



## The Use of Customer Data for Direct Marketing Purposes

This fact sheet is intended for the *data controller*, i.e. the party that uses the personal data of other individuals for his own purposes.

THIS FACT SHEET WILL ANSWER THE FOLLOWING QUESTIONS:

What constitutes direct marketing?

Under what circumstances is the use of personal data permitted for marketing purposes?

What constitutes a justified interest?

What constitutes consent?

Must you notify the data subject in advance?

What happens if the data are incorrect?

What is involved in the right to object?

What different types of advertising are there?

What is Infofilter?

Where can the data subject go if he has any questions or complaints?

What other rights does the data subject enjoy?

Number 1A, October 2007

The titles in italics can also be found at [www.cbpweb.nl](http://www.cbpweb.nl) and [www.mijnprivacy.nl](http://www.mijnprivacy.nl)

It may well be that it is in your commercial interest to maintain direct contact with your customers. It may also be in your interest to acquire new customers. Using personal data for direct marketing purposes and trading in addresses is permitted, as long as certain conditions are adhered to. For example, the *Wet bescherming persoonsgegevens (Wbp)* [Dutch Data Protection Act] allows the data subject (i.e. the person whose data you are using) to lodge his objection against the use of his data for direct marketing purposes.

### Direct marketing purposes

The purpose of direct marketing is to enable or maintain a direct relationship between a supplier and its customers. The term 'direct marketing' does not include unaddressed door-to-door distribution and market research. If, however, a bank were to send a data subject a letter containing offers of new products, specially selected for him, then this does constitute direct marketing. Calling a data subject on the telephone during mealtimes in order to offer him a subscription is also a form of direct marketing.

### Conditions governing the use of personal data for direct marketing purposes

In order to contact a data subject for direct marketing purposes, his personal data are first of all required. In many cases, you will already be in possession of such data, as he is already one of your customers. If that is not the case, you can purchase or rent data from a third-party organisation.

The Wbp stipulates what is and is not permitted when handling personal data. The Wbp lays down the rights enjoyed by the data subject and the duties with which you must comply when contacting (new) customers with unsolicited advertising material. The Dutch Data Protection Authority (Dutch DPA) [College bescherming persoonsgegevens (CBP)] is responsible for supervising compliance with the Wbp.

It is permitted to rent or sell address data if a data subject has given his consent, or if you have a justified interest in the use of such data. These are the two main grounds underlying the trade in addresses and the use of personal data for direct marketing purposes. Further information about these can be found in the fact sheet entitled *Disclosing personal data* [Verstrekken van persoonsgegevens].

In addition to the Wbp, the Telecommunicatiewet (Tw) [Telecommunications Act] also plays an important role with regard to certain types of advertising. The Act contains all regulations governing the electronic communications sector. This also includes advertising delivered by telephone or by e-mail. For example, chapter 11 of the Telecommunicatiewet includes stipulations regarding the use of the personal data of subscribers and users by providers of communications services, amongst other things. The Onafhankelijke Post en Telecommunicatie Autoriteit ([www.opta.nl](http://www.opta.nl)) [Independent Post and Telecommunications Authority] and the Dutch DPA both monitor compliance with chapter 11 of the Tw.

In the study carried out by the Dutch DPA *Koning klant. Het gebruik van klantgegevens voor marketingdoeleinden* [The Client is King. The use of customer data for marketing purposes], you can find further information regarding the conditions under which you are allowed to make use of personal data for direct marketing purposes. In addition, the Dutch DPA study, *Klant te koop. Privacyregels voor adressenhandel* [Customer for sale. Privacy regulations governing the trade in private addresses], contains the conditions governing the rental and purchase of addresses for the purpose of acquiring new customers.

### **Justified interest**

Personal data may only be used if this is necessary in order to look after your justified interest or that of another organisation to which you are supplying the data. What this means is that personal data may be used within the context of normal business activities or the everyday management of your organisation. If the purpose of your business is the trading in addresses, this activity will, in most cases, fall within the normal business activities of your organisation. This does not mean, however, that you are permitted to contact a data subject for advertising purposes without his or her consent. You must first of all consider whether your interest in the use of the data relating to the data subject is equal to the rights and interests of the data subject, including the interest of the data subject that his personal data should not unnecessarily be distributed and his right not to be harassed by unsolicited advertising material. Aspects that may play a part when weighing up the interests of both parties include the data actually being processed (do they consist only of an individual's name, address, postcode and town of residence, or are further data included?), the relationship of the user to the customer (is the data subject a regular or an occasional customer?), how well-informed is the customer and how easy it is for him to register his objection to the processing of his data. Chapter 4 of the Dutch DPA study *Koning klant. Het gebruik van klantgegevens voor marketingdoeleinden* [The Client is King. The use of customer data for marketing purposes] contains detailed examples of how these interests are evaluated. You must be able to demonstrate to the data subject and, if necessary, to the Dutch DPA or the courts that you have considered the customer's interests.

### **Consent**

If you do not have a justified interest in the use of personal data, you can then ask the data subject for his unequivocal consent for his data to be used. 'Unequivocal' means that there must be no doubt as to the specific use that will be made of an individual's personal data and for which the data subject has given his consent. You are therefore required to inform the data subject effectively and in advance as to the uses to which he is giving his consent. A data subject may withdraw that consent at any time.

### **Obligation to provide information**

Not only are you obliged to inform the data subject in all cases that require his consent, but you must also do so as soon as you have made use of his data. You must inform the data subject as to: your identity, the purpose for which you wish to use his data and what he must do if he is not in agreement with this. The precise point at which you are required to inform the data subject depends upon the manner in which you obtained his data. If you obtained the details from the customer himself or herself, you are required to inform him in advance. If you receive the address from another organisation and use this for advertising purposes, however, you must always inform the data subject as soon as you send the unsolicited advertising material. Further information about the duty of disclosure can be found in the fact sheet entitled *Obligation to Provide Information* [ Informatieplicht ].

### **The right to access to and correction of one's data**

A data subject has the right to know what data you hold about him/her, what these are being used for and from where they were obtained. If you make use of his data, you must provide him with a summary of his personal data within four weeks of his request to view the data. You are also required to state the purpose for which the data are being used, who has received the data and from where the data have been taken.

In return for providing this information, you are entitled to make a charge not exceeding €23 per page, up to a maximum of €50. Further information about the right to view personal data can be found in the fact sheet entitled *Providing access to personal data* [Het geven van inzage in persoonsgegevens].

A data subject is also entitled to request that data be corrected. This means that he may ask you to correct, supplement, erase or block his personal data. Data may only be corrected if they are incorrect, incomplete or not relevant for the purpose for which they are being used. Further information about the right to correct data can be found in the fact sheet entitled *The Correction of Personal Data* [Het bieden van correctie].

### **The right to object**

As trading in addresses and the use of personal data for direct marketing purposes is, in many cases, permitted, the Wbp also grants data subjects the right to lodge their objection. Invoking this right enables a data subject to prevent his personal data from being sold or rented out. He may also avail himself of this entitlement in order to prevent telemarketing and direct mail.

#### How can a data subject lodge his objection?

If a data subject lodges his objection to direct marketing, he is not required to inform you as to the reason for his objection. You are obliged to comply with his objection in all cases and are not entitled to demand a fee to do this. This means that you must provide data subjects with an opportunity to tick a box, write to a freepost address and/or call an 0800 telephone number in order to lodge his objection. This way, a data subject is not required to pay any postage or telephone charges. It is advisable to make use of written requests. If an individual lodges his objection, you may decide to mark his data or to include them in a non-mailing list. In the event that you do not respond to his request or do not provide a satisfactory response, a data subject may ask the Dutch DPA to act as an intermediary. Further information about this can be found in the fact sheet *Mediation by the Dutch DPA in respect of your Data Processing* [ Bemiddeling door het College bescherming persoonsgegevens inzake uw verwerkingen].

#### What can a data subject object to?

When a data subject lodges his objection, it does not always mean that you are no longer permitted to make any use of his data. The only restriction that then applies is that the data no longer may be used for direct marketing purposes. If, for example, a subscriber to a weekly magazine lodges an objection, the publisher of the magazine is still entitled to make use of his data in order to send the magazine to the subscriber and to charge the applicable subscription charge. The publisher is no longer permitted to send the subscriber any offers or to sell or rent out his data.

#### How should you inform a data subject of his right to object?

You are obliged to inform a data subject of his right to object:

- In every advertising message. You can do this, for example, by providing a freepost address, an 0800 telephone number or an e-mail address, to which the data subject can send a message lodging his objection.
- By means of a general announcement, in the event that you are supplying personal data that you have obtained yourself to a third-party organisation or in the event that you are making use of personal data on behalf of third-party organisations. A general announcement is understood to involve the placing of an advertisement in a newspaper, newsletter or door-to-door newspaper. When data are being supplied to others on a regular basis, you are obliged to notify data subjects of their right to object at least once a year.

## **Types of advertising**

There are a number of channels that you may use in order to contact a data subject:

### 1. Door-to-door advertising

This takes the form of leaflets that are placed in individuals' letter boxes. They are not addressed to an individual data subject, as the leaflets involved do not carry his name or address. Neither the Wbp nor the Tw, which contains a description of the rights and duties that apply in the case of door-to-door advertising. The Reclame Code Commissie [Dutch Advertising Code Authority] ([www.reclamecodecommissie.nl](http://www.reclamecodecommissie.nl)) has drawn up the Code brievenbusreclame, huissampling en direct response advertising [Code for door-to-door advertising, home sampling and direct response advertising] and the Code verspreiding ongeadresseerde reclamedrukwerk [Code for the Distribution of unaddressed advertising material]. These codes contain rules and regulations governing the content of advertising and its distribution.

### 2. Addressed advertising material

This too takes the form of leaflets that arrive via the letterbox, but they are addressed specifically to the individual data subject involved, in that his name and/or address is included. Advertising material that is addressed to the recipient is also known as direct mail. This type of advertising is subject to the Wbp, but not to the Tw. In addition, the Reclame Code Commissie has also drawn up the Code brievenbusreclame, huissampling en direct response advertising [Code for door-to-door advertising, home sampling and direct response advertising]. This code contains rules and regulations governing the content of advertising and its distribution.

### 3. Telephone

This involves a data subject being contacted via his landline or mobile telephone number. Contacting individuals by telephone for advertising purposes is also known as telemarketing. No consent is required for this type of advertising, unless the data subject has indicated in advance that he does not wish to be contacted. You are, however, obliged actively to inform the data subject during each telephone conversation that he is entitled to lodge an objection. Telemarketing is subject both to the Wbp, as well as to the Tw. Telemarketing is also required to comply with the Code Telemarketing [Telemarketing Code], which is managed by the Reclame Code Commissie.

### 4. Fax, e-mail, MMS and SMS

This type of advertising involves the data subject being contacted by fax, e-mail, MMS or SMS. Unsolicited contact by e-mail or mobile telephone (SMS or MMS) is also known as spam. Spam also includes calling or faxing using an automatic calling system, i.e. that an individual is called by a computer. An automatic call made by internet telephony is also known as spit. The sending of spam or spit is forbidden, in accordance with the Tw, unless a data subject has given consent to this or he is, or once was, one of your customers. In the latter instance, the advertising in question must be for similar products or services. You are, however, obliged to inform him that he is entitled to lodge an objection. The Reclame Code Commissie has drawn up the Code Verspreiding Reclame via e-mail [Code for the Distribution of Advertising by e-mail]. The code contains rules and regulations governing the sending of advertising messages by e-mail, which, amongst other things, impose limits on the size and extent of the e-mail.

The fact sheet *The Combating of Unsolicited Advertising* [Tegengaan ongevraagde reclame] contains a description of the steps that the data subject can take to prevent him from receiving the various types of unsolicited advertising material.

## **Infofilter**

Infofilter is an initiative of the Stichting Zelfregulering DM [Trade organisation of direct marketers]. Infofilter takes the form of a central reporting point at which consumers can lodge their objection to the use of their data for direct marketing purposes (for information, see [www.infofilter.nl](http://www.infofilter.nl)). In principle, it is

possible to distinguish between two situations in which the use of Infofilter is required, namely when using databases in order to acquire new customers and when using customer databases for cross-selling and upselling activities (selling more to existing customers).

If you are a member of the trade organisations Dutch Dialogue Marketing Association (DDMA), Nederlandse Thuiswinkel Organisatie (NTO) [Dutch Home-shopping Organisation], MarktOnderzoekAssociatie (MOA) [Market Research Association] and the Werkgeversorganisatie Callcenters (WGCC) [Callcenter Employers' Organisation], you are obliged to make use of Infofilter in the situations described above.

Mr. Heemskerk, the State Secretary for Economic Affairs announced in July 2007 that he wishes to convert the Infofilter into a legally obligatory 'don't call me' register. His plan is for this measure to take effect at the beginning of 2008. When the time comes, the Dutch DPA will amend this fact sheet.

### **If the data subject has questions or complaints**

If he has questions or complaints, the data subject should contact you in the first instance. In the event that you are unable to resolve the issue between yourselves, the data subject is entitled to submit his questions or complaints to the Dutch DPA. Information regarding the way in which the Dutch DPA handles the complaint can be found in the fact sheet *Complaints Handling by the Dutch DPA* [ Klachtenbehandeling door het CBP].

### **Other rights of the data subject**

A data subject may also lodge his objection as a result of his specific personal circumstances. This is only possible, however, in a limited number of cases. Further details of this type of objection can be found in the fact sheet *Data Subjects and their Rights* [ Rechten van de betrokkene].