

## **GUIDELINES for E-MAIL MARKETING**

**(TEXT ADOPTED BY THE AGM ON 23 APRIL 2004)**

EMOTA (the European Mail Order and Distance Selling Trade Association) comprises today 18 national associations: 15 belonging to the European Union: Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Great Britain, Hungary, Ireland, Italy, the Netherlands, Slovakia, Spain, Sweden together with Norway, Russia and Switzerland.

These 18 national associations represent nearly 2,000 companies operating in the mail order and distance-selling sector with an annual turnover of nearly 58 billion euro in 2003.

The commercial activity called « mailorder » and/or « distance selling » encompasses various marketing methods which, from the initial commercial proposal made by the company to the consumer until the execution of the order placed by the consumer, are carried out through a wide range of (interactive) means of communication and distribution of information at a distance, from written documents to the use of the most advanced communication technologies.

This trade sector therefore includes all forms of on-line communications and commercial proposals through e-mail, Internet website, interactive television, wireless application protocol or any other interactive means of communication.

The use of e-mail to inform consumers about the range of goods and to provide services that might be of use for the customers, will, with the further penetration of online activities and e-commerce, be an important additional marketing tool for our companies.

The mail-order and distance-selling companies are strongly convinced that a careful balancing of the interests of both the industry and the consumers is vital.

With reference to Directive No. 2002/58 on Data Protection and Electronic Communications published in the Official Journal on 31 July 2002 and in addition to the EMOTA Convention on (Cross border) Mail order and Distance Selling signed by our Associations in March 2002, EMOTA has developed a set of Guidelines for e-mail marketing for our companies when dealing with consumers:

### **DEFINITIONS**

*"electronic mail"* means any text, voice, sound or image message sent over a public communications network which can be stored in the network or in the recipient's terminal equipment until it is collected by the recipient [\[1\]](#)

*"e-mail marketing"* means the commercial activity in order to establish a commercial relation with consumers by sending them commercial communications in the form of electronic mail;

“consumer” means any natural person who is acting for purposes which are outside his trade, business or profession[2];

“customer” means any natural person who has entered or willing to enter into a commercial relation with the company[3];

“company” means the distance selling company which sends out the commercial communications to the customer.

## **GUIDELINES**

*With respect to the collection of the e-mail addresses:*

1. Companies shall collect e-mail addresses for the purpose of e-mail marketing in a fair and lawful way by respecting national and European legal and deontological provisions

*Comments: Companies therefore shall abide by national and European legal and deontological provisions concerning their activity and provisions aiming at protecting the privacy of consumers. In this respect we refer to the provisions in the European Convention of EMOTA mentioned here above in the introduction, which lays down the basic framework for these specific guidelines.*

*Collecting directly can be done in a visible way by means of written information or with the order form supplied by the consumer. Also by means of the use of telephone in contacts with the consumer. When using invisible means of collecting, especially with the use of a cookie or via the IP address, companies should clearly inform the consumers that they do so. When collecting e-mail addresses rented with a third party, companies should inform whether this third party has the prior consent of the consumers involved to transfer their data to a third party for commercial purposes.*

2. Companies shall clearly identify themselves

*Comments: As in traditional distance selling it is essential that recipients of commercial e-mails should easily understand who sent the e-mail they receive.*

*In this respect we might refer to the E-commerce Directive 200/31/EC of 8 June 2000.*

*The company must render easily, directly and permanently accessible information such as the name, details allowing to contact the company and a reference to applicable professional rules and the means to access these, either in the e-mail itself or by way of a link through to the website of the company.*

3. Companies shall inform the customer of the purpose for which the e-mail addresses are collected

*Comments: Companies selling, promoting or marketing goods and services at a distance to consumers should not engage in practices that are likely to be deceptive, misleading or unfair to consumers. They will therefore have to inform their customers that the collection of the e-mail address is for commercial purposes.*

4. Companies shall clearly mention that the e-mail address might be used for sending commercial communications concerning the range of goods and services of the company

*Comments: Companies must clearly indicate to customers that the e-mail address might be used to send them offers of goods and services that might be interesting to the customers. Companies should at the same time offer the consumer the right to refuse to receive any further or future commercial message. This might be done in the form of a tick box where the consumer might indicate his or her wish to receive or no longer receive commercial messages.*

5. Companies having received e-mail addresses in the context of the sale of a product or a service are allowed to use these to offer their own similar products or services. Any other use of the e-mail address is only allowed in respect of consumers who have given their prior consent. Consumers will always clearly and distinctly be given the opportunity to object, free of charge and in an easy manner.

*Comments: This provision has been brought in line with article 13 of Directive 2002/58/EC of 12 July 2002, the so-called Electronic Communications Directive. Companies when engaged in passing on e-mail addresses to third parties that might in their view have a range of goods and services that might interest their customers should clearly inform the customer that they wish to do so, thereby offering him the possibility to refuse, if he does not wish that his address is passed on to third parties.*

*With respect to the sending of commercial e-mails:*

6. Companies shall bring their files up to date on a regular basis in order to avoid to send out commercial communications to customers who have expressed the wish to not (further) receive such messages

*Comments: following the same principles as in more traditional means of sending commercial messages by mail and telephone it is essential that companies remove individual names before prospecting according to the wishes of consumers who have expressed the wish to no longer receive commercial messages. They could have expressed that wish either directly with the company or by using a central (national) register (Preference Service) like for mail and telephone. Customers with whom a business relation exists or who have checked opt-in boxes or otherwise gave permission to receive commercial e-mail messages may be contacted.*

7. Companies shall clearly identify themselves

*Comments: Here it is referred to the explanation given under guideline 2 here above. Companies shall clearly identify themselves, provide the customer with an e-mail address or any other electronic or written means of contact or a telephone number. The use of invalid, forged, or fraudulent information used to commercial e-mail messages, so as to make it appear the e-mail were from a different entity or purpose, the use of invalid or non-existent domain names or any other means of deceptive addressing is neither appropriate nor allowed.*

8. Companies shall clearly mention that the sending of the e-mail concerns a commercial message

*Comments: It is essential that the recipient easily understands where the commercial message is coming from and for what purpose. It does not mean that the e-mail or its subject heading must include “ADV” or “this is an advertisement” or similar terminology (unless required by the law of the Member State into which the e-mail is sent). Consumer confidence is greatly enhanced if the e-mail contains specific information concerning the company that sends the messages and information to contact the company.*

9. Companies shall offer the possibility to unsubscribe either on their website or in the commercial message itself

*Comments: It is essential to provide consumers and /or customers with an easy way out to no longer receive commercial information they do not wish to receive.*

*Therefore, the commercial message should contain a possibility to unsubscribe or should provide the consumer with a clear link to the website of the company to do so. Unsubscribe requests should be processed automatically and promptly, upon receipt. In case such a system is not in place a reasonable time frame to suppress is 10 days.*

10. Companies shall not attach heavy files, images, videos and the like especially in the first commercial communication, in order not to prolong the downloading process and not to overload the customer’s mailbox

*Comments: This guideline is relevant in this day and age where many consumers still use analogue or ISDN telephone lines for their Internet connection and to receive their e-mails. When more and more consumers will go over using fast and permanent Internet connections such as ADSL and broadband connections this guideline will loose importance. Companies should also take all the normal necessary precautions to prevent viruses in their commercial messages.*

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[1] Directive 2002/58 on Data Protection and Electronic Communications published in the Official

Journal on 31 July 2002 (OJ 201)

[2] Directive 2000/31/EC on Electronic Commerce

[3] Customers include consumers with whom the company has previously done business ( e.g. they have made a purchase) or consumers who have contacted a company and included their e-mail address