

European Data Protection Law and Permission Marketing



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Christopher Kuner
Morrison & Foerster LLP, Brussels
ckuner@mofo.com

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Permission marketing raises many legal questions under European law

- What is meant by “permission marketing” (e.g., ad serving, e-mail advertising, WAP, etc.)
- When does EU law apply?
- Opt-in or opt-out?
- What about privacy policies?
- Transferring data outside the EU
- Developing a data protection compliance strategy

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When does European law apply?

- EU law generally applies in two situations:
 - If the processing is carried out in the EU and the “data controller” is established there;
 - If the data controller uses “equipment” in the EU for processing data.
- So:
 - EU law applies for EU-based data controllers
 - Also applies for non-EU web sites using “cookies”

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Opt-in or opt-out?

- In most cases, “unambiguous” consent is necessary for data processing, “explicit” consent for processing “sensitive” data
- Five Member States (Austria, Denmark, Finland, Germany, Italy) currently require opt-in
- Clear trend toward opt-in

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Is a privacy policy necessary?

- Not strictly necessary in a legal sense (European law applies anyway!)
- However, advisable for a number of reasons:
 - Likely to become standard in Europe
 - Demonstrates commitment to privacy
 - Can help sensitize company to privacy protection

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Transferring data outside the EU



- Transfer of personal data from the EU to third countries is restricted
- Implications (e.g.):
 - Servers located outside US
 - Transferring data to US for sending e-mails
- Solutions (e.g.):
 - Ensuring that EU users consent to transfer
 - Safe Harbor arrangement

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Data Protection Strategy for Permission Marketing



- Bring practices in Europe into compliance with applicable Member State law
- Perform risk management evaluation on practices outside the EU
- Ensure that contract partners (web sites) comply with certain minimum standards
- M-Commerce (WAP) presents special problems

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