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How the PPI Act could affect corporate communication

Businesses will have to dramatically rethink their marketing and communication strategies once the Protection of Personal Information (PPI) Bill is enacted into law.

Although there is debate around the anticipated date of the enactment of the PPI Bill, it is currently under review and may be passed into law as soon as next month by Parliament after having been approved by Cabinet in August 2009.

The PPI Bill is concerned with the way commercial and non-commercial organisations view, manage and use personal information. Since personal information includes mobile numbers and email addresses, the Bill will impact on the use of electronic corporate communications such as SMS and email.

Currently the Electronic Communications and Transactions Act (2002) allow unsolicited electronic marketing communications to anyone (customers and non-customers alike), provided individuals are given an option to opt-out and, on request, senders disclose where they obtained the contact details of the individual.

Under the new PPI Bill, communications that relate to carrying out the performance of a contract with an existing customer may continue to be sent but further marketing communications to that customer may only be sent if a business provided the customer with an opportunity to opt-out of such further communications at the time when his or her contact information was first obtained. Unless a business can comply with the above, it will only be able to send out direct marketing communications if it obtains the explicit consent of an individual. Furthermore, the Bill stipulates that each marketing communication sent to customers must include opt-out instructions. Such direct marketing communications may only be used for a purpose disclosed at the time the contact information was obtained, e.g. to promote similar products and services sold by the same business.

Communications that are not marketing related

Apart from communications required for the performance of a contract, the new PPI bill allows for a number of other non-marketing electronic communications that do not require explicit consent from individuals and also do not require opt-out instructions. These include communications that are required by law, or communications that are necessary to protect a legitimate interest of the individual or the business. For the last item, individuals may still object to receiving such communications on reasonable grounds.

This means that businesses will need to practise extreme caution when communicating with customers or they could be accused of breaking the law. Recipients of communications, under the new PPI regulations, will be able to demand proof of the origin of where their information was obtained as well as consent for the particular use thereof by a business.

This not only applies to the future collection of information but will need to be applied to all existing personal information that already resides within the organisation. Although most companies should be able to prove where and how the information was obtained, they may now also be required to produce proof of consent for using data they already have and they also need to be able to show how this customer information is being protected against possible theft or leakage.

In addition, companies will need to implement systems and processes to keep track of a customer's preferences relating to the use of personal information for communications. They will need to honour a customer's preferred communication channels as well as exclusions or conditions that may have been agreed upon. This means that customer communication profiles will become extremely customised, which may seem like an administrative headache for companies, but it will lead to more effective communications in the long run. The net result is that business communications will become more targeted and therefore more valuable to the recipient.

SMS will score

In the end it is the consumers that stand to receive the most benefits from the PPI Bill. Provided this legislation is enforced, unsolicited messages are going to decrease in all electronic communication channels, including SMS.

From a mobile industry perspective, it is encouraging to see that the new Bill has recognised the benefits of electronic communications for non-marketing purposes, and great care has been taken to remove unnecessary constraints on these communications.

In particular, the Bill prescribes a number of notifications that must be sent to customers as soon as reasonably possible, for instance: notifications of data breaches, product recalls or any notifications protecting a legitimate interest of a customer. SMS messaging is best suited to enable companies to comply with these new requirements as SMS is the quickest way of sending critical notifications to a small or large group of targeted individuals

Businesses need to get their communications act together

In short, although individuals will enjoy increased control over the messages they receive and increased rights to the notifications they should receive, it is up to the business to ensure that these choices and requirements are adhered to as required under the PPI Bill. Failure by a company to comply with a customer's explicit preferences and notification rights will be a contravention of this new legislation and could result in criminal charges and possible civil action.