



Media and Privacy

Opt-in/Opt-out Regulations in major world markets produced by the members of the Lucerna Iuris Legal Network

An executive summary of the opt-in/opt-out regulations for major direct marketing media channels for use in selecting media channels and compliance with legal and self-regulatory requirements.

MEDIA AND PRIVACY - EXECUTIVE SUMMARY OF OPT-IN/OPT-OUT REGULATIONS WORLD-WIDE

This Executive Summary is intended to provide especially the marketing staff with a “quick reference tool” to reach some preliminary decisions on off-line direct marketing channel choices when planning a multi-national campaign, or contemplating targeting a market in a new country. It focuses solely on the media with respect to which there are privacy implications.

This Summary has been compiled as a result of the Lucerna Iuris network’s experience that marketing planners and business development staff frequently need a “quick glance broad overview” of a market’s legal restrictions on data and media use, and especially out of the marketer’s need to understand, at least on a broad brush and preliminary basis, where she may send email offers.

This is a snapshot on the state of the regulation in this area taken from a very high level, without the granularity necessary for final decisions. **THIS IS NOT FORMAL LEGAL ADVICE. IF CAMPAIGNS ARE ANTICIPATED WHICH COULD EXPOSE THE COMPANY’S BRAND TO INJURY IF MISHANDLED, WHETHER FROM THE CONSUMER’S PERSPECTIVE OR THE REGULATOR’S, LOCAL LEGAL ADVICE SHOULD BE OBTAINED.**

The core of this work has been provided by the colleagues of Lucerna Iuris, an international affiliation of distinguished lawyers from throughout the European Union and the United States. The Editor has based the additional information on countries outside the European Union on his own research and the generosity of colleagues from numerous direct marketing associations and law firms world-wide. We believe this information is accurate as of June 1, 2009. Where there is no information, it is because we do not have an authoritative source of information there and we most definitely welcome contributions and participation from knowledgeable persons. Such contributions, as well as recommendations for improvement and corrections should be sent to Editor@prescottreport.com. Subsequent editions of this work will acknowledge all contributors.

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A BRIEF COMMENT ON TERMINOLOGY:

Where the terms “opt-out” or “opt-in” are employed, this indicates there is a statute or regulation that either mandates offering an individual the ability to “opt-out” of being contacted for marketing purposes through this medium or mandates that no marketing approach through that medium may be conducted without an individual’s express consent. Where we refer to “Self-regulatory opt-out or opt-in”, this indicates that industry has imposed notice and opt-out acceptance or opt-in requirements on itself.

“DNC” means “do not call list” and is the list of phone numbers which a market participant should not call for marketing purposes. These are self-regulatory obligations imposed voluntarily through an industry organization unless indicated as “Mandatory DNC”, in which case a statute or regulation makes use of the list mandatory.

“B to B” indicates business to business communication. “B to C” indicates business to consumer. The issue of what is a business and whether home-based and small businesses should be treated as “consumers” for purposes of DNC may vary from country-to-country, with the UK having established the first Mandatory B to B DNC list.

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	E-mail		Telemarketing		Direct mail	Fax	
	B to B	B to C	B to B	B to C		B to B	B to C
NORTH AMERICA							
CANADA	Self-regulatory Opt-out	Self-regulatory Opt-out		Mandatory DNC List	Self-regulatory Opt -out	Self-regulatory Opt-out	
UNITED STATES	Opt-out	Opt-out		Mandatory DNC List	Self-regulatory Opt -out	Opt-in	
MEXICO	Opt -out	Opt-out					
SOUTH AMERICA							
ARGENTINA	Self-regulatory Opt-out	Self-regulatory Opt-out	Self-regulatory Opt-out	Self-regulatory Opt-out		Self-regulatory Opt-out	
BRAZIL							

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	E-mail		Telemarketing		Direct mail	Fax	
	B to B	B to C	B to B	B to C		B to B	B to C
WESTERN EUROPE							
AUSTRIA	Opt-in	Opt-in	Opt-in	Opt-in	Self-regulatory Opt-out list	Opt-in	Opt-in
BELGIUM	Opt-in	Opt-in	Opt-out	Self-regulatory DNC list	Self-regulatory Opt-out list	Opt-in	
DENMARK	Opt-in	Opt-in	Opt-out DNC list	Opt-out DNC list	Self-regulatory Opt-out list	Opt-in	Opt-in
FINLAND	Opt-out	Opt-in	Opt-out	Opt-out	Self-regulatory Opt-out list	Opt-out	Opt-in
FRANCE	Opt-out	Opt-in	Opt-out	Opt-in	Self-regulatory Opt-out list		Opt-in
GERMANY	Opt-in	Opt-in	Opt-in	Opt-in	Self-regulatory Opt-out list	Opt-in	Opt-in
GREECE	Opt-in	Opt-in			Self-regulatory Opt-out list	Opt-in	Opt-in
ICELAND	Opt-in	Opt-in	Opt-out	Opt-out	Self-regulatory Opt-out		
IRELAND	Opt-in	Opt-in			Self-regulatory Opt-out list		
ITALY	Opt-in	Opt-in	Opt-in	Opt-in	Opt-out	Opt-in	Opt-in
LUXEMBOURG	Opt-out	Opt-in			Self-regulatory Opt-out		
NETHERLANDS	Opt-in	Opt-in	No regulation	Mandatory DNC list	Self-regulatory Opt-out list	Opt-in	Opt-in

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	E-mail		Telemarketing		Direct mail	Fax	
	B to B	B to C	B to B	B to C		B to B	B to C
WESTERN EUROPE (cont.)							
NORWAY	Opt-in	Opt-in	Opt-out	Mandatory DNC list	Mandatory DNM list	Opt-in	Opt-in
PORTUGAL	Opt-out	Opt-in	Opt-out	Opt-in	Self-regulatory Opt-out list	Opt-out	Opt-in
SPAIN	Opt-in	Opt-in		Opt-in	Self-regulatory Opt-out list		
SWEDEN	Opt-out	Opt-in	Opt-out	Mandatory DNC list	Mandatory DNM list	Opt-out	Opt-in
SWITZERLAND	Opt-in	Opt-in	No regulation, but Self-regulatory Opt-out	No regulation, but Self-regulatory Opt-out	No regulation, but Self-regulatory Opt-out	No explicit regulation, opt-in should be assumed	No explicit regulation, opt-in should be assumed
UNITED KINGDOM	Opt-out	Opt-in	Mandatory DNC list	Mandatory DNC list	Self-regulatory Opt-out list	Self-regulatory Opt-out list	Opt-in

The diversity of approaches to the regulation of commercial messaging in different media in the European Union is quite remarkable. At least with respect to e-mail, telephone, mobile and fax, the Directive **2002/58** on Privacy and Electronic Communications established the basic principle of prior consent for electronic commercial messaging to individuals. Or so it was thought. In the process of producing implementing legislation, the Member States have in some important instances come to widely divergent interpretations of that Directive. The differences are most stark in Central Europe, Spain, and Italy, where consent to direct marketing approaches are more likely to require prior affirmative consent, as for example in Italy where consent is needed for the use of a name and address, as in sending a mail piece.

Another important “prior consent” exception to a marketing email provided for in the Directive was a message advertising “same or similar” goods or services to those sold in the transaction in which the merchant obtained the email address. This is often referred to as the “soft opt-in”.

Spain has said the articles in question must be of the identical type, i.e., if a shirt was the first transaction, the email may not offer other clothing. Other countries, such as the Netherlands, have been much more flexible.

One can generally expect, however, that the approaches to this subject within the 27 members of the European Union are fairly similar. Norway, Iceland and Switzerland are not members of the EU. Switzerland is, compared with EU Member States, quite non-restrictive, which may be due to widely spread self-regulatory solutions.

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	E-mail		Telemarketing		Direct mail	Fax	
	B to B	B to C	B to B	B to C		B to B	B to C
EASTERN EUROPE							
BULGARIA							
CZECH REPUBLIC	Opt-in	Opt-in	Opt-in	Opt-in	Opt-out	Opt-in	Opt-in
HUNGARY	Opt-in	Opt-in	Opt-out	Opt-out		Opt-out	Opt-out
POLAND	Opt-in	Opt-in	Opt-in	Opt-in		Opt-in	Opt-in
ROMANIA							
RUSSIA							
SLOVAKIA	Opt-in	Opt-in	Opt-in	Opt-in		Opt-in	Opt-in
SLOVENIA							

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	E-mail		Telemarketing		Direct mail	Fax	
	B to B	B to C	B to B	B to C		B to B	B to C
ASIA/PACIFIC							
AUSTRIA	Opt-in	Opt-in		Opt-out DNC list	Self-regulatory Opt-out list	Opt-out	
CHINA	Opt-in	Opt-in					
HONG KONG	Opt-out	Opt-out		Opt-out	Opt-out		Opt-out
INDIA							
JAPAN	Opt-in	Opt-in	No regulation	No regulation	Self-regulatory Opt-out		
MALAYSIA	Opt-out	Opt-out	Opt-out	Opt-out	Opt-out	Opt-out	
NEW ZEALAND	Opt-in	Opt-in	Self-regulatory Opt-out	Self-regulatory Opt-out	Self-regulatory Opt-out	Self-regulatory Opt-out	
SINGAPORE	Opt-out	Opt-out		In-house suppress			
SOUTH KOREA	Opt-out	Opt-out					
TAIWAN	Opt-out	Opt-out	Opt-out	Opt-out	Opt-out	Opt-out	
THAILAND							

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	E-mail		Telemarketing		Direct mail	Fax	
	B to B	B to C	B to B	B to C		B to B	B to C
MIDDLE EAST & AFRICA							
ISRAEL	Opt-out	Opt-out					
SOUTH AFRICA	Opt-out	Opt-out					

LUCERNA IURIS

Expertise

Lucerna Iuris is the first European network of lawyers specializing in data protection, telecommunications, and marketing law.

This alliance of leading lawyers provides specialised services in data protection and privacy law, and all aspects of direct marketing, distance selling, sales promotion and general commercial activity.

Businesses increasingly operate on an international, if not even global, scale. Consequently, it is imperative to efficiently coordinate personnel and policies in multiple jurisdictions while respecting the distinct rules in each. This is why using legal experts with both international and local knowledge and experience is essential for businesses of all sizes. Moreover, businesses can realize important consistency in approach and cost and operational efficiencies by looking to an integrated network of lawyers for advice in multiple jurisdictions.

Lucerna Iuris offers a unique solution to companies by providing them with an international platform coupled with strong local presences.

Activities

Lucerna Iuris offers legal assistance, conferences and seminars, newsletters and booklets, and is able to deal with all types of international cases, from the most straightforward to the most complex, within your timescale.

Our United States Affiliate

We recognize that our US clients often require assistance in numerous of our locations. Therefore, we have affiliated Charles Prescott, admitted in California and New York, to act as a single point of contact and transmission for those clients wishing to have one contact point with us all. Mr. Prescott's twenty years experience as in-house counsel for companies with world-wide operations provides him with interpretative and counseling skills of a unique order.

MEDIA AND PRIVACY – EXECUTIVE SUMMARY OF OPT-IN/OPT-OUT REGULATIONS WORLD-WIDE

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	Spohn Richter & Partner Rechtsanwälte OEG is an Austrian law firm, founded in 2000. The office in Vienna is specialized in Austrian and European data protection and direct marketing law as well as trade and intellectual property law. We deliver our legal advice to both non-profit organizations/companies and private clients. We also work in constitutional, administrative, environmental and real estate law, and since 1998 we are very much engaged in restitution matters and legal questions concerning museums.

MEDIA AND PRIVACY – EXECUTIVE SUMMARY OF OPT-IN/OPT-OUT REGULATIONS WORLD-WIDE

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	The firm was founded in 1992 by Michael Siegert, former legal adviser of the German Direct Marketing Association, and is highly specialized in the fields of German data protection and direct marketing, competition law, intellectual property law, telecommunication and internet law. On the international level, the firm focuses on data protection and privacy issues. The lawyers have wide experience in the EU data Protection laws as well as the Eastern European Legislation, the US Safe Harbor and most Asian laws.

MEDIA AND PRIVACY – EXECUTIVE SUMMARY OF OPT-IN/OPT-OUT REGULATIONS WORLD-WIDE

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	<p>Studio Legale Maglio & Partners, founded in 2001, is a leading Italian law firm providing specialized services in marketing law, data protection and privacy law, covering all legal services related to direct marketing, distance selling and in general to companies activity. The main seat is in Milan but the firm has offices in Rome, Turin, Bologna. Studio Maglio & Partners offers its expertise also in the fields of contractual law, misleading advertising and intellectual property. The law firm also is experienced in supporting multinational companies in their commencement of activities in Italy by helping the client to understand the market and to find suppliers and partners.</p>

MEDIA AND PRIVACY – EXECUTIVE SUMMARY OF OPT-IN/OPT-OUT REGULATIONS WORLD-WIDE

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	<p>Singewald Consultants Group, BV specialises in data protection, telecommunication law and commercial communication. We possess the necessary background, expertise, and practical experience to be able to deliver sound (legal) advice and solutions. We work with a wide number of renowned organizations and companies that seek our expertise particularly regarding legalities relating to data processing in general, and more specifically database marketing. The fact that we represent a diverse range of organisations and companies reflects our ability to be able to offer our services in various fields and application that may be relevant to data protection. We provide our customers with the legal advice they need and actively aid them in procuring viable solution.</p>

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	<p>PLMJ is a full service law firm with a dynamic team of professionals and a history of exceptional quality and personal service in the constant pursuit for excellence. It is Portugal’s largest law firm. At present, PLMJ has 45 partners and 39 senior associates out of a total of more than 175 qualified lawyers, as well as a large number of trainees and paralegals. Besides our head office in Lisbon, we have branch offices in Porto and Faro. We also have offices abroad in Brazil, Angola, Mozambique and Macao (in joint ventures with leading local firms). Our TMT department is the market leader with significant experience in data protection, IT, Media and Telecom issues.</p>

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	Landwell is the worldwide tax and legal services department within PwC, covering all needs of companies, business and governments related to tax and legal advice. Specifically in the field of information technologies law, Landwell Spain has the top team in Spain. This team includes more than 20 professionals fully specialized in all matters related to IT Law, including data protection, telecommunication law and commercial communication, e government, e commerce and e business, electronic signatures and invoicing, e procurement, intellectual and industrial property, digital convergence and IT litigation.

MEDIA AND PRIVACY – EXECUTIVE SUMMARY OF OPT-IN/OPT-OUT REGULATIONS WORLD-WIDE

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	CMS von Erlach Henrici AG is the Swiss member of the pan-European CMS organization of independent lawfirms, comprising 2400 lawyers in over 50 locations throughout Europe. We are a full service firm. Our IP/IT Group advises major players and SMEs in Switzerland, Europe and the US, in matters of data protection, marketing, outsourcing, all aspects of TMT (including e.g. TV broadcast law), patent, trademark and copyright law, and with a strong practice in pharma law (advertising and regulatory).

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	<p>Charles Prescott has over thirty years' experience in commercial, securities, intellectual property, marketing, and non-profit law, as well as law firm, in-house corporate, and association work. He maintains a private practice focused on privacy, postal, marketing and international market development law. He represents his several constituencies in numerous US government and international bodies, including the US Department of Commerce, the State Department, the International Chamber of Commerce and the Universal Postal Union. He has served on the Board of Directors of FEDMA (Federation of European Direct and Interactive Marketing). Currently he represents the Global Envelope Alliance at the Universal Postal Union where he is Chairman of the Consultative Committee, which consists of private sector associations and organizations with interest in the international postal network, including competitors, customers of and suppliers to the posts world-wide. He also serves on Industry Technical Advisory Committee 5 to the U.S. Department of Commerce, which advises the government on international trade agreements; he is also on a similar committee which advises the State Department on postal matters. He is formerly the Vice President, International, at the US Direct Marketing Association.</p>