

## Legal issues raised by mobile advertising

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### Abstract

The end of the 20th century and the beginning of 21<sup>st</sup> were characterised by rapid developments of communication tools. The e-commerce hype has barely subsided, and the focus has already moved on to the mobile Internet. The new technology changed the world by revolutionising communication: Mobile computing technology as a communication tool was initially limited to voice telephony. However, due to digitalisation and the consolidation of telecommunication networks and Internet technology, mobile devices have evolved to full-scale Internet-enabled computers (Dagon, 2004). The convergence of those technologies provides endless possibilities for mobile computing applications and usage.

The emergence of the above described technologies has paved the way for mobile advertising (m-advertising) to become an increasingly important element in the marketing mix (Leppäniemi, 2004). The unique features of handheld devices, including their mobility, personalisation and location-awareness are the basis to deliver spontaneous, direct, interactive and/or targeted communications at anytime, anywhere (Kurkovsky, 2006). Unfortunately, the same technologies that bring all the benefits also raise a lot of privacy and data protection issues due to their capability to collect, store, use, and disclose a lot of personal information (Gratton, 2002).

While m-advertising may provide some benefits to consumers, the privacy risks have to be considered and appropriate data protection and privacy safeguards must be guaranteed. If consumer concerns about privacy are not addressed, the growth of m-advertising may well be jeopardised by the same lack of consumer trust that has discouraged the growth of email marketing. The success of m-advertising mainly depends on the trust and acceptance of both service providers and consumers on the new type of service (Cavoukian, 2002). This can only be achieved if known and familiar forms of the economic life will apply, and if the interests of the involved parties will be maintained. Thus, the legal system and its implementation play a crucial role in developing confidence in m-advertising services.

Although data protection rules are relatively well established within the EU, the dynamics of the Information Age lead to a gap between the law and business practices within the digital world. Problems arise when the regulation of data protection clashes with commercial practices to maximise advertising via mobile technologies. The application of mobile communication technologies tends to collect personal information beyond necessity, thereby creating a risk to individuals' privacy. Thus, there remain open issues, such as the level and type of consent required before the collecting of personal data as well as the sending of unsolicited m-advertising. Individuals must determine for themselves the circumstances and extent that information about them is collected and processed as well as being able to determine the frequency of received advertisements. Without the ability to control access and distribution of personal data, privacy cannot be protected. Consequently, there is a need for technical solutions that could help mobile users to retain some privacy which must be implemented in conjunction with legislative efforts (Lahlou & 2005).

The success, however, is dependent on the development and execution of legislative and industrial initiatives. The law should facilitate and enforce an adequate choice mechanism. The translation of privacy laws into business practices will, on the other hand, be a great challenge for industries that will have to develop privacy-enhancing solutions enabling for informed consent. Consequently, in the mobile world, privacy is not simply a question of legislative compliance, but also one of solid business practices and technical solutions in order to avoid unsolicited m-advertising.

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