

Understanding the new controls over online advertising, cookies and marketing communications

If your business uses websites and electronic communications to market directly to UK consumers, you'll be affected by recent developments in the regulation of advertising and marketing.

Some of the most important changes are as follows:

- From 1 March 2011, the Advertising Standards Authority's (ASA) online remit has been extended to cover companies' marketing claims on their own websites and in other non-paid space they control. This includes social networking sites such as Facebook and Twitter.
- New rules on the use of 'cookies' to collect information about website users (e.g. to conduct targeted or behavioural advertising) will come into force on 26 May 2011.
- The Information Commissioner's power to issue monetary penalties has been extended to cover non-compliance with rules concerning direct marketing by phone, email, text and other messaging services.

What's the outcome of these changes?

The extension of the ASA's responsibilities means that on-line marketing must comply with the UK Code of Non-broadcast Advertising rules – these are designed to

ensure that advertisements are legal, decent, honest and truthful. The outcome of this is that online marketing must now comply with the same strict standards that already apply to advertising in other media. The ASA has a broad number of sanctions for non-compliance. These can include adverse publicity through publication of decisions, the removal of non-compliant advertisements and withholding ad spaces for businesses which don't comply.

The new rules on cookies mean that the user's consent must now be obtained before cookies are deployed for any purposes which are not essential for the operation of the website. Previously an 'opt-out' approach was permitted but this will no longer be sufficient. This new rule has been required as a result of controversial changes to European Union law. In the longer term, consent may be provided through new features in website browsers, but for now you may have to bring in additional procedures to obtain consent.

The increased sanctions for unwanted marketing communications mean that if your organisation is making unwanted marketing phone calls or sending unwanted marketing emails, then in extreme cases this could result in penalties of up to £500,000. The Information Commissioner will also gain increased investigatory powers and there are new requirements for communications companies to notify customers of data breaches.

What does this mean for you?

If your organisation markets or advertises online or via the telephone, there may be a direct impact on your business:

- You'll need to review your own websites and other online marketing activities to make sure they comply with the UK Code of Non-broadcast Advertising. If they don't, you could face sanctions from the ASA.
- You should also review how cookies are used on your websites and may need to implement additional procedures or technology so your users can give their consent. Recent guidance from the Information Commissioner's Office (ICO) makes clear that the ICO expects website operators to consider the issues and to set out a realistic plan to achieve compliance, even if you can't implement changes immediately. The ICO will take into account whether businesses have made plans or have just ignored the issue in any enforcement action.
- If you market via email phone, text messaging and similar communications methods, you should also review and assess these activities to ensure compliance.

How can PwC Legal help?

PwC Legal can help you determine how to respond to these changes. We can help carry out a review of your existing websites and advertising and marketing policies and procedures in light of the above developments, as well as compliance issues raised by specific marketing campaigns.

Find out more

If you'd like to speak to us to find out more about how we could assist you in complying with the requirements, then please contact Latika Sharma or Jonathan Nugent.

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