

Venturefest 2004

The Business Boffin Seminar - Starting a Business

Data Protection and IT Security RT Coopers Solicitors

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(RTC)
RTCoopers
Solicitors

INTRODUCTION

- Who We Are
- Overview of Data Protection
- E- Marketing
- IT Security Measures

WHO WE ARE

- ❑ Specialist Commercial Law firm in the City of London
- ❑ Focusing on Technological Advances in a Range of Sectors

❑ **Strong Expertise**

- **Corporate Finance**
- **Data Protection and IT Security**
- **Life Sciences and Pharmaceuticals**
- **Intellectual Property**
- **Private Equity Investments and Venture Capital**
- **Technology Transfer**

- ❑ **Clients** - Inventors, Start-ups, Universities, Spin-outs, Charities, High-Tech Companies, Corporate

- ❑ **Rapid Growth** - Offices in London and the Caribbean. Opening offices in Cambridge, Singapore and Southampton

- ❑ Setting up China-UK Partnership

WHO WE ARE

□ Our UK Team

- Partners
- Assistant Solicitors
- Trainee Solicitors
- Paralegals
- Patent Agents
- Accountants

□ We assemble **the right team for a project**, which may include lawyers forming part of our global network

□ RT Coopers Capabilities

Key Qualities Driving Our Success:

- ✓ **Personal Service** - dedication and commitment, knowledge and experience of the highest level
- ✓ **Value for Money** - meeting our Client's instructions without compromise
- ✓ **Involvement** - hands on approach and availability
- ✓ **Innovation** –creative solutions to complex legal and commercial problems; developing and applying progressive techniques
- ✓ **Experience** – We are at the cutting edge of technology and are leaders in our fields

Overview of Data Protection

❑ Personal Data – Identifiable

individuals such as facts and opinions, names, addresses, email addresses, telephone numbers

❑ Processing means-

Obtaining, recording, handling, storage, disclosure and use of data

❑ Processing of ‘Personal Data’ -

Certain conditions have to be met:

- Consent of the individual
- Necessary for the performance of a contract with the individual
- Required under a legal obligation
- Necessary to protect the vital interests of the individual
- Necessary to carry out public functions
- Necessary in order to pursue the legitimate interests of the data controller or third parties (unless it could prejudice the interests of the individual).

❑ Data – Information intended to be processed electronically or which forms or is intended to form part of a ‘relevant filing system’

❑ Sensitive Data-

Racial or ethnic origin, Political opinion, Religious or other beliefs, Trade Union membership, Sexual life, Commission or alleged commission of any offence, Any proceeding for an offence or alleged commission of an offence

❑ Processing Sensitive Data - Stricter controls regarding ‘sensitive data’

- Require explicit consent of individual or data subject
- Required by law to process the data for employment purposes
- Process the information in order to protect the vital interests of the data subject or another person
- Dealing with the administration of justice or legal proceedings

❑ Sanctions

Eight Data Protection Principles

Principle 1	Personal data shall be processed fairly and lawfully
Principle 2	Personal data shall be obtained only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes
Principle 3	Personal data shall be adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed
Principle 4	Personal data shall be accurate and, where necessary, kept up to date
Principle 5	Personal data processed for any purpose or purposes shall not be kept for longer than is necessary for that purpose or those purposes
Principle 6	Personal data shall be processed in accordance with the rights of data subjects
Principle 7	Appropriate technical and organisational measures shall be taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data
Principle 8	Personal data shall not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of Data Subjects in relation to the processing of personal data

E-Marketing

The Privacy and Electronic Communications (EC Directive) Regulations 2003

❑ **Rule 1- Applies to all marketing messages sent by email regardless of who the recipient is:**

- The sender must **not conceal its identity**
- In the **subject line** there must be reference to the fact that it is **a marketing email**; and
- The sender must provide a valid address for **opt-out** requests

❑ **Rule 2- Applies to unsolicited marketing messages sent by email to individual subscribers**

- Senders cannot send such messages unless they have the recipient's prior consent

❑ Constraints on the use of e-mails, SMS marketing and Website cookies

❑ Processing of personal data and protection of privacy

-Opt-in - “a person shall neither transmit, nor instigate the transmission of, unsolicited communications for the purposes of direct marketing by means of electronic mail **unless the recipient of the electronic mail has previously notified** the sender that he consents for the time being to such communications being sent by, or at the instigation of, the sender”.

-Previously notified – passive consent is not enough (positive tick in a box or equivalent device)

- Individual subscribers – Residential subscribers, sole traders or unincorporated partnership

E-Marketing

❑ Data Collected before October 2003 - maybe legally unusable

- Unless email addresses of persons bought or negotiated for the sale of goods or services
- Opt-in required in all other cases – if persons registered on a website for a newsletter or feature in a bought-in list

❑ Existing Customer Relationship Exemption

- Limited direct marketing by e-mail is permissible without an express opt-in, subject of the following requirements:
 - The email address must have been obtained in the course of the “sale or negotiations for the sale of a product or service to that recipient”
 - Direct marketing is permitted only in respect of the marketer’s “**similar products and services**”
 - Recipient must be given a simple means of refusing the use of contact details for the purposes of direct marketing – e.g. a tick box

❑ Cookies

- Web servers – use of cookies and other tracking devices are:
 - prohibited unless subscribers and users are clearly told they are being used; and
 - given the chance to refuse their use
- Regulations do not set out when, where or how information or switch off opportunity should be communicated – **Privacy policy**

❑ Enforcement

- **Damages** against any person who contravenes the requirements of the Regulations
- Enforcement provisions of the **DPA** extended to contravention of Regulations

IT Security Measures- Selecting Relevant Controls

Preventive
/ deterrent

Corrective

Detective

Off-the-shelf

Best practice

Custom

Free/cheap

£various

£££

Cost

Effectiveness

CONCLUSION

- Individual's privacy must be protected
- Data Controllers are under a legal Obligation to ensure the data integrity and security of individual's personal data

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