



Pro Bono Day Online Training Data Protection, Direct Marketing & IP

Developed by Pro Bono Volunteers for LawWorks

Data Protection legal landscape

- ▶ Data Protection Act 2018 which incorporates the GDPR (“DP Laws”)
- ▶ Currently a bill in parliament looking to make some changes to the GDPR to reduce the administrative burden on UK companies
- ▶ Information Commissioner’s Office (regulator)
- ▶ ICO’s website has guidance and tools to help comply with DP Laws, incl:
 - ▶ Guide to the GDPR
 - ▶ Fundraising and data protection guidance
 - ▶ Privacy notice template
 - ▶ How to report a data breach
 - ▶ Guidance on complying with subject access requests
- ▶ Take a risk-based approach - if handling sensitive data then treat it securely

Principles / Best practice

- ▶ Be **transparent** about how you process personal data
- ▶ Only **collect** the personal data you **need**
- ▶ Make sure personal data is **accurate** and kept up to date
- ▶ Don't use personal data for a purpose other than your original purpose unless you have told the person in advance (such as through your Privacy Policy)
- ▶ **Delete** personal data or **anonymise** it when you no longer need it
- ▶ Keep personal data **secure** (e.g., make sure your storage system is password-protected; when sharing it with third parties is it possible to encrypt it first?)
- ▶ Remember that people have certain **access rights** to personal data
- ▶ If relying on a person's **consent** to collect their personal data, make sure that consent language is clear and presented separately from other information
- ▶ There are limited legal bases under which you can collect health, ethnicity or sexual orientation data - this is "**special category data**"

Documents & actions to be aware of to comply with DP Laws

- ▶ Privacy Policies
 - ▶ Website
 - ▶ Employees
 - ▶ Fundraisers / investors / others
- ▶ Cookie policy / cookie banner
- ▶ Data map / record of processing activities
- ▶ Data protection impact assessments for high risk data processing
- ▶ Agreements with data processors - mandatory language in contract
- ▶ Transfers of personal data overseas (not EU) - mandatory language in contract and risk assessment
- ▶ Do you need a Data Protection Officer?
- ▶ ICO's data controller annual fee - does it apply to you?

Documents & actions to be aware of to comply with DP Laws (cont.)

- ▶ Train staff on data protection practices
- ▶ Cyber insurance
- ▶ Data breaches and incidents - keep a log of incidents and a policy on when to report to the ICO or data subjects
- ▶ Consider adopting an incident response plan and business continuity plan
- ▶ Due diligence on third party vendors handling personal data on your behalf
- ▶ Adherence to legal/regulatory and industry security standards e.g. PCI, BSI standards on firewalls and network security, ISO27001 and its successors and Cyber Essentials etc
- ▶ Consider specific organisational risks to personal data and address these

Fundraising / direct marketing

- ▶ Electronic communications with supporters about fundraising activities constitute direct electronic marketing
- ▶ Purely factual electronic communications (like invoices) do not constitute direct marketing
- ▶ Need to consider GDPR and Privacy and Electronic Communications Regulations
- ▶ Electronic marketing: (i) opt-in consent; or (ii) 'soft opt-in'
- ▶ If someone opts-out you must comply
- ▶ ICO website has useful 'plan' for direct marketing for SMEs

Intellectual Property / Branding legal landscape

- ▶ IP rights include:
 - ▶ Copyright (unregistrable; exists upon creation with author receiving immediate rights)
 - ▶ Trade marks (registrable; only enforceable upon securing a registration in the UK)
 - ▶ Patents (registrable; only enforceable upon securing a registration in the UK)
 - ▶ Designs (registrable; only enforceable upon securing a registration in the UK)
- ▶ Confidential information, trade secrets and unregistered brands can also be protected - e.g., 'passing off', 'breach of confidence'
- ▶ UK Intellectual Property Office - Register of patents, trade marks and designs
 - ▶ Before adopting a brand / registering a TM, search the TM register for similar marks
- ▶ IP belongs to the author unless created by an employee in the course of their employment, in which case by law it is owned by the employer (Cf. contractors - they own the IP unless the contract assigns the rights to you)
- ▶ Owner holds all rights in IP unless a licence is granted to a 3P (can be exclusive or non-exclusive; for a fee or royalty-free; revocable or irrevocable, etc.)
- ▶ Assignment of IP to someone else must be in **writing** and signed by the assignor