

# PPA Data Protection Breakfast Briefing

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PPA June 2  
2005

# Health Warning!

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The information provided and the opinions expressed in this seminar represent the views of the presenters. They do not constitute legal advice and cannot be construed as offering comprehensive guidance to the Data Protection Act 1998 or other statutory measures referred to in the course of the presentation.

# Programme

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- ❑ Overview of the Data Protection Act and the Privacy and Electronic Communications Regulations
- ❑ Defining opt-in, soft opt-in and opt out
- ❑ Impact for Publishers
- ❑ The implications of non-compliance
- ❑ Managing your data processing
- ❑ Minimizing opt-outs
- ❑ Selling third party data
- ❑ Email Marketing best practice
- ❑ Emailing outside the UK – what data protection rules to apply
- ❑ Interactive question and answer session

# Overview of the Data Protection Act and the Privacy and Electronic Communications Regulations

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- ❑ ***The Data Protection Act 1998 (DPA) implements Directive (95/46/EC)***
- ❑ ***The Privacy and Electronic Communications (EC Directive) Regulations 2003 (PECR) implement Directive (2002/58/EC)***
- ❑ ***Processing of contact names in 'business lists' falls within the DPA but largely outside the PECR***
- ❑ ***Data subjects have the right to object to processing for the purposes of direct marketing (even for further direct marketing approaches by the data controller)***
- ❑ ***Consent is King!***
- ❑ ***Data subject access rights have to be upheld***

# Overview of the Data Protection Act and the Privacy and Electronic Communications Regulations

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- ❑ ***personal data*** means data which relate to a living individual who can be identified from that data
- ❑ ***sensitive data*** relate to ethnicity, politics, religion, trade union membership, health, sexual life, criminal offences/record
- ❑ ***individual subscriber*** includes consumers, sole traders, partnerships and employees of sole traders and partnerships (***but not employees of Limited companies, plcs and public sector***)

# Defining opt-in, soft opt-in and opt-out

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- ❑ Opt-in – Explicit Consent
- ❑ Opt-out – Implied Consent
- ❑ Soft opt-in –
  - Applies to PECR only
  - Permits communication with existing customers and those with whom you have an on-going two way dialogue concerning a prospective sale; information concerning similar products and services may be sent.

# Impact for Publishers

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- ❑ Audit all data within the organisation within all systems
- ❑ Establish ownership and how and when the data was collected
- ❑ Old and poorly permissioned data should be suppressed
- ❑ Review future data collection methodology

# Impact for Publishers

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- ❑ Establish a privacy policy that covers all data uses across all departments
- ❑ Consider how you will use and share data in the future and ensure that consent covers this activity
- ❑ Review internal and external data security
- ❑ Seek highest possible level of consent for future data collection

# The implications of non-compliance

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## □ Legal Penalties

- Fines
- Legal fees
- Prison
- Secondary action by employees

# The implications of non-compliance

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## □ Business at risk

- Brand damage
- Loss of reader trust
- Competitive disadvantage

# Managing your data processing

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- Data Security
  - Staff Access
  - Preventing identity theft
- Processing Contracts
  - Outsourced subscription processing
  - Outsourced List Management
- Export of data outside EEA
  - Model Contracts
  - Binding Corporate Rules

# Minimizing opt-outs

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- Use the tone of voice of magazine
- Fit the message to the readers/audience (age/demographics)
- Cover all future uses/channels to market
- Be clear about who is collecting the information
- Offer the right opt-out or opt-in
- Give them a reason to hand over information

# Minimizing opt-outs

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- Persuade
  - Incentivise
  - Bribe
  - Cajole
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- But never coerce!

# Minimizing opt-outs (Hard copy)

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Permission Magazine is part of Privacy Trust Group Ltd. Privacy Trust Group Ltd would like to use the information you provide on this card to contact you with information about other Privacy Trust Group products and services which we believe will be of interest to you, or to undertake market research in order to improve our products. If you would prefer not to receive such information, please tick this box

From time to time Privacy Trust Group Ltd would like to make your details available to third parties whose products and services we believe will be of interest to you. If you prefer not to receive such information, please tick this box

# Minimizing opt-outs (Hard copy)

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Please tick if you do not wish to receive

- business direct mail
  - telephone calls
  - emails
- from Privacy Trust Group Ltd

Please tick if you do not wish to receive

- business direct mail
  - telephone calls
- from other companies

Email address.....

Please tick if you are happy to receive emails from other companies

# Minimizing opt-outs (Telephone)

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“Permission Magazine is part of Privacy Trust Group Ltd. We may wish to contact you to get your feedback or to provide details of other products and offers from Permission Magazine and our sister companies. Would you have any objection to this? ”

# Minimizing opt-outs (Telephone)

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Persuade

“Are you sure? This means that we won’t be able to send you future special offers related to the magazine and other group products, are you happy with that?”

# Minimizing opt-outs (Telephone)

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Offer channel options

“ If you don't want us to email you, do you mind receiving offers by post?”

# Minimizing opt-outs (Telephone)

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Last ditch attempt...

“How about a renewal call as a reminder before this subscription runs out?”

# Minimizing opt-outs (Inbound)

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Recorded message on entry

“ In the course of your call we will need to make a note of your reader contact details. Permission Magazine is part of Privacy Trust Group Ltd. We may wish to contact you to get your feedback or to provide details of other products and offers from Privacy Trust Group and other selected companies. If you are not happy to receive such information please tell your operator during the call”

# Achieving opt-in (online collection)

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- ❑ The tick box is not the only mechanism for achieving consent
  - ❑ Clear notification followed by completion of address and submission achieves opt-in.
  - ❑ Allowing individuals to express preferences for how and what they receive communications about delivers positive results.
- “Complete your email address to receive our monthly newsletter and information from us and our partners about new products and services in your interest areas...”

# Minimizing Opt-outs (online)

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- ❑ Target your email accurately
- ❑ Ensure Relevance
- ❑ Do not attempt a hard sell
- ❑ Remember you are often interrupting
- ❑ Make the subject line compelling
- ❑ Make the content, information led
- ❑ Follow up with features and benefits
- ❑ Don't forget the call to action

# Minimizing opt-outs

## (Sensible privacy policies)

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- ❑ What you do with personal data (and what you do not do)
- ❑ Physical address of the Data Controller
- ❑ List of group companies
- ❑ Where personal data is held
- ❑ How personal data is handled/processed
- ❑ Policy on cookies
- ❑ Disclosures of data
- ❑ Subject Access arrangements
- ❑ Data security guarantees
- ❑ Links to other sites
- ❑ Contact address

# Minimizing opt-outs (Sensible privacy policies)

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## □ Sanity check

- Does the Privacy Policy reflect actual processing?
- Is it consistent with the permission statements?
- Is there a link on the data collection screen?

# Selling third party data

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- Terms and Conditions of rental
  - List warranties/fair collection guarantee
  - Seeding
  - Limitation of usage
  - Sample mailing pieces
  - Manager's terms and conditions
- MPS/TPS/CTPS cleaning
- Dealing with reader complaints
- Subject Access Requests

# Host Mailings (hard copy)

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- ❑ Non selective host mailings which go to recipients of a magazine are **generally** permitted without notification to the data subject

BUT

- ❑ Objectors must be suppressed
- ❑ Any selectivity based on personal data (male/female; job title splits) means that the data subject should be given an opt-out of third party contact when data is collected

# Email Marketing best practice

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- ❑ Be honest with your Data Subjects about how you intend to use their data. Avoid tricks and gimmicks.
- ❑ Have rigorous processes in place to comply with subject access requests and to suppress data at the request of the data subject.
- ❑ Ensure that your employees are clear about your obligations to your data subjects.

# Emailing outside the UK – what data protection rules to apply ?

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- ❑ Legally established in the UK only – follow UK interpretation of the legislation.
- ❑ Legally established in one or several European countries or Working with international agents/partners

Act Local!

# UK Interpretation

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- Mail opt-out
  - Telephone opt-out
  - Fax opt-out
  - Email soft opt-in
  - SMS opt-in
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- MPS – required for DMA members
  - FPS/TPS/CTPS legally required.

# Europe

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## Mail

- Mostly opt-out, exceptions:
- Italy/Slovakia/Slovenia/Cyprus/Malta/Denmark – opt-in. Except, where information is in the public domain.
- Consent for opt-in must be in writing.

# Recommendation

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- ❑ With the exception of Denmark and Italy and the new EU members an opt-out approach can be taken.
- ❑ In Italy, written consent can be achieved via the telephone.
- ❑ Most countries maintain Mailing Preference Services and this data should be used to suppress “do not mails”.
- ❑ Ensure that in-house suppression lists are kept and applied rigorously.

# Europe

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## Telephone

- ❑ Opt-out: Belgium/Czech Republic/ Finland/ France/ Hungary/ Ireland/ Netherlands/ Norway/ Portugal/ Germany B2B/ Greece
- ❑ Opt-in: Austria/ Denmark/ Germany B2C/ Italy (unless public domain)/ Poland/ Slovakia/ Spain/ Slovenia/ Romania/ Cyprus/ Malta

# Recommendation

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- ❑ Prior consent is always required when using automated diallers.
- ❑ Use local Robinson “do not call lists”
- ❑ Ensure that in-house suppression lists are kept and applied rigorously.
- ❑ When using a call centre outside the European Union, you remain the data controller, the laws still apply and can be enforced.

# Europe

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## Fax

- ❑ Opt-Out: / France B2B/ Germany B2B/
- ❑ Opt-in: All EU for B2C.

# Europe

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## Email

- ❑ Soft-opt in: Austria/ Belgium/ Czech Rep/ Denmark/ Finland/ France B2C/ Germany/ Hungary/ Ireland/ Netherlands/ Norway/ Poland/ Sweden/ UK B2C/ Portugal / Spain
- ❑ Opt-in: Romania/ Slovakia/ Slovenia/ Cyprus/ Malta/ Austria/ Italy/ Greece (Legal persons)
- ❑ Opt-out: France B2B/ UK B2B

# Recommendation

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- ❑ Adopt a strict opt-in policy for email prospect data across Europe.
- ❑ Existing customers and those with whom you have an ongoing two-way dialogue concerning a prospective sale can be mailed information concerning similar products and services.
- ❑ US company definitions of opt-in under the “Can Spam” Act may be insufficient.
- ❑ Beware the definition of a consumer in the UK, sole traders and partnerships are subject to soft opt-in.

# It looks so complicated...

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- ❑ It needn't be.
- ❑ The secret to an easy life and happy cross border communication lies in how you collect data.
- ❑ Notification and fair processing are the keys to collecting information across all EU states.
- ❑ Legislation is likely to tighten further.
- ❑ Review your data collection policies via all media now.
- ❑ Implement clear notification statements at each point of collection.
- ❑ Allow your customers and prospects to control and change their preferences.
- ❑ Allow them to opt-out of any and all forms of communication.

# Summary

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- ❑ The principles of Data Protection are just good database practice
- ❑ Readers are becoming more sensitive to the use of their data
- ❑ There are legal penalties and reputation risks
- ❑ Carefully worded statements will increase permissions
- ❑ Other European countries have different levels of protection

# Interactive question and answer session

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# Contact details

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***Free data protection newsletter***

***<http://www.opt-4.co.uk/subscribe.asp>***

***Go to [www.fedma.org](http://www.fedma.org) to download a copy of the European Code of Practice for the use of Personal Data in Direct Marketing***

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