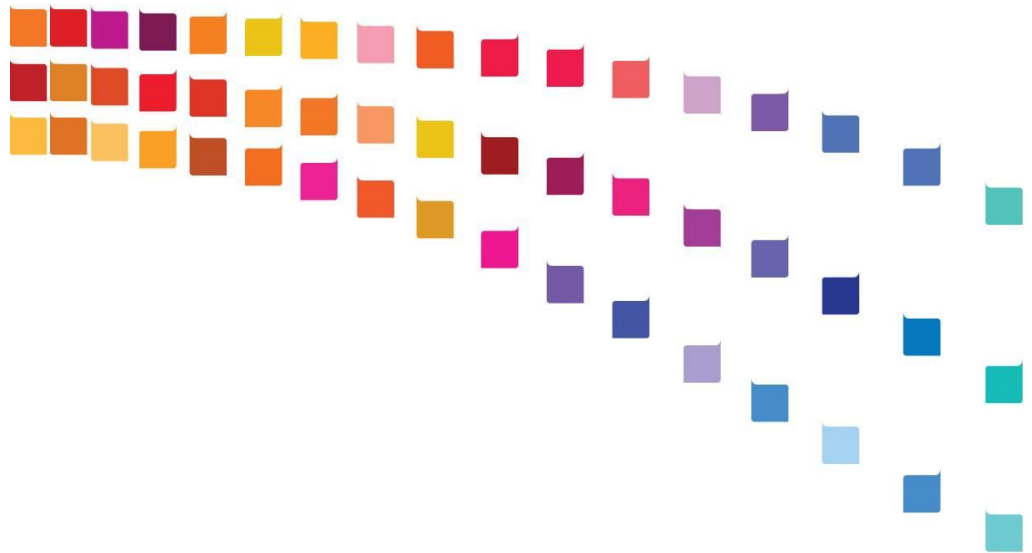




The DMA buying and selling data toolkit





The DMA buying and selling data toolkit

The DMA buying and selling data toolkit will help businesses buying or selling marketing data to ensure they are acting responsibly and within the law.

The Information Commissioner's Office (ICO) issued its Direct Marketing Guidance in September 2013 in which it clarified the rules for marketers when collecting or using personal data for marketing. The clarification refers mostly to electronic communications (email, SMS, automated telephone calls) covered under the Privacy and Electronic Communications Regulations 2003 (PECR) but is relevant for more traditional marketing channels (e.g. direct mail).

<http://dma.org.uk/article/dma-clarifies-ico-guidance-on-direct-marketing>

PECR was amended as of 6th April 2015 to remove the requirement to demonstrate 'substantial damage or substantial distress' which now makes it easier for the ICO to bring prosecutions and sanctions against organisations.

Buying a list for marketing

What to look for in a list broker/business selling data

A reputable list broker should be able to demonstrate that the marketing list for sale or rental is reliable, by explaining how it was compiled and providing full details of what individuals consented to, when and how.

When you buy or rent a marketing list from a list broker or other third party, you must make rigorous checks to ensure that the organisation selling the data obtained the personal data fairly and lawfully, and that the individuals understood their details would be passed on for marketing purposes, and that they have provided their consent.

Questions to ask when buying a marketing list

Who compiled the list? When? Has it been amended or updated since then?

How often is the list updated?

When was consent obtained?

Who obtained it and in what context?

What method was used – e.g. was it opt-in or opt-out?



Was the information provided clear and intelligible? How was it provided – e.g. behind a link, in a footnote, in a pop-up box, in a clear statement next to the opt-in box?

Did it specifically mention texts, emails or automated calls?

Did it list organisations by name, by description, or was the consent for disclosure to any third party?

Has the list been screened against the TPS or other relevant preference services? If so, when?

Has the individual expressed any other preferences – e.g. regarding marketing calls or mail?

Has the seller received any complaints?

Ask to see a sample of the data.

Ensure that your obligations are met to maintain and apply “suppression list” of people who have opted out or otherwise told your organisation directly that they do not want to receive marketing from you.

Is the seller a member of a professional body or accredited in some way?

<http://www.dma.org.uk/>

Selling a marketing list

The rules on electronic marketing are stricter than for more traditional marketing methods, and businesses cannot take a one-size-fits-all approach to consent or the sale of marketing lists.

A list with general consent to third party marketing may be enough for mail marketing, but is unlikely to cover calls, texts or emails. Call lists must be screened against the TPS, and third party lists can only be used for text or email marketing in limited circumstances.

An organisation wanting to sell a list for use in a telemarketing campaign should make it clear if you need to screen the list against the TPS file before you use it and when it was last screened.

An organisation must act fairly and lawfully when selling a list for marketing communications. This means that if you obtained the details from individuals with the intention of selling them onto other organisations, you must have told the individual that,

- a) their details would be passed on to other organisations,
- b) these organisations would send them details of their products and services



- c) i) in lists for telephone and direct mail marketing you gave the individuals the opportunity to opt out or unsubscribe from having their details passed on to those organisations.
- ii) in respect of email, text or automated call marketing, you obtained the individual's consent to pass on their details to those organisations.

It is therefore important that an organisation wanting to sell a marketing list keeps clear records showing when and how the relevant consent was obtained.

Marketing data lists and consent

Email, SMS and automated call marketing

What constitutes valid consent? The ICO covers the issue of consent extensively in its Guidance. Members can also refer to the DMA's supplementary guide issued in May 2014 which clarified the Guidance for businesses.

Here are some key points about consent to consider:

The consent obtained must be valid – it must be reasonably recent, and clearly extend to the organisation using it specifically or to organisations fitting their description.

How consent is obtained

Securing consent requires a positive action to be taken by the consumer. In almost all circumstances this means that pre-ticked opt-in boxes should not be used to secure consent.

Pre-ticked opt-in boxes should not be used to obtain consent for third-party email/SMS. Should a data controller (e.g. a brand) wish to release its data to third parties and allow the third party to send offers from the third party (aka indirect third-party offers) then brand- or company-specific consent is required. This means that when the data controller obtained the consent of the individual to indirect third party marketing, the third parties to whom the data controller wanted to pass the personal information to were either specifically named or are a member of a small sector group (i.e. travel agents).

Time limits: how long does consent last?

The ICO Guidance gives an indication that consent is valid for six months. What this means in practical terms is that the older the consent the harder it will be for it to meet PECR requirements. However, the ICO makes it clear that context is



important and accepts that there may be circumstances where consent will last longer, such as seasonal products or annually renewable services.

The time limit applies mainly to indirect third-party consent where permission has not been used or activated. This means that if a consumer has been receiving emails or SMS and has not unsubscribed, it can be assumed that the consent is current. If, however, no communication has been received since the consent was given, then the older the consent is the more difficult it will be for the organisation to meet the requirements of PECR.

Remember, it is a criminal offence under section 55 of the Data Protection Act to sell or offer to sell a marketing list if any of the customer details were knowingly or recklessly obtained from another data controller without its consent.