

## **Consultation Response: Implementation of the Directive on Privacy and Electronic Communications**

I am writing to respond to this consultation as a private individual and the part-owner of a (very) small business, in order to put forward a small number of specific, and rather narrow, points.

### ***Customer Relationships***

It is fundamental to the concepts being discussed that solicited email, where the user has given informed permission, is not covered. It is only where the sender does not have this permission that the email is unsolicited and is then covered by the Directive and hence by the Regulations.

However, the discussion in Chapter six of “what is a customer relationship for e-mail marketing purposes” is quite bizarrely flawed. If the e-mail addresses have been “fairly collected” and people “given a chance to object” then this quite clearly meets the tests for informed permission. Hence the Directive will not apply.

What the discussion should have covered more carefully is where companies have collected the email addresses for operational reasons to provide a quotation or to discuss the possibility of a sale, but they have NOT given the customer an opportunity to object to the future usage of the addresses. This will be remarkably common and it is when these ancient “addresses on file” are used for future marketing that the email is truly unsolicited and indeed is likely to be quite unwelcome since the customer has chosen to go elsewhere.

The Directive has sets out the limits here very clearly and it is most unwelcome that the DTI seeks to soften this still further. There seems no reason for the DTI to condone incompetence by companies in seeking permission for processing email addresses by allowing them to use the exemption. Furthermore, it does not seem to me that the company would conform to the Data Protection Act by their unfair processing of the email address data prior to sending the communication.

In fact, when one looks at the Regulation 21(3) to see the list of tests that the sender must meet then condition (c) states that there must have been an opportunity to refuse permission. So this is in fact all fine, albeit entirely at variance with the discussion!

Sadly, what the Regulation does not do is to actually state that the recipient must not have refused permission! The requirement is solely to ask each time, not to take any notice of the response. This lacuna needs correction!

## ***Corporate entries in the Telephone Preference Service***

As someone running a small business I reject the notion that businesses are better placed to deal with direct marketing communications than an individual at home. Unless I hire a secretary specifically to filter communications I am in **exactly** the same position.

I would therefore fully support the so-called radical proposal (since when has the DTI treated common-sense as being radical) of allowing all businesses to make use of all of the available preference services.

I note the issue of business-to-business marketing and suggest that it should be dealt with by use of a quota. Viz: companies (not individual sales people) may make up to five phone calls a day to companies on the preference list without infringement. This would allow small companies to continue to tout for business “on the off chance” without incurring the expense of consulting the preference service registers. However it would make the registers of real value to everyone.

## ***Enforcement and Sanctions***

Although the IC has recently “got their act together” in going after fax marketeers who ignore the rules, this has been too little too late. A statutory minimum (of say £100) should be introduced in 27(1) so as to encourage individual actions against those who break the rules. If a company sends me an unsolicited communication despite my preference or my explicit refusals then there should be an encouragement within the system for me to take action directly rather than relying on an over-worked and under-funded bureaucrat in Wilmslow to get around to it.

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