**Chapter C:CRTF Revision draft v2**

 **Data Driven Marketing and Digital Marketing Communications**

This chapter is to be read in conjunction with the General Provisions and Definitions on Advertising and Marketing Communications and the Introduction regarding scope, application, jurisdiction and relationship with the law.

**Scope of chapter C**​

The rules of this chapter apply to data driven marketing and digital marketing communications as defined below. They also apply to physical direct mail whether distribution is based on the use of personal data or not (so-called “unaddressed mail”). Unless specifically indicated otherwise, this chapter applies to all participants in the data driven marketing and digital marketing eco-system and their marketing communications activities, whether digital or non-digital, whatever their form, medium or content. It sets standards of ethical conduct to be followed by all parties involved in data driven and digital marketing communications.

These rules, as well as the General Provisions, apply regardless of how marketing communications are created, modified or delivered, i.e., whether by humans or through automated means, such AI and algorithms. Marketers employing such technologies should exercise due oversight to ensure compliance with the Code.

The rules are designed to be technology neutral and should be applied to new technologies when there are reasonable means commercially available enabling compliance. Companies should seek to develop such means and apply the ICC code as soon as possible to new technologies.

Due to the rapidly changing and developing nature of digital interactive media, additional guidance regarding interpretation and application of these rules is made by the ICC where necessary. These can be found on the ICC Code Centre website.

**Terms specific to data driven marketing and digital marketing communications:**

Further definitions are found in the specific sections on telemarketing and interest-based advertising (IBA) of this chapter; see Articles C14 for specific terms related to telemarketing and C15 for specific terms related to interest-based advertising.

* The term “***data driven marketing***” is the communication, by whatever means, of advertising or marketing material carried out by a data driven marketer itself or on its behalf, and which is directed to particular individuals using their personal contact information (including mailing address, telephone number, email address, IP address, fax, personal social media account handle, and the like).
* The term **“*digital marketing communications*”** refers to marketing communications, using digital interactive media, including digital universes, platforms and channels, intended primarily to promote products or to influence consumer behaviour.
* The term “***operator***” refers to any person, firm or company, other than the marketer, that provides a data driven marketing or digital marketing communications service for or on behalf of the marketer.
* The term “***right of withdrawal***” refers to the consumer’s right to resend any goods to the seller, or to cancel the order for services, within a certain time limit and thus annul the sale.

**GENERAL PROVISIONS FOR DIGITAL AND DATA DRIVEN MARKETING**

**Article C1 – Responsibility**

 As defined in article 23 of the General Provisions, whatever the nature of the activity, medium or technology, responsibility for data driven and digital marketing activities is shared by all the parties concerned, commensurate with their respective role in the process and within the limits of their respective functions.

All parties concerned need to take into account that responsibility also applies to other participants in the data driven marketing and digital marketing eco-system including:

* operators, telemarketers or data controllers, or their digital ad agencies, other service providers and their subcontractors, who contribute to the activity or communication;
* interest-based advertising, data analytics and ad technology companies; publishers, platforms and channels, media-owners, affiliate networks or contractors who publish, transmit or distribute the offer or any other marketing communication;
* market influencers, bloggers and vloggers;
* those responsible for preparing algorithms for marketing communications; and
* and those responsible for designing online choice architecture and virtual universes.

**Article C2 – Identification and Transparency**

Marketing communications should be properly identified, subject descriptors should be accurate, and the commercial nature of communications should be transparent to consumers in accordance with Article 7 of the General Provisions.

**Article C3 – Presentation of the Offer**

The terms of offers should be presented in a transparent and understandable manner in accordance with Article XX of the General Provisions (Presentation of the Offer).

**Article C4 – Transparency on Cost of Communication**

Where the cost to consumers of accessing a message or communicating with the mar­keter is higher than the standard cost of that mode of communications, e.g. “premium rate” for an online message, connection or telephone number, this cost should be made clear to consumers, expressed either as “cost per minute,”  “cost per message,” “message or data rates may apply,” or other similar means likely to be understood by the consumer. When this information is provided on-line, consumers should be clearly informed of applicable charges at the time when they are about to access the message or online service and be allowed a rea­sonable period of time to disconnect without incurring the charge.

Where a communication involves such a cost, the consumer should not be kept waiting for an unreasonably long time in order to achieve the purpose of the communication and calls should not be charged until the consumer can begin to fulfill that purpose.

Such costs should not be charged for calls or other types of interactions aimed at making a complaint or receiving information on an ongoing order process.

**Article C5 – Respect in Digital and Data Driven Marketing Communications for Children**

* All parties involved in the creation and targeting of digital marketing communications should take special care to comply with the general principles for marketing communications directed to or featuring children or teens in Article 21.
* Parents and/or legal guardians should be encouraged to participate in and/or supervise their children’s interactive activities, in particular involving online contract acceptance (e.g., purchase or terms of use).
* Identifiable personal information about individuals known to be children should only be disclosed to third parties after obtaining consent from a parent or legal guardian or where disclosure is authorised or required by law. Third parties do not include agents or others who provide support for operational purposes for data driven marketing and digital marketing communications and who do not use or disclose a child’s personal information for any other purpose.
* Websites and other forms of digital marketing communications devoted to products that are subject to age restrictions such as alcoholic beverages, gambling and tobacco products should undertake measures, such as age screens, to restrict access to such websites by minors[[1]](#footnote-1) and refrain from using themes and visuals that would be particularly designed for or attractive to minors. In this context marketers, including influencers and other parts of the marketing communications system, should be mindful of the ICC Framework for responsible alcohol marketing communications.

**Article C6 – Respect for the potential sensitivities of a global audience**

Marketers should strive to avoid causing offense by respecting social norms, local culture

and tradition in markets where they are engaging in data driven marketing. Given the global

reach of electronic networks, and the variety and diversity of possible recipients, marketers should take steps to align their marketing communications with the principles of social responsibility contained in the General Provisions.

**PROVISIONS FOR DATA DRIVEN MARKETING**

**Article C7 – Identity of the marketer**

The identity of the marketer and/or operator and details of where and how they may be contacted should be given in the offer, so as to enable the consumer to communicate directly and effectively with them. Where technically feasible, this information should be available in a way which the consumer can access and keep, i.e., via a separate document offline, an online or downloadable document, email or SMS or log-in account; it should not, for example, appear only on an order form which the consumer is required to submit or return. At the time of delivery of the product, the marketer’s full name, address, e-mail and phone number should be supplied to the consumer.

**Article C8 - Respecting the wish not to receive communications**

Marketers should respect a consumer’s wish not to receive data driven marketing communications by e.g. signing on to a preference system or utilizing another system. Marketers who are communicating with consumers internationally should avail themselves of the appropriate preference service in the markets to which they are addressing their communications and respect consumers’ wishes not to receive such communications (see also General Provisions, article 19, data protection and privacy).

Data driven marketing sent electronically should include a clear and transparent mechanism

enabling the consumer to express the wish not to receive future solicitations.

If required by applicable law, marketing communications must be consented to by the recipient.

**Article C9 – Prices and credit terms**

Any information needed by the consumer to understand the cost, interest and terms of any other form of credit should be provided, either in the offer or when the credit is offered.

Whether payment for the offer is on an immediate sale or instalment basis, the price and terms of payment should be clearly stated in the offer, together with the nature of any additional charges (such as, handling, taxes, postage etc.) and, whenever possible, clearly the total amount of such charges.

In the case of sales by instalment, the credit terms, including the amount of any deposit or payment on account, the number, amount and periodicity of such instalments and the total price compared with the immediate selling price, if any, should be clearly shown in the offer.

Unless the duration of the offer and the price are clearly stated in the offer, prices should be maintained for a reasonable period of time.

**Article C10 – Fulfilment of orders**

Unless otherwise stipulated in the offer, orders should be fulfilled within 30 working days of receipt of the order from the consumer. The consumer should be informed of any undue delay, substitution product (see article C17) or additional cost as soon as it becomes apparent. In such cases, any request for cancellation of the order by the consumer should be granted, even when it is not possible to prevent delivery, and the deposit, if any, should be refunded immediately.

**Article C11 – Substitution of products**

If a product becomes unavailable for reasons beyond the control of the marketer or operator, another product may not be supplied in its place unless the consumer is informed that it is a substitute and unless such replacement product has materially the same, or better, characteristics and qualities, and is supplied at the same or a lower price. In such a case, the substitution and the consumer’s right to return the substitute product at the marketer’s expense should be explained to the consumer.

**Article C12 – Return of faulty or damaged products**

The cost of return of products which are faulty, or damaged other than by the consumer, is the responsibility of the marketer, provided the consumer gives notice within a reasonable period of time.

**Article C13 – Payment and debt collection**

The procedure for payment and debt collection should be such as to avoid undue inconvenience to the consumer, making due allowance for delays outside the consumer's control.

Debtors should not be approached in an unreasonable manner and debt collection documents which might be confused with official documents should not be used.

**Article C14 – Right of withdrawal**

Where consumers have a right of withdrawal the marketer should inform them of the existence of this right, how to obtain further information about it, and how to exercise it. (See General Provisions for further provisions re free trials).

**Article C15 – After-sales service**

When after-sales service is offered, details of the service should be included in the terms of any guarantee or stated elsewhere in the offer. If the consumer accepts the offer, information on how to activate the service and communicate with the service agent should be readily available.

**PROVISIONS FOR DIGITAL MARKETING**

**Article C16 – Respect for public groups and review sites**

The terms and conditions of particular digital interactive media should be respected. Marketing communications posted to such public meeting places are appropriate only when the forum or site has implicitly or explicitly indicated its willingness to receive such communications. These should be suitably identified.

**Article C17 - Respecting consumer use of digital interactive media**

Due care should be taken to ensure that digital marketing communications and/or any application used to enable consumers to open other marketing or advertising messages, do

not unduly interfere with the consumer’s usage or experience of digital interactive media and enable consumers to return to the content within a reasonable time.

**SPECIAL PROVISIONS**

**Article C18 – PROVISIONS FOR TELEMARKETING**

**Scope:** The following provisions apply specifically to **data driven marketing** via telemarketing.

**Definition of terms specific to Telemarketing provisions:**

* The term “***telemarketer***” refers to any person, organization or company that provides or performs a telemarketing service for or on behalf of the marketer. The term “***telemarketing*”** includes all marketing communications performed/made by voice (whether human or machine generated) via a landline, mobile, voice over IP or any other device.
* The term “***automatic dialling-announcing device***” refers to any automatic equipment incorporating the capability of storing or producing telecommunications numbers used in conjunction with other equipment to convey a pre-recorded or synthesized voice message to a telecommunications number.
* The term “***predictive dialling device***” refers to “any software, system, or device that automatically initiates outgoing telecommunications from a pre-determined list of telecommunications numbers”.

**C18.1 – Disclosures**

*Outbound calls*

1. For calls to consumers, telemarketers should ensure that:
	* the name of the marketer they represent is promptly stated at the beginning of the call, as well as their own name.
	* the commercial purpose of the call is unambiguously stated, and General Provisions Article 8 is respected and that the call is not disguised as, for example, market research or a consumer survey.
	* the call is politely terminated when it becomes apparent that the recipient is not competent to complete the call, or does not wish to take the call, or is a child (unless the telemarketer receives permission from an appropriate adult to proceed with the call)

Telemarketers should consider employing industry tools that enable consumers to express their wish not to be contacted in the future.

1. Telemarketers should not test call lines by calling a number and, for example, making no response, having a machine generated voice or sound immediately terminating the call or putting the consumer immediately on hold (see C.21.6)
2. When a telemarketer calls a consumer the telemarketer should ensure their number displays on the recipient’s phone or other device if technically possible.

*All calls*

1. Before closing the call, the telemarketer should ensure that the consumer is informed and aware of the nature of any agreement reached, and of any steps that will be taken following the call.

Where a sale agreement is claimed to have been concluded, the consumer should be fully aware of the essential points of the contract. These include, as a minimum:

* the main characteristics of the product
* where products are to be supplied permanently or for an on-going period, the minimum duration of the contract
* the price of the product, including any additional costs (e.g. delivery and/or handling charges and any tax which the consumer may have to pay)
* the arrangements for payment, delivery or performance
* any right of withdrawal to which the consumer is entitled

Where the call leads, not to a sale, but to further contact by a marketer, the telemarketer should inform the consumer that there will be a subsequent contact. If data supplied by the consumer are to be used for any non-obvious purpose, i.e. a purpose which has not already been disclosed, the telemarketer should explain this purpose to the consumer in accordance with the General Provisions on data protection (article 19).

**C18.2 – Reasonable hours**

Unless the recipient has expressly requested otherwise, outbound calls should be made only during hours which are generally regarded as reasonable for the recipient.

**C18.3 – Right to written confirmation**

Where a call results in an order, the consumer has the right to receive confirmation, in writing or other durable format, of the detailed terms of the contract, in due time and at the latest at the time of delivery of the goods or at the commencement of the delivery of the services. Confirmation should include all the information specified in article C12 (Right of withdrawal) and article C2 (Identity of the marketer) and, where appropriate, any other information specified in this chapter.

**C87.4 – Monitoring of conversations**

Monitoring, including recording, of conversations made for telemarketing purposes should be conducted only with appropriate safeguards, in order to verify the content of the call, to confirm a commercial transaction, for training purposes and for quality control. Telemarketers should be made aware when monitoring is taking place and consumers should be informed, as early in the call as is practicable, of the possibility of monitoring.

No recorded conversation should be presented to a public audience without the prior consent of both participants.

**C18.5 – Unlisted numbers**

Consumers with an unlisted number should not be contacted for any commercial purpose, unless the number was supplied by the consumer to the marketer or operator.

**C18.6 – Use of predictive dialling services and automatic dialling announcing services**

Where a predictive dialling device is used, if no telemarketer is immediately available to take the call generated by the dialler, the equipment should abandon the call and release the line in not more than one second.

Other automatic dialling-announcing devices may be used to contact a consumer only where:

* the call is initially introduced by a telemarketer,
* the consumer has expressly agreed to receive such calls without telemarketer intervention, or
* the consumer wishes to call the telemarketer back and an automated call is initially used to put the consumer in contact with the telemarketer.

Neither a predictive dialling device nor any other automatic dialling-announcing devices may be used unless the equipment immediately disconnects when the consumer hangs up. Dialling equipment should release each time before connecting to another number.

**Article C19 – PROVISIONS FOR INTEREST-BASED ADVERTISING (IBA****)**

**Scope**

The following applies to IBA focusing on web viewing behaviour over time and across multiple web domains or applications owned and operated by different unaffiliated entities in order to create interest segments (a collection of users that share one or more attributes based on prior and current online browsing activity) or to associate such viewing behaviour against interest segments for the purposes of delivering advertisements to and by that web user’s interests and preferences.

These provisions apply to all individuals and entities engaged in such activities online.

**Definition of terms specific to IBA provisions:**

* The term “***interest-based advertising***” or **“IBA”**, and also referred to as “online behavioural advertising” **or “OBA”** refers to the practice of collecting information over time on users’ online actions on a particular device across different unaffiliated websites or applications in order to create interest segments or to allocate such viewing behaviour against interest segments for the purposes of delivering advertisements to and by that web user’s interests and preferences. It pertains to advertising operations on desktop, in mobile, video or TV, social, or IoT settings, and include tracking and targeting across devices. IBA does not include quantitative ad delivery or quantitative ad reporting, or contextual advertising (e.g., advertising based on the content of the web page being visited, a consumer’s current visit to a web page, or a search query).
* In the context of IBA, the term “***third party***” refers to an entity that engages in IBA on a digital property other than a digital property which it or an entity under Common Control[[2]](#footnote-2) owns or operates..
* In the context of IBA, the term “***first party***” refers to an entity that engages in IBA on a digital property which it or an entity under Common Control owns or operates.
* The term “***consent***” means an individual’s freely given, specific and informed indication in response to a clear and conspicuous notice regarding the collection and use of data for online behavioral advertising purposes.
* The term “user-facing portal” refers to an internet-user-focused site and educational portal, that provides, at a minimum, a mechanism for users to receive more information and means to exercise choice with respect to the collection and use of data for IBA purposes by one or more third parties or links to a mechanism permitting user choice over IBA.

**Application of notice and choice provisions**

Any party participating in IBA should adhere to principles of notice and user control as set out below. Transparency of data collection and use, and the ability for users and consumers to choose whether to share their data for IBA purposes is vital. The following guidance provides further clarification for how these principles apply to IBA.

**C19.1 Notice**

Through company-specific measures and/or complementary industry frameworks that are user-friendly, accessible and intuitive - such as those featuring prominent markings - third parties and website operators should provide meaningful transparency by giving clear, and conspicuous notice on their websites describing their IBA data collection and use practices. Such notice should refer to the relevant self-regulatory guidance and industry best practices in each jurisdiction (for instance EDAA in Europe, DAA/DAAC in North America)

Notice should be provided through deployment of one or multiple mechanisms for clearly disclosing and informing Internet users about data collection and use practices.[[3]](#footnote-3) Via such mechanisms, it should be clearly understood by consumers when content is a marketing communication.

**C19.2 User control**Through company-specific measures and/or complementary industry frameworks that are user-friendly, accessible and intuitive. Third parties should make available a mechanism for web users to exercise their choice with respect to the collection and use of data for IBA. Such choice should be available via a link from the notice mechanisms described in footnote 9.

**C19.3 Accountability**
Third parties should undergo an independent audit in order to demonstrate their compliance with the principles of notice and user control, as outlined above.

**C19.4 Enforcement**

Third parties’ compliance to the principles of notice and user control should be subject to mechanisms coordinated by national-level and - where applicable - international-level enforcement bodies (e.g. advertising self-regulatory organisations). Third parties that do not respect these principles should be subject to the applicable sanctions administered by the aforementioned bodies.

**C19.5 Education**

Third Parties should point towards a consistent, common resource for the education of consumers on jurisdiction-specific multi-language user-facing portals, that provide periodically updated information in a user-friendly language and different formats - e.g., useful videos, jargon buster, etc. Third Parties may -and are encouraged to- contribute materials for potential inclusion on the user-facing portals, where applicable, in support of this furthering the educational goals.

**C19.6 Precise Location**

Precise location data is data that describes the precise location of a device derived through any technology that is capable of determining with reasonable specificity the actual physical location of an individual or device, such as GPS-level latitude/longitude coordinates or location-based frequency signal triangulation.

Location Data includes unique values assigned or attributed to a device or a unique combination of characteristics associated with a device where combined with Location Data. For example, Location Data may include data obtained from cell tower triangulation techniques or Wi-Fi , latitude- longitude coordinates obtained through GPS technology, or beacons using Bluetooth technology. This is relevant for both IBA based on marketing communications delivered to a group of devices as well as an individual device only. Location data does not include registration details, including postcodes, city name or billing address, or general geographic information derived from an IP address.

Privacy disclosures should make clear the ways in which sites, apps, and services (including, for example, Application Programming Interfaces (APIs) and Software Development Kits (SDKs) available for use by third parties) access, use, and share precise geolocation data. Companies should also disclose all mechanisms through which location information is collected (e.g., Wi-Fi, Basic Service Set Identifier (BSSID)) and ensure that consumer choice related to collection of location data is never circumvented (by collecting Wi-Fi state, for example, when other location services are turned off).

After serving and delivering an IBA ad based on precise location data in real time, such data should be retained only for the purposes and periods specified at the time of collection.

**C19.7 Cross Device Tracking**

Disclosures and choices offered to consumers and to the first-party companies on whose websites and apps cross-device tracking companies appear should address the many forms of tracking used, including any proprietary techniques that combine technologies (e.g., cookies, fingerprinting, cookie syncing). These disclosures should also disclose tracking across multiple devices.

Users should not be led to believe tracking is more limited than it is, or that they have blocked all tracking across all apps, browsers and user devices when that is not the case. Companies should ensure that a consumer’s opt-out on one device to prevent that device from receiving interest-based ads should also prevent data from that device from informing interest-based ads on other devices linked through cross-device linking. If the choices offered do not cover all the ways companies track consumers, then this should be clearly and prominently indicated.

**C19.8 Data security**

Appropriate physical, electronic, and administrative safeguards to protect the data collected and used for IBA purposes should be maintained at all times.

Data that is collected and used for IBA should only be retained for as long as necessary to fulfil a legitimate business need, or as required by law.

Adequate industry-accepted protocols for data storage or disposal should be utilized.

**C19.9 Children**

Segments specifically designed to target children for IBA purposes should not be created without appropriate consent from a parent or legal guardian. Adequate measures should be in place to comply with local laws concerning not providing personalized ads to children.

**C19.10 Sensitive data segmentation**

In general, companies should not create or use IBA segments based on sensitive data. Those seeking to create or use such IBA segments relying on the use of sensitive data as defined under applicable law should obtain a web user’s - consent, prior to engaging in IBA using that information. Adequate measures should be in place to comply with local laws concerning not providing ads based on profiling using sensitive data.

1. The term ’minor’ refers to those below the legal purchase age, i.e., the age at which national legislation permits the purchase or consumption of such restricted products. In countries where purchase age and consumption age are not the same, the higher age applies. For the purpose of this Article, in countries where there is no legal purchase or consumption age minors are defined as those below the age of 18. The meaning of this term has been derived from the definition provided in the [ICC Framework for Responsible Marketing Communications of Alcohol](http://www.codescentre.com/other-icc-guides.aspx#gen0) [↑](#footnote-ref-1)
2. Entities or web sites under Common Control are defined by the European Self-Regulatory Framework for Data-Driven Advertising and include ones which Control, for example parent companies, are Controlled by, such as subsidiaries, or are under common Control, such as group companies. They also include entities that are under a written agreement to process data for the controlling entity or entities, and do such processing only for and on behalf of that entity or entities and not for their own purposes or on their own behalf. [↑](#footnote-ref-2)
3. Examples of how third parties, and where applicable website operators, can provide notice of the collection of data for IBA purposes include mechanisms like an icon that links to a disclosure either in or around the advertisement delivered on the web page where data for IBA purposes is collected or somewhere else on the web page; or through a web link to an industry-developed website(s) where third parties are individually listed. [↑](#footnote-ref-3)