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POPIA Guide 2021

Marketing Compliance

An Exploration of Direct
Marketing and the POPI Act



| Important Notice

Please note that this guide does not constitute legal advice and Adclick Africa takes no responsibility for damages, either directly or indirectly, incurred in relation to the suggested compliance recommendations. This document contains shared views and interpretations of the POPI Act of 2013 and is only meant as a guide to help understand how to achieve data protection and marketing compliance standards in accordance with South African legislation.



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Introduction

In South Africa we have The Protection of Personal Information Act (POPIA) of 2013. It is considered as the equivalent of the General Data Protection Regulation (GDPR) currently governing Europe.

The POPI Act sets the conditions for people and businesses (referred to as responsible parties) operating in SA to lawfully process the personal information and data profiles of individuals (either natural or juristic persons).

The purpose of the POPI Act is to protect citizens by protecting their personal information.

This is done to prevent money being stolen, to stop identity theft and further to protect someone's privacy. To achieve this, the POPI

Act sets certain conditions for when it is lawful for someone to process someone else's personal information.

Privacy is a fundamental human right.

Identity theft and the misuse of personal information is a growing concern as information becomes more easily accessible through the internet.

Businesses don't have much time left to comply with the deadline for compliance, which is 1 July 2021. You, as a business or an organisation need to ensure you have taken the necessary steps to look after all the personal information you use to market to yours or your client's potential customers.

Buying and selling of information is also prohibited.

Previously, companies and organisations have built up large databases of contact details, including phone numbers and email addresses,

which are then bought and sold on the open market. This is no longer allowed in relation to POPIA, but from an industry perspective this has always been considered an unethical practise.

What personal information may be processed? Here is a list of the information governed by the POPI Act that most businesses generally use in direct marketing: gender, age, religion, cultural beliefs, language, email address, phone or mobile number, physical address, location, personal opinions, views or personal preferences.

It is quite clear that the most common data collected by businesses falls under the provisions of the POPI Act. Marketers and agencies need to start paying closer attention to the processing of customer data in order to stay compliant in the future.

POPIA Summary

It is vitally important for businesses to comply with POPIA and this guide will assist your business in understanding the legal requirements of direct marketing that are governed by POPIA.

Adclick Africa strives to help businesses implement and send compliant, effective marketing communication. We assist our clients in collecting and processing data correctly to ensure they meet the compliance requirements of POPIA in time for the implementation deadline (1 July 2021).

Businesses should act now! As we enter 2021 there is not much time left to comply. You must ensure your business has taken the necessary steps to protect personal information you collect and use. POPIA will affect how you communicate with both current and potential customers going forward.

The POPI Act defines personal information as follows:

“information relating to an identifiable, living, natural person, and where applicable, an identifiable, existing juristic person.”

In simpler terms it means any data that can be used to identify a person.

As such, companies must ask for your permission to send you as an individual or business, marketing related emails and other forms of digital communication. Once you have given permission, they can continue to contact you until you choose to opt-out.

What are the penalties?

There are two legal penalties or consequences for a responsible party:

1. FINE OR IMPRISONMENT

A fine of between R1 million and R10 million, or imprisonment of up to ten years in jail.

2. COMPENSATE FOR DAMAGES

Paying compensation to data subjects for the damages they have suffered.

Reputational damage carries a realistic financial cost and online reputational management is crucial. Businesses want to avoid unnecessary PR disasters, and complying with the provisions of POPIA is the first step.

Our guide will help you understand the urgency of complying with POPIA and will guide the audit process of your business operations in relation to digital marketing and online communication.

A fine of between R1 million and R10 million, or imprisonment of up to 10 years in jail.

HOW TO COMPLY? KEY STEPS TO TAKE

Steps to take as a Responsible Party in order to achieve compliance:
(i.e. Responsible Party = Your Business and/or Organisation)

01

Appoint an Information Officer.

03

Raise awareness amongst all employees.

05

Amend contracts with operators.

07

Ensure lawful transfer of data to other countries.

02

Draft an up to date Privacy Policy.

04

Update internal data and data processes.

06

Report data breaches to the regulator and data subjects.

08

Only share personal information legally allowed by the act.



POPIA Checklists

Does this mean a company will not be allowed to send direct marketing to their existing customers?

Although companies can generally only send marketing, instant messaging or emails with specific consent, there is an exception to this rule for your existing customers.

Exceptions for existing customers

Companies can send marketing messages if:

- **they have obtained the contact details in the course of a sale of a product or service to that individual;**
- **they are only marketing their own similar products or services; and**
- **they have given the individual a reasonable opportunity to object to receiving marketing, both when initially collecting the details and in communication thereafter.**

This checklist covers opt-in and ensuring you have the correct permission to use data for direct marketing purposes. When collecting data related to personal information you need to ensure the following is in place:



1. Receiving subscriber details

Be transparent and tell users explicitly how you plan to use their data. You must provide an opportunity for users to consent to the use of their data by third parties or partner organizations.



2. Only collect the data you need

Name, email address and phone number is all you really need. Asking for unnecessary data decreases Conversion-Rate-Optimization and will have an impact on data storage over time.



3. Clear user opt-in process

Give users a clear opt-in process and inform them of what communication they can expect to receive. Be explicit and transparent in the sign-up process regarding the marketing channels used.



4. Consent must be blatant

If the user has given blatant consent you can continue to communicate with them up until they opt-out. Make opt-in and opt-out processes known when collecting user data.



5. Correct opt-in format

Avoid using pre-ticked boxes on sign-up or website subscriber forms. As a rule-of-thumb any type of default consent should never be used.



6. Check if soft opt-in applies to data

If a marketer has been emailing a client for a reasonable period of time prior to POPIA and the client has had no objection, then a soft opt-in is applicable. This concept is intended to protect marketers but accurate record keeping is still needed.



7. Accurate record keeping

Even though a soft opt-in may be applicable, inaccurate record keeping going forward will contravene POPIA and data can't be kept without accurate opt-in proof. Audit your mailing list and retarget soft opt-in clients where possible.



8. Transparent access to data

Continue to be transparent by giving your contacts access to the data you've collected about them. Provide a channel or platform for them to easily update their data or opt-out.



Checklist for Data Collection

Checklist for Email Marketing

Email marketing is still widely popular amongst businesses. This checklist will assist marketers in complying with the provisions of POPIA for email marketing campaigns:



3. Opt-out option at all times

With POPIA in force, you have to give your readers the option to unsubscribe at any time. This means including an opt-out option or link in every mailer.



6. Channel specific opt-out processes

A channel specific opt-out process means when a user receives a bulk mailer from you they must be able to unsubscribe via that same email. Remember, users must be able to opt-out at any time. Keep this process automated to avoid disgruntled users.



1. Display company name and logo

Your company name and logo should always be included in the body of your mailer. Remember to add it to the footer and use a company email address when sending.



2. Keep emailers relevant to business

Don't alienate your audience by sending irrelevant content as you will increase your unsubscribe numbers and upset your readers. Make your mailer instantly recognizable by displaying your company name and logo.



4. Allow subscribers to update

It's best practice to allow your subscribers to manage their own subscriptions to your mailers and newsletters. Include a link where they can update their details at anytime.



5. Keep a list of Unsubscribers

Be sure not to re-upload unsubscribes to your mailing lists by keeping a list of readers who have opted-out, also known as a suppression list.



PRO-TIP

Choose an email marketing platform that has sufficient automation tools to help you achieve your POPIA goals.

Alternative digital marketing channels like instant messaging are also used to distribute marketing messages. This checklist will assist marketers to further comply with the provisions of POPIA where SMS and WhatsApp messages are concerned:



1. Updated list of mobile numbers

Keep your database clean by ensuring you continuously update your clients or subscribers records and mobile (cell) numbers.



2. Keep messages relevant to business

Only send out SMS or WhatsApp messages that are relevant to your database. Your audience is likely to complain or unsubscribe if you send content that isn't in-line with what they signed up to receive.



3. Opt-out at any time, again

Even though you are sending an SMS or WhatsApp you still need to give your subscribers the option to unsubscribe at any time. Remember to have this opt-out in every message.



4. Provide opt-out link or address

A quick win is to look for a chatbot that automates your unsubscribe option in WhatsApp or SMS.



5. Free unsubscribe process

Remember that POPIA requires your unsubscribe option to be at no extra charge to your reader. Keep this in mind when sending SMS campaigns and they have to reply to opt-out.



6. Channel specific opt-out processes

POPIA dictates your subscribers need to be able to opt-out through the same channel that they received the message on. If you are sending a WhatsApp, they need to be able to unsubscribe via WhatsApp and the same for SMS.



7. Third-party messages compliant

If you use a third party to send your WhatsApp or SMS campaigns, POPIA compliance is still your responsibility. Make sure your lists were obtained legally and kept up to date.



Checklist for SMS & WhatsApp

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