



# Passnotes

## Best Practice in PR and Marketing



THE HENLEY GROUP INTERNATIONAL

## The Devil is in the Data: What GDPR means for marketing and communications

The new General Data Protection Regulation (GDPR) requires marketing and public relations specialists will now be required by law to build privacy options into their digital communications and services; be they websites, newsletters or press releases. Those to whom these communications and services are addressed will have to give their explicit consent that they're happy to receive them, and businesses will be required to conduct regular privacy impact assessments of their activities.

To make it easier to get to grips with the changes GDPR will bring, this Passnotes provides an overview of GDPR and what it means for PR professionals and marketers. It also includes examples of how GDPR might impact on marketing and PR activity. However, as organisations capture and use data in very different ways, readers are strongly encouraged to seek independent legal and or professional advice where necessary to ensure full compliance with GDPR. The Information Commissioner's Office (ICO) is also a useful source of information.

# WHAT IS GDPR AND HOW DOES IT APPLY TO BUSINESSES?

According to [www.eugdpr.org](http://www.eugdpr.org), a website set up specifically to help organisations achieve GDPR compliance, and the Information Commissioner's Office (ICO), GDPR is a regulation by which the European Parliament, the Council of the European Union and the European Commission wish to strengthen and unify data protection for all individuals within the European Union and the UK.

Figures from a 2016 Consumer Privacy survey carried out in the USA by TRUSTe/NCSA showed that 92% of online customers are concerned about the security and privacy of their personal information <sup>1</sup>. Closer to home, a study from the Chartered Institute of Marketing (CIM) showed that 57% of consumers don't trust brands to use their data responsibly <sup>2</sup>. This should be a worrying thought for any marketing practitioner as it calls into question the trust and positive image they work so hard to build for brands.

GDPR applies to all organisations that control or process personal information about EU resident data subjects, regardless of the organisation's location and whether or not the processing takes place in the EU <sup>3</sup>. While under existing data protection laws, "a non-EU organisation will only be caught if it is established in the EU, the GDPR has a much wider reach. Non-EU organisations will be caught if they offer goods or services (paid or free) to data subjects in the EU or they monitor the behaviour of data subjects in the EU." Crucially, even if Britain leaves the European Union and the Common Market, GDPR will still be enforced in the UK.

From the outset, it's important to be clear that GDPR applies to all aspects of personal data - such as names, addresses, photographs identifying individuals, email addresses, and so on. It has been created "to harmonise data privacy laws across Europe, to protect and empower all EU citizens data privacy and to reshape the way organizations across the region approach data privacy." <sup>4</sup>

The regulation thus relates to many of the activities marketing and communications specialists undertake, from sending e-mail newsletters to lists of clients, sending press releases to journalists and even soliciting testimonials for client case studies.

Much of the fears that lie behind GDPR readiness relate to the tough stance of the ICO and the high fines for non-compliance. Businesses can be fined up to 20 million or 4% of annual global turnover – whichever is higher. It is no wonder that marketing agencies of all sizes worry about compliance and how they can achieve it on a reasonable budget by the deadline of 25 May 2018...

The UK Information Commissioner Elizabeth Denham has made it clear that "While there will be no grace period – you've had two years to prepare – I know that when 25 May

dawns, there will be many organisations that are less than 100 per cent compliant. This is a long haul and preparations will be ongoing. But if you self-report a breach, engage with us to resolve issues and can demonstrate effective accountability arrangements, you will find us to be fair." <sup>5</sup>

She also believes that "GDPR rebalances the relationship between individuals and organisations", which will undoubtedly offer companies excellent opportunities for "restoring trust and confidence" whilst "reset[ing] the equilibrium" for customer relationships.<sup>6</sup>

## HOW DOES GDPR AFFECT PR AND MARKETING?

Marketing and PR departments focus on communicating their organisation's messages to a wide and varied audience. PR practitioners for instance rely on contacting journalists and reaching out to the media via a multitude of mediums. But GDPR will change methods of communication with press representatives and create new boundaries between agencies and individuals receiving the marketing messages, whether they are journalists or members of their clients' customer base.

'Six Principles of Data Protection' serve as a guiding beacon for organisations as they engage with GDPR. Although general in nature, they can be applied to specific areas of marketing communication, as follows.

## THE SIX PRINCIPLES OF DATA PROTECTION FOR MARKETING PROFESSIONALS

1. The first principle covers 'lawfulness, fairness and transparency'. This part of the directive looks at the way in which individuals' personal data is being used. PR and marketing agencies are classified under GDPR as data processors and data controllers. They are therefore compelled to process personal data "lawfully, fairly and in a transparent manner in relation to the data subject".

This means that a PR department using a contacts list bears the responsibility of explaining to the data subjects how their personal data will be processed. So if all that is processed is a name, job title and e-mail address, then it's important to explain that this information will be used, for example, to email a monthly newsletter or new product releases, and nothing more.

2. The 'purpose limitations' principle states that data collectors and data processors should collect personal information "for specified, explicit and legitimate purposes". Marketers have in the past found themselves gathering as much information about their audience as possible, in the hope that this will help target their messages more accurately and offer greater open rates.

But under GDPR, asking for someone's mobile number, favourite colour, shoe size, favourite biscuit and so on will no longer be legal – unless there is a very clear and explicit reason for needing this information. Marketers must now collect only data they actually need for a specific purpose, rather than 'nice to have' information for 'just in case' scenarios.

3. The 'data minimisation' principle is all about collecting data that is "adequate and relevant" – and nothing more. This principle complements the one above and reinforces the idea that marketers should only gather data that is essential for the task in hand. When purchasing ready-made lists from publishers or using their own mailing lists, for example, PR professionals and marketers must only keep relevant contact details and discard additional notes.
4. The 'data accuracy' principle refers to the importance of maintaining high standards of data quality. This can be achieved by periodically auditing and cleaning data to ensure that it is accurate and is still fit for purpose. It's worth remembering that keeping information up to date isn't just a chore imposed by GDPR; up-to-date information helps marketing professionals to achieve better and more reliable targeting of the marketing mix.
5. The 'storage limitations' principle refers to the way in which personal information is kept, and how long it is kept for. According to GDPR it should be held "in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed".

This means that if a marketer has developed a contact list specifically to send out a press release about a particular invitation an event, the list can't be kept after the event has passed, and it can't be reused for sending unrelated communication.

Once again, methodical cleansing of data to observe this principle has definite benefits. It means that irrelevant and out-of-date information will be discarded, and getting rid of this informational 'noise' helps marketers to offer better services by focusing the exact information needed for the task in hand.

6. The last key principle of GDPR states that all data should be treated with 'integrity and confidentiality'. In some ways this is the most important principle and if companies find themselves in breach of it they can face serious fines from the ICO. According to this principle, personal data has to be processed "in a manner that ensures appropriate security, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures". Observing this principle forces agencies, big and small, to put in place safeguards against data breaches, after assessing and taking into account security risks.

## GDPR IN PRACTICE

The GDPR's requirements are undoubtedly strict and complex. The six guiding principles provide an overview of the requirements, but many marketing and PR professionals may still be concerned about how GDPR will work in practice. To help dispel this concern, we've put together answers for some of the most frequently asked questions about GDPR.

### **Q: How will the media relations landscape change under GDPR?**

**A:** First of all, it is important to say that unlike its predecessor the Data Protection Directive 95/46/E, GDPR does not make a distinction between business and consumer personal data. This is important because as all data is treated in the same way, the same consent rules apply. For example, prior consent for most contact with journalists and members of the press is an important legal requirement.

GDPR also governs the ways in which marketers can store and process data about people, including members of the press. The exact rules differ, however, depending on the scope of the communication. Marketers need to make sure that they have actively sought (and not assumed) permission from their contacts, and that they have confirmed that they want to be contacted. Pre-ticked boxes that need to be unticked if the contact wants to opt out are no longer acceptable – marketers must now be able to show that opt-ins are a deliberate choice rather than the result of an oversight.

Another example is that, instead of assuming that visitors who fill out a web form wish to receive marketing emails, marketers will have to ask visitors to specifically opt-in to newsletters by ticking the sign-up box. And, for any other types of messages such as 'news' or 'special offers', additional opt-in boxes will be needed.

### **Q: Will PR professionals still be able to contact journalists with press stories?**

**A:** GDPR does not mean the end to free-flowing communication between PR professionals, agencies and journalists. It does ask however that PRs identify a 'legal basis' under which press stories can be sent. The Chartered Institute of Public Relations (CIPR) confirms that "public relations activity, where the processing of personal data belonging to a journalist is necessary, will be covered by the legal obligation condition, public interest or the legitimate interests or the data controller condition." <sup>7</sup> It is thus up to each practitioner to assess their activity and decide under which of these conditions they fall.

For existing pre-GDPR contacts, a 'soft opt-in' applies. This means that if a PR presently communicates with a journalist on a regular basis, he or she can assume that this journalist is happy to continue receiving information about those products or services – even if they haven't

specifically consented. If at some point the journalist decides to opt out of these communications, however, their decision must be respected.

**Q: Do all electronic marketing communications, such as promotional emails, need an unsubscribe option?**

**A:** In short, yes. All direct marketing requires an 'unsubscribe option' and should the receiver ask to be removed from all further communications, marketers need to comply or risk being in breach of GDPR. The ICO has issued a direct marketing checklist<sup>8</sup> which explains that marketers have to offer recipients of direct marketing messages the ability to opt-out, either by replying or by using an unsubscribe link. Companies are also required to keep a list of anyone who opts out and use this list to ensure that no further contact attempts are made.

Furthermore, individuals have a 'right to be forgotten' - which allows anyone to ask that data about themselves that is incorrect, out of date or irrelevant to the communication, be removed immediately.

**Q: What level of consent is required for e-mail communication?**

**A:** Under GDPR marketers will only be allowed to send email to people who've opted-in to receive messages. Companies will have to collect affirmative consent that is "freely given, specific, informed and unambiguous" to be compliant with the legislation. In addition, users must be notified of how their data will be used. If a marketer is undertaking a market study and the data will be used for customer profiling, for example, then this must be made clear from the very beginning when asking an individual to sign up.

**Q: Is it permissible to send unsolicited print direct mail?**

**A:** Postal marketing - brochures, flyers, product samples, invitations and so on - can be an important tool for generating new leads and business, but under GDPR the same rules apply to postal marketing and electronic marketing. In other words, for a business to send marketing material by post it has to prove that the addressee has opted in to receive that specific type of communication. And, even after the recipient has given

consent, if they ask to be removed from the mailing list, this must be done immediately. The ICO states that there are no exceptions to this rule and, if organisations fail to comply, they can take the matter to court.

## CONCLUSION

Many companies see GDPR as a bureaucratic exercise and some have likened it to a burning hoop they're being forced to jump through! But in reality, GDPR aims to help individuals gain control of their personal information and the way in which it is being used. In a world of hyper-communication, people are welcoming the opportunity to be selective about the information they receive.

For businesses, the stringent compliance requirements of GDPR will help to drive standards in public relations and marketing communications. Using cleaner and leaner data will help practitioners create more targeted messages that, in turn, are of more interest to the recipient. At the end of the day, this should translate to better response rates and a stronger, happier customer base!

<sup>1</sup> <https://www.trustarc.com/resources/privacy-research/ncsa-consumer-privacy-index-us/>

<sup>2</sup> <https://www.cim.co.uk/newsroom/opinion-be-transparent-on-social-media-or-risk-the-consequences/>

<sup>3</sup> [https://www.cjpr.co.uk/sites/default/files/11278\\_Skills\\_Guide\\_GDPR\\_v6.pdf](https://www.cjpr.co.uk/sites/default/files/11278_Skills_Guide_GDPR_v6.pdf)

<sup>4</sup> <https://www.eugdpr.org>

<sup>5</sup> <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2018/02/information-rights-and-responsibilities-with-the-information-commissioner/>

<sup>6</sup> *Idem*

<sup>7</sup> [https://www.cjpr.co.uk/sites/default/files/11278\\_Skills\\_Guide\\_GDPR\\_v6.pdf](https://www.cjpr.co.uk/sites/default/files/11278_Skills_Guide_GDPR_v6.pdf)

<sup>8</sup> <https://ico.org.uk/media/for-organisations/documents/1551/direct-marketing-checklist.pdf>

Copies of other Passnotes, the Henley Group's guides to best practice in PR and marketing, can be downloaded at [www.henley.co.uk](http://www.henley.co.uk)



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