



Rt Hon Jeremy Wright QC MP  
Fourth Floor  
100 Parliament Street  
London  
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02/08/2018

Dear Mr Wright,

The DMA is concerned by the lack of focus on direct marketing during negotiations for the ePrivacy Regulation. The Government should assess the scope and implications of article 16 and its related recitals (32 to 35) and definitions (article 4.3 (f) and (h)).

Advertising and marketing are at the heart of the UK economy and play a vital role in driving economic growth. Annual UK exports of advertising services are worth £4.1 billion and every £1 spent on advertising returns £6 to the economy, resulting in £120 billion to UK GDP.

The underlying pillar of the direct marketing industry is consumer trust, fuelled by transparency and consumer control over their privacy and data. Trust in an organisation is the main driver for consumers to share their personal data with a company<sup>1</sup>.

The below issues related to direct marketing and article 16 should be discussed further to avoid any duplication with the GDPR and to ensure a well-balanced text for consumers.

1. The **definition of direct marketing communications** (art. 4.3(f)) should be aligned with the industry practice and defined by the two cumulative elements of being send or directed (**not presented**) to particular individuals (**not a broad group**), thus excluding display advertising from the definition, regardless of the context in which the display advertising take places.
2. The ability for organisations to **communicate with their existing clients** (art. 16.2a) about similar products and services is essential. At the same time, ePrivacy already provides that individuals have control at any time over the communications they receive. Engagement of a customer with its brand can take multiple forms other than the purchase of a product or a service. Additionally, each product has a different purchase cycle and is linked to a different marketing strategy<sup>2</sup>. The opportunity to develop national rules on time limitation would fail the objective of harmonisation of the single market.

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<sup>1</sup> Source: Global data privacy: What the consumer really thinks, May 2018, <https://www.fedma.org/wp-content/uploads/2018/05/Global-data-privacy-report-FINAL.pdf>

<sup>2</sup> Whether a customer purchases a three-year magazine subscription, a new car, or a piece of clothing, brands will communicate with their customer on a completely different timeline. The magazine may only engage with its customer after a three-year period for the

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3. Applying a common **specific prefix number** (art. 16.3a) to all marketing calls would prove to be challenging to implement and require disproportionate effort while providing little added value for individuals<sup>3</sup>. Most European countries already have in place mechanisms enabling individuals to object to telemarketing such as Telephone Preference Services or Robinson lists, while others require the data subject's consent prior to placing a call.
4. The distinction between a voice-to-voice call and an automated call should be whether the recipient receives a call from an individual and has the possibility to interact with them, regardless of the technology used to initiate the call. **Automated calling systems** (art. 4.3(h)), such as predictive dialers, are a technology broadly used in Europe, connecting callers to the person called, enabling a voice-to-voice interactive conversation, where the user can express their preferences. Definitions and provisions in the ePrivacy Regulation should reflect this approach.
5. In the UK B2B marketing can be sent without prior consent so long as a clear opt-out is offered in the communication. Requiring UK businesses to ask for consent would severely restrict businesses ability to attract new customers. This would have a negative impact on the UK economy. It would also be anti-competitive as larger businesses already have many existing clients on their databases and are therefore more likely to have consent to send marketing compared with SME's. Clarification is needed that the Council does not intend to require consent for B2B marketing.
6. Currently, the existing customer soft opt-in is not available for charities and their donors under PECR. This unfairly prevents charities from communicating with their donors as organisations in the private sector do. The soft opt-in for existing customers should be extended to donors.

The DMA believes there needs to be more time dedicated to discussions on direct marketing to ensure the text is balanced between the privacy rights of individuals and securing a strong digital economy.

I would be happy to meet with you to discuss the issues raised in this letter.

Yours sincerely,

Chris Combemale

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renewal of its subscription, while the fashion brand will have new products to present to its customer on a more regular basis.

<sup>3</sup> Telemarketing calls with a prefix number can be blocked at the telecom operator level. This can lead to situations where calls to an individual having given his/her consent to be called, or having explicitly requested to be called back by an organisation cannot be connected.

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