



Guidance on the Privacy and Electronic
Communications Regulations 2003
September 2003

INTRODUCTION

New Regulations updating existing legislation on the use of unsolicited emails and texts plus the use of cookies were laid before Parliament in September 2003.

Implementing the Directive on Privacy and Electronic Communications (2002/58/EC), the new Regulations allow for a twelve-week familiarisation period and will come fully into force from 11 December 2003.

What will the regulations introduce?

1. Unsolicited commercial emails (spam) and text messages (SMS) to individual subscribers will need individual's prior agreement. Such communications may only be sent to individuals who have 'opted in' or given their 'active consent' to receive unsolicited commercial emails or 'spam', and SMS to mobile phones.
2. There is an exception to this rule in the context of existing customer relationships. Unsolicited communication relating to similar products and/or services can be sent to existing customers until such time as they indicate they no longer want to receive such communications by opting out.

What does this mean for market research?

1. Market research emails and SMS are not defined as commercial communications within the legislation. However researchers should be prepared for feedback and/or questions from respondents regarding the legislation.
2. Clients will still be able to forward their customer email addresses to market researchers in the same way they can now. The only exception to this is in instances where clients have decided to include market research in their standard data protection opt out policy.
3. For "category 6 projects" (e.g. mixed purpose projects where market research is combined with a non-market research activity – see [MRS data protection guidance](#) for full details) the new Regulations will apply and must be adhered to.

What other changes will take place?

- As of Spring 2004 corporate bodies in addition to individuals will be able to subscribe to the Telephone Preference Service (TPS). Screening against the TPS is only required for commercial/direct marketing calls and not for market research calls.
- Any websites employing 'cookies' and other tracking devices must include a clear statement about the use of cookies and must allow subscribers or users to refuse to accept them if they wish.
- There are new information and consent requirements for entries in publicly available directories, including a requirement that subscribers are informed of all the usage possibilities of publicly available directories - e.g. reverse searching from a telephone number in order to obtain a name and address. Researchers who use or purchase such directories will need to be aware that there is now this requirement.

Guidance on the Regulations

The Information Commissioner – the enforcer of the new Regulations - is preparing guidance notes on the new provisions. The DTI will make the guidance available on their website as soon as it has been finalised, and it will also be available on the Information Commissioner's Office (ICO) [website](#).

The Interactive Advertising Bureau (IAB) provides independent guidance for Internet users and online operators on the use of cookies and how to notify users of them under the new rules at: www.allaboutcookies.org