

G-Regs™

France – UFMD Email Charter



Full title	UFMD (Union Française du Marketing Direct) Code relating to the use of electronic contact details for direct marketing purposes; found to comply with the Data Protection Act by the CNIL [<i>Commission Nationale de l'Informatique et des Libertés</i> ~ French Data Protection Authority], on 30 March 2005, in accordance with the procedure provided for under Article 11-3 of the Law of 6 January 1978.
Title of relevant section	Definitions, Articles 1-30, Annexes 1-3
Chapter	<p>Definitions</p> <p>In the context of this Code, the term:</p> <p>"Electronic contact details" means an email address of an individual or corporation.</p> <p>"Electronic message" means any text, voice, sound or image sent by means of electronic communication over a terminal of an individual or corporation, which can be stored thereon.</p> <p>"Direct marketing" means sending any electronic message designed to promote the goods, services or image of a person selling goods or providing services, directly or indirectly. Direct marketing covers the dispatch of commercial messages from one's own databases and over those of other companies.</p> <p>"Consent" means any expression of free will, specific and informed, via which a person accepts that personal data relating to thereto are used for direct marketing purposes. Consent cannot be assumed. It must not be diluted either, for example, by relying simply on acceptance of the terms and conditions of sale. A person must be aware that he/it is authorising the use of his/its data. This authorisation may take different forms: for example, that of a check-box, a dropdown menu or subscription to a newsletter. It must involve necessarily a positive act by the person.</p> <p>"Processing" means any operation or set of operations applied to personal data, regardless of the process used or use thereof (collection, recording, retrieval, use, disclosure, approximation or interconnection and provision).</p> <p>"Controller" means any individual or corporation determining the purposes and means of the personal data processing.</p>
Article 1	<p>Collection of electronic contact details from individuals and use thereof</p> <p>1. Companies shall ensure the collection of electronic contact details from persons in a fair and transparent manner in accordance with the provisions of this Code and the regulations in force.</p>
Article 2	Any collection of electronic contact details must first be subject to the formalities required by the Commission Nationale Informatique et Libertés (CNIL).

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Article 3	<p>The person from whom the electronic contact details are collected shall be informed, at the time of collection of the electronic data, of the identity of the data controller, the purpose of the processing, the recipients or categories of recipients of this information, the mandatory or optional character of the responses as well as the rights of each individual recognised by law, in accordance with Article 7 of this Code and, where appropriate, the transfer of data to a country outside the European Union without an adequate protection system under the terms of EC Directive 95/46³. ³It is recalled that transborder flows of data outside the European Union are subject to special provisions available under:</p> <p>http://europa.eu.int/comm/internal_market/privacy/index_fr.htm and on the website of the CNIL: http://www.cnil.fr</p>
Article 4	<p>Electronic contact details may not be used for direct marketing purposes without the prior consent of the person concerned, except in the limited cases below (see Rule 9).</p>
Article 5	<p>The company shall seek to secure the free, specific and informed consent of the person concerned, <i>inter alia</i> by ensuring that said person is well aware of what he/it is authorising (with regard to consent, see above in the "Definitions" part), using a method for obtaining consent that is adapted to the mode of collection, <i>inter alia</i>, based on the models described below in the Appendix.</p>
Article 6	<p>The principle of free, specific and enlightened consent applies both to subscription to a newsletter and during data collection within the framework of a sale or service.</p>
Article 7	<p>The company collecting contact details shall ensure that the persons whose data are collected are informed of their right of access, correction and objection and the conditions for the exercise of these rights, at the same time. This information must be notified to the customer in a sufficiently legible, clear and accessible manner at the time of the data collection. In particular the possibility of objecting to the receipt of electronic commercial offers should be offered expressly and without ambiguity.</p> <p><i>Companies may draw on the models covered in the Appendix.</i></p>
Article 8	<p>Any electronic direct marketing message shall include an unsubscribe link as provided for in Article 18.</p>
Article 9	<p>Collection of electronic contact details from customers</p> <p>The electronic contact details of individuals collected in connection with the sale of a product or provision of a service may be used without the prior consent of the person concerned, in order to send marketing material to promote products or services similar to those provided by the same company in connection with the sale or service, with the exclusion of any other direct marketing use on behalf of third parties.</p>
Article 10	<p>Similar products or services means products or services for which the person concerned could reasonably expect to receive direct marketing material from the seller or supplier that collected the contact details. Thus, for example, a person who orders a book from a website offering a wide variety of cultural products and services may expect to receive commercial offers for all the cultural products and services usually offered by the source.</p>
Article 11	<p>The persons concerned must be informed of the possibility of objecting, free of charge (excluding transmission costs), to the dispatch of any direct marketing both at the time of collection and with each dispatch (in the latter case, see Rule 18)</p>

Article 12	Collection of electronic contact details connected with corporations <p>For the purposes of this Code, the term electronic contact details connected with a corporation means an email address including the name of the company with which the sender wishes to make contact.</p>
Article 13	When the contact details contain personal data, the person from whom the electronic contact details are collected shall be informed, at the time of collection, of the identity of the data controller, the purpose of the processing and the recipients or categories of recipients of this information, as well as other information provided for in Articles 3 & 7.
Article 14	Similarly, the document used for the collection should clearly indicate the right to object to any future commercial use of the data for the dispatch of direct marketing by the company or its intermediary.
Article 15	In the case of direct marketing by email, whether or not the address comprises a name of an individual, the company shall include an unsubscribe link under the same conditions as those laid down in Article 18.
Article 16	Individuals may be canvassed by email at their professional email address and in the capacity of the position that they hold in the public or private organisation attributed to them by this address without their prior consent.
Article 17	Identification in emails of a commercial nature <p>Any electronic direct marketing message, regardless of the recipient, must include necessarily the identity of the sender and translate the commercial nature of the message. This information must appear clearly and without ambiguity upon receipt of the message before it is opened by the recipient.</p>
Article 18	Unsubscribe link <p>18. All direct marketing emails shall offer their recipients a simple, direct and easily accessible way to stop the dispatch of any new electronic marketing message from the sender. It must be possible for this right to be exercised free of charge (excluding communication costs) and said right shall be taken into account as soon as possible by the message sender.</p>
Article 19	Use of databases provided by third parties <p>Any person obtaining the electronic contact details of an individual from a third party with a view to a direct marketing operation shall ensure with this third party, as far as possible, that the contact details, communicated thereto in this way, were collected legally with regard to the planned use, that is to say, with the prior consent of the individuals concerned under the conditions stipulated in the Code and in accordance with Articles 3 and 7.</p>
Article 20	Collection of names of friends and referrals <p>With regard to processing electronic contact details collected from third parties, for example in the case of the referral of friends, companies must ensure compliance with the principles relating to the consent of the owner of the electronic contact details.</p>
Article 21	However, when the company only plays a simple role involving the technical transfer of a commercial offer between two individuals, it must ensure that the recipient is clearly informed of the name of the person having it transmit the commercial proposal.

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Companies may draw on the terms of the Appendix to this Code dedicated to this type of operation.

Article 22**Collection of email addresses on paper**

22. When electronic contact details are collected via a request for documentation or an order form on paper, companies shall take care to mention that the fact of communicating his electronic contact details implies the consent of the person concerned to the receipt of electronic commercial offers from the company and from other partner companies, in accordance with Articles 3 and 7.

Article 23**Objection lists**

Companies that use electronic marketing operations shall ensure that they maintain an updated internal list of persons who have expressed their objection to the dispatch of marketing material by the company.

Article 24

In addition, these companies shall ensure the use of the general objection list recommended by their professional organisations, when this exists.

Article 25**Information on this Code**

Companies and service providers shall make express reference to this Code of Good Conduct in contracts relating to the dispatch of direct marketing email campaigns.

Article 26**Electronic contact details of minors**

Companies primarily targeting minors shall ensure that they do not collect personal data on these minors without asking them to request permission from their parents.

For this purpose, a specific reference shall appear on the collection documents of sites whose targets are minors under 16 years. This reference shall stipulate that the legal representative consents to the collection of information on the minor for whom he is responsible.

Article 27

Data controllers shall ensure that, in exchange for a child's participation in a game, a prize or within the framework of any other activity related to promotional benefits, they do not ask a child to disclose more personal information than is strictly necessary for participation in such an activity.

Article 28**Indication of the frequency of marketing dispatches**

As far as possible, it is advisable to inform persons whose electronic contact details are collected of the frequency or periodicity envisaged for the dispatch of electronic messages.

Article 29**Methods of proof of consent**

Companies shall ensure that they establish appropriate measures, in accordance with professional standards and practices, to justify the procedures used to maintain a sufficient trace of the obtainment of consent when it is necessary to do so.

Article 30**Penalties for failure to apply this Code**

The penalties for non-compliance with this Code shall be those provided for in the Articles of Association of each professional organisation and member of the UFMD.

Section:

Appendix 1

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APPENDIX 1 - Examples of information which may be used in the collection of email addresses on paper and electronic supports

This document is an Appendix to the Code of Conduct on the use of email addresses for direct marketing purposes. It aims to illustrate the principles set out in the aforesaid Code in accordance with different types of situations.

The following examples are based on the essential distinction between addresses collected by the company for its own needs and a case in which the data are also likely to be disclosed to third parties.

These models must be adapted to each situation and cover data collection as part of a subscription to a newsletter, a request for information as well as an order for products or services.

They are offered as examples only and should not be construed as the only possible method of obtaining consent. They are not exclusive of other models of obtaining consent that companies might wish to use.

In addition, the UFMD reserves the right to amend these examples according to changes in process, practices and / or legal rules.

Email addresses collected on a website

1. OBTAINMENT OF EMAIL ADDRESSES RELATING TO INDIVIDUALS ON WEBSITES (FOR DIRECT MARKETING PURPOSES)

Case No. 1: a person asks to receive commercial information outside any purchase or other provision of service and you want to use the contact details later. For example, in the case of subscription to a newsletter.

➤ A person who provides his email address must be fully informed at the time of collection of his data, of the use to be made thereof prior to confirmation of his request. Furthermore, he must be informed of the recipients of this information and his rights as recognised by law (in accordance with Articles 3 and 7 of this Code).

This information must be clear and easily accessible. It may be provided in two stages, where appropriate, on the basis of the following example:

Step 1: The person is asked to leave his contact details on the Home page. For example:

Pour être informé de nos offres (ou pour vous abonner) merci d'indiquer votre adresse e-mail :

If you wish to be informed of our offers (or to subscribe), please enter your email address:

CONFIRM

Step 2: After clicking Confirm, the person is directed to an explanatory page, on the basis of one of the two models below, as appropriate:

Version A (when the company does not wish to communicate the contact details to third parties)

Je souhaite recevoir des informations et offres promotionnelles de XYZ (nom de l'entreprise) à cette adresse e-mail :

m.dupont@nomdedomaine.fr

Conformément à la loi du 6/01/1978, je dispose d'un droit d'accès, de rectification et d'opposition aux informations me concernant qui peut s'exercer à tout moment auprès de XYZ ... (préciser les modalités). Seule notre société est destinataire de ces informations. Pour plus de détails [cliquer ici](#) (renvoi vers les conditions générales d'utilisation des données).

VALIDER

I wish to receive promotional offers and information from XYZ (name of company) at this email address:

m.dupont@nomdedomaine.fr

In accordance with the Law of 6/01/1978, I have the right to access, correct and object to the information concerning me and may exercise this right in respect of XYZ at any time... (*specify the methods*). Our company shall be the only recipient of this information. For more details [click here](#) (*reference to the general terms and conditions of data use*).

CONFIRM

Version B (where the company wishes to be able to communicate the contact details to third parties)

Je souhaite recevoir des informations et offres promotionnelles à cette adresse e-mail de la société XYZ

m.dupond@nomdedomaine.fr

- Oui, j'autorise votre société à communiquer cette adresse à vos partenaires afin de bénéficier de leurs offres promotionnelles.
- Non, je ne souhaite pas que mon adresse soit communiquée à vos partenaires

Conformément à la loi du 6/01/1978, je dispose d'un droit d'accès, de rectification et d'opposition aux informations me concernant qui peut s'exercer à tout moment auprès de XYZ ... (préciser les modalités). Pour plus de détails [cliquer ici](#) (renvoi vers les conditions générales d'utilisation des données).

VALIDER

I wish to receive promotional offers and information from XYZ (name of company) at this email address:

m.dupont@nomdedomaine.fr

Yes, I authorise your company to communicate this address to your partners in order to benefit from their promotional offers.

No, I do not wish my address to be communicated to your partners.

In accordance with the Law of 6/01/1978, I have the right to access, correct and object to the information concerning me and may exercise this right in respect of XYZ at any time... (specify the methods). Our company shall be the only recipient of this information. For more details [click here](#) (reference to the general terms and conditions of data use).

CONFIRM

Case No. 2: the consumer orders a product or service and you simply wish your company to use his contact details to send him your own offers for similar products or services.

➤ A consumer providing his email address on the occasion of an order or a provision of service must be informed at the time of the data collection, of the use to be made thereof. If you plan to use his contact details to send him promotions for products or services similar to those he has ordered, later, you must inform him thereof so that he is able to object.

In addition, you must also inform the person of his rights according to the law (pursuant to Articles 3 and 7 of this Code).

This information should appear on the page where the contact details are collected.

Companies may be guided by the following:

This information is required to process your order and manage our commercial relations. In accordance with the Law of 6/01/1978, you have the right to access, correct and object to your information. Our company shall be the only recipient of this information. You may ask not to receive our offers by clicking **here** or on the unsubscribe link which shall appear on offers that may be sent to you later. For more information [click here](#) (reference to the general terms and conditions of data use).

Case No. 3: a consumer orders a product or service and you wish to send him offers for your similar products or services and to be able to communicate his contact details to third parties.

➤ In this case, you must obtain the consent of the person concerned. To obtain consent, you may use a form of the type described below, for example.

➤ In addition, you must also inform the person of his rights as recognised by law (in accordance with Articles 3 and 7 of this Code). This information should appear on the page where the contact details are collected.

Companies may be guided by the following:

<p>e-mail :@.....</p> <p><input type="checkbox"/> J'accepte de recevoir des informations et offres promotionnelles de la part de vos partenaires à l'adresse e-mail ci-dessus</p> <p><input type="checkbox"/> Non, je ne souhaite pas recevoir des offres de la part de vos partenaires (*)</p> <p>Ces informations sont nécessaires au traitement de votre commande et à la gestion de nos relations commerciales. Conformément à la loi du 6/01/1978, vous disposez d'un droit d'accès, de rectification et d'opposition aux informations vous concernant. Vous pouvez demander à ne pas recevoir nos offres en cliquant ici (**) ou sur le lien de désinscription qui sera sur celles qui pourront vous être adressées ultérieurement. Pour plus de détails cliquer ici (renvoi vers les conditions générales d'utilisation des données).</p> <p>VALIDER</p>
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Email:....@....

I agree to receive promotional offers and information from your partners at the email address above.

No, I do not wish to receive offers from your partners (*)

This information is required to process your order and manage our commercial relations. In accordance with the Law of 6/01/1978, you have the right to access, correct and object to your information. You may ask not to receive our offers by clicking [here](#) (**) or on the unsubscribe link which shall appear on offers that may be sent to you later. For more information [click here](#) (reference to the general terms and conditions of data use).

CONFIRM

* Optional statement

** By clicking, the person will be directed to a window where he will be given the opportunity to exercise his right to object.

➤ **In any event**, in the three cases described above, it is advisable to provide an unsubscribe link on each subsequent promotional electronic message, that is sufficiently visible and easily accessible, in accordance with the following example:

If you wish to change your subscription or to unsubscribe, [click here](#)

or

If you no longer wish to receive our offers, [click here](#)

The action of clicking must allow the subscription to be cancelled quickly and easily, for example, by referring to a dedicated page of the site allowing the user to express his request or automatically generating a draft email pre-addressed to the company. In this case, the company shall ensure that the procedure is simplified. No explanation should be required from the customer.

It is also recommended that companies send an acknowledgment of receipt without undue delay.

Section 2:

COLLECTION AND USE OF CONTACT DETAILS OF CORPORATIONS

Case No. 4: the business email address does not contain information on an individual

In the event that the email address collected does not include the name of an individual in the email addresses (e.g. info@ufmd.fr), an unsubscribe link shall appear on every direct marketing message, at least, for the recipient to express his right to object to any new dispatch.

This information is required to process your request and manage our commercial relations. You may also ask to no longer receive our offers at any time by clicking on the unsubscribe link appearing on our offers.

In the other cases described below, where a name of an individual appears in the business address, the principle of consent should be taken account and all rules related to personal data in the Data Protection Act shall apply in full.

Case No. 5: the name of an individual appears in the business email address but there is a doubt as to the business character of the email address

This may be the case of email addresses of craftsmen, sole proprietorships or the professions, not comprising a specific professional generic name.

In this case, the general provisions on prior consent shall apply and companies may draw on examples for collection of the data of individuals

Case No. 6: the email address contains the name of an individual accompanied by the name of the company for which this individual works and the emails are related to the business activity.

Should email addresses of corporations be used, mentioning a specific company name, and comprise names of individuals, the provisions of the amended Data Protection Act of 6 January 1978 shall apply in full.

For this purpose, a Data Protection statement shall appear on the data collection document. Consequently, the rights stipulated under Articles 3 and 7 this Code shall appear on the data collection form.

In addition, companies shall ensure that the message has a business character in relation to the position that the person holds in the public or private organisation or company.

Also, an unsubscribe link shall appear on any direct marketing message at least for the recipient to express his right to object to any new dispatch.

e-mail :@.....

Ces informations sont nécessaires au traitement de votre commande et à la gestion de nos relations commerciales. Conformément à la loi du 6/01/1978, vous disposez d'un droit d'accès, de rectification et d'opposition aux informations vous concernant.
 Vous pouvez demander à ne pas recevoir nos offres ou celles de nos partenaires que vous pourriez recevoir par notre intermédiaire, en cliquant [ici](#) (**) ou sur le lien de désinscription qui sera sur celles qui pourront vous être adressées ultérieurement
 . Pour plus de détails [cliquer ici](#) (renvoi vers les conditions générales d'utilisation des données).

VALIDER

Email:....@....

This information is required to process your order and manage our commercial relations. In accordance with the Law of 6/01/1978, you have a right to access, correct and object to your personal information. You may ask not to receive our offers or those of our partners which you might receive through our intermediary, by clicking [here](#) (**)

or on the unsubscribe link which shall appear on offers, which may be sent to you later.

CONFIRM

**** By clicking, the person will be directed to a window where he will be given the opportunity to exercise his right to object and select the types of offers that he does not wish to receive.**

Email addresses collected on paper

Case No. 7: collection of email address on paper without the possibility of it being communicated to third parties

➤ In this case, you must obtain the consent of the person concerned. The fact that the person is totally free to communicate his email address in a free, specific and informed manner, or otherwise results in him giving his consent if he communicates his email address in accordance with the methods described in the example below.

Adresse e-mail

.....

si vous souhaitez être informé de nos offres commerciales

Email address

*.....

* If you wish to be informed of our commercial offers

Companies shall ensure that the collection document where the email address is requested indicates the purpose of this collection. In addition, they shall inform persons of their rights described in Articles 3 and 7 of this Code and shall ensure in particular that they are informed expressly and without ambiguity of their right to object to the receipt of advertising messages.

In this case, the electronic data must not be communicated to third parties.

Case No. 8: collection of email address on paper and you wish to send offers for your own products or services and to be able to communicate his contact details to third parties.

In this case, you must obtain the consent of the person concerned. The fact that the person is totally free to communicate his email address in a free, specific and informed manner or otherwise results from him giving his consent if he communicates his email address in accordance with the methods described in the example below.

<p>Adresse e-mail</p> <p>•</p> <p>• <u>si vous souhaitez être informé de nos offres commerciales et de celles de nos partenaires</u></p>
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Email address

*.....

* If you wish to be informed of our commercial offers and those of our partners

Companies shall ensure that the collection document where the email address is requested indicates the purpose of this collection. In addition, they shall inform persons of their rights described in Articles 3 and 7 of this Code and shall ensure in particular that they are informed expressly and without ambiguity of their right to object to the receipt of advertising messages.

Annex 2:

APPENDIX 2 - Referral and collection of "names of friends " in electronic communications.

Asking customers for the contact details of friends is a common practice in business operations. In terms of legal provisions on personal data, this practice comes under indirect collection.

This paper aims to define some rules to be applied with regard to the indirect collection of electronic data within the framework of legal provisions on digital economy.

These rules cover the referral of friends for the purpose of marketing by e -mail (electronic communication).

For the collection of names of friends from customers, there are two main cases:

1. Collection of names of friends used for direct marketing by the company

This is the case where "names of friends" are collected from customers and entered into the database of the company with a view to direct marketing thereby. Companies are prohibited from the indirect collection of names and addresses for the purposes of marketing by email, without obtaining the prior consent of the future recipient.

2. Transfer of a commercial offer to names of friends

The most common case is that of a person A wishing to share an advertisement on a website or received in his mailbox with a friend B. He communicates the email address of B to the website, so that he receives a copy of the commercial offer.

The rules to be applied are different depending on whether the website registers the contact details of individuals or otherwise.

2.1. If the website collects the names of friends that have been communicated thereto by its customers, it may only use them once to send these persons direct marketing and provided that the name of the "friend" is clearly indicated in this one and only direct marketing operation. In this case it can only relate to

technical storage

2.2. If the website only provides the technical transfer from "Friend A" to "Friend B", the operation is lawful provided that the name of the person having the commercial proposal sent thereto is indicated to the recipient.

Annex 3:

APPENDIX 3 - Main legal reference texts

1. Law No. 78-17 of 6 January 1978 amended by the Act of 6 August 2004 on Information Technology, Data Files and Civil Liberties
2. Law No. 2004-575 of 21 June 2004 for confidence in the digital economy
3. Article L.34 -5 of the Post and Electronic Communications Code on the legal system of electronic communications
4. Article L.121-20 -5 of the Consumer Code on the legal system of electronic communications vis-à-vis consumers.
5. European Directive 2002/58/EC of 12 July 2002 of the European Parliament and the Council concerning personal data processing and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)
6. Directive No. 95/46 of the European Parliament and the Council of the European Union of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data
7. Directive 00/31/EC of the European Parliament and the Council of 8 June 2000 on certain legal aspects of ecommerce in the internal market
8. Ordinance No. 2001-741 of 23 August 2001 transposing Community Directives and adapting consumer law to Community law
9. Legal provisions on declaration or request for authorisation of databases from the CNIL

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For more information, consult the website of the CNIL: www.cnil.fr