

## MAILING PREFERENCE SERVICES USE INTERNATIONAL PERSONAL DATA CONTRACTS

*January 1st 1993 marked the start of Spain's Mailing Preference Service, and Spain expects later this year to sign the Paris Convention of Mailing Preference Services in Europe (MPSE) which Germany, the Netherlands and the United Kingdom signed in March 1991. The next countries expected to join are Italy and Ireland. The UK's MPS 1992 Annual Report states that Brazil has an MPS and Argentina, Venezuela and Chile are "showing interest."*

The direct marketing industry's message for the European Community and national Data Protection Authorities is that it is using its best efforts to achieve contractual self-regulation; a system which the industry hopes will satisfy the European Community's criteria for permitting transborder data flows to countries outside the EC (PL&B Dec'92 pp.4 and 10). But the policy makers will also be looking for evidence of use of the Convention in the USA and Canada and elsewhere when mailing into Europe.

### The MPSE pioneers

The Paris Convention (contractual arrangement) has now attracted its first adherents, companies which have agreed to respect the wishes of those who are *not* interested in receiving direct mail marketing (PL&B Winter 1990/91 p.8).

In the first five months of operation, four companies signed MPS contracts leading to the issue of MPS licences: Time Warner Publishing of Amsterdam were the first to complete the process in August 1992, closely followed by two New York companies, Raffoler, a computer bureau, and Printronic. In late 1992, they were followed by Data Services of Alexandria, Virginia, USA.

Time Warner was also the first company to receive an MPS Consumer File under a

contract between countries which are party to the Convention. Of course, bilateral contracts may be made between a company and MPS's in several EC member states. For example, late last year, UK-based Printronic International contracted to receive a consumer suppression list from France, Germany and the Netherlands.

In January 1993, the UK's MPS had 295,000 people listed as not wishing to receive direct mail and 10,000 who had requested that they wished to be added to direct marketing lists. Individuals requesting mailings may select certain categories, such as home and leisure, sport, children's products, clothing, financial services, travel and community services. Data which is more than three years old is deleted from the file, if it is found to be out of date.

### THE MAILING PREFERENCE SERVICE CONSUMER FILE

The UK consumer file is divided into three parts:

1. A suppression list of individuals registering a *wish to reduce* their promotional mailings
2. A list of *deceased persons*
3. A mailing list of individuals who register a *wish to receive mailings* within certain product categories.

### Express consent for export unnecessary

The MPSE has also overcome its first regulatory hurdle - in France. France's Mailing Preference Service, *Stop Publicité*, discussed the MPSE licensing system with the CNIL, France's Data Protection Authority. The CNIL, at first, said that all the consumers on the suppression file must give their express consent before the file could be exported. But *Stop Publicité* argued that that would lead to the creation of two suppression files, one for use in France and another for mailing into France from other countries. This scenario would create additional expense and would not significantly increase data subjects' rights.

After discussion with DPA's in other countries, the CNIL decided that the express consent requirement for data export was unnecessary.

#### UK law applies to international licences

MPS Chief Executive Kay Beckett explains that, "The mechanism is now in place for *any company worldwide* to receive a licence, the terms of which comply with the Paris Convention and ensure the necessary protection of the data issued on the Consumer File in accordance with the requirements of the United Kingdom's Data Protection Registrar." In effect, the system requires a company located outside the UK to comply with the UK's Data Protection Act *as if it were located in the UK*.

International licences are issued on payment of £250 plus annual post and packing costs and a signature confirming agreement with the terms of the licence. The appropriate trade associations in the licensee's country are advised as a matter of courtesy when a licence is issued.

The availability of the MPS Consumer File to other countries enables companies which wish MPS to clean UK lists and databases in their own country, to do so both for their own purposes and on behalf of clients.

#### The Consumer File licence terms

A company signing an MPS international licence makes certain promises including:

##### Licensee undertakings (Article 4)

- The Licensee shall ensure that it *complies with the Data Protection Act 1984* and that it shall process all data held on the MPS Consumer File in accordance with this Act.
- The Licensee shall ensure compliance if and where appropriate, with the current *Codes of Practice* in force from time to time.
- The Licensee shall permit the Licensor to *enter its premises in order to audit or otherwise monitor* the management of the MPS Consumer File at any time during the term of this agreement.

##### Confidential information (Article 5)

- The Licensee acknowledges that the *MPS Consumer File contains confidential information* of the Licensor and all copyright, trade marks and other intellectual property rights in the MPS Consumer File are the exclusive property of the Licensor.
- The Licensee shall *not copy* the whole or any part of the MPS Consumer file.
- The Licensee shall *not modify, merge or combine* any part of the MPS Consumer File with any other list which the Licensee may have.
- The Licensee shall *not assign, transfer, sell, lease, rent charge or otherwise deal in* or encumber the MPS Consumer File or any version of it nor use on behalf of or make available the same to any third party.
- The Licensee shall *keep confidential* the MPS Consumer File and limit its access to those of its employees, agents and subcontractors who have a need to know or are engaged in the use of the Consumer File.
- The Licensee shall take all such steps as shall from time to time be necessary to protect the confidential information of the Licensor and that all intellectual property rights therein are the property of the Licensor. The Licensee shall take all such steps as shall be necessary to *ensure compliance by its employees, agents and subcontractors* with the provisions of this clause 5.

##### Law (Article 9)

- This agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the *exclusive jurisdiction of the English Courts*.

**Privacy Laws & Business acknowledges the help given by Kay Beckett, Chief Executive, Mailing Preference Service & Co-ordinator for MPSE, 1, Leeward House, Plantation Wharf, London, SW11 3TY, UK.**

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