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3C45936C4195887ACA25744700026DEE

⁸ See ACMA's media release announcing the conclusion of its investigation available at http://www.acma.gov.au/WEB/STANDARD/pc=PC_311469

⁹ For detailed information about the DNCR Act and scheme see http://www.acma.gov.au/WEB/STANDARD/pc=PC_100642

¹⁰ See "Responsive Regulation – Transcending the Deregulation Debate" by Ian Ayres and John Braithwaite, 1992, <http://www.oup.com/us/catalog/general/subject/Politics/AmericanPolitics/?view=usa&ci=9780195093766>, presented by John Braithwaite to the First APEC Technical Assistance Seminar on Cross-Border Privacy Rules in January 2007, http://aimp.apec.org/Documents/2007/ECSCG/SEM1/07_ecsg_sem1_019.pdf and summarised in a Seminar Background Paper for participants in the Second Seminar that year http://aimp.apec.org/Documents/2007/ECSCG/SEM2/07_ecsg_sem2_002.doc

¹¹ Do Not Call Register Act 2006 Explanatory Memorandum p 2. See http://www.austlii.edu.au/au/legis/cth/bill_em/dncrb2006211/memo_0.html

¹² Ibid; pp 58-59.

¹³ For details of ACMA's findings and the results of the investigation see the enforceable undertaking given by Dodo to ACMA available at http://www.acma.gov.au/webwr/_assets/main/lib310480/dodo_aust_pl_s572b_enforceable_undertaking.pdf

¹⁴ The distinction between what is required in regulation and what is required of the regulator within that regulatory framework is too rarely made. For an earlier account of these issues including the development of the three Es concept see "Light Touch or Soft Touch – Reflections of a Regulator Implementing a New Privacy Regime", first delivered by Malcolm Crompton as Privacy Commissioner to the National Institute of Governance at University of Canberra, in March 2004, http://www.privacy.gov.au/news/speeches/sp2_04p.pdf.

Dutch authorities publish rules on viral marketing and tell-a-friend

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Viral marketing and particularly 'tell a friend'-systems on websites are allowed, provided that certain conditions are complied with. This is what the Telecoms Authority (OPTA) and the Dutch Data Protection Authority (DPA) have made known in a joint opinion.

Viral marketing and 'tell a friend' provided Internet users with the option to inform a friend or acquaintance through a website about particular messages or news from that site. This marketing method (so-called viral marketing) is largely applied on websites and affects the powers of both OPTA and the DPA. Although this marketing method has been used for a number of years now, the two authorities have only now drawn up a joint opinion in order to create clarity on the conditions on which 'tell a friend'-systems can be used in a lawful way.

'Tell a friend'

'Tell a friend'-systems offer the visitors of a website the option to have an e-mail sent to someone they know (or perhaps not know) without the prior consent of the addressee. A well-known example was an online contest organised by an air carrier; participants had to solve a puzzle and could win a city-trip. If they didn't solve the puzzle they could enter again, provided that they invited five friends to participate as well.

Such viral marketing and 'tell-a-friend' actions fall under the spam prohibition, *i.e.* the prohibition pursuant to the Telecoms Act (*Telecommunicatiewet*) regarding the dispatch of unsolicited electronic messages for commercial, idealistic or charitable purposes. Furthermore, a personal e-mail address will most likely be involved. This implies that the Dutch Personal Data Protection Act (*Wet bescherming persoonsgegevens*) applies as well.

Conditions for lawfulness

In this joint opinion, OPTA and the DPA determine that 'tell a friend'-systems can only be lawful if at least the following conditions have been complied with:

1. *no incentives or rewards*: the message will be sent completely on the initiative of the Internet user (*i.e.* sender); the website does not provide incentives or (any chance of) reward to the sender or recipient;
2. *sender's identity*: it must be clear to the recipient who the initiator of the e-mail is, so that he can tackle that person if he does not like such mails.
3. *sender responsible*: the sender must know the full content of the message that is sent on his behalf, so that he can assume responsibility for the personal contents of the message.
4. *no harvesting of personal data*: the website concerned may not use or save the e-mail addresses and other personal data for other purposes than the once-only dispatch of a message on behalf of the sender. In addition, the website must protect the system from abuse, like the automated dispatch of spam.

Co-operation protocol

This is not the first time OPTA and the DPA have worked together. The authorities have entered into a co-operation protocol. This protocol includes arrangements on the way they work together in matters where both have certain powers, such as in the area of privacy protection for (Internet) users and the processing of personal data by providers of electronic communications services.

The joint position on viral marketing (in Dutch) can be downloaded from the websites of both regulators: <http://www.opta.nl> and <http://www.cbprweb.nl> search on 'tell-a-friend'.