GDPR: 15 EXAMPLES OF BEST PRACTICES FOR OBTAINING MARKETING CONSENT FROM USERS

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The GDPR is officially here and many companies have implemented measures to comply. One possible legal basis for processing personal data is the notion of ‘consent’, which the regulation reinforces\(^1\). But what does the GDPR mean by ‘consent’? In this e-book, we’ll present examples of best practices for obtaining GDPR compliant consent.

\(^1\) Consent isn’t the only legal basis for processing personal data. Other possibilities include legitimate interest of the data controller, vital interest of the data subject, public interest, and contractual or legal obligations. All legal foundations have the same legal validity.
Any personal data processing activity requires the data subject to give their consent before the processing can take place, providing, of course, that consent is the legal basis for processing personal data. The precise characteristics of a valid consent under GDPR are specified in Article 4, paragraph 11 of the legal text:

“‘Consent’ of the data subject means any freely given, specific, informed and unambiguous indication of the data subject’s wishes by which he or she, by a statement or by a clear affirmative action, signifies agreement to the processing of personal data relating to him or her.” (Article 4, paragraph 11)

We will see how each of these conditions is applied when you obtain consent by presenting real-life examples of best practices.
CONSENT IS AFFIRMATIVE AND UNAMBIGUOUS

One of the GDPR fundamentals is that consent requires a clear affirmative action by the user. Silence is not giving consent: if the user has not clearly said ‘yes’, then it’s ‘no’. In practice, this means that passive acceptance is invalid and that your opt-in boxes cannot be pre-ticked.

On the Data Protection Network website, consent is affirmative: not only is newsletter consent separate from the general conditions, but the red cross clearly indicates that the default value is ‘no’.
Informed consent ensures that the data subject is in full knowledge of the facts when giving permission to process their personal data. This forces the use of plain, understandable language, without convoluted sentences.

The GDPR also means the end of incomprehensible terms and conditions written in technical jargon and small print. Information is to be provided in a concise and accessible format. The data controller is held by a duty of transparency that requires them to provide straight and simple answers to the user regarding the identity of the data controller, the purpose of the processing for which the personal data are intended, the exercise of their rights, as well as other items stated in Article 13.

**WHICH FORMATS SHOULD I USE?**

Focus on formats that make information more accessible. For example, this is the case for question-answer formats used by a number of companies such as Renault and L’Oréal for their privacy policies. Using everyday language, these companies answer questions that may arise in relation to the processing of personal data: what data are collected (L’Oréal lists them in an exhaustive way), for what purposes, where they are stored, etc.
Renault provides a clear explanation of its privacy policy using a question-answer format understandable to all.

In addition to using this question-answer format, L’Oréal, describes in detail the list of data that they would potentially collect, subject to the user’s consent, of course.
Finally, another good example is that of Nestlé. In addition to text, the company uses educational videos to answer privacy questions.

Besides the accessibility dimension, the legal text encourages initiatives to synthesize information to make it more legible and enable those concerned to have an overall vision of the subject. This is the case, for example, in LinkedIn's privacy policy: to the right of each paragraph, they sum up in a phrase the main idea. The information is thus available in two versions: a detailed description and a short overview.
This putting forward of main ideas can also be visually presented. The GDPR goes as far as to suggest the use of 'standardised icons' illustrating the information provided on data processing:

“The information to be provided to data subjects pursuant to Articles 13 and 14 may be provided in combination with standardised icons in order to give in an easily visible, intelligible and clearly legible manner a meaningful overview of the intended processing. Where the icons are presented electronically they shall be machine-readable.” (Article 12, paragraph 7)

**HOW TO CREATE GDPR COMPLIANT FORMS WITH ALL THIS INFORMATION?**

The French administrative regulatory body CNIL (Commission nationale de l'informatique et des libertés, the National Commission on Informatics and Liberty) introduced a customisable model data collection form with mentions (see image below). They recommend including the following information at least: name of the data controller, the purposes of processing, the retention period, the recipient's name, as well as the contact details of the appropriate contact person or unit for the data subjects to enforce their rights.
A concrete example of this can be found on France Télévisions’ website, where the company mentions all the required information in the form.

Feel free to pick creative formats. For example, the British agency Cyber-Duck is an interesting one: for each data field to fill in, a tooltip shows containing information on how the company intends to use this information.
Another essential condition for the validity of the consent is that it should always be for a **specific** purpose and processing activity. ‘Bulk consent’, which is consent obtained within an ‘all or nothing’ approach, is invalid. The data subject gives consent for a specific purpose or a series of similar purposes.

**GENERAL CONSENT IS NOT VALID CONSENT**

Each consent request refers to only one purpose and to specific processing activities. These processing activities are by their nature limited and the data subject must be informed about them (see previous section). Moreover, the GDPR makes it imperative to collect only the data that is necessary to be used for the purposes identified².

In case the processing activity has several purposes, the data controller shall ensure that a distinct consent is requested for each of the purposes identified. The data controller will also have the task of ensuring a clear differentiation between information related to consent and information related to other matters.

Finally, if the data controller wants to use the data for another purpose later on, they will have to request consent again, which will then be specific to this new purpose.

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² “The personal data shall be collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes [...]”; adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (‘data minimisation’) [...]”; kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed (...)” (Article 5, 1)
CONSENT FOR A SPECIFIC PROCESSING ACTIVITY MUST BE DISSOCIATED FROM CONSENT FOR GENERAL CONDITIONS

“If the data subject’s consent is given in the context of a written declaration which also concerns other matters, the request for consent shall be presented in a manner which is clearly distinguishable from the other matters, in an intelligible and easily accessible form, using clear and plain language.” (Article 7, paragraph 2)

Therefore, the GDPR does not allow you to mix the data subject’s consent to terms and conditions (often compulsory) and their consent to other specific processing activities (must be optional). In the example below of a large UK supermarket chain, notice that these two blocks are distinct:

![Terms and conditions and Contact permission form from Sainsbury's](image-url)
A frequent practice among marketers is to request consent for both their own purpose and that of partners in a single opt-in, which is prohibited under the GDPR. On the one hand, the consent request related to your brand’s communication must be dissociated from that related to your partner’s communications. On the other hand, it is recommended that you include the name of these partners.

The picture above shows the example of the French agency DigitaWeb: several choices are available in terms of communications, and consent for DigitaWeb is dissociated from that of their partner HAAS Avocats, which is mentioned.
MAKE YOUR CONSENT REQUESTS GRANULAR

In the light of the above-mentioned examples, we see that the data controller has to give data subjects granularity in their consent request. This granularity can be offered on various levels: the type of content you want to send, the frequency, or even the communication channels. The more granular your consent request, the stronger the specificity of the user consent will be.

Le Figaro presents the user with granular consent: they can choose the type and frequency of email newsletters.

Dior offers visitors a choice between two newsletters: Fashion & Accessories and/or Perfume & Beauty. In the French version above, visitors can also choose contact options.
CONSENT IS FREELY GIVEN

FREELY GIVEN MEANS OPTIONAL

There should not be any constraints to the data subject’s consent: it should be freely given. In practice, this means that it should be optional. Access to your services cannot be conditional on the data subject’s consent to unnecessary processing of their personal data. By the same logic, consent given for fear of a different treatment is not considered a freely given consent. Feel free to clearly mention that consent is optional, as shown in the example below.

Walmart Canada makes it clear that signing up for its newsletter is optional. The group further explains in simple terms what type of information the newsletter may contain.
FREELY GIVEN AND EASY TO WITHDRAW

Another consequence of the free nature of consent: it may be withdrawn by the data subject at any time. In fact, it should be just as easy to withdraw consent as to give it. For instance, offer your subscribers an accessible unsubscribe link or button. See *The Guardian’s* example below:

The Guardian’s account deletion process is simple and informed. After entering their password as confirmation, the data subject receives a confirmation email and all personal data related to their account is deleted.

THE WITHDRAWAL OF CONSENT CAN ALSO BE GRANULAR

In the same way that you have offered granularity in your consent request, you can choose to make withdrawing consent granular. In addition to fully unsubscribing, you can suggest a number of intermediate levels of communication. For instance, you can suggest someone stay subscribed only to some of the available content or to reduce the frequency of mailings. That way, you won’t lose subscribers who want less contact, and make sure your communications are in line with the preferences of each of your users. Your audiences will be that much more engaged.
The Daily Sip, a website dedicated to wine and spirits lovers, suggests its subscribers fully unsubscribe from the newsletter, block all communications even on an occasional basis, or simply switch from the daily to the weekly newsletter.

Spotify offers its subscribers total control over the type of notifications they receive, with advanced as well as granular setting options.
If your forms comply with the principles addressed in this e-book, your data subjects’ consent should be valid under the GDPR. In all your communication activities, make sure to be transparent and provide users with everything that allows them to really consent, starting with full information on what exactly they are consenting to.

Even if the GDPR seems technical, many general principles it upholds are actually common sense if you put yourself in the position of the data subject. How many times have you received communications for which you did not give your consent? How credible are those communications? Beyond the necessary constraints imposed by the GDPR, it provides an opportunity to regain the confidence of your audiences, bringing back a higher level of engagement and demonstrating the true meaning of relationship marketing.

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WHAT IS QUALIFIO?

Qualifio is Europe’s leading interactive marketing and data collection platform. It allows publishers, brands and agencies to easily create and publish interactive content on websites, mobile apps and social media. Quizzes, contests, surveys, tests, animated games and 40+ other innovative formats allow them to collect data and to grow, engage, qualify, segment and monetize their digital audiences.

HOW DOES IT WORKS?

CREATE
Choose your interactive campaign from +40 formats, fully customizable and without extra development

PUBLISH
Easily publish it on your websites, mobile apps & social networks

COLLECT DATA
in full compliance with GDPR thanks to the “GDPR toolbox”, a set of GDPR-dedicated features

GET RESULTS
Visualise & extract your data and campaigns results in real time

SEGMENT & MONETIZE
Connect the platform to your marketing & data tools (CRM, DMP, SSO, Analytics, etc.)

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