



**INFORMATION
REGULATOR
(SOUTH AFRICA)**

*Ensuring protection of your personal information
and effective access to information*

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MEDIA STATEMENT

DIRECT MARKETING ASSOCIATION OF SOUTH AFRICA

The Information Regulator (Regulator) has requested a meeting with the Chief Executive Officer of the Direct Marketing Association of South Africa (DMASA) Mr David Dickens. The purpose of the meeting is to discuss the concerns that have been raised in the article titled “Direct marketers slam POPI 'opt-in' provisions” written by the business editor of ITWeb Mr Admire Moyo at <https://www.itweb.co.za/content/4r1lyMRoO43qpmda> on 25th July 2018.

Opt-out in the context of direct marketing means that direct marketing can be directed at a data subject without obtaining the data subject’s consent. Once the data subject indicates that he/she no longer wishes to receive direct marketing from a responsible party she indicates her objection through opting-out. This is usually done through clicking on an unsubscribe link or messaging “STOP” to the responsible party. Opt-out has been adopted in several laws, including in POPIA and in the Consumer Protection Act. Section 11 of the Consumer Protection Act provides that the right of every person to privacy includes the right to refuse to accept; require another person to discontinue; or to pre-emptively block any approach or communication to that person, if the approach or communication is primarily for the purpose of direct marketing. The pre-emptive block (the opt-out register) has not yet been created.

In the context of direct marketing opt-in means that the data subject’s consent has to be obtained before direct marketing can be directed at that data subject. Opt-in provides effective remedies against the selling of personal information for marketing purposes. This approach has been adopted in section 69 of POPIA. In terms of section 69 of POPIA it is unlawful for a direct marketer to market goods or services to a data subject through

electronic communication without first obtaining the data subject's consent. Moreover, the data subject's consent may only be requested once. section 69(2) of POPIA gives marketers the right to approach a data subject once for purposes of direct marketing through electronic communication. In terms of POPIA responsible parties may only send direct marketing to data subjects that are customers if (a) the contact details were obtained in the context of a sale of a product or a service; (b) the contact details were obtained for the purpose of direct marketing of the responsible party's own similar products and services; and (c) the data subject is given the opportunity to object to such use of her contact details at the time when the information (the contact details) were obtained; and on each occasion of communication for the purpose of marketing if the data subject has not initially refused such use. These provisions provide extensive conditions for the lawful processing of personal information.

The Direct Marketing Association of South Africa has created an opt-out register but this is only binding on the marketers that are members.

Section 69 and its effect on direct marketing should be viewed in light of the Regulator's constitutional mandate. The Regulator's legislative mandate is to give effect to the constitutional right to privacy, by safeguarding personal information when processed by a responsible party, subject to justifiable limitations that are aimed at balancing the right to privacy against other rights, particularly the right of access to information; and protecting important interests, including the free flow of information within the Republic and across international borders.

Arthur Goldstuck, MD of World Wide Worx, was also quoted in the article. He said:

"Consumers have a right not to be bombarded, interrupted or disrupted in their daily lives by unwanted communication. They have an even greater right to privacy, and how their personal information is used"

This comment is supported. This alludes to a practice that relates to direct marketing, namely the collection of data subjects' personal information in databases and the trading in such databases for direct marketing purposes. These practices violate a number of the conditions for the lawful processing of personal information and would be unlawful once POPIA is fully operational.

The Regulator is of the firm opinion that the direct marketing provisions in section 69 of POPIA are in the best interests of data subjects. The provisions are fair and on par with international best practices. Data subjects will be protected against unsolicited direct marketing once responsible parties' processing of personal information is compliant with POPIA. This will strengthen their constitutional right to privacy.

The Regulator is hard at work to ensure that the remaining sections of POPIA come into effect before the end of this year. South Africans cannot wait any longer for the full operationalization of the Regulator.

Adv P Tlakula

Chairperson: Information Regulator

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