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Get your legal permissions right at the start

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Top-ranked in
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Coming up

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- Email permission rules reprise
- Some key cases
- Tick box wordings
- Predictions



UK email permission rules- where to find them

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- The legal rules are in the **Privacy and Electronic Communications (EC Directive) Regulations 2003**
- *The code rules are in the "**CAP**" **British Code of Advertising, Sales Promotion and Direct Marketing***
- Also check out the **ICO Guidance** (www.ico.gov.uk)



UK email permission rules-the default rule

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- Default rule for unsolicited marketing emails ("UMEM")
- **"Prior opt-in" (my phrase)**
- In other words.....
- **a person wanting to send or instigate the sending of UMEM ("Sender") cannot do so....**
 - *unless* the recipient has previously notified the Sender that he/she....
 - **consents for the time being to the Sender sending him/her UMEM**



Exceptions to Prior opt-in #1

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1. "B2B"

- UMEM to employees of limited companies or limited partnerships where the UMEM is promoting business products



Exceptions to Prior opt-in #2



2. "Customer soft opt-in" or "CSOI"

- recipient's email address ("EMA") was supplied to the Sender when recipient was buying or negotiating to buy from the Sender
- *a simple, free opt-out opportunity was given and not taken up*
- the future UMEM is only sent by the Sender and
- *only promotes Sender's "similar" goods/services*



Exceptions to Prior opt-in #3

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3 "Corporate emails"

- Prior opt-in rules do **not** apply to UMEM unless sent to an individual's EMA
- So no Prior opt-in needed for e.g. UMEM sent to info@osborneclarke.com



Exceptions to Prior opt-in #4



4 "Service messages"

- Prior opt-in *only* applies to unsolicited emails if they are sent for direct marketing purposes
- *So emails sent for "service" reasons are exempt*
- But beware fake "administrative" messages



Three other key permission points



- 1 All legal/code rules here apply also to marketing texts/MMS to mobiles*
- 2 All UMEM must include a valid address to which the Recipient may send a request that such communications cease*
- 3 UMEM to EU Recipients outside UK? Opt in/out laws of Recipient's country apply*



Key case #1

Direct Line Loans/ ASA-

October 2009



- SMS to complainant's mobile:
 - Borrow up to £750 into your account today. Visit www.wepay2day.co.uk or to opt out text "0"
- *Complainant #1 said they had not previously opted in to receive these messages from DLL*
- Complainant #2 said they had followed opt out instructions but still got SMS from DLL
- *DLL: "trying to receive info necessary for our response"*
- **ASA: Complaint upheld**



Key case #2

Moviechoices.com ("M") ASA 2004

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- M bought 216,000 "opt-in consent" EMAs from a company's liquidator in good faith
- How opt-in consent was obtained was not checked
- Recipient of M's UMEM said he never opted in
- M had no proof he did
- **Verdict: complaint upheld-
no prior explicit consent**



Key case #3

Carphone Warehouse ("CW")

ASA 2004

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- List provider used by CW obtained data from lifestyle survey where respondents invited to insert mobile phone number against
- *"Some reputable companies may prefer to communicate offers to you on your mobile phone"*
- Respondent received unsolicited CW sms and complained
- **Verdict: complaint rejected. CAP Code "prior explicit consent" rule satisfied**



Key case #4

ING Direct/ASA 2008

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- Sample **newsletter** ("NL") in ING mailing
- *"We currently have you recorded as having opted out of receiving marketing promotions. If you'd like to change this decision please call."*
- NL: newsletter was not marketing/promotional but ING product info
- ASA: NL=marketing. Sending to opt-outers breached CAP Code (43.2.c)
- **Verdict: Complaint upheld**



Tick box wordings that work?

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- *We'd like to pass your details on to other companies so that they can send you online offers too. If you agree to this, tick here []*



Tick box wordings that work?

#2

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- *[] By submitting this registration form, you will be indicating your consent to receiving email marketing messages from us about our offers **unless** you have indicated an objection to receiving such messages by ticking the above box*



Tick box wordings that work?

#3

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- By registering with Bloggs pizza, we'll remember who you are, saving you the hassle of giving us the same information next time you order
- Personal details: [*Name and telephone number*]
- Delivery details [*postal address*]
- Email details [*email address*]
- **If you would like us to contact you about new offers, please tick this box []**



Email marketing permissions- predictions

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- No big changes to EU UMEM laws any time soon
- *Changing of guard at ASA/ICO and greater ICO powers may see more enforcement by ICO*
- Complaints about UMEM to ASA will continue to increase, so...
- *Email marketers will need to be ever more aware that disclosures and options given on acquisition of EMAs are key...*
- to ability to being able to make maximum use of EMAs for UMEM



Any questions/further
information?

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