



FEDERATION OF EUROPEAN DIRECT AND INTERACTIVE MARKETING

PUBLIC AFFAIRS & SELF-REGULATION

20 October 2011

To

Mr. Jacob Kohnstamm  
Chairman of the Article 29 Working Party

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Dear Mr. Kohnstamm,  
Dear members of the Article 29 Working Party,

On the 11<sup>th</sup> of October your office kindly contacted FEDMA explaining there is some confusion regarding the letters in which FEDMA expresses concern about the implementation of the Online Annex to the FEDMA Code in the Netherlands. FEDMA was surprised to hear that the Dutch Telecoms Supervisor (OPTA) did not recognize these concerns, when contacted by your office. Both the Dutch Dialogue Marketing Association (DDMA) and the Confederation of Netherlands Industry and Employers (VNO-NCW / MKB Nederland) are in contact with OPTA, discussing her interpretation and application of the definition of consent for *e-mail* by the Dutch Telecoms Supervising Authority (OPTA) in recent cases and decisions. You will find these letters attached.

OPTA recently published a number of fines given to companies, presumably not operating in accordance with the Dutch Telecommunication Act. In the enclosed letters the industry explains that in one of these fines OPTA interprets the requirements for unambiguous consent in a matter contradicting the provisions of the FEDMA Online Annex, approved by your Working Party on 13 July 2010. OPTA states that in order for consent to be specific, it should be given separately for individual advertisers and offers. Whilst Privacy Law, the FEDMA Code and Dutch Civil Law do not prohibit freely and informed consent given at once for several data controllers, as long as these controllers are explicitly named or the categories/industries in which they operate are clearly stated., as mentioned in the Fedma Online Annex.

As a result of these differences in interpretation of the requirements for consent in e-mail between OPTA and the FEDMA Code, approved by your Article 29 Working Party, the Dutch e-mail and advertising industry is cramped. Advertisers do not provide e-mail suppliers with new orders, already resulting in decreased expenditure and chances on threats of bankruptcy of some suppliers.

FEDMA therefore stresses that it is counterproductive and inefficient to create Codes of Conduct at European level and get these approved by the Article 29 Working Party, if individual Supervisory Authorities in Member States apply these principles contrary to what is agreed upon by the industry and the Article 29 Working Party.

FEDMA would very much like to discuss this matter further with the Article 29 Working Party, making sure that there is a harmonised (explanation) interpretation of the provisions of consent for e-mail.

Yours sincerely,

Dieter Weng  
Chairman of FEDMA