

# Marketing - think customer satisfaction, not legal liability

Tim Beadle argues that companies trying to mitigate the risks in cross-border marketing campaigns should think less about the law and more about their customers.

How do you manage privacy in a pan-European campaign when the rules from country to country vary so much? From opt-in in Germany to opt-out in the UK, easy data transfer in the Netherlands to registration in Spain, and companies having the same rights as individuals in Italy. It's no wonder most companies give up before they start! But for those companies determined to persevere, where do they start?

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Well you could try the local Information Commissioners – but some give advice and some don't. The legal "experts" conflict with each other and on top of privacy legislation there are quasi-legal standards bodies to contend with. There is only one answer – don't start with the law, start with what bothers the people who are the target of your pan-European campaign. What bothers consumers are spam, unsolicited telemarketing at home and perceived privacy breaches.

If you take this approach then you would NOT be carrying out some perfectly legal activities – for example sending spam to business e-mail addresses in the UK. You would be very careful about using personal data in a mailshot – for example, consumers'

ages. While you might select on age and even tailor the message, you would NOT say "as it's your Birthday in May and you'll be 49...". Sensitivity matters more than the law, I would suggest.

## The seven steps

OK, so you're going to carry out a marketing campaign, and you're going to be sensitive. So what are the steps? I would suggest that there are seven:

**Step 1** - Country-by-country DP audit

**Step 2** – Devise CONSISTENT rules and processes

**Step 3** – Educate local marketing teams

**Step 4** – Educate local agencies/ service providers

**Step 5** – Implement rules and processes

**Step 6** – Complaint management

**Step 7** – Run campaigns based on PERMISSION

## Step 1 – The audit

Any audit should focus on sales and marketing because these two groups touch more people than anyone else and therefore tend to be the people who are most likely to expose the company if they overstep the boundaries. It is important that the audit looks at all the "touchpoints" – where the company interfaces with customers, suppliers and potential customers.

Look carefully at what permissions, if any, are collected and where the data

goes within the organisation. Evaluate the regulatory framework AND what your competitors are doing. From this it becomes possible to determine what risks you are prepared to take both with the law and with local custom and practice. Note that you may have to do MORE than the law requires you to.

## Step 2 – Rules and processes

Trust me, people in marketing generally don't do rules. They're in marketing because it is "creative". Set rules for how data is collected and stored, how permissions are gathered, what data is used for and where, if anywhere, it can be transferred to. Do not forget the processes though. These are particularly important for cross-border transfers, data selection, de-duplication and suppression. But the most important process of all is the one for handling complaints. As a rule, consumers have to initiate a complaint before a data protection commissioner will investigate. Therefore, if complaints are handled well, it is unlikely the complainant will then go to the commissioner. Handle it badly and you are doomed!

## Step 3 – Educate local teams

Give the local marketing teams the current local law and guidance on where to go to keep up to date in their locality. Make it THEIR responsibility to stay up to date. Give them Powerpoint presentations for their colleagues. Most importantly, emphasise that the approach should never be one of trying to "get round" the rules – rather one of "how do we make people WANT to give us their personal data?"

**Step 4 – Educate local agencies**

Do not expect ad agencies, telemarketing agencies, or Direct Mail agencies working for your company to help you. They have little or no understanding and care even less (I know, I used to work in one!). Put in place binding contracts that REQUIRE them to ensure data protection compliance. Focus their minds on always gaining PERMISSION to use data. And audit

**Step 6 – Complaint management**

With the exception of Spain, it is only IF someone complains to the Information Commissioner that your problems start. So, first and foremost, ensure that there is a data privacy officer in each country and that the ENTIRE company knows who they are and why they exist. In particular, focus on switchboard operators and receptionists – these will often be the first people that a complainant contacts. Maintain a

Unfortunately no. Why? Because your approach to privacy might just be limiting the results you're getting in a particular country. Customers could be voting with their wallets. If you too stringently try to abide by the privacy laws you might make things so complex customers find you hard to do business with. Too lax, on the other hand, and they may not trust you. It is NOT a matter of law – it is a matter of customer perception.

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what they do for you on a regular basis – they will backslide faster than you can possibly imagine.

**Step 5 – Implement**

Undertake small-scale tests. For example, try a “permission-gathering” pilot. This will often highlight poor processes, poor understanding and poor programmes. And, in so doing, these pilots can save money, save time and educate like nothing else!

log of all complaints so that you can modify processes that are causing regular complaints and undertake comparative analysis from country to country. This will show where you can relax the regime with impunity and where it needs to be tightened.

**Step 7 – Run the campaigns**

That's it, you're done, everything is running smoothly – steps 1 to 6 are working and no one is complaining. But is that it? Is it good enough?

**Conclusion**

Bizarre though it might sound in a publication entitled *Privacy Laws & Business*, in our experience the law itself is not very important. If it is anything, it is but a starting point – a set of minima or a set of aspirations, depending on your point of view. We do NOT advocate breaking the law per se. Rather, we suggest that commercial realities and consumer perceptions make it more a matter of abiding by the spirit. Or, to put it another way, focus on the eight data principles, not the actual legislation, and you will not go far wrong.

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