



# Address Collection, Data Protection & Advertising

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*Presented by:*

Members of the

**Global Advertising Lawyers Alliance**

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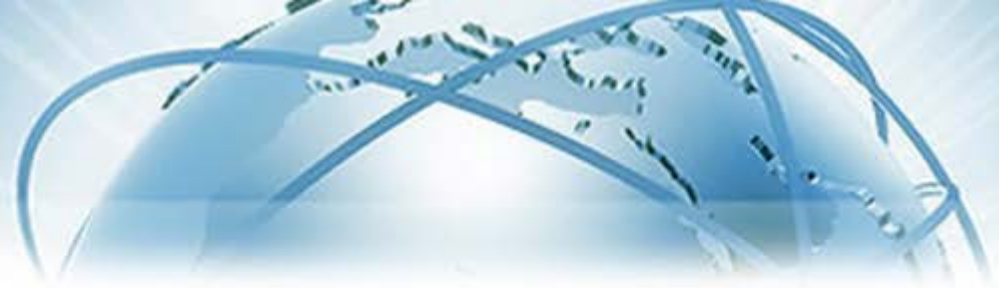


# Introduction

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GALA - Global Advertising Lawyers Alliance

- 60 independent law firms throughout the world
- Expertise in advertising, marketing and promotion law
- Additional expertise in trademark related questions
- Corporate membership for in - house counsel



# Introduction

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- Australia:
  - Peter LeGuay, Thomsons Lawyers
- Canada:
  - Adam Kardash, Heenan Blaikie
- Germany:
  - Søren Pietzcker, Heuking Kühn Lüer Wojtek
- Peru:
  - Luis José Diez Canseco Núñez, Estudio Muñiz



# German Privacy and Spam Laws

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- Federal Data Protection Act
  - Processing/Use of personal data
  - Regulations for the collection of data for promotional purposes
  - Permission necessary by law or by consent
  - Cross border transfer
  - Sanctions
- Act on Telemedia
  - Certain aspects on information on data processing
- Unfair Trade Practices Act
  - Anti spam regulations in § 7
  - Sanctions



# Australian Privacy and Spam Laws

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- National Privacy Principles (*Privacy Act 1988*)
  - NPP1 - Collection
  - NPP2 - Use and disclosure (including direct marketing)
  - Australian Privacy Principles (APPs) commence 12 March 2014 – major changes
- Spam Act 2003
  - Consent
  - Identification of sender
  - Unsubscribe facility



# Canadian Privacy and Spam Laws

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- Federal and Provincial Private Sector Privacy Legislation
  - Comprehensive rules for collection, use, disclosure and management of personal information
- New Canadian Anti-Spam Legislation
  - Strict consent, notice and unsubscribe requirements
  - Potentially severe penalties for contravention of the statute
    - Up to \$1 million per violation for individuals and \$10 million for businesses
    - Statutory damages up to \$200 for each violation of the prohibition against unsolicited commercial electronic messages up to \$1 million for each day on which the violation occurred



# Peruvian Privacy and Spam Laws

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- Personal Data Protection, Law 29733
  - Processing
  - Consent (exceptions)
  - Rights and duties
  - Local and cross border transfer
- Spam Regulation, Law 28493, and its regulation
  - Requisites
  - Sanctions
  - Compensations
- Registry “*Gracias, ... no insista*”, Directive 005-2009/  
COD-INDECOPI
  - Registry for non sending of commercial messages





# Hypothetical Case

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ACME Company wants to use data of existing customers as well as data collected through a recent sweepstake to run a worldwide direct marketing promotion via its local affiliate per mail, fax and email.

One of the recipients who has received the promotion via fax, email and regular mail is not amused and requests a cease-and-desist declaration from the sender, ACME affiliate. ACME affiliate does not comply with the request and recipient wants to sue.







# Hypothetical Case

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- Does the recipient have a case using one of the following arguments?
  1. There was no prior consent to receive promotions by regular mail.
  2. There was no prior consent for receiving promotions by email or fax.
  3. I informed the sender that I did not want to receive any mail with “promotions”.



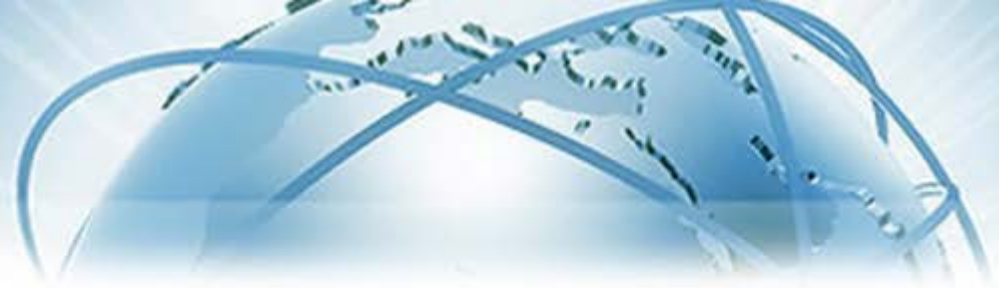


# Hypothetical Case

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- Does the recipient have a case using one of the following arguments?
  4. There is a sticker on my mailbox saying “no advertising”.
  5. Consent is too old and no longer valid.
  6. Consent was invalid.





# Consent Requirements for Direct Marketing

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1. Informed consent
2. Free decision
3. Form
4. Consent of minors < 14 years





# Information Requirements

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- Australia: For commercial electronic messages only:
- Identification of sender.
  - Functional unsubscribe facility.
- Germany: The right to withdraw a previous electronic consent.
- The right to oppose any use of personal data for marketing purposes.
- Canada: Notice and unsubscribe facility.
- Peru: Right to oppose.





# Consequences of non-compliance

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1. Warning letters requesting a cease-and-desist declaration
2. Preliminary injunction
3. Ordinary court action
4. Fines
5. Other





# Advice

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1. Australia
2. Canada
3. Germany
4. Peru





# We thank you for your patience



**Peter LeGuay**

Level 25, 1 O'Connell Street  
Sydney NSW 2000  
Australia

Tel: +61 2 8248 5800

[pleguay@thomsonslawyers.com.au](mailto:pleguay@thomsonslawyers.com.au)



**Adam Kardash**

333 Bay Street, Suite 2900,  
Toronto, ON M5H 2T4  
Canada

Tel: +1 416 360 3559

[akardash@heenan.ca](mailto:akardash@heenan.ca)



**Dr. Søren Pietzcker**

Neuer Wall 63  
20354 Hamburg  
Germany

Tel. +49 40 35 52 80 17

[s.pietzcker@heuking.de](mailto:s.pietzcker@heuking.de)



**Luis Diez Canseco**

Las Begonias 475, 6º Piso,  
Lima 27,  
Perú

Tel: +51 1 611-7000

[ldiezcanseco@munizlaw.com](mailto:ldiezcanseco@munizlaw.com)