



## Privacy Promise Member Compliance Guide

### Keeping Our Privacy Promise to Consumers

In October 1997, The Direct Marketing Association (DMA) Board of Directors made a Privacy Promise to American consumers. It was an important step for our industry, our customers, and for your individual organization.

The Privacy Promise is a public assurance that, by July 1, 1999, all members of The DMA will follow certain specific practices to protect consumer privacy. Those practices are designed to have a major impact on those consumers who wish to receive fewer advertising solicitations. At the same time, we have sought to make compliance with the Privacy Promise as easy as possible for our members.

With membership in The DMA, you will stand out in the marketplace as one of the trusted organizations that promises to abide by four traditional privacy protection practices:

1. Provide customers with [notice](#) of their ability to opt out of information exchanges;
2. Honor customer [opt out](#) requests not to have their contact information transferred to others for marketing purposes;
3. Accept and maintain consumer requests to be on an [in-house](#) suppress file to stop receiving solicitations from your company; and,
4. Use [The DMA Preference Service](#) suppression files which now exist for mail and telephone lists - and will soon exist for e-mail lists.

### Why Should You Keep the Privacy Promise?

By keeping the Privacy Promise, you will:

- further build consumer trust in your organization and our industry;
- protect our industry from burdensome regulation inhibiting our freedom to market;
- demonstrate that DMA members respect individual consumer privacy choices; and,
- show you support a self-regulatory solution to consumer privacy protection.

### What Do I Need To Do?

[Step One: Take Responsibility](#)

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### Step One: Take Responsibility

Designate an executive to be responsible for your organization's compliance with the Privacy Promise.

This will help with follow-up communications should there be a privacy issue for your organization to address. If you haven't already done so, please let The DMA know on the feedback form (step 3) who your company has chosen for this role. If you are not

sure whether your firm has designated a compliance contact, call or e-mail The DMA Member Services department at 212.790.1414 or [members@the-dma.org](mailto:members@the-dma.org).

[Step Two: Know The Rules](#)

[Step Three: Make the Pledge](#)

### **Step Two: Know the Rules**

Review the Privacy Promise requirements, and determine how they apply to your organization.

DMA members include both business-to-consumer marketers and business-to-business marketers; however, the **Privacy Promise applies only to business-to-consumer marketing**.

The Promise specifies requirements for business-to-consumer marketers performing such functions as:

- list user,
- list compiler,
- list manager,
- list broker,
- list owner,
- service bureau, and,
- supplier.

Some companies perform all of those functions and, there-fore, need to understand the requirements of all functions. The requirements of the Privacy Promise are defined by your relationship to the consumer named on the list.

Following are the Privacy Promise requirements.

### **Step Two, Part 1: NOTICE**

If your organization is a business-to-consumer marketer that rents, sells or exchanges lists of customers, you must give your customers notice that they have a choice not to have their contact information rented, sold or exchanged.

#### **Timing of Notice**

The first notice must take place when, or soon after, a "prospect" becomes a "customer."

#### **Definition of "Customer"**

A person is defined as a "customer" if that person:

- bought something from you,
- donated to you,
- is identified by you as a "customer" on a list that you rent or exchange with someone else,

- has inquired about your products, services or organization, and/or,
- is a sweepstakes entrant (whether or not he or she has purchased).

### Definition of "Prospect"

A person is defined as a "prospect" if that person has not previously purchased from or donated to you. (For example, a gift recipient is considered a prospect because he or she has not purchased an item or requested information from you.)

### Annual Notice

You should give follow-up notices at least once a year. (However, if you contact a customer less frequently than once a year, you need only give notice as frequently as you contact the customer.)

A separate communications piece for this notice is NOT required. You may include the notice in any routine customer communication. It should, however, be easy for the customer to find, read and understand. Notice is required regardless of the medium you use to contact customers: mail, phone, fax, print or online. Notice need not be in the same medium as the solicitation, but, again, it must be easy for the customers to find, read and understand.

List compilers, brokers, owners, and service bureaus must give notice only if they are communicating directly to the customer under their own company or organization name. Otherwise, where they have no direct relationship with the customer, their obligation is to request and encourage marketers to give notice to their customers, and to make list users aware of the Privacy Promise.

### Questions and Answers about Notice:

- [My company has several distinct brands \(or affiliates, divisions, or subsidiaries\) under which it operates. Does each have to give notice?](#)
- [If my organization does not sell, rent or exchange names, must we give a notice stating that fact?](#)
- [Does our notice have to include information other than our organization's list practices?](#)
- [Do I have to give notice during telephone sales calls?](#)
- [If a "customer" doesn't purchase for a number of years, does he or she automatically become a 'prospect' again and therefore not require notice?](#)
- [Would a "customer" continue to be a "customer" even after a club membership or subscription lapses?](#)

**My company has several distinct brands (or affiliates, divisions, or subsidiaries) under which it operates. Does each have to give notice?**

You should view this from the average customer's perspective. Each separate company or brand, **as the consumer is likely to perceive it**, must offer notice and opt out.

Where affiliates, divisions, or subsidiaries **market under different company or brand names**, customers are likely to think they are all different entities. Therefore, each corporate entity or brand must offer its own independent notice.

Where affiliates, divisions, or subsidiaries **market under a single company or brand name**, customers are likely to think they are all one organization. Therefore, unless you clearly specify otherwise, one notice applies to all.

**If my organization does not sell, rent or exchange names, must we give a notice stating that fact?**

No. Though many companies believe it is beneficial to tell their customers that they do not share marketing information with others, it is not required under the Privacy Promise.

**Does our notice have to include information other than our organization's list practices?**

The Privacy Promise requires that you inform customers of your policy concerning the rental, sale or exchange of data and of the opportunity to opt out of the marketing process. However, if you market online, [\*The DMA Marketing Online Privacy Principles and Guidance\*](#) require a more detailed notice about how your organization uses information.

**Do I have to give notice during telephone sales calls?**

No. Since it is time consuming and distracting to give notice over the phone, you may give notice to "customers" in future solicitations, fulfillment packages, bills, or by any other means. Notice must be given soon after a prospect becomes a customer, however.

**If a "customer" doesn't purchase for a number of years, does he or she automatically become a 'prospect' again and therefore not require notice?**

A customer remains a customer as long as he or she is classified as such for list rental and exchange purposes. However, a customer ceases to be a customer, and therefore should not receive communications from the marketer or have his or her name rented or exchanged, when that customer indicates that he or she no longer wishes to be a customer.

**Would a "customer" continue to be a "customer" even after a club membership or subscription lapses?**

Yes. Nothing prevents a marketer from renewing a completed membership or subscription that has simply lapsed or expired, or from offering that customer other goods and services. However, if a customer indicates that he or she no longer

wishes to be a customer by canceling a club membership or subscription, that person is no longer considered a customer.

Below is some sample language your company could use or adapt to provide notice to customers. Examples of Notice Language:

A. We make our customer information available to other companies so they may contact you about products and services that may interest you. If you do not want your name passed on to other companies for the purpose of receiving marketing offers, just tell us by contacting us at \_\_\_\_\_, and we will be pleased to respect your wishes.

B. We make portions of our customer list available to carefully screened companies that offer products and services we believe you may enjoy. If you do not want to receive those offers and/or information, please let us know by contacting us at \_\_\_\_\_.

## **Step Two, Part 2: HONORING OPT OUT REQUESTS**

All consumer marketers must promptly honor individual requests to opt out of the sale, rental or exchange of their contact information for marketing purposes.

### **Questions And Answers About Honoring Opt Out Requests:**

- [If selective or categorical choices are available, may I make individuals aware of them?](#)
- [Once a customer opts out of the list rental process, how long must a marketer honor a customer's opt out request?](#)
- [Whose responsibility is it to ensure that opt out is offered and honored?](#)

### **If selective or categorical choices are available, may I make individuals aware of them?**

Yes. Sometimes an individual will want to opt out of a home furnishings line or sporting goods line, but may want to continue to receive clothing or food and specialty offers. If you have the capability of giving consumers those kinds of choices, you may offer them.

### **Once a customer opts out of the list rental process, how long must a marketer honor a customer's opt out request?**

Unless the marketer indicates otherwise, a marketer must not rent that person's name again for at least five years after the opt out request.

### **Whose responsibility is it to ensure that opt out is offered and honored?**

It is the list owner's responsibility to see that opt out is offered and honored. Any business partner - such as a vendor or partner in a joint marketing venture - that receives an opt out request from a consumer has the responsibility to pass the opt out request on to the list owner(s).

## Step Two, Part 3: IN-HOUSE SUPPRESSION

List owners and list users must honor individual requests for no future contact from both customers and prospects.

### Questions And Answers About In-House Suppression:

- [Must list owners and list compilers honor individual requests not to be contacted if an individual asks them directly?](#)
- [A "prospect" contacted my company and requested not to receive our promotions any more. But this prospect is not in my database - the prospect's name was part of a rented list. What must I do?](#)
- [A "customer" contacted my company to request not to receive promotions from my company any more. What must I do?](#)
- [How should in-house suppression be handled for separate affiliates/brands/subsidiaries?](#)
- [Can a marketer offer selective suppression? For example, could a magazine publisher offer suppression from a specific magazine title, or type of magazine?](#)
- [Once an individual customer or prospect is on an in-house suppression file, how long must a marketer refrain from contacting that person again for solicitation purposes?](#)

### **Must list owners and list compilers honor individual requests not to be contacted if an individual asks them directly?**

Yes. These individuals may be either customers or prospects.

### **A "prospect" contacted my company and requested not to receive our promotions any more. But this prospect is not in my database - the prospect's name was part of a rented list. What must I do?**

Establish an in-house suppression file of all individuals who do not want to receive your promotions. Use this in-house suppress file on all prospect lists you rent/exchange from others to ensure you do not continue to send material to someone who has asked not to receive it.

### **A "customer" contacted my company to request not to receive promotions from my company any more. What must I do?**

Marketers must stop soliciting these individuals and flag them as do-not-solicit names in their customer file. This can be achieved by removing them from your active customer lists and adding them to your in-house suppress file to ensure that you do not send them material, even if they are on lists rented from others.

### **How should in-house suppression be handled for separate affiliates/brands/subsidiaries?**

As in the case of "Notice," you should look at this from the average consumer's point of

view. For company affiliates/brands/subsidiaries, the rule is the same: if affiliates, etc., market under a single name, a request for no future contact applies to all related entities. Where related affiliates, etc., market under different names, consumers are likely to think they are different entities; therefore, each affiliate or brand should have its own in-house suppress option.

**Can a marketer offer selective suppression? For example, could a magazine publisher offer suppression from a specific magazine title, or type of magazine?**

Yes. Nothing in the Privacy Promise prevents you from giving the consumer a categorical choice of in-house suppress options. For example, when a consumer asks to be removed from a publisher's list, it would be appropriate to ask: "Would that be from all of our magazines, or only those on health (or home decorating or travel) subjects?"

**Once an individual customer or prospect is on an in-house suppression file, how long must a marketer refrain from contacting that person again for solicitation purposes?**

Unless a marketer indicates otherwise, a marketer must not contact that person for at least five years after that individual makes a request not to be contacted in the future. In the case of telemarketing, the Telephone Consumer Protection Act requires that individuals who ask not to be called again be placed on your in-house suppression file for ten years.

Companies who wish to provide notice of in-house suppression could use or adapt the following language.

Examples of In-House Suppress Language:

A. If you decide you no longer wish to receive our catalog, send your mailing label with your request to \_\_\_\_\_.

B. We would like to continue sending you information only on those subjects of interest to you. If you don't wish to continue to receive information on any of the following product lines, just let us know by \_\_\_\_\_.

C. If you would like to receive our catalog less frequently, let us know by \_\_\_\_\_.

**Step Two, Part 4: Use of the DMA Mail, Telephone and E-mail Preference Services**

Marketers that contact consumers are required to use MPS, TPS or EMPS **on all consumer marketing campaigns**. Note: Marketers are not required to use MPS/TPS/EMPS on their own customer files before contacting their own customers. The list user is the one responsible for using MPS/TPS before soliciting prospects. Usage by either the list owner or the list user, however, will satisfy the requirement. The goal is to ensure that the prospects' choices not to receive mail and telephone solicitations are respected.

List owners and users may wish to specify whose obligation it is in the list rental contract. For example, a list owner or manager may require by contractual obligation that a list user must use MPS/TPS.

**Example of Contract Language Specifying MPS/TPS Responsibility:**

"[List User] hereby acknowledges and agrees that as a condition of using [List Owner's] list, in accordance with the terms and conditions of this Agreement, [List User] will, prior to such use, remove, and refrain from contacting all names that appear on The DMA's MPS and TPS files except those individuals that are already a customer of [List User]." While list brokers and managers are not the parties responsible for running MPS/TPS, DMA members that are list brokers and managers must advocate their use to business partners and clients. List brokers and managers could fulfill this requirement by including a paragraph encouraging this use in their sales material.

**Example Language Promoting the Privacy Promise to Business Partners:**

"[List Broker] strongly endorses the use of The DMA's MPS and TPS files and requests that every list owner, manager and user use those files in accordance with the industry's Privacy Promise. For more information, contact The DMA at 202.955.5030."

**Questions about use of MPS/TPS:**

- [Do business-to-business marketers have to use it?](#)
- [How often are the MPS/TPS files updated and how frequently must I use them?](#)
- [How do I obtain the MPS/TPS files?](#)
- [In what media are the MPS/TPS files available, and do I have options for customization?](#)
- [Are MPS/TPS corrected by the U.S. Postal Service's National Change of Address file?](#)

**Do business-to-business marketers have to use it?**

No. MPS and TPS were created for consumers who receive mail at home. They do not include business addresses. However, if a business-to-business marketer is using a hybrid list of business and consumer names, it must process the consumer portion of the list using MPS/TPS.

**How often are the MPS/TPS files updated and how frequently must I use them?**

The MPS and TPS files are updated monthly, and can be sent to you on either a monthly or a quarterly basis. As a minimum standard for complying with the Privacy Promise, the most recent quarterly release of the MPS/TPS file should be run whenever contacting prospects. To ensure that consumers who requested name suppression see results as quickly as possible, monthly processing is recommended.

**How do I obtain the MPS/TPS files?**

Contact the Director, Consumer Services at 202.861.2406 to request an order form and subscription agreement for either of these files.

### **In what media are the MPS/TPS files available, and do I have options for customization?**

These files are available in the following media: 3480 cartridge, 6250 bpi tape, 1600 bpi tape and CD ROM. Additional options include: geographic selections for companies who do not market nationwide; MPS COMPRESS, a compression filter which speeds the processing of the MPS file; and a Resident Enhanced MPS file for saturation mailers.

### **Are MPS/TPS corrected by the U.S. Postal Service's National Change of Address file?**

Yes. MPS is run by NCOA monthly. It is also run against the Delivery Sequence File (DSF), Locatable Address Conversion System (LACS), Address Standardization, ZIP Correction and ZIP+4.

TPS is also run against NCOA, LACS, DSF, ZIP Correction, telephone number appending, and area code and exchange correction every quarter.

### **Step Two, General Compliance Questions**

- [My business is small and keeping the Privacy Promise is time consuming and expensive for such a small operation. Must we adhere?](#)
- [What is the role of suppliers in this process?](#)
- [Can I do business with non-DMA members that are not bound to follow these rules?](#)
- [What are the rules for co-marketing ventures with non-DMA member companies where both have access to customer data?](#)
- [Do resident/occupant/saturation mailers have to follow the Privacy Promise?](#)
- [What happens if a DMA member does not follow the Promise?](#)
- [Must I follow the Privacy Promise when communicating to consumers in other countries?](#)

### **My business is small and keeping the Privacy Promise is time consuming and expensive for such a small operation. Must we adhere?**

It is important for The DMA to be able to assure the public that all of our members follow the rules. In an effort to ensure that all DMA members, regardless of size, can comply with the Privacy Promise, The DMA has developed an MPS compression technology, which makes running that file faster and less expensive. We are also aware of companies that will offer the running of MPS at little or no cost. Please contact The DMA Department of Ethics and Consumer Affairs for information on these special programs.

DMA members in the unique circumstances of contacting so few prospects each year as to make the running of MPS/TPS and the other requirements of the Privacy Promise burdensome and unduly expensive, may apply to The DMA for assistance. However, since we know that we will not be able to anticipate all contingencies, we have allowed for rare accommodations. It is important to note, however, that **any relaxation of the obligations under the Privacy Promise may be granted only by The DMA committee on Ethical Business Practice**. To contact the Committee, write The DMA Department of

Ethics and Consumer Affairs, 1111 19th Street NW, Suite 1100, Washington, DC 20036-3603.

### **What is the role of suppliers in this process?**

If you are a supplier, you must take steps to encourage compliance with the Privacy Promise. This might include inserting special statements in contracts encouraging compliance:

"[Supplier] strongly endorses the use of DMA's MPS and TPS files and requests that every list owner, manager and user use those files in accordance with the industry's Privacy Promise. For more information, contact The DMA at 202.955.5030."

You must also document your efforts in encouraging your clients to comply. For example, a supplier might obtain statements from non-member clients who do not wish to follow the Privacy Promise:

"[List User] acknowledges that [Supplier] explained the Privacy Promise in detail and has requested [List User] to satisfy the Privacy Promise by using DMA's MPS and TPS files and by providing [List User's] customers with notice and the opportunity to opt out, but that [List User] refuses to do so.' Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Officer of [List User]

### **Can I do business with non-DMA members that are not bound to follow these rules?**

Yes. But DMA member list owners, managers, users, brokers and suppliers should exercise their own independent business judgment as to whether to adopt contractual provisions such as those offered in this publication.

### **What are the rules for co-marketing ventures with non-DMA member companies where both have access to customer data?**

DMA members should see to it that all their business ventures satisfy the Privacy Promise. Similarly, DMA members should take all reasonable steps to assure that customer data generated by a co-marketing venture is used in accordance with the Privacy Promise.

### **Do resident/occupant/saturation mailers have to follow the Privacy Promise?**

Since such mailers do not have personally identifiable information about individual consumers, but deliver to every home on a mail route much like a neighborhood newspaper, significant privacy concerns are not affected. Therefore, saturation mailers are not part of the Privacy Promise.

### **What happens if a DMA member does not follow the Promise?**

If The DMA Committee on Ethical Business Practice determines that a member appears not to be in compliance with the Privacy Promise, the company will be contacted and asked for immediate compliance. The member will then need to come into immediate compliance and/or demonstrate to the Committee that its practices are consistent with the Privacy Promise.

Any unanswered Committee question or unmet Committee request will be referred to The DMA Board for appropriate action, which may include censure, suspension, or expulsion from The DMA, and publicity to that effect.

### **Must I follow the Privacy Promise when communicating to consumers in other countries?**

Although the Privacy Promise is made to American consumers, The DMA encourages

those marketing to consumers in other countries to follow the principles of notice and opt out. In addition, a few foreign countries have their own preference programs which The DMA encourages you to use. Please contact The DMA Department of Ethics and Consumer Affairs for further information on these at 202.955.5030.

**[Step Three: Make the Pledge!](#)**

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