May 2018 NEWSLETTER

“Don’t leave me this way…”

Yes, this is yet another article on GDPR aka the Great Dancing Panda Returns aka the EU’s General Data Protection Regulation.

As predicted, there has been an influx of ~~begging~~ marketing emails to our inboxes, encouraging us all to remain connected with the businesses that rely upon our custom. I have to admit I was amazed at the number of companies who’ve crawled out of the woodwork with these emails (did I really give THEM my email address? why have they left it so late?) and it has felt more than a little liberating to ‘purge’ my inbox of some of the less relevant of these. The best example I’ve received is from wetransfer, which opened with the gem ‘Nobody ever regrets spending too little time in their inbox…’, and I gladly opted into hearing more from them.

The vast majority of firms have, as has ProShare, asked for recipients to ‘opt-in’ in order to receive marketing-related email contact in the future (NB: though we reserve the right to contact members regarding their membership under the ‘contractual requirement’ basis for processing and holding data). Much smaller is the number of companies who’ve offered participants the choice to ‘opt-out’ instead – the outcome for passive inactivity being that this indicates consent to continue receiving marketing emails. GDPR of course requires organisations to obtain unambiguous consent to use and retain data, and perhaps many companies are taking what might eventually in hindsight appear to be an ultra-conservative approach to consent. That’s hardly a surprising approach when multi-million pound fines are threatened, regardless the calculation of remoteness of risk of being the unlucky company chosen to be made ‘the example’ by the regulators.

Around 150 individuals on our own marketing database (from a total of around 1,300) have so far opted-in to continuing to receive this monthly newsletter and our ‘Get Involved’ events marketing emails. If you haven’t yet opted-in, please do so without delay – there’s a link underneath this article in our newsletter.

The prospect of losing around a large proportion of our marketing database contacts is one which has given us more than a few sleepless nights, as I’m sure has also been the case for others involved in marketing at companies both large and small. A smaller (slightly OCD) part of me takes some satisfaction at the thought of thoroughly ‘sanitising’ our marketing database and reducing the number of ‘hard bounces’ that we receive post- each newsletter.

For us, the next phase after 25 May will be focussed on making it as easy as possible for our customers – new and old - to sign up to our newsletter and events emails. Contact acquisition has it's price however, and the cost will weigh more heavily on the smaller organisations than the larger.

Whilst it's easy to complain about the avalanche of 'stay in contact' emails now, we believe that GDPR will ultimately prove to be a positive force. Many of us will be compelled to finally become 'digital adults' and take an active role in deciding who gets to use our data and who doesn't. In the wake of the Cambridge Analytica/Facebook scandal, even Sheryl Sandberg, Facebook's COO, has admitted that 'Europe was way ahead on [data privacy]'.

GDPR, whilst a European Union regulation, will effectively become the global standard for data privacy, as 1) any country wishing to trade (or sign a trade deal) with the EU will be required to sign up to GDPR and 2) regardless of the organisation's location, they are required to abide by GDPR for all EU citizens' data that they may hold. So following – or perhaps in tandem with - the reckoning i.e. the first organisation which finds itself on the wrong side of this legislation, there will be a global 'levelling up' effect. Some consistency may not be a bad thing - consistency is not usually the outcome of EU law when introduced as directives (which can be interpreted by EU member states) rather than regulations (which broadly speaking have to be transposed into EU member states' national law). Companies operating globally may find that it's simply cheaper to comply with GDPR, even in jurisdictions where they might previously have taken a more localised approach to compliance.

Compliance is an expensive business – the average FTSE 100 company is estimated to have spent £15m to comply with GDPR (source: Axiom), with many hiring additional headcount to cope with compliance and as data protection officers. The UK Information Commissioner's Office will itself hire several hundred more staff by 2020 in order to effectively enforce the new data regulations. Companies alleged to be in breach and facing fines on the scale of the greater of €20 million or 4% of global turnover will fight tooth and nail, so the regulator will need to be on it's mettle in both principle and process, if they are to make any charges stick.

One of the unintended consequences of GDPR might be a boom in the volume of Subject Access Requests ('SARs'), for which companies may no longer charge a nominal processing fee. This may create an operational – and financial – overhead which companies as data processors and owners alike will have no other option than to absorb. This has to be an area crying out for automation and/or the application of AI in order to compliance-proof it and reduce the cost.

Our last GDPR webinar, delivered last November by Stephen Ratcliffe of Baker McKenzie, was our most popular ever – credit to Stephen for enlivening an otherwise dry subject and most importantly busting many of the myths that persisted at that time (mainly around the lawful bases for holding and processing data). Once GDPR practices have bedded in, ProShare intends to run another webinar looking at the impact the legislation has had upon share plans operations from the plan issuer and the plan administrator viewpoints. Do get in touch if you'd like to be involved in this.

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