

# ***Privacy Act 1988 & Spam Act 2003: LPA Member Guidelines***

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## **Disclaimer**

This document is provided for the information of members. The views expressed are those of the contributing staff and are not necessarily those of Live Performance Australia, the Australian Entertainment Industry Association, or of its members. The comments and options expressed within should therefore not be interpreted as indicating formal LPA policy or organisational intention. The guidelines are not intended to be a comprehensive guide to the *Privacy Act 1988* but are intended to highlight some issues of particular relevance to our members. This information is of a general nature only and is not specific legal advice. Member organisations and their members should take specialised and independent advice before using the information for specific purposes.

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## 1. Does the Privacy Act 1988 apply to my organisation?

Your organisation must comply with the *Privacy Act 1988* (the Act) if it:

- has an annual turnover of \$3 million or more;
- is an Australian or ACT Government agency; or
- trades in personal information.

Organisations with an annual turnover of less than \$3 million do not have to comply with the Act, but in the interests of best practice and customer satisfaction, LPA recommends that organisations have systems in place that protect the privacy of their customers. To this end, small organisations may choose to comply with the Act.

Organisations that are agencies of State Governments should consult the relevant State Government authority on privacy. The principles of privacy legislation in the states however are similar to that of the federal legislation. For this reason these guidelines can be used as a general guide for compliance with the state legislation.

Trading in personal information generally means buying, selling or bartering personal information. For example, buying a mailing list without first obtaining the consent of all the individuals on that list or disclosing customer details to someone else for some commercial gain would be considered trading in personal information. A business is not trading in personal information if it gives or receives personal information for a benefit, service or advantage and it:

- Always has the consent of all the individuals concerned; or
- Only does so when authorised or required by law.

## 2. Does the Spam Act 2003 apply to my organisation?

The *Spam Act 2003* applies to your organisation if you send out commercial electronic messages using applications such as:

- Email;
- Short message service (SMS);
- Multimedia message service (MMS); and
- Instant messaging (iM).

The *Spam Act 2003* does not apply to messages that are non-electronic, such as ordinary mail, paper flyer etc.

### **3. How do I comply with the *Privacy Act 1988* and the *Spam Act 2003* (the Acts)?**

In order to best comply with the Acts, your organisation should:

1. Have a Privacy Policy including information on the collection, use and disclosure of personal information;
2. Make the Privacy Policy readily available to customers and inform them of any relevant possible disclosures of their information upon collection;
3. Gain express consent (see below) for the disclosure of personal information to third parties and for the use of personal information for direct marketing purposes;
4. Appoint a Privacy Officer within your organisation who is responsible for administering the Privacy Policy and for dealing with privacy-related customer queries;
5. In each and every communication to the customer, identify your organisation and provide a physical business address and contact details; and,
6. In each and every communication to the customer, allow them the opportunity to contact the Privacy Officer and have their details removed from any particular contact list.

Private sector (i.e., non government) organisations, under certain circumstances explained below, may not have to obtain consent before disclosing personal information when the disclosure is for direct marketing purposes. However customers may be more satisfied knowing that their consent is always obtained before their personal information is disclosed to third parties. In any case, explicit consent obtained prior to disclosure will always provide a secure defence to allegations of an interference with privacy.

Business also must not use electronic address harvesting software, or lists which have been generated using such software, for the purposes of sending unsolicited electronic messages. You may use a purchased or rented list of contacts, but you should be careful to ensure that consent has been obtained in this circumstance.

### **4. What information should my organisations' Privacy Policy contain?**

Your organisations' Privacy Policy should contain information about the collection, use and disclosure of personal information by your organisation in the course of its operation. 'Personal information' means any information or opinion, including that contained in a database, about an individual whose identity can be understood from the information. Information that does not allow an individual to be identified is not considered 'personal information' and so is not regulated by the *Privacy Act 1988*. Sometimes these data are called 'de-identified information'.

Information will be considered personal information regardless of whether or not the information is true. Records of employees are not regulated by the Acts, but by Workplace Relations Legislation. Your Privacy Policy should also state clearly how an individual can access and correct their personal information. This includes the contact details of your organisations' Privacy Officer what a customer can do if they think their privacy has been interfered with, including details of how to contact the Privacy Commission.

## 5. Guidelines to writing your Privacy Policy

The following provides a guideline for organisations drafting a Privacy Policy. If you answer the questions in full sentences, providing as much information as clearly as possible, you should have a Privacy Policy that satisfies the requirements of the *Privacy Act 1988*. LPA recommends that all Privacy Policies be checked by a legal practitioner to ensure compliance.

Generally, you should be as detailed and honest as possible in describing how you collect, use and disclose personal information. The more information your Privacy Policy contains, and the more you encourage your customers to read it, the fewer complaints you will receive about interferences with privacy.

### **Collection**

- What information do we collect? Names and contact details? Other information?
- How do we collect this information? Is it automatic?
- Why do we collect this information? Why do we need this information?
- Do we use cookies or web bugs?
- Does our internet server collect information of the individuals that browse our website? What do we use this information for?

### **Use**

- How do we use this information?
- Where do we store this information?
- Who has access to this information?

### **Disclosure**

- To whom do we disclose this information?
- How will the information be used once it is disclosed?
- Will the people to whom we disclose the information use it in accordance with the principles of the Act?  
How do we ensure this?

### **Accessing and Correcting Information**

- What is the name of the Privacy Officer of your organisation and how he or she be contacted?
- What does a person do if they want to access or correct their personal information?
- What does a person do if they wish to complain that their privacy has been interfered with?

## **6. Use: Has the individual given their consent?**

An individual provides their consent for an organisation to use their data merely because they provide it upon request. This means that you can use the persons' data within your organisation for the purposes for which it was collected.

You can use the person's data for another reason if that reason directly relates to the purpose for which it was collected. This can include using the data for marketing purposes when the marketing directly relates to the purpose for which the information was collected. The use of customer data in this way should be detailed in your Privacy Policy. For example, if a customer:

- buys a ticket for a show by one producer, you may use their details to advise the person of other shows by the same producer.
- has purchased a ticket to a show, the ticketing agent or venue may use their details to advise the person of similar shows.
- has purchased a subscription package, you can use their details to notify them of the following years' subscription package.
- has subscribed to an information or advisory service, or is a members of a buyers club, then you may use their details to contact the person in a manner consistent with their expectations.

You do not need the express permission of customers to use their personal information in this way, as there is an existing relationship between your organisation and the individual and your conduct is consistent with their reasonable expectations. For any other scenarios relating to the use of customer data for a purpose other than for which the information was collected, you should consider whether there is an existing relationship between the customer and your organisation, and whether the communication in question is consistent with that relationship. A good rule of thumb when deciding whether the communication is consistent with the relationship is to put yourself as an individual in the shoes of the customer and ask whether, based on your previous dealings with the organisation, you would expect to receive the communication.

In order to disclose the information to third parties however, you may need the express permission of the individual concerned. Government Agencies generally need the express permission by each individual for every disclosure. Private Organisations do not need express permission, but LPA encourages Private Organisations to obtain consent before disclosure.

## 7. Disclosure: Consent for Government Agencies

The box below provides a guideline for organisations making their Privacy Policy available to customers and obtaining informed consent for the use and disclosure of customer information. LPA recommends that all procedures be approved by a legal practitioner to ensure compliance.

### **Online**

Use a separate check-box for both the use and disclosure of personal information. For example:

- *Can we use your information to contact you about upcoming events? (yes/no)*
- *Can we disclose your information to the promoter of this event so you can be told about other shows the promoter is presenting? (yes/no)*

### **By Phone**

Have the customer service officer ask a specific question, similar to the one above, when the customer is making a purchase. If there is a record of the customer having already agreed to these questions, there is no need to ask them again.

Use a recorded message to make the customer aware of the Privacy Policy, and where to obtain a copy, while the customer is on hold waiting to be served. For example, instead of music, play a message that says something like:

*Your privacy is important to us. Please take time to read the details of the use and disclosure of your personal information, contained in our Privacy Policy, available at [www.website.com](http://www.website.com).*

### **In Person**

Have the customer service officer ask a specific question, similar to the one above, when the customer is making a purchase. If there is a record of the customer having already agreed to these questions, there is no need to ask them again.

Have copies of the Privacy Policy available at the counter and have a sign notifying patrons of its availability upon request

## 8. Disclosure: Consent for Private Organisations

Private Organisations may disclose customer's personal information to other businesses without the express consent of the customer, subject to some additional requirements. This is because the Acts were drafted with care taken not to make compliance overly burdensome for businesses. While express consent will always allow disclosure, private organisations may disclose personal information to third parties without the express consent of the customer.

For Private Organisations, the Acts distinguish between disclosure for direct marketing and other purposes. Disclosure for direct marketing purposes is allowed without consent, as long as the customer is given the option of being removed from any contact list. Disclosure for other purposes is allowed if the customer would reasonably expect this disclosure to happen.

If there is no express consent from the customer to disclose personal information, you should consider whether their customer would expect to receive communication from this other organisation. If the customer would not expect to receive the material from this other organisation, then they may complain that their privacy has been interfered with. If the customer expects to receive the material, then consent can be inferred from the fact that their personal information was provided.

For example, if a private organisation ticketing service provider does not have consent to disclose customer data to a promoter, the ticketing service provider may disclose the information to the promoter if:

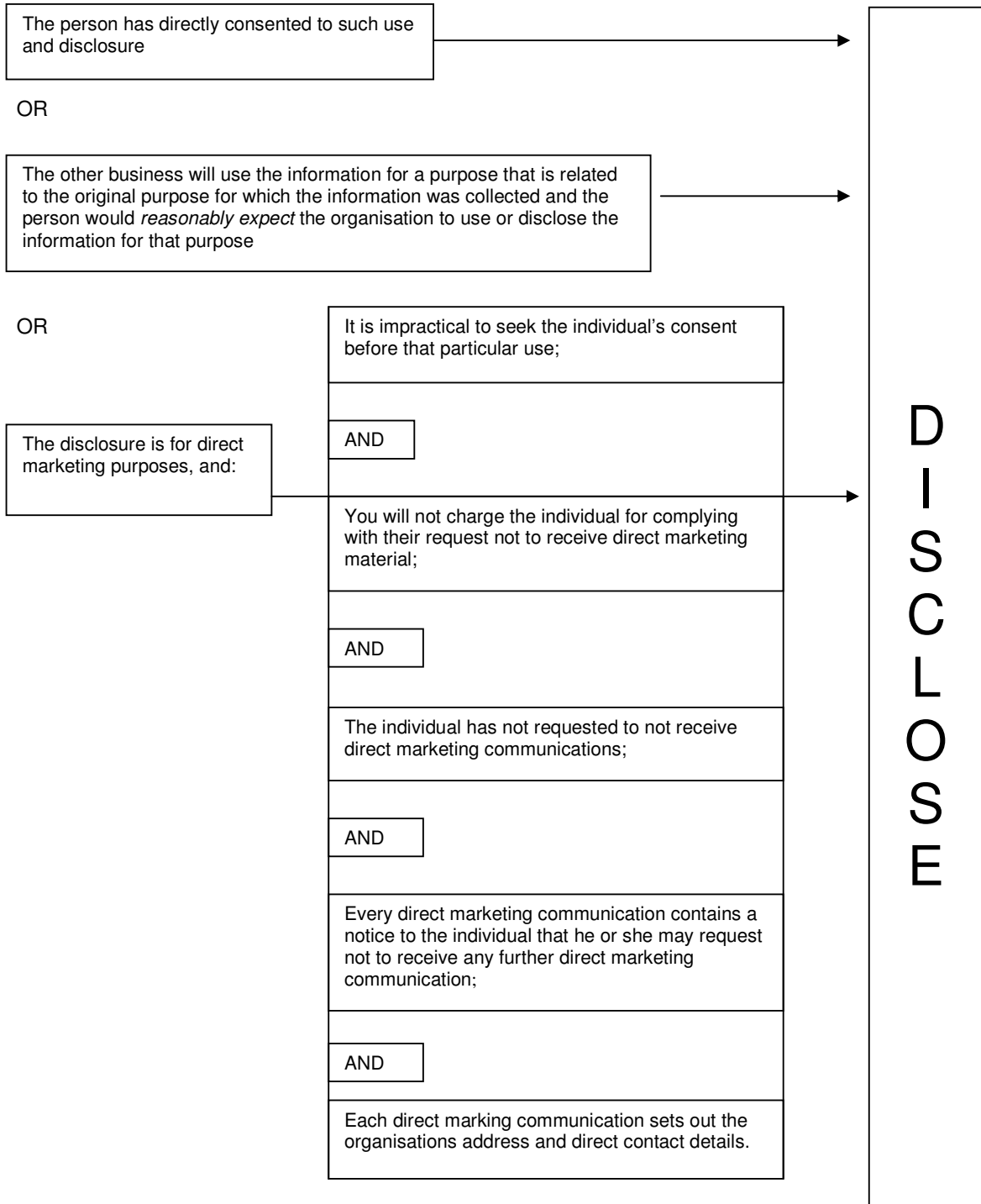
- the individual has given consent; or,
- the individual might reasonably expect his or her information to be passed on for that purpose.

Again, a good rule of thumb when deciding whether a customer will expect to receive the communication is to put yourself as an individual in the shoes of the customer and ask whether, based on your previous dealings with the organisation, you would expect to receive the communication. Consent to receive the information can be inferred from an established relationship such as a subscription or membership arrangement. If the relationship is more tenuous, and relates only to a single ticket purchase, then the customer may feel their privacy has been interfered with if they receive information from a third party.

If the information is being disclosed for the purposes of direct marketing, then consent for such disclosure is not required at all as long as the five criteria listed below are fulfilled. These criteria include the customer not having elected to be kept off any list for direct marketing communications.

## 9. Disclosure: Direct Marketing by Private Organisations

Private sector organisations can disclose customers' personal information to other businesses if:



## **10. The Privacy Officer**

A Privacy Officer is merely someone in your organisation who has an understanding of the Acts, your Privacy Policy and how it is implemented in your organisation. The Privacy Officer needs to be able to be contactable directly by anyone dealing with your organisation. Their details should be included in the Privacy Policy, and they should be responsible for ensuring that your organisation complies with the Acts. This may involve the Privacy Officer reviewing customer databases and being involved in discussions with information technology service providers so as to ensure compliance with the Acts. The Privacy Officer should also be equipped to manage unsubscribe requests from customers and respond to any complaints.

## **11. General Points to Consider**

Privacy is important for your organisation both from a legal compliance perspective but also from a customer service perspective. If your use or disclosure of customers personal information is going to be intrusive or irritating, then you can expect to have complaints about privacy intrusion. Information on your customer databases should be kept current and accurate and you should use the personal information you have with care and respect for the customers who have entrusted the information to you.

Privacy, use and disclosure of customer information should be discussed at the contract stage between producers, ticketing agents and venue management. This may help avoid disputes after a production has settled and allow businesses to share information to help the live performance industry to grow.

## **12. Further Information**

Information about the federal *Privacy Act 1988* can be obtained from [www.privacy.gov.au](http://www.privacy.gov.au). This site also has links to the relevant state legislation which may apply to state government venues, subsidised performing arts companies and State Government ticket agencies.