

Briefing on the Netherlands changing Telecommunication Law, October 1, 2009

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.

In the Netherlands the mandatory Do-not-call register will be introduced by October 1, 2009. Also on this date the opt-in regime for b-to-b email will be introduced.

OUTBOUND TELEMARKETING

Outbound telemarketing

If an advertiser calls prospects he/she is obliged to use his/her own Robinson List and the mandatory Do not call register. If an advertiser calls his/her clients (everybody whom he/she received the contact details in the context of a sale) he/she only has to use his/her own Robinson List.

Scripting

In every outbound call the advertiser or the used call center has to offer the Robinson List of the advertiser and the opportunity to enrol the Do not call register. This must be offered in every outbound call to prospects and clients.

If a data subject wants to be registered in the Do not call register the advertiser/call center has to transfer the phone number and other details within 10 days to the Do not call register.

Do not call register

The Do not call register has several licenses to deduplicate. There is a marker licences: an advertiser uploads his/her file with telephone numbers to the Do not call register and will receive his/her file with indications if there is a blocking. A file with telephone numbers can be used for four weeks. After file may be used for four weeks, if after four weeks not every number is phoned the rest should be deduplicated again.

For an advertiser that calls in 12 months more than 500.000 prospects (definition earlier) the cost of the use of the Do not call register is € 19.000,- (excl VAT) per year.

Supervisory Authority

The OPTA is the supervisory authority. The can impose fines up to € 450.000,- or other administrative order such as compliance orders. They do have even

the possibility to temporarily close down an organisation involved in outbound telemarketing.

The OPTA will monitor the use of the Do not call register and the offering of the Robinson List and the Do not call register in every outbound call, strictly. Even advertisers outside the Netherlands that do outbound telemarketing into the Netherlands are obliged to use the Do not call register.

B-to-b implications on outbound telemarketing

Independent workers (small offices/home offices) can also register in the Do not call register. So the Do not call register must also be used on the business-to-business market.

B-TO-B E-MAIL

On October 1, 2009 also the prior consent for b-to-b e-mail comes into force. That means that b-to-b e-mail only is allowed with prior consent. If the e-mail address was collected in the context of a sale an advertiser is allowed to use it for offering own similar products or services, if at the moment of collection the right to block data was offered. But this was not an obligation so far.

One is also allowed to use e-mail addresses that were made public for receiving commercial e-mail . If the receiver of the e-mail is outside the European Economic Area the law of the country of the receiver is applicable.

If an advertiser doesn't have the consent and consent is needed he can use e-mail to ask for consent till October 1, 2009. After that it is not possible to ask for consent by mail. And consent means not a pre-selected opt-in but an opt-in to be selected, or any other way in which the data subject actively provides his/her e-mail address.

Also here OPTA is the supervisory authority and can fine up to € 450.000,-.

Background Singewald Consultants Group BV
(http://www.privacy.nl/english_summary)

Singewald Consultants Group BV, based in Aalsmeer, The Netherlands, is specialised in all matters pertaining to data protection and commercial communication. We possess the necessary background, expertise, and practical experience to be able to deliver sound (legal) advice and solutions. In particular, Singewald Consultants Group BV works with a wide number of renowned organisations and companies that seek our expertise in the field of the legal consequences of data processing in general, and more specifically database marketing. On the other hand, the fact that we can accommodate 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 solutions.

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