

New e-marketing rules aim to cut spam

New electronic communications regulations should deter unsolicited emails but they have also changed the way that civil engineering businesses can contact customers. **Russell Brown** at Manchester law firm Glaisyers explains the new rules.

For many civil engineering and construction businesses the use of email has taken over from the telephone as the preferred means of communication. Consultants, contractors and other suppliers view it as a cost-effective and direct means of promoting their services to potential and existing clients.

But despite good practice recommending that direct marketers adhere to the British Code of Advertising, Sales Promotion and Direct Marketing, in reality many emails are being sent with neither consent nor effective targeting. Nearly all of us now complain about how our email inboxes are bulging full of unsolicited commercial emails or 'spam' – but the law has finally caught up.

While the Privacy and Electronic Communications Regulations 2003 which came into force on 11 December 2003

should help to reduce the strain on all of our email in-boxes, those of us who use email as a means of marketing really need to sit up and take notice of what the new rules mean.

'Opt-in' for commercial emails

The major change is the introduction of an 'opt-in' consent procedure for commercial emails. This means that businesses are only allowed to target people who have given their active consent to receiving communications.

An important exception to the opt-in rule is for e-mails sent from a business to an existing customer. Businesses may continue to email their own customers as long as they only mention their own products and services. In these cases, the addressee will still be able to opt-out of such communications should they wish to do so. However, marketing through faxes remains an opt-out form of communication.

In essence, civil engineering and construction businesses which currently use electronic marketing will no longer be able to make initial contact with new or potential customers through email. Existing databases of email contacts will have to be checked thoroughly to ensure that their details have been legitimately collected.

Restrictions on cold calling

Though e-marketing may have completely replaced telephone marketing in some areas, the new rules could mean that some businesses will switch back to more traditional methods of communication. Unsolicited telephone calls are still allowed under the new regulations, but recipients also have the right to opt-out.

However, from May 2004, businesses can subscribe to the blanket Telephone Preference Service (www.tpsonline.org.uk), which was previously only available to individuals. This means that would-be suppliers must screen the numbers they use if they are to avoid being prosecuted for making nuisance phone calls.

Coming clean on cookies

The new regulations also lay out new parameters for the use of 'cookies' on company websites. At their simplest, cookies are snippets of information about internet users which allow the site server to store details such as visitor numbers and user preferences. Using this information, website operators can tailor their marketing communications to target individual needs.

Businesses are now obliged to inform their customers that their web site uses cookies and provide an opt-out facility for those who do not wish for them to be used. Website users must be given clear and comprehensive information about the ways in which cookies are to be used, through a 'privacy' or 'cookies' statement.

The statement must also contain detailed information to advise users on how they can turn off cookies should they wish to prevent their information from being stored. This can be done via the computer's browser settings, either by a service provider or by the user.

Enforcing the new rules

So what are the punishments? Anyone suffering damage from individuals or companies which contravene the new regulations will be entitled to sue for compensation.

However, a loophole in the legislation could make prosecutions difficult. Accused parties which can prove, in their defence, that they took all appropriate measures to ensure compliance with the regulations are expected to avoid prosecution.

Nevertheless, the Information Commissioner's enforcement powers under the Data Protection Act 1998 also applies to the new regulations. The Commissioner can investigate breaches and, in appropriate circumstance, bring enforcement proceedings directly.

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