

## About the GDPR

With an enforcement date of May 25, 2018, the [General Data Protection Regulation \(GDPR\)](#) is designed to unify data privacy requirements across the European Union (EU). Affecting all business that market to or process the information of EU Data Subjects – which include end users, customers and employees.

The GDPR aims to protect EU residents from data and privacy breaches and has been introduced to keep up with the modern digital landscape where any organisation processing personal data must comply with GDPR in respect of that data processing. This means that identifying what personal data you hold and how it is used is a critical part of any GDPR compliance project.

Organisations that breach the GDPR can expect hefty fines of up to 4% of annual global turnover or €20 million – whichever is greater.

## GDPR and SalesPond

The SalesPond business provides services to Asia Pacific, North and Latin America.

- **Sales Pond doesn't have an established presence in the EU. (See Id. Art. 3(2)(a).)**
- **Sales Pond is not processing of personal information related to the offering of goods or services to those data subjects in the EU.**
- **Sales Pond is not monitoring the behaviour of data subjects in the EU (See Id. Recital (24)).**

However, we are taking GDPR as an opportunity to implement better data management practices, which will also help us establish and maintain trust with our customers that may be present in EU. To ensure your marketing activities are complying with GDPR, please find below some B2B market related awareness based on the GDPR legislation.

## Direct marketing as a legitimate interest

There are five other lawful bases, rather than Opt-in consent, to process personal data under the GDPR (GDPR Art. 6(1)(b)-(f).).

1. Performance of a contract to which the data subject is party (i.e. your customers);
2. Compliance with a legal obligation of the controller;
3. Protection of the vital interests of the data subject or of another person;
4. Performance of a task carried out in the public interest or official authority;
5. For purposes of the "legitimate interests" pursued by the controller or by a third party, except where overridden by the interests or fundamental rights and freedoms of the data subject

Clearly, in addition to "opt in" consent, you are also permitted to process personal data where you have a "legitimate interest" (See Id. Art. 6(1)(f), Recital (47).) in doing so that is not overridden by a person's fundamental rights or interests\*\*. (\*\*See GDPR Arts. 15-21.)

In fact, the GDPR states that the "processing of personal data for direct marketing purposes may be regarded as carried out for a legitimate interest." (This is verbatim from the text of the regulation.)

In other words, the data usage is not limited to "opt in" contact data **for B2B marketing** under the GDPR.

In that case, you do not need to obtain consent, but you do still need to provide the person with a notice that you have their data. (See Id. Art. 14.) That notice needs to include all of the information from the section on consent below, plus (1) the fact that you are relying on direct marketing purposes as your legitimate interest and (2) the source of the data.

The good thing is that you can provide the notice the first time you communicate with the person (but no later than one month from when you obtained the data). So, if you obtain a list for email marketing, you can include the notice with your first message.

## Consent

Consent requires you to get the data directly from the data subject. Perhaps a prospect provided their information when visiting your website. In order to use that data, you need to make sure the consent is clear and unambiguous. You also need to provide certain information at the time you obtain the consent, including: (1) who you are, (2) the purposes for which you will use the data, (3) who you will be transferring it to (if anyone), (4) if you are in the EU and intend to transfer it out of the EU, the countries where you intend to transfer it and the existence or absence of an adequacy decision by the European Commission with regard to the safeguards such countries have in place for the protection of personal data, (5) how long you intend to keep it, (6) the person's right to correct the data or have it erased and to withdraw their consent, (7) the right to lodge a complaint with the supervising authority, and (8) whether you are using any automated decision-making or profiling. (Id. Art. 13(1)-(2).)

## Rights of the Data Subjects

Whenever you are processing someone's data, they have certain rights under GDPR. (See GDPR Arts. 15-21.) They always have the right to ask you what data you have on them, and for the other information that's required in the above-mentioned notices. They also have the right to make you correct the data if it is wrong or delete it or object to processing. If you have transferred it to anyone else and the person requests deletion, you also need to tell whomever you transferred it to that the data subject requested deletion.

## Notice requirements

Once you've determined that you have a lawful basis for processing a person's information for marketing purposes, you still have other obligations under the GDPR. A big one is that you need to provide the person with a notice that you have their data.

- Who you are
- The purposes for which you will use the data
- Who you will be transferring it to (if anyone)
- If you are in the EU and intend to transfer it out of the EU; the countries where you intend to transfer it; and the existence or absence of an adequacy decision by the European Commission regarding the safeguards such countries have in place for the protection of personal data
- How long you intend to keep the data
- The person's right to correct the data, have it erased, and withdraw their consent
- The right to lodge a complaint with the supervising authority
- Whether you are using any automated decision-making process or profiling
- The lawful basis for processing that you're relying on (e.g. legitimate interest)
- How you acquire the data

## Disclaimer

This guidance is intended to apply to your use of business contact information for your own B2B marketing purposes. SalesPond is not qualified to provide legal advice of any kind and. To understand how the GDPR or any other law impacts you or your business, you should seek independent advice of qualified legal counsel.