



Federation of European Direct Marketing

## FEDMA LIST COUNCIL CODE OF PRACTICE

### 1. INTRODUCTION

The list brokers who are members of the FEDMA List Council agree by their membership of this organisation to abide by the guidelines set out in this code.

The code guarantees the proper trading of lists and adherence to quality standards used by those list brokers who are members of the FEDMA List Council.

The code is only to be used in addition to existing national and EC legislation controlling the use of data for direct marketing purposes. List Council members also undertake to abide by national direct marketing codes of practice of the countries in which they are trading. It is also necessary for members to be familiar with other codes of practice where they affect direct marketing (such as sales promotion, advertising codes of practice).

The term "user" or "user-client" is used rather than "renter", in order to avoid confusion regarding the responsibility of the intermediary who may act as the renter on behalf of the user.

### 2. CONCEPT DEFINITIONS

The Code considers:

**List:** a collection of data, which allows the identification of an individual or an address. A list should not contain information, which is in conflict with professional ethics or prohibited by national or international laws.

**List holder:** the party with control over the personal particulars recorded in the list (list owners and list managers).

**List broker:** a mediator who executes transactions for one or more users and more than one list holder, either in his own name and on his own behalf or in his own name and on behalf of a list holder or user-client.

**User-client:** the party communicating their offer to the individuals/addresses on the list.

**Undeliverable:** postal item returned to the sender, either because the address is incorrect or because the addressee no longer lives at the address.

**Mailing Preference Service** (known in some countries as "Robinson lists"): a list of individuals who have made known through M.P.S. that they do not want to receive addressed advertising (Direct Mail).

**Cleaning:** executing the wish of individuals to be removed from mailing lists by means of computer deduplication (M.P.S.).

**"Seed" or monitoring address:** the addresses added to the lists used in order to monitor abuse.



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**Abuse:** use contrary to the law, this Code or other relevant self-regulatory provisions established under the auspices of the List Council. Also contrary to agreements made between the list holder and the list broker, and between the list broker and the list user. (Conditions of Business).

### **3. GENERAL RULES OF CONDUCT**

3.1 The members of the List Council who act as list brokers undertake to act in accordance with this Code to the letter and in spirit.

3.2 For the protection of the privacy of consumers, the list broker ensures to the best of his ability that the lists he brokes shall contain no other data than that which is explicitly allowed according to this Code and mentioned under the chapter Concept Definitions and introduction.

3.3 The list holder cleans each list placed at another party's disposal with the most recent M.P.S. list, unless this is technically impossible. In this case, the list broker will strongly recommend that this be undertaken by the user-client before mailing.

3.4 The list broker urges the list owner of the lists he represents to update the lists to a maximum degree.

3.5 The list broker has the responsibility to assist the user-client in tracing each individual address to the list of an original list holder.

3.6 The list broker looks after the interests of the list holder as well as those of the user.

3.7 The data is safeguarded against any use or operation other than those agreed upon with the owner.

### **4. RULES OF CONDUCT OF THE LIST BROKER TOWARDS THE LIST HOLDER**

4.1 The list broker informs the list holder of the identity of the user and of the nature of the activity for which the latter will use the list.

4.2 The list holder is entitled to reject the use by the proposed user-client without any justification.

4.3 The transactions between list broker and list holder are clearly laid down in writing. The list holder is liable for the quality of the data as offered and supplied to the user-client, in accordance with the list holder's and list broker's terms and conditions.

4.4 The list broker will use his best endeavours to ensure that the lists are not used in any other way than agreed with the list owner(s).

4.5 The list broker undertakes to obtain as much information as possible from the list holder as to the current state of the list to be used.

4.6 The list broker sees to it that the lists are used in compliance with the written agreements made with the list holder.



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4.7 The list broker's liability for the payment of obligations ensuing from the transactions is specified in the written agreement between broker and list owner, taking into account the possibility of "force majeure".

4.8 The supply of a list for test purposes to a third party implies taking an option on this list for the activities as agreed under item 4.1. It obliges the user to respect the nature of the proposed activities when using the list.

4.9 The list broker takes all necessary steps to transmit the undeliverable mailing pieces (nixies, postal returns) to the list owner upon receipt from the user-client.

4.10 The list broker shall introduce a formal claim against the user-client upon the first request by the list owner, in the case where non-agreed use of the data is detected.

4.11 Abusive use of lists is considered proven if demonstrated by the control of "seed" addresses which have been officially included in the list.

## **5. RULES OF CONDUCT OF THE LIST BROKER TOWARDS THE LIST USER**

5.1 The list broker guarantees his client that he is authorised to act as list broker on behalf of the list holder.

5.2 The list broker is required to inform the user of the name of the list holder and of the identity of the list.

5.3 The list broker is obliged to give the user-client all information in his possession concerning the current state of the list to be placed at the disposal of the user.

5.4 The transactions between the list broker and the list user are laid down in a written convention, which includes the prohibition for the user to transmit to any third party, all or part of the information resulting from the agreed transaction.

5.5 The list broker is entitled to verify that the final mail piece conforms with the model on the basis of which the agreement was made. In order for this to be done, the list user ensures that he or his mailing house sends a signed copy of the final mailing piece to the list broker for his approval prior to mailing. If it does not conform, the list broker must inform the list owner immediately.

5.6 In order to check the actual mailing material used, the list owner will use variable seed or monitoring addresses. If any discrepancy comes to light, the list owner and the list broker will apply the complaints procedure as outlined in sections 8 and 9 of this Code.

5.7 The list broker pays special attention to certain business sectors, as advised by FEDMA, which may require particularly careful verification and monitoring.

5.8 The list broker must inform immediately FEDMA and other members of the List Council if he has taken measures such as described in 5.5 or 5.6 above, so that appropriate steps can be taken.

5.9 In the event of a claim for breach of warranty of conditions by the user-client or as a result of incorrect execution of the order, the list owner and the list broker shall not be



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liable for any consequential or other loss in excess of the rental value of the order in question.

## **6. LIST BROKER/HOLDER/USER: OBLIGATIONS TO THE CONSUMER**

6.1 Requests by individuals for the correction of personal data must be acted upon with all reasonable promptness by the list owner.

6.2 Requests by individuals to receive no further promotional mailings must be acted upon with all reasonable promptness by the list holder.

6.3 If an individual enquires about the source of the list from which his name has been selected, the identity of the mailing list must be revealed with all reasonable promptness by the list broker, list owner and user-client.

## **7. LIST USAGE**

7.1 All companies who make their lists available to third parties, and the intermediaries who may act for them, are required to investigate the intentions and credentials of a prospective user before permitting use. Prospective users (list renters) must specify the particular and legitimate purposes (normally by way of a mailing piece sample) before they are permitted to use such lists.

## **8. COMPLAINTS PROCEDURE**

8.1 Complaints against a list broker, list holder or user-client, which are of a purely national nature, will be referred to and dealt with directly by the national List broker's or Direct Marketing Association of that country. The List Council will be informed of this.

8.2 If the national association within three months has reached no conclusion, the List Council will take over with appropriate action as listed below.

8.3 All complaints referred to the List Council will be dealt with by the Supervisory Committee, consisting of the List Council Co-ordinator, a representative of FEDMA designated by the FEDMA Board, and a neutral party designated in conjunction with the European Advertising Standards Alliance. The role of the Supervisory Committee will be to investigate the complaint and decide on appropriate action as listed under section 9.

8.4 Trans-border complaints will be immediately reported to the List Council, who will inform FEDMA. FEDMA will contact the relevant national DM association with respect to necessary sanctions.

8.5 Only written complaints with adequate documentation can be dealt with.

## **9. SANCTIONS**



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9.1 When a breach of this Code has been investigated and the complaint considered justified, the transgressor will be notified officially by FEDMA of the sanctions to be taken. These sanctions will be applied within a period of three months.

9.2 In the case of a first breach of this Code, an official warning will be issued to the transgressor by FEDMA.

9.3 In the case of a second breach of this Code, the transgressor will be expelled from membership of FEDMA and the List Council for a period of one year, and this expulsion can be announced publicly. A similar course of action will be recommended to the relevant national association.

9.4 In the case of a third breach of this Code, the transgressor will be expelled from membership of FEDMA and the List Council indefinitely, and this expulsion will be announced publicly. A similar course of action will be recommended to the relevant national association.

9.5 In the case of a serious breach of this Code, sections 9.3 or 9.4 may be applied even in the case of a first breach.

## **10. APPEALS**

10.1 The company accused of being in breach of this Code has the right to appeal to FEDMA against sanctions within a period of one-month following the receipt of the official notification.