

DIRECT MARKETING ASSOCIATION DRAWS UP FRANCE'S FIRST SECTORAL CODE OF CONDUCT

After nine months of negotiations with France's Data Protection Authority, the Commission Nationale d'Informatique et Libertés (CNIL), the representatives of the direct marketing industry, grouped within the Union Française du Marketing Direct, have drafted and signed a Code of Conduct for Direct Marketing, which was made public on 8 December 1993. The CNIL hopes that the Code will set a precedent for similar attempts at voluntary regulation in other sectors.

This is the first case of voluntary self regulation with a Code of Practice by a particular sector since the enactment of the France's Data Processing, Data Files and Individual Liberties Act of 1978. The motivation for drawing up the Code was the rise of data protection complaints concerning direct marketing practices. Also, there was a need to provide clear rules and better understanding of the data protection legislation in the direct marketing sector.

As a sectoral self-regulatory instrument, the Direct Marketing Code interprets and applies the general rules of the legislation to specific data protection issues in the direct marketing industry.

Main Objectives

- To provide for necessary transparency of collection and processing of personal data, by ensuring that data subjects are informed of their rights under France's data protection legislation in a systematic and harmonised manner;
- To guarantee the right of data subjects to object to unsolicited mail by taking into account "Robinson List/Stop Publicité" or any other similar lists enabling individuals to give effect to their objection to direct marketing;

- To ensure general compliance with the law and provide the concerned enterprises with a practical reference tool for all issues arising from collection and use of personal data, such as the collection and management of data, erasure and blocking of data, security and sensitive data.

The Direct Marketing Code of Conduct will have obligatory status for all members of the Union Française du Marketing Direct, (UFMD) once it is ratified by the general assemblies of the associations grouped within the Union.

Monitoring

It is still too early to predict its real impact on the direct marketing industry. However, it is clear that members of the UFMD strongly desire to ensure compliance with and adherence to the principles of the Code. To this end, a Committee will be established this year to monitor the compliance and practices within the sector. Also, further discussions are going to be held with the CNIL and representatives of France's Consumers' Association.

Scope

The Code contains comprehensive rules on applying the basic principles of fair and lawful collection and processing of data in the field of direct marketing where personal data is collected:

- from sources either accessible to the public, or indirectly, without the knowledge of a data subject, or
- from the data subject himself.

Collection of data

In the first case, the principle of fair collection requires that an organisation which uses an existing list has to inform data subjects of the following:

- the fact that personal data has been obtained from an existing external list;
- his rights of access to and correction of this personal data;
- the right to have his data deleted;

- the right to object to his data being communicated to third parties.

This information has to be provided when personal data is used for the first time.

The Code suggests the following wording for this data protection clause:

"This offer is addressed to you on the basis of an external mailing list. As envisaged by La Loi Informatique et Libertés of 6 January 1978, you have a right of access to and rectification of your personal data. You could demand, by a simple letter, to have your data deleted from this list and/or not to have the data communicated for use to a third party."

Collection and use of data directly from the data subject

The greater part of the Code concerns the situation where a data subject, within the legal framework of a precontractual relationship with an organisation, has shown interest in the offered products or services and has himself provided personal data to that organisation.

The Code repeats the relevant Article 27 of France's Data Processing Act which envisages that, when collecting personal data from the data subject, the latter has to be informed of the following:

- the mandatory or voluntary nature of his responses
- the consequences of refusing to respond
- the natural or legal persons to whom his personal data may be transferred
- his right of access to and correction of the personal data.

The Code stresses the obligation on organisations to inform data subjects of their rights of access and rectification, as well as of their right to object to their data being used for marketing activities of other organisations.

It suggests the following wording in cases where data is *not used* for marketing activities of third parties:

"As envisaged by La Loi Informatique et Libertés of 1978, you have a right of access to and correction of your personal data. The

personal data you have supplied to us is for our exclusive use and will not be used for marketing services and products of other organisations."

In cases where data *might be used* for marketing activities of third parties:

"As envisaged by La Loi Informatique et Libertés of 1978, you have rights of access and correction of your personal data. Acting as an intermediary, we may send you offers of products or services from other organisations. If you do not wish to receive these offers, you should write to us indicating your name, address and client reference number."

How to inform the data subject

The Code also contains rules regarding the precise placement and manner in which this information would be provided to a data subject. As a general rule, the information has to be presented in a clear and legible format and has to be included in any form which is used for collecting data, or within the offer itself. Where this is not technically possible, such as in the case of telemarketing, for example, the data protection clauses must be included in the first written material sent to the client.

Rights of objection

The Code makes it obligatory for all organisations to grant data subjects a right of objection. Procedures and measures must be put into place which will take into account a data subject's wish not to have his data processed by that organisation.

This means that organisations will have to respect all objections made directly to themselves, as well as the ones made indirectly, via Robinson List/Stop Publicité, or similar mailing preference lists.

The data subject's demand for a data user not to process his personal data will be handled free of charge. Also, where possible, the data subject should be informed of the existence of the mailing preference lists.

Sensitive data

The Code states that sensitive data may be collected, stored and used only with the consent of the data subject. The definition of sensitive data is taken from the Council of Europe Convention 108 and includes personal data which may reveal racial origins, political opinion, religion, health or sexual matters. This particular data may be communicated for the use of third parties only with the written consent of the data subject.

Third party security

In an attempt to regulate uses of personal data by other organisations for direct marketing purposes, the Code contains comprehensive rules governing the relationship between the controller of data and third parties. These are cases where, partly or wholly, a personal database is given to another organisation for direct marketing purposes.

The Code envisages that this can be done only after the data subject has been informed and given an opportunity to object to the commercial use of his data for the mailing purposes of other organisations.

Further, the organisation has to ensure that appropriate data security measures are put in place to avoid personal data being used and circulated without control. The Code suggests the nomination of a person responsible for data protection in each organisation to take on the responsibilities of a Data Protection Manager.

Finally, it is envisaged that the relationship between the two organisations should be regulated by contract. Such a contract would stipulate the rights and duties of each party and provide limits and conditions for the commercial use of personal data.

Mailing preference lists

In its last part, the Code deals with the mailing preference lists and, in particular, with the Robinson List, which is managed by the l'Union Française du Marketing Direct.

There is an obligation on all the signatories of the Code to subscribe to the Robinson List and in general, comply with the procedures of that and other similar mailing preference lists.

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