



# Privacy & Data Protection

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## New email marketing rules—Commissioner publishes guidance

The UK's privacy regulator has published guidance on the E-Privacy Regulations

The Information Commissioner's document will be crucially important for businesses in developing their strategies for electronic communications for 2004 and beyond. Whilst the wording of the text of the law has been available since the end of September, the Commissioner's view of it represents the practical standard that businesses should adhere to in order to avoid infringement actions.

The Regulations, which come into force in the UK

on 11th December this year, ban the sending of unsolicited marketing emails where opt-in consent has not been previously obtained, save in exceptional circumstances.

In the guidance, welcomed by the business community as constituting a wide and pragmatic view of the legal requirements, the Commissioner states that:

... A 'sale' does not have to be completed for individuals to qualify as 'customers';

... The phrase 'similar products and services' relates to those products

and services about which the customer would reasonably expect to receive information;

... Businesses can continue to use their legacy e-mailing lists after 11th December provided that they complied with applicable data protection law before that date; and

... Email communications sent to 'corporate subscribers' are not subject to the new opt-in regime;

One of the main concerns of business in relation to their existing email marketing lists is that, in order to utilise the exception

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## Zeta-Jones—£14,600 compensation

The judge in the *Hello!* wedding photographs case has finally assessed the amount of compensation payable to the claimants.

*Hello!* had printed unofficial photographs of the wedding of Michael Douglas and Catherine Zeta-Jones, despite the existence of an exclusive deal between the Hollywood couple and *OK!*, its rival celebrity magazine.

Mr Justice Lindsay awarded Douglas, Zeta-Jones and Northern & Shell (the publisher of *OK!*) the figure of £1,047,756—£14,600 to the Douglases and £1,033,156 to *OK!*

Chris Hutchings, the media lawyer who acted for *Hello!*, said that the result was "a mixed blessing" for the media. "It reaffirmed that damages for any breach of an individual's confidence should result in very low awards that may make celebrities—and their lawyers—think twice about the commercial sense of pursuing an action for damages. But the large award to *OK!* does have potentially very serious consequences for a competitive media."

Mr Hutchings emphasises that the low award to Douglas and Zeta-Jones—£3,750 each for distress,

the balance of the £14,600 being for expenses and a nominal figure for data protection—shows that "this is not and never was a privacy case. It is a commercial matter about exclusive contracts."

Maninder Gill, group secretary and legal director of Northern and Shell, said, "The Douglases took the action as a matter of principle and are delighted that this ruling vindicated theirs and *OK!*'s position establishing their right to the protection of the law. We are delighted with this historic victory.

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