

# DIY ecommerce guide

Build your ecommerce business

in association with  
**tamebay** 



1. Getting Started



2. Going mobile



3. Using marketplaces



4. Promote



5. Deliver



6. Convert



7. Retain & Expand



8. Legal

**PART 8:  
LEGAL**



Don't fight  
the power

**DIY**  
ecommerce  
guide

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### WHAT WE LEARN

- What laws apply to ecommerce
- What laws apply to data gathering
- What laws apply to distance selling
- What laws apply to import and export

## PART 8: SELLING AND THE LAW

### INTRODUCTION

As an eSeller you have many rules and rules and regulations to contend with when selling in the UK, let alone elsewhere in the world. While the Brexit vote may well yet throw up some changes to the law, we will look at what you have to do to meet EU and wider law in our other articles.



Online sellers that collect personal data are responsible for the storage and protection of that data

Just a note before we begin: this is an overview of the rules and regulations that apply it is NOT legal advice – to learn more you need to contact a solicitor specialising in online selling.

### What to Google?

UK selling laws	
EU selling laws	
Brexit and changes to UK selling law	
Brexit and changes to EU selling law for UK companies	

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## What laws apply?

First, though, we walk you through a checklist of the basic UK rules and laws you have to be aware of when selling online.

### 1. Online Selling Regulations

Be mindful of regulations protecting consumers' rights when purchasing products online. These regulations seek to ensure companies provide appropriate information to purchasers in connection with the online sale of goods and services.

They include:

- The Consumer Protection (Distance Selling) Regulations 2000 (implementing EU Directive 97/7/EC), which requires online sellers to provide certain information to consumers before conclusion of a transaction;
- The Electronic Commerce (EC Directive) Regulations 2002 (implementing EU Directive 2000/31/EC), which requires online sellers to identify themselves and their registration/VAT numbers; regulates the display of prices, fees, and applicable taxes; and imposes other pre-purchase obligations on e-commerce sellers;
- The Electronic Signatures Regulations 2002 (implementing EU Directive 1999/93/EC), which governs the enforceability of electronic signatures;
- The EU's new Consumer Rights Directive (EU Directive 2011/83/EU), which is designed to harmonise certain rules applicable to consumer rights across EU member states (and will supersede the Distance Selling Regulations once in effect);
- Online stores must have conspicuous terms of sale to ensure they are compliant with all regulations and legislation. They may need to be "localised" to comply with the laws of each member state in which consumers can purchase products, not just the UK. Compliance with the domestic laws of each country you sell into should not be overlooked.

### 2. Consumer Protection and Product-Specific Regulations

Regulations that provide protections to consumers purchasing from a "brick-and-mortar" retailer also apply to online sales. In the UK, these include:

- The Sale of Goods Act 1979, which covers the quality of goods received by purchasers;
- The Consumer Credit Act 1974, protecting consumers' rights when purchasing with a credit card; and
- The Unfair Terms in Consumer Contract Regulations 1999, which provides consumer protections against unfair terms imposed by retailers.
- Online sellers offering consumer electronics also have obligations under the UK's RoHS Regulations 2012 (implementing EU Directive 2005/95/EC), Producer Responsibility (WEEE) Regulations (implementing EU Directive 2002/96/EC), and Battery Regulations (implementing EU Directive 2006/66/EC), and may be responsible for their suppliers' compliance with such regulations.

## What to Google?

The consumer protection Regulations	
Distance selling regulations	
Electronic commerce regulations 2002	
Electronic signature regulations	
EU consumer rights directive	
GDPR and online selling	
Consumer protection act	
Sale of Goods act	

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### 3. Data Protection

Online sellers that collect and process personal data of their customers are responsible for ensuring that the storage and handling of such data is in compliance with the EU Data Protection Directive (95/46/EC), implemented in the UK via the Data Protection Act 1998.

The UK's Information Commissioners Office (ICO) requires registration by every non-exempt organisation processing personal data. Online stores should have a clear and accurate privacy policy ("say what you do"), and should ensure compliance with their privacy policy at all times ("do what you say").

Online sellers should ask for (and obtain and track) consent to their privacy policy and terms of sale prior to completing a transaction. If a third party processes consumer data for you, an appropriate controller-to-processor agreement needs to be in place.

If such third party is outside of the EEA, be aware of the conditions and exclusions under the Data Protection Directive and Data Protection Act related to such transfer. Personal data stored on systems (whether yours or your service providers') should be protected, encrypted and have access restrictions.

There are notification laws in many countries and states/provinces that may need to be followed in the event of a security breach, and note that the EU is mulling an EU-wide data breach directive or regulation, which would replace the current voluntary disclosure obligation in the UK.

A new harmonising EU Regulation has been proposed to replace the current data protection directive – but who knows how that will pan out for UK businesses post-Brexit, so watch for more developments in the coming months.

### 4. Cookies

If you use cookies on your e-commerce site, be aware of the requirements under the EU Cookie (e-Privacy) Directive (2009/135/EC) and ICO guidance on using cookies on your site.

This European Union directive is a recent legal requirement and requires a message to flash up as soon as visitors land on your homepage to notify them of your use of cookies. This is a passive requirement, which means it is assumed that visitors to your site will agree with the use of cookies and need take no action to continue navigating around the site.

Companies must show a willingness to comply with this new directive; otherwise they will fall foul of the Information Commissioners' Office. The ICO's guide to cookies is available here: [http://www.ico.org.uk/for\\_organisations/privacy\\_and\\_electronic\\_communications/the\\_guide/cookies](http://www.ico.org.uk/for_organisations/privacy_and_electronic_communications/the_guide/cookies).

Online sellers with operations outside of the UK may need to comply with additional local laws, and other member state implementations of EU directives may vary from the UK's legislation.

Finally, networking among peers, reading articles on ecommerce laws, and joining online communities for online sellers and their employees are prudent steps to take towards avoiding the legal landmines of running an e-commerce business.

## What to Google?

GDPR for business	
EU data protection act	
Cookies and the law	
EU cookie directive	
GDPR and cookies	
ICO cookie guidance	

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## Three consumer protection laws you need to know

For almost all products and services sold anywhere, not just online, there are rules and regulations designed to protect customers from harm. Now harm here has varying meanings. First off, it means to protect consumers from being hurt physically but goods and services, but there are also laws in place to stop them being 'harmed' by good being faulty and not working, not being what they are said they are or not being returnable and refundable.

Understanding all these laws and knowing where your responsibility lies as the merchant (as opposed to the producer or manufacturer of the goods supplied to you) is crucial to not only protecting your customers, but also your business from lawsuits.

So what do you need to do? Here is an overview of the main consumer protection laws and what your obligations are (we are not lawyers, so this is a guide not legal advice).

### 1. Consumer Protection Act 1987

This is your bible as a retailer as it protects the consumer from unsafe goods and makes the manufacturer of defective goods responsible for any damage the goods may cause. It also covers misleading prices and allows the council to seize unsafe goods or goods that fall foul of the Act.

The act was updated in 2000 to cover distance selling too, so that means anything where the sale is being made outside of a shop: so over the phone, via leaflets and of course online.

So what do you need to do?

- (a) Check that your goods are safe. You need to check with any suppliers that they have the right British Standards and EU kite marks and that the products have been certified as safe. This largely means dealing with reputable suppliers, ideally from within the EU.
- (b) Check the supply chain. Under the Act the Producer is liable for the goods safety and meeting safety requirements if they are an EU company. If they are not then the whole supply chain can be liable – so that not only includes your supplier, but can also include you too.
- (c) Dealing with enforcement authorities. Dealing with the council or other authorities that monitor safety of goods and pricing is your responsibility as the distributor.
- (d) Misleading pricing. It is your responsibility as the distributor to give the correct price to the consumer. If you advertise it at one price and then charge them a higher price you have broken the law and, as with breaching all the above, can result in a criminal conviction.

**Read more**

<http://www.legislation.gov.uk/uksi/1987/1680/contents/made>

## What to Google?

The consumer protection act 1987	
EU law and consumer protection	

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## 2. The Trade Descriptions Act 1968

The Trade Description Act of 1968 covers making false or misleading claims about goods or services: it is basically to cover people from being lied to about what things can do.

So what do you need to do?

- (a) Be truthful. It's that simple really: tell the truth about what your goods and services do with no exaggeration or lies.
- (b) Testimonials and quotes. It is against the Trade Description Act to make up testimonials or to get your mum to do it (assuming she hasn't used your goods or services), so don't.
- (c) Check supplier literature. You as the distributor are responsible for telling it like it is so check that your suppliers information is truthful and accurate. You could well get sued if you just use what they send you. Then again, they have also broken the law, so you may end up sharing a cell.

### Read more

<http://www.legislation.gov.uk/ukpga/1968/29>

## 3. Electronic Commerce (EC Directive) regulations

Brought in in 2002 to give protection to consumers buying things on the internet, the E-Commerce regulations cover the exchange of money for anything 'at a distance' (so not in a shop) over the web. It also covers advertising online.

So what do you need to do?

- (a) Details. You need to register your self as a company, with an office address (even if its your home), a VAT number and display clear pricing.
- (b) Companies Act. You also need to meet the Companies Act 2006, which means filing accounts and so on. <http://www.legislation.gov.uk/ukpga/2006/46/contents>
- (c) Marketing. You need to be very clear when doing email or other 'digital' marketing that the message is commercial; you also need to name and details of the company that the message is being sent from. You also need the person receiving to have 'opted in'.

### Read more

<http://www.legislation.gov.uk/uksi/2002/2013/made>

## What to Google?

Trade discriptions act 1968	
EU Electronic commerce regulations	

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## Data gathering and the law

While data is becoming increasingly invaluable to any business, there are myriad and complex laws governing its collection, storage and use that you have to be aware of.

In the UK there are essentially two main pieces of legislation that govern the collection and use of data: The Data Protection Act, which is about collecting and storing it, and The Privacy and Electronic Communications Act, which is more to do with how you use that data in an electronic and marketing environment.

While each of these pieces of legislation are huge, dense and labyrinthine, they are also confusingly intertwined, sometimes overlapping and occasionally contradictory. Understand both is, however, essential if you are going to collect data about customers and use it.

So what do you need to know?

### 1. The Data Protection Act

Introduced in 1998, the Data Protection Act is designed to help protect anyone who has their data stored by anyone else, be they customers or employees. The act was introduced to promote high standards in the handling of personal information and so protect the individual's right to privacy.

Broadly, the Act covers any information that relates to living individuals which is held on computer. For example, this may include information such as name, address, date of birth and opinions about the individual or any other information from which the individual can be identified.

The Act applies to firms holding information about living individuals in electronic format and, in some cases, on paper. They must follow the eight data protection principles of good information handling.

These say that personal information must be:

- (a) Fairly and lawfully processed;
- (b) Processed for specified purposes;
- (c) Adequate, relevant and not excessive;
- (d) Accurate and, where necessary, kept up to date;
- (e) Not kept for longer than is necessary;
- (f) Processed in line with the rights of the individual;
- (g) Kept secure; and
- (h) Not transferred to countries outside the European Economic Area unless the information is adequately protected.

## What to Google?

Data gathering legally	
GDPR and data gathering	
The Data Protection Act	

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## Data Protection Act Checklist

This short checklist will help any company try and comply with the Data Protection Act. Answering yes to all the questions below doesn't guarantee compliance, but it certainly shows you are on the right path.

- (a) Do I really need this information about an individual? Do I know what I'm going to use it for?
- (b) Do the people whose information I hold know that I've got it, and are they likely to understand what it will be used for?
- (c) Am I satisfied the information is being held securely, whether it's on paper or on computer? And what about my website? Is it secure?
- (d) Am I sure the personal information is accurate and up to date?
- (e) Do I delete/destroy personal information as soon as I have no more need for it?
- (f) Is access to personal information limited only to those with a strict need to know?
- (g) If I want to put staff details on our website have I consulted with them about this?
- (h) If I use CCTV, is it covered by the Act? If so, am I displaying notices telling people why I have CCTV?  
Are the cameras in the right place, or do they intrude on anyone's privacy?
- (i) If I want to monitor staff, for example by checking their use of email, have I told them about this and explained why?
- (j) Have I trained my staff in their duties and responsibilities under the Act, and are they putting them into practice?
- (k) If I'm asked to pass on personal information, am I and my staff clear when the Act allows me to do so?
- (l) Would I know what to do if one of my employees or individual customers asks for a copy of information I hold about them?
- (m) Do I have a policy for dealing with data protection issues?
- (n) Do I need to notify the Information Commissioner?

### 1. The Privacy and Electronic Communications Act

Introduced in 2003, this Act is designed to protect how individual's data is used by direct marketers and is designed to protect consumers from unsolicited communications from any entity, be they businesses, charities or others.

In theory this was an 'anti spam' law, introduced – rather perceptively – at the start of the e-commerce boom and is designed to make data use for marketing something that consumers opt into receive, not opt out of to stop. As such you have to be aware that if you are trying to collect consumer data and use it

## What to Google?

GDPR checklist	
Privacy and electronic communications act	

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## ✓ 2. The Privacy and Electronic Communications Act Checklist

Again, this short checklist will help you decide if you are collecting data correctly so that you can actually use it to market to people. Its not water tight – so don't use it in evidence if you end up in court – but meet these criteria and you are probably doing things right.

### Obtaining consent for marketing

- Do you use opt in boxes?
- Do you specify methods of communication (eg by email, by text, by phone, by recorded call, by post)?
- Do you ask for consent to pass details to third parties for marketing, and name or describe those third parties?
- Do you record when and how we got consent, and exactly what it covers?

### Using bought-in lists

- Do you check the origin and accuracy of the list?
- Do you check when and how consent was obtained, and what it covers?
- You DON'T use bought-in lists for texts, emails or recorded calls (unless we have proof of opt-in consent within last 6 months which specifically named or described us)?
- Do you screen against the TPS?
- Do you tell people where we got their details?

### Making calls

- Do you screen live calls against the Telephone Preference Service (TPS)?
- Do you only make recorded calls with opt-in consent?
- Do you keep our own do-not-call list of anyone who says they don't want our calls?
- Do you screen against our do-not-call list?

### Sending texts or emails

- Do you only text or email with opt-in consent (unless contacting previous customers about our own similar products, and we offered them an opt-out when they gave their details)?
- Do you offer an opt-out (by reply or unsubscribe link)?
- Do you keep a list of anyone who opts out?
- Do you screen against our opt-out list?

## What to Google?

Cold calling rules and regulation UK	
Cold calling rules and regulations EU	
How to legal buy contact lists	
Legal use of purchased lists for marketing	
How do I know my marketing list is legal	
Rules for SMS marketing	
SMS marketing and the law	

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## What laws to consider when exporting

Growing your business overseas is a great opportunity, but you can't just set up virtual shop and let the business flood in: you have to make sure that you meet all the many legal requirements of each territory you are effectively exporting to.

Now, there is a lot of legal stuff you need to know to export – and I mean A LOT – but there are some basic principles you need to adhere to and things you need to make sure are all in place if you are to do it.

Obviously, post-Brexit the rules may change, but for the next couple of years at least it is likely to stay as it is, so here is an overview of the sorts of legal things you need to be on top of to start exporting goods.

### 1. Where are you exporting to?

You need to know where the most likely places there are for your products to sell well overseas, which requires research and probably visiting the region or countries identified. While there checking out the cultural aspects of the market, try and find out local duties, taxes and tariffs. As with understanding the actual market, it is often best to get in with someone local who can advise you.

- **Customs**

You can't get anything into any country without clearing customs, so you need to understand the customs classification of your goods and understand the Tariff Codes, the Commodity Codes and Customs Procedure Codes (CPCs) for your market.

- **Obligations and declarations**

You have to know what you are declaring at customs – which will be on any documentation – and you have to be clear if someone else is collecting it – ie its being delivered to someone – that they sign for it and sign the declaration. You also need to make sure that they are aware that they are doing so.

- **Documentation**

What is put on the documentation is vital and has to be 100% accurate. Never misdeclare goods, mis-value them or make any mistakes on the documents. Even if you make a mistake in error it could be very costly indeed.

- **VAT**

We have dealt with VAT before, but to recap: goods sent outside the EU – or indeed imported from outside the EU – are VAT exempt, but you have to be able to prove that they are going without or come from without the EU.

Goods moved within the EU are liable to VAT at the destination, unless they are digital goods which are now VAT-able at source/billing destination.

## What to Google?

What laws affect exporting from UK	
UK export rules	
Customs for exports	
VAT and exports	
Documentation for legal exporting from the UK	

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- **Payment problems**

With traditional exporting you usually are sending goods along with an invoice that has to be paid within 30-90 days. With e-commerce you are taking payment on a site through a payment gateway. In either case check that you are dealing with someone credit-worthy before you dispatch any goods.

- **Dispute resolution**

Make sure that you have very clear terms and conditions about liabilities and how any disputes are likely to be resolved – you typically need to do this within English law but you should really take basic legal advice on this. A good place to look for more information and get advice on specific overseas markets and export law are:

- UK Trade & Investment (UKTI)
- BExA
- Chambers of Commerce
- HMRC



## What to Google?

Getting paid for exports	
Export dispute resolution services	

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## MARKETING AND THE LAW

If you use email, mobile, social or SMS marketing, then you have to make sure you do it within the bounds of the law. The main law that you are going to have to be aware of is 'anti-spam law', or to give it its proper name, the Privacy and Electronic Communications (EC Directive) Regulations.

Ah, EC law I hear you cry: Brexit will put an end to that! Well, not for the foreseeable future and you can bet that if it is repealed, something similar will take its place.

Anyway, for now you have to meet this law so here is a simple overview from our friends at lawdonut.co.uk of what you need to be aware of. This is just a GUIDE, please do take legal advice if acting on any of this guide's information.

### 1. What does the anti-spam law do?

The law stops you sending unwanted and unsolicited stuff to people, especially email – which is often called spam to individuals. Unsolicited emails can be sent to corporate subscribers if they are relevant to their work, however.

### 2. Who enforces it and what are the fines?

The law is enforced by the Information Commissioner and breaches can incur fines of up to £5,000. You can also be subject to a civil suit from anyone who feels that they have been damaged by your. The rules are in the Privacy and Electronic Communications (EC Directive) Regulations.

### 3. What is the definition of 'spam'?

Interestingly, 'Solicited' and 'unsolicited' are not defined in the rules, but solicited emails are commonly those that recipients specifically ask you to send them. A recipient can solicit an email from you via a third party such as a reseller or another company within the same group as yours. An unsolicited email is any other email. What soliciting means is described below in terms of subscribing.

A 'marketing' email is not defined by the law either, but must include any email promoting your goods and services. For not-for-profit bodies like charities it includes promotion of your ideals.

### 4. Individual subscribers verses corporate subscribers

The restrictions on spamming individual subscribers apply not just to consumers, but also to sole traders and partners in business partnerships in England & Wales (Scottish partnerships are different – see below) because they are still individuals, even though they are in business and even if you email them in their business capacity.

## What to Google?

What laws impact marketing	
What makes spam marketing	
How to get subscribers	
How not to spam	
Anti-spam laws UK	

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A ‘corporate subscriber’ will usually be a limited company or Limited Liability Partnership (or a Scottish partnership) but can also include schools, hospitals, government departments or agencies and other public bodies.

## 5. The rules for corporate subscribers

You can ‘cold email’ an unsolicited, direct marketing email to a corporate subscriber, but be careful. The fact an email address ends in .co.uk does not mean it belongs to a limited company. Anyone can register a .co.uk domain name (the only UK domain names that tell you for certain that you are dealing with a UK limited company are the .ltd.uk and .plc.uk domains, but these are rare).

An email to sales@abcwidgets.co.uk or helpdesk@abcwidgets.co.uk is clearly to the corporate subscriber. But what if you are emailing ‘Pauline Manager,’ an employee at a limited company, at a work address such as pmanager@abcwidgets.co.uk? The email will be opened by Pauline, who is an individual.

This is permitted if the email is work-related (eg promoting office furniture to a facilities manager) but not if it is personal (eg promoting family holidays to the sales team at a recruitment company).

This view is bolstered by the legal argument that the law defines a ‘subscriber’ as “a person who is a party to a contract with a provider of public electronic communications services for the supply of such services”. Since it is ABC Widgets that is the party to the contract with the telecoms provider providing the work email address, not the employee, the argument is that the email is being sent to the company – the ‘corporate subscriber’ – and no restrictions apply. It doesn’t matter that the email can only be accessed by the individual employee.

## 6. The rules for individual subscribers

### (a) Individuals who specifically consent (‘opt-in’) to receiving emails

You can send direct marketing emails to individual subscribers if they have ‘previously notified the sender’ of their specific consent (ie they have ‘opted in’) to receiving such emails from you.

Specific consent requires some positive action by the subscriber. If an individual omits to deselect an opt-in box you have pre-ticked on (eg an order or enquiry form), that is not a specific consent. If they specifically tick the opt-in box or you make it clear that by entering his email address in a field they are opting in, these are positive acts for this purpose.

The opt-in must be ‘clear and distinct’ so individuals can see that they are opting in and see what they are opting into when they tick a box or provide their email address.

### (b) The family opt-in

When emailing a family address (eg smithfamily@isp.co.uk), you must have reasonable grounds for believing

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you have the consent of a person who is speaking on behalf of the family. Given the inclusion of the word 'subscriber' in the definition of an 'individual subscriber' this probably means you need the consent of the family member(s) who is a party to the contract with the telecoms provider providing the family email facility.

(c) **Opt-in is temporary**

If an individual subscriber does opt-in, his or her consent is only given 'for the time being'. You are entitled, however, to assume the individual's consent remains valid until there is a good reason for you to consider otherwise.

(d) **Third party advertising consent**

If you are going to let third parties advertise in your emails, you should obtain the consent of any individual subscribers on your emailing list before you do so. Without it, your emails might be construed as unsolicited direct marketing emails from your advertisers to your subscribers.

(e) **What your opt-in request should say**

Applying the above rules, the 'opt-in' request of a limited company within a group might ask for an individual's consent to receiving emails:

- from you about the products and services that you want to market to them
- from other companies in your group about the products and services they offer
- from you, or other companies in your group, about other brands you each offer
- from you, or other companies in your group, about other activities such as seminars, competitions, promotions, etc
- from you that include third party advertisements
- from third parties offering specified products and services (to allow you to pass details to those third parties).
- 'Opt-in' and bought-in lists

Opt-in has to be previously notified to 'the sender' of direct marketing emails. If this means consent must be given to you directly, then addresses on any list compiled by a third party (such as a list broker or another company within the same group as yours) after December 2003 (when the anti-spam law came into force), cannot be an 'opted in' list for your purposes.

Guidance from the Information Commissioner, however, envisages that a consent can be collected from an individual by a third party on your behalf, provided the third party makes it clear to the individual that it is proposing to pass his or her details to businesses offering the sort of products and services you offer. For example, if you offer American holidays, a third party can ask an individual for consent as follows:

"We would like to pass your details on to specially selected third parties so that they can send you more information about holidays in America. Do you agree to this?"

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A positive response, according to the guidance, means ‘it is likely’ the third party can pass those details to you and you can send direct marketing emails to those contacts to promote your American holidays. It does not matter that the individual has never heard of you previously.

(f) **‘Soft’ opt-in**

There are circumstances in which you can treat an individual subscriber as having consented to receiving emails from you, even though they haven’t specifically done so. This is called ‘soft’ opt-in. You can send direct marketing emails to individual subscribers under the soft opt-in rules if:

- Their email address was obtained by you in ‘the course of the sale or negotiations for the sale of a product or service’ The Department for Business, Innovation and Skills (BIS) interpretation is that this condition is satisfied if the individual is already a customer or has entered into negotiations with you with a view to a sale or has registered an interest in a product and allowed their email address to be recorded for future marketing use.

An example of a ‘negotiation’ might be a price enquiry or someone checking availability of a product or service. But beware the difference between an email address obtained as the result of an enquiry from your website that asks ‘where’s the nearest store to Tetbury?’ (no interest in a product) and one obtained because an individual asks ‘is there a store near Tetbury where I can buy a new toner cartridge for my printer?’ (interest in a product). It is possible that entry into a competition designed to create awareness/interest in particular goods and services could constitute ‘negotiations with a view to a sale.’

- The direct marketing is in respect of your ‘similar products and services only’ The BIS interpretation is that the products or services must be ‘similar’ to those the individual was buying or negotiating to buy when their email address was originally captured. This probably extends to any goods and services that the recipient would reasonably expect you to provide. For example, if you are a hotelier, guests would reasonably expect you to offer conference, party and catering facilities as well as rooms, and these could be promoted using direct marketing emails.
- The recipient has been given a simple means of refusing (free of charge except for the costs of the transmission of the refusal) the use of his or her contact details for the purposes of such direct marketing, at the time that the details were initially collected.
- The individuals are given the opportunity to opt out in every subsequent email to them Individuals whose email addresses you buy in from a list broker cannot have opted in to receive emails from you under the soft opt-in rules if they have never dealt with you, but only the list broker. Nor can an individual who gives his or her email address to your company be treated as having opted in to receiving direct marketing emails from other companies in the same group as you, unless he or she has specifically consented to this.

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It's also likely that, if you have opt-in from a subscriber to receiving emails from one brand or business name, and you want to promote another brand or business name you own, you can only do so if the recipient would associate the two as being under common ownership.

## 7. Rules applying to all emails

All direct marketing emails, whether to corporate subscribers or individuals, and whether unsolicited or solicited, must:

- (a) make the identity of the sender clear (the sender must not be 'disguised or concealed')
- (b) provide a valid address to which 'unsubscribe' messages may be sent.

Existing emailing lists?

By concession, the Information Commissioner has said that he will not apply the law to 'legacy lists'. This means:

- (a) email addresses you had at 31 October 2003
- (b) that you have used within the last 12 months
- (c) that you collected in compliance with the law at the time (at a minimum, you told the people whose addresses you collected that you would be using the addresses for marketing purposes when you collected them)
- (d) whose owners haven't told you to stop emailing them

## 8. Subcontracting your e-marketing?

The Information Commissioner will proceed against you first if the rules are breached, as the 'instigator' of the email communication.

## 9. Data Protection Act 1998

The anti-spam rules specifically say that they do not affect your obligations in relation to personal data under the Data Protection Act 1988. Under that Act individuals (as opposed to businesses) can prevent you from processing 'personal data' (which includes using it to send them unsolicited marketing emails) without their consent.

Personal data is data relating to a living individual (but not companies). So, if you have an email address but cannot tie it to a person's name or other personal details, it is not personal data. If it is, however:

- (a) you should not send unsolicited marketing emails to any person who has not consented to your doing so
- (b) even if they originally consented, recipients of your direct marketing emails can write and ask you to stop using personal data to send out direct marketing emails at any time afterwards
- (c) And as lawdonut.co.uk always says: Always take legal advice.

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