



Internet  
Advertising  
Bureau  
UK

How to guide  
Email and cookies legislation

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# Introduction

From 26 May 2011 additional measures came into effect in the UK as part of an update of the Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR) (“the Regulations”). The revised law covers any technology that stores data on or uses data from a person’s “terminal device” such as computer, laptop, smart phone, and web enabled TV, etc. This includes technology that is used to track the activity of a user’s terminal online.

This paper provides guidance and good practice in relation to email tracking. Virtually all the comment, analysis and guidance so far published about the Regulations in the UK has focused on the use of cookies and similar technology by websites. Although it is not in any way exempted, very little, if at all, has been said about the use of such technology by emails.

The revised law – implementing the revised EU ePrivacy Directive – replaces the existing ‘notice and opt out’ provisions with a requirement to obtain consent for the storing of information or the gaining of access to information stored in the terminal equipment of a subscriber or user... having been provided with clear and comprehensive information.

Although the Regulations do not mention “blank gifs” or “web beacons”, whether or not open tracking in emails falls under the Regulations is still unclear at this point. Regardless of whether a type of tracking is affected or not by the Regulations, best practice indicates that information regarding the use of all types of tracking employed on your email campaigns and website should be informative and easily accessible by consumers, regardless of why you are communicating with them.

Email is different from a user visiting a website. With email, the user has agreed to receive the marketing email they are being sent. If at the point of recruiting a customer to email communications the marketer gives clear, concise and relevant information about the kind of tracking and how it will be used in email marketing, then it is likely that the recipient will be well informed and have some expectation of measurement and tracking of their actions. This is known as “implied consent”.

If, however, the data is being used for more intrusive purposes, such as being combined with other data and used in a way that the recipient is unlikely to know about, understand or expect then it will be affected by the Regulations. This guidance from the DMA and the IAB seeks to provide clear and transparent communications with consumers about the use of cookies and similar technology by email marketing. It also identifies potential approaches to good practice in obtaining informed consent to the use of such technology, as the law now requires.

As the email marketing industry is still very much in learning mode on these issues and the Information Commissioner’s Office (“ICO”) has not yet published any guidance in this area, this How to Guide is not set in stone and will evolve over time.

**This document does not constitute legal advice, but is informed guidance.**



# 1. Background and considerations

For a number of years, some marketers have used methods of one sort or another to track their email campaigns providing revenue and other types of related information (beyond the last click). Methods used include third party analytics cookies (such as Google Analytics) and first party cookies directly served from the website domain.

As with any sort of tracking technologies, these may fall under the Regulations and if so, marketers are under an obligation to comply with the Regulations. This best practice guidance is focused on email marketers who use any form of tracking in the course of their email marketing.

It is incumbent on email marketers to explain what email tracking is, how it is used, and how it impacts recipients. This level of transparency will ultimately build trust in brands that use email marketing. For instance, if you are using cookies in your email marketing, their description and use should be detailed in your cookie policy, easily found on your website, or linked through from the mechanism you are using to gain consent. Equally, any other technology used to track what a recipient does with email needs to be described.

For your existing subscriber list, if the use to which the tracking in email goes beyond that which an average consumer would expect, a form of consent will be required by the Regulations.

## 2. Gaining consent

Below are some suggested approaches to obtaining consent to the use of tracking. These are examples only. How you communicate with your customers and prospects is core to your branding so the choice of language and words should be yours. The overarching intention should be to use easy to understand language that is simple, concise and clear and to obtain consent where this is required by the Regulations.

### 2.1 Tracking consent for new subscribers

One of the best ways to gain permission to use tracking is in the email opt-in process. One possible option might be as follows:

*We use technology to help ensure we send you what you want, and stop sending you what you don't want. [Click here](#) to find out more. Please tick this box to register for our newsletter, allowing us to send you relevant offers and information.*

When potential subscribers click on the “click here to find out more” they’ll be taken to a page which explains what tracking is used with your campaigns, how it is used, and how it impacts on recipients – including how long it lasts and how the subscriber can stop receiving the newsletter if they change their mind.

### 2.2 Consent via a “soft opt-in” email permission process

Many websites use the “soft opt-in” process to secure email marketing permission. This process can be used when the email address is obtained during the sale of goods or services.

This is an effective way of gaining marketable email addresses; it also offers you the opportunity to inform the subscriber about what tracking is used with your campaign and show them where they can gain further information.

*We would like to send you emails from time to time with offers and other relevant information. If you don't want to receive these emails from us, please un tick this box. We use cookies or similar technologies to help us ensure we only send you what you want and also to improve your online experience: [click here](#) for further details.*

### 2.3 Consent via email

Email marketers are under an obligation to educate their existing recipients about the tracking used in this process and to obtain consent. This information need not be confined to cookies or similar technologies used in emails, but can also include other uses throughout the web. The important point to remember is that **clear information should be provided about any technology you are using and consent obtained.**

One method of providing the information for cookies or similar technologies is to use a statement such as the one below, at the head of the email or in the “pre-header”. Once the link is clicked, the recipient/subscriber is presented with information on how cookies are used.

*We may use cookies or similar technologies to help us send you relevant offers and to improve your online experience. By agreeing to receive emails from us you are agreeing to the use of such technologies: [click to find out more.](#)*

## 2.4 Consent via terms and conditions

The terms and conditions of the sale, or registration, is another good place to gain consent for the use of tracking.

*By clicking the [Accept or Register] button below you are agreeing to our terms and conditions, which include information on how we use cookies or similar technologies that help us send you relevant offers and improve your online experience. [Click here to find out more.](#)*

When the potential subscriber clicks on the “click here to find out more” link they must be taken to a page which explains what cookies or similar technologies are being used, how they are used and how they impact on the recipient. This is usually your Privacy and Cookie policy, which should have a separate, highly visible link that you may want to position on your website and email header.

# 3. What makes your privacy and cookie policy transparent?

## Produce *effective communication material*:

For the material you make available to consumers to be effective it must be:

- **Easy to understand** – plain English where possible
- **Honest and accurate** – users mustn't be misled in any way and information should not seek to deliberately mislead
- **Helpful and empowering** – the aim is to put the consumer in control and provide them with the information and means to achieve this. Information presented must satisfy this requirement

## Include relevant subject matter and 'headings'

These examples are illustrative only.

- **What are Cookies?**

Example only description: Cookies are small, usually randomly encoded, text files that help you navigate through a website. They are generated on the sites that you visit as well as by third-parties that websites work with to manage key elements of their business (user functionality and advertising, for instance). In most cases they do not involve or use personal information in any way.

*They are extensively used online and have become part of the fabric and make-up of what has made the internet work so effectively for you and the owners of the websites you visit. Without cookies many areas of functionality for example, user logins, shopping baskets and other customisation features will not work.*

- **Is it just about cookies?**

- Describe other technologies that are used with email marketing. Examples might include:
- Flash Locally Stored Objects (eg 'Flash' cookies) – these follow the same principle as normal standard cookies in the respect that they allow information to be stored on a user's machine.
- Transparent GIF or web beacons – these mechanisms can be used to deliver a cookie to your browser. They can also be used in email marketing to identify to the sender if an email has been opened.

- **Controlling Cookies**

Describe how it is possible to prevent, delete and control cookies on your computer by using the relevant settings within your browser options etc. Explain how this may affect the overall experience with the website.



## 4. What are our responsibilities?

Describe the need to provide transparency to consumers and signpost to the revised law.

- **What is our policy as a business?**  
Explain to consumers what your approach is to providing transparency and protecting privacy.
- **How do we use cookies on our website?**  
Describe first and third party cookie usage within your advertising, analytics activities etc. Describe the affiliate marketing model briefly, being clear about advertising and sales revenues. It is important to keep this information easy-to-understand for the average internet user.
- **Information about the cookies used**  
There are many examples available on the internet to provide assistance on how this can best be formatted. You might use a simple table providing clear information including how long the cookie lasts. Something like:

Cookie Name	Purpose, characteristics and privacy	How to delete and prevent
XYZ-adv	This is a first party cookie which is used to ensure that we are able to provide users with / track advertising etc...  The information stored does not include any personal data. It includes anonymous identifiers.	Describe how the cookie can be deleted, blocked and provide any opt out functionality (e.g. links)
Web beacon or clear gif (web)	This is a blank image that can deliver a tracking cookie to a web browser	If you have blocked cookies, the web beacon will not deliver the cookie.
Web beacon or clear gif (email)	This blank image tells the sender of the email that the recipient has opened the email.	Images can be disabled in the email program. In most cases, open tracking is disabled by default in the email program: you would need to enable images to allow this type of tracking to work

Third party solutions may need to be summarised, perhaps with a short section for each provider, eg:

**Name of Provider:** Example X

**Description of Cookies:** Example X tags are used by our advertisers to measure the effectiveness of their online marketing campaigns and to provide anonymous transaction data.

**Privacy / deleting cookies:** You can read more about Example X here.

## 5. Further Information

Keep up to date with evolving developments regarding cookie compliance via these links:

- DMA - <http://www.dma.org.uk/toolkit/countdown-cookie-compliance>
- IAB - <http://www.iabuk.net/blog/tackling-the-eprivacy-conundrum>
- IAB Consumer Transparency Framework - <http://www.iabuk.net/about/press/archive/iab-amc-publishesconsumer-transparency-framework>
- DMA How to guide 10 step overview guide to managing cookies - [http://www.dma.org.uk/sites/default/files/PDF/Cookies/10\\_Step\\_Cookie\\_Guide.pdf](http://www.dma.org.uk/sites/default/files/PDF/Cookies/10_Step_Cookie_Guide.pdf)
- DMA How to guide mobile and cookies legislation - <http://www.dma.org.uk/toolkit/how-guide-mobile-and-cookies-legislation>
- The ICO's latest guidance on cookies - [http://www.ico.gov.uk/for\\_organisations/privacy\\_and\\_electronic\\_communications/the\\_guide/cookies.aspx](http://www.ico.gov.uk/for_organisations/privacy_and_electronic_communications/the_guide/cookies.aspx)

# About the DMA

The Direct Marketing Association (DMA) is Europe's largest professional body representing the direct marketing industry. With a large in-house team of specialists offering everything from free legal advice and government lobbying on direct marketing issues to research papers and best practice, it is always at the forefront of developments in the industry.

The DMA protects the direct marketing industry and consumers. It promotes the highest standards through self-regulation and lobbies against over-regulation. The DM Code of Practice sits at the heart of everything we do – and all members are required to adhere to it. It sets out the industry's standards of ethical conduct and best practice.

Our 16 DMA Councils/Board Committees cover the whole marketing spectrum – from the digital world of social media and mobile marketing to the 'real' world channels of door drops and inserts. The Councils are made up of DMA members and regularly produce best practice and how to guides for our members.

We also have a packed calendar of conferences, workshops and discussions on the latest topics and best practice, and 80% of them are free for members and their staff.

As the industry moves on so do we, which is why we've recently launched a number of new services for our members – a VAT helpline, a Social Media Helpdesk and a Pitch Protection Service.

Visit [www.dma.org.uk](http://www.dma.org.uk) regularly to keep up to date with all our services.



# About IAB

The Internet Advertising Bureau (IAB) is the trade association for digital advertising. With over 700 members, it's run for the leading media owners and agencies in the UK internet industry. Online is an exciting and fast-growing medium and our job at the IAB is to work with members to ensure marketers can identify the best roles for online and the emerging mobile market, to help them engage their customers and to build their brands. Through the dissemination of research and the organisation of regular events, we aim to put digital on the agenda of every marketer in the UK, acting as an authoritative and objective source for all internet advertising issues whilst promoting industry-wide best practice.

Visit [www.iabuk.net](http://www.iabuk.net) for more information.





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