

## Attention: Illegal e-mails can cause immense costs for the sender

In the case of a legal conflict regarding the permissibility of the sending of marketing e-mails, the onus is on the sender to provide documentary evidence and prove that permission was actually granted by the specific owner of the e-mail address used, in the sense of Section 13 (2) TMG (German Telemedia Act), Section 28 (3) BDSG (Federal Data Protection Act), Section 7 (2) No.3 UWG (The Act against Unfair Competition). The mere statement that permission has been granted for the sending of marketing e-mails to a given e-mail address is not sufficient, if the sender cannot prove that the permission was granted by the actual owner of the e-mail address used. Minimum requirements for proof are the permission text at the time of the data collection, date and time, and the source of permission.

At the moment, there are increasing numbers of receivers who are defending themselves against unsolicited marketing e-mails. In 2014, the eco Internet Complaints Office recorded more than 130,000 user complaints relating to e-mails.

Litigation that deals with the legality of the sending of marketing e-mails is in fact not very common, because as a rule the parties attempt to reach agreement outside of court. Costs are also created in an extra-judicial proceeding, but in comparison to a court case these are still manageable. These include, for example, the fine for the infringement, the costs for legal representation and the costs of compensation claims.

If the dispute should result in a court case, the sender of the marketing e-mails can anticipate high costs in the case of losing:

The costs of court proceedings are calculated according to the respective value of the claim, which is determined by the judge presiding over the case. The value of the claim can vary from 100 Euros through to more than 30,000 Euros (Federal Supreme Court I ZR 38/ 10), depending on the individual case and the judicial instance. In the case of a claim value of 30,000 Euros, the sender can be left with legal fees, court costs and a compensation claim totaling more than 5,000 Euros. Now, if, for example, four receivers of unsolicited marketing e-mails take legal action against the sender, the sender may bear costs of up to 20,000 Euros.

In addition to this, senders of unlawful e-mails can be convicted of malfeasance. In this



case, courts threaten with an additional fine to the tune of up to 250,000 Euros for every illegal act, provided that an application for this is made by the complainant.

Therefore, it is advisable to comply with all requirements for the legal sending of marketing e-mails, in order to avoid the risk of high court costs and compensation claims.

*Authors: Rosa Hafezi, Legal Team of the Certified Senders Alliance - [rosa.hafezi@eco.de](mailto:rosa.hafezi@eco.de)*