review the content, code and functionality before releasing the app, other stores are less rigorous. Regardless of the review process, marketers should be mindful of the need to create good user and brand experiences. There are some similar considerations with the mobile web in delivering optimal campaigns:

- Costs – although costs of paid apps are clearly shown in app stores, marketers should clearly sign-post users to other potential costs such as data charges
- Privacy and data security – marketers should have a clear privacy policy or link to privacy policy in the app showing which data is collected and/or stored
- Handset functions – apps may access a broad variety of handset functions from internet data connections to location services. While some handset operating systems notify the user which services will be accessed, not all systems give this information. It is important that marketers provide clarity to mobile users regarding what functions will be accessed and the reasons for that access. The information can be provided in the app or a link to a mobile site in a similar way to a privacy policy
- Mobile network data usage – aside from the data connection required to download the app, once installed on the phone it may also require a network data connection. While many mobile users, especially those with smartphones have a flat rate data tariff, some users may not. Additionally, network limits mean that some mobile users will be mindful of the amount of data they use. As a consequence, marketers need to take care to ensure that apps are of the optimal size and use only the necessary data required for the app to perform correctly. Some marketers are including detailed analytics software in their apps, which are often data heavy. Consideration should be made as to whether this amount of data is required when offering a brand app for downloading.



What is Bluetooth and proximity marketing?

Bluetooth or proximity marketing offers marketers a unique opportunity to reach people in a location specific area with rich content but without the cost and complexity of the mobile networks' SMS and MMS technology. Anyone with a Bluetooth, enabled mobile device can instantly receive rich content including coupons, single track song downloads, short video clips, applications and links to mobile micro-sites. Importantly, Bluetooth can deliver applications (for example Java or system applications) that will add to, or even alter, the handset's functionality. For example, a traffic application installed on the handset may have implications for both the system as well as a subsequent requirement for a data connection and thus any associated costs.

To receive a message, a consumer must have their handset set to "active" and "discoverable" for a Bluetooth device to locate and pair with them and be within close proximity of a broadcasting device.

Although under the current regulations, Bluetooth is not considered to be a direct marketing medium, in practice, marketers should consider it as such and establish campaigns accordingly.

Other proximity marketing channels

As mobile develops we will see the emergence of other proximity marketing media. The current emerging channel is NFC or contactless, which will allow users to 'touch-in' to receive further marketing information. The exact operation of these contactless channels is still in the process of formulation by the mobile operators and handset manufacturers.

Location-based mobile marketing (LBS)

It is worth noting that LBS may or may not always constitute direct marketing. LBS may be enhanced with marketing that takes advantage of location information, but LBS is not inherently direct marketing.

As we see an increasing penetration of smartphones which are GPS-enabled, location-based mobile marketing is taking a higher degree of prominence. Marketers need to understand the importance of location in both developing successful campaigns and to understand data and privacy issues for consumers. As such, the organisation needs to consider the EU Working Party 29 Opinion on the use of LBS along with the existing rules and best practice on the subject.

DMA and other trade organisation considerations

DMA members must comply with the provisions of the DM Code of Practice. Non-members are strongly advised to comply with the Code as it is a useful summary of the legal and best practice requirements for direct marketers. Section 20 deals specifically with mobile marketing.

The DMA's compliance department monitors the activities of DMA members through compliance visits, mystery shopping and annual questionnaires.

Members must also comply with the provisions of The British Code of Advertising, Sales Promotion and Direct Marketing (CAP Code), which is enforced by the Advertising Standards Authority (ASA).

Mobile marketers must also comply with the Code of Practice and Guidelines issued by PhonepayPlus.