

AskALLi: Quick & Easy
Self-Publishing Guides

Authors' Legal Guide to Email Lists



INSIDE

How to
comply with
EU's New
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Introduction: Managing Email Lists

This quick and easy guide to email lists is not about the best services or designs to use for email marketing. It's about something even more crucial: the law.

Email newsletters are almost as old as the Internet, itself, but they're still one of the most-effective ways to reach your most engaged readers and followers and maintain a direct conversation with fans. People have been talking about the death of email for years but in fact, newsletters have surged in popularity and are used highly effectively by authors today.

Email subscribers actively choose to receive updates about your writing and are more likely to engage with your content and buy your books. But one person's valuable information can be another person's spam, and governments around the world have tightened up their rules governing access to inboxes.

From May 25, 2018, if you send email to anybody who lives in the European Union—no matter whether your business is there—you are governed by General Data Protection Regulation (GDPR). These regulations are dominating the news at this writing, but in the long term GDPR regulations are worth following because they represent a clear path to both author peace of mind and readers' data privacy. The

Your aim is to send emails your audience looks forward to receiving. Keeping your readers happy will keep spam regulators happy.

Alliance of Independent Authors recommends everybody adopt these practices, regardless of whether they do business with EU citizens.

Many of the rules and practices covered had already been around for a while and covered by previous legislation in various territories. GDPR just puts it all into one handy package.

The best way to ensure you're sending to people who have asked to hear from you is to implement what the marketers call an inbound email marketing strategy. Instead of pushing your message out to all and sundry, you attract your audience with valuable content. As writers, that's easier for us than it is for most businesses.

Your aim is to send emails your audience looks forward to receiving. Keeping your readers happy will keep spam regulators happy.

By entertaining, inspiring, or informing your audience, instead of just being another email in their cluttered inbox, or constantly trying to sell them something, you'll be not only a compliant, but also a successful email communicator.

General Data Protection Regulation

In May 2018, GDPR replaced the EU Data Protections Act 1998. It is designed to give people more control over how organizations store and use their data. Noncompliance with the regulations can lead to hefty penalties, as can breaches of data.

The penalties can amount to \$20 million or 4 percent of annual turnover, whichever is more.

GDPR makes data protection identical throughout the European Union. It ensures data is handled securely and can only be used in certain ways. What it means for authors who keep mailing lists and other information on readers is they must take all reasonable steps necessary to ensure the protection and privacy of any data collected.

This makes sense. If our fans sign up for updates on our work, new releases, and book signings, they have a right to expect that we will not turn around and sell their data to somebody else who inundates them with offers to help a Nigerian prince. If readers give us their information, they have to be confident that we will do only what we say we will do with that information.

What Does Data Mean ?

When the law talks about “data,” it means email addresses, physical

addresses, phone numbers, web-tracking devices such as cookies and plugins, social media accounts such as Twitter and Facebook. Any piece of information that can be used to identify a person, and potentially violate that person’s privacy, is considered data.

Action Point: Find Out What Data I Hold On My Email Subscribers

I will:

Communicate Your Privacy Policy

Take a close look at how you tell your readers what you’ll do with their data. You must let them know who you are and how you intend to use their information. This is usually done through a privacy notice.

You need to explain your lawful basis for processing the data, how long you’ll retain their data, and that they have a right to complain to the relevant authority in their country e.g. to the Information Commissioners Office (ICO) in the UK, if they think there is a problem with the way you are handling their data.

This information must be provided in concise, easy-to-understand and clear language.

What Do I Tell My Readers and Followers About The Data I Hold?

From now on I will:

Privacy Policy Checklist

I have:

- Explained my lawful basis for processing the data;
- Explained how long I'll retain data;
- Explained their right to complain to the Information Commissioners Office (ICO) in the UK;
- Explained all in concise in plain, clear language.

Opt-In vs. Opt-Out

Readers must opt in to join an author's mailing list by law. In many countries this includes double-opt-in, which means readers sign up for the list, then need to respond to an email to confirm.

Readers must also be aware of what they are opting in to. They must freely give consent, take affirmative and specific, unambiguous action to consent.

Does This Mean My Existing Subscribers Must Be Asked To Resubscribe?

Not necessarily. If you only ever signed people up through a double-opt-in through a website, then that's fine. You're good to go, so long as you can demonstrate this to be true.

James Blatch, of Mark Dawson's [Self-Publishing Formula](#), advises there's no need to automatically go to your list for fresh consent. "In fact you might get in trouble emailing someone to ask for consent if you don't already have their consent. You can use the lawful grounds of 'marketing,' which is a denoted as a legitimate interest for a business as the legality for emailing your current list."

But if you've collected emails where there's no audit trail, like adding people from sign-ups via giveaway, or sign-up sheets at events, then it's best practice to invite them to resubscribe.

Bottom line: If you are unsure whether you obtained any addresses or email lists in a way that might not be compliant, it is best to ask your subscribers to sign up again under a double-opt-in process. True, you run the risk of annoying your subscribers, and are almost certain to lose some of them, but that's better than risking a fine.

Author Tip: In the email before you write to ask them re-opt-in to your list, send out some great content or giveaway. Remind them why they signed up for you in the first place.

Keep Clear Records

You should keep clear records of what a person has consented to, and when and how you got this consent, so that you can demonstrate compliance in the event of a complaint.

“It's also important to be specific regarding method of communication,” says ALLi member [Mariah Kingdom](#), a crime and mystery author from the United Kingdom. “So generic ‘mailing list’ isn't compliant, must be specific that the method of communication is by email, and not snail mail. The customer has the right now to give separate permissions for different channels ... SMS/text, phone, email, snail mail must all be separate opt-ins. It must be specifically stated which list you're referring to. So ‘join my mailing list’ isn't OK, but ‘join my mailing list to receive emails’ is.”

Take time to do an internal audit of all the data you have. If there's a question, err on the side of caution.

How Will You Ensure You Can Demonstrate Compliance?

From now on I will:

Incentives

Also known as lead magnets, sign-up incentives, or, more plainly, opt-in bribes, these are anything you offer a

reader or follower in exchange for their email address. If the incentive is a free book, for example, the author needs to be unambiguous that this book is being offered in exchange for their address.

There should also be a tick box and an explanation of exactly what the signup will trigger. E.g. By clicking this, the reader indicates that they understand they will receive offers, news, and updates from the author (aka marketing messages).

And, no “pre-ticking” this box. The subscriber has to actively choose to click it themselves.

The lead magnet sign-up form should also include a link to your privacy policy.

How Will You Ensure Your Incentivized Sign-ups Are Compliant?

From now on I will:

Incentives Sign-Up Checklist

I have:

- Explained my incentive is offered in exchange for an email address
- Added a tick box
- Linked to our privacy policy

Customer Control and Requests

What this whole thing is about, really, is the need to give customers complete control over their data privacy. If they don't want to hear from you, they should be able to opt out immediately and not have to navigate a labyrinthine unsubscribing process.

Also, your subscribers have the right to request the data you hold on them at any time.

How Will You Ensure That You Can Meet A Request To Demonstrate What Data You Hold?

I will

Email Services

GDPR requires email services to be compliant, and for services in territories outside the EU that they judge not to have adequate data protection legislation, e. g. the United States, to have a compliance certification called a Privacy Shield.

Check what your email provider is doing for GDPR compliance and that you are happy with the steps they are taking.

Children & YA

If you're a children's book or YA author, it is important to verify that the person who is sharing their data is sixteen years or older. Under GDPR, this age may be lowered to thirteen. Any younger than that, and you must get permission from a parent or guardian.

Multi-Author Giveaways

When email addresses are collected for giveaways, it should be made clear that those entering will be added to an email list and how that list will be used.

For multi-author giveaways there should be a tick box allowing the reader to opt in for individual authors, in order to demonstrate freely given consent where clear action is taken to give that consent.

Author Events

There should be a copy of the privacy notice at online and live events, clearly available for all to see. Any physical copies kept of sign-up lists should be stored in line with your GDPR-complaint data protection policy.

If there are email signup sheets at multi-author events readers must be given the option to opt in to individual authors and should only be added to that particular list and informed about how it will be used.

Website Privacy

You might think this a little beyond the scope of this guide, but usually readers will sign up for your newsletter through your website, and it could potentially be violating the law by collecting information without consent.

The most important thing to note is your site's use of cookies. Cookies are small files saved to the user's computer hard drive that track, save, and store information about the user. They remember users' preferences and how they use the site, enabling an experience tailored for them.

GDPR requires that your website allow the user to give explicit permission before cookies are saved on their device.

Other Legislation

GDPR protects US citizens. Most other countries around the world have similar laws and regulations in place about being clear, being granular, and obtaining consent from your readers. Here are a few noteworthy points in US and Australian legislation.

United States

Can-Spam Act of 2003

- Each separate email in violation of the CAN-SPAM Act is subject to penalties of up to \$40,654
- Don't use false or misleading header information.
- Don't use deceptive subject lines.
- Identify the message as an ad.

- Tell recipients where you're located.
- Tell recipients how to opt out of receiving future email from you.
- Honor opt-out requests promptly.

Australia

Spam Act of 2003

Consent: In Australia, commercial electronic messages must be sent with your consent. The Spam Act provides for two types of consent: express and inferred.

Express consent means you have deliberately and intentionally opted-in to receiving electronic messages from the message sender.

Inferred consent relies on a relationship you have with the message sender, who may decide that because you have an existing relationship, you would be interested in receiving electronic messages about similar products and services. For example, if you subscribe to a magazine or newspaper, it could reasonably be inferred that you might also want to receive an email newsletter.

What this whole thing is about, really, is the need to give customers complete control over their data privacy. If they don't want to hear from you, they should be able to opt out immediately.

Advice From ALLi Authors and Advisers

We asked some authors and advisers how they've been responding to GDPR and what advice they have to offer ALLi members.

Nick Stephenson Myths & Misunderstandings

Email maestro [Nick Stephenson](#) sets us straight on some common author assumptions about what GDPR and other such regulations mean for our email marketing.

Assumption : "We can't offer lead magnets / reader magnets anymore because GDPR says we can't incentivise opt-ins for marketing!"

Actual answer: Yes you can. GDPR doesn't allow you to "unfairly prejudice" someone for not opting in, and doesn't allow you to make "consent to marketing" a condition of service. Neither of these things cover lead magnets, which is also confirmed by the ICO guidance (specifically they talk about money-off vouchers as an incentive, which is considered fine). You can make opting in for marketing mandatory as long as you don't fall foul of these things, and you aren't unduly affecting a person's privacy under Privacy and Electronic Communications Regulations.

Assumption : "We have to get all our list to re-opt-in!! I'll lose half my list!"

Actual answer : Not necessarily. If you have PROOF that your existing contacts ACTIVELY opted in and you were upfront about sending them marketing, AND you had a compliant privacy policy (compliant with the law at the time) AND you've done an internal audit and record of your decision, you should be fine. You shouldn't need to get everyone to opt in again if you've already been following best practices under existing law and have a record of informed consent.

Assumption : "We can't track people with cookies or run Facebook ads anymore!"

Actual Answer: Again, not necessarily. Cookie consent is treated as a "implied opt-in" and requires you give people an opportunity to opt out if they desire, assuming you give them the relevant info and let them look at the cookies you're using. If they continue to use your site and do not block cookies in their browser, chances are you are fine (so long as your cookie notice is prominent and gives people the required info). As most cookie control is covered inside your actual browser, the ICO is expected to release fresh guidance on this. As for processing data for Facebook advertising purposes, this is covered by "legitimate interest" and so long as you state that's what you'll be doing on your privacy policy (and give people notice of the tracking cookie in your cookie consent) then you should also be fine.

Joanna Penn

Multi-genere author, podcaster and speaker: TheCreativePenn.com

I am:

- Updating my website privacy policy and cookie policy to be clear about how I collect and use data—which in my case, and probably yours, is only name and email—or mostly just email.
- Reviewing how I've collected emails and considering whether I really have permission to email my newsletters. Although I have used double-opt-in for years, I haven't been really clear that people get the free Blueprint or Book and then they will get newsletters as well. It's a GDPR rule that you have to be clear before signup about what people will get. So I'll also be updating my signups.
- Reviewing my email lists—and looking at re-engaging or deleting people who haven't opened or clicked. I've had an email list for almost ten years and I haven't been great at cleaning it. I've done some big purges over the years, but am now going through a concerted exercise to make sure I only have people on my list who want to be there. I'm also wary of people collected through Insta-freebie and Facebook Lead Ads, and also people I still have on my list who haven't opened in years.

Orna Ross

Novelist, poet, advocate for indie authors and other creative entrepreneurs. OrnaRoss.com

My sign-up process has always been clear and I haven't done any Instafreebie or Facebook lead generation ads, which makes life easier. I have always used double opt-in on my website and always been clear about exactly what happens to each list (incentive + newsletter) so I don't believe I need to reinstate my lists.

However, I have taken GDPR as an opportunity to clean down and further segment my lists. For example, my monthly newsletter addresses readers of my fiction and poetry but while there is crossover, obviously some of the novel readers are not interested in the poetry and vice versa.

I'm updating my website privacy and cookie policy to be clear about how I collect and use the names and email addresses I gather.

And finally, because you have to be able to prove how you came by your addresses, I'm creating a process document that explains my methodology, should anyone ever ask.

“I have taken GDPR as an opportunity to clean down and further segment my lists.”

- Orna Ross

The Alliance of Independent Authors

Process Document

We are creating a document about what information we save about our visitors and members, why we save this information and for how long.

We are identifying all the companies we work closely with and writing down what data they have access to and why, and linking to their own protection policies. They include our web server provider, web developer, accountant, bank and third parties like Google Analytics, PayPal and ConvertKit.

Protocols

We are creating protocols for internal use:

- The right to be forgotten, e.g what to with addresses of people who register but don't complete payment
- The right of data access. When a visitor or member asks for access what do we include in the data and how do we present it
- Hack or data leak. Protocol in the event of a security breach. We must inform the GDPR authority and any affected visitors/members within 72 hours

Privacy and cookies policy

Our online privacy and cookies policy is being updated to explain which data is saved, which shared and with which

“I have taken GDPR as an opportunity to clean down We are identifying all the companies we work closely with and writing down what data they have access to and why, and linking to their own protection policies. They include our web server provider, web developer, accountant, bank and third parties like Google Analytics, PayPal and ConvertKit.

companies, and how long the data is stored. It will inform visitors and members that they have the right to be forgotten and the right to access their data and explain how. We will also inform members about the automatic emails we send to run their membership.

Consent

We're adding a checkbox to all forms (Contact form, login, renew, and join) to display, "I have read the privacy and cookies policy (include link) and I agree."

We had previously considered that membership implied consent to newsletters and member information being given, with an opt-out option. Now we include an opt-in for newsletters with the same checkbox and link to the privacy policy.

We are sending a newsletter to all existing members to inform them about the updates.

Russell Phillips

Russell Phillips is a military history author

I had a small number of people on my list that may or may not have been compliant. Here's what I did (in MailChimp):

1. Moved those people to a temporary list (named "GDPR Temp List")
2. Sent an email to the temporary list, saying that if they wanted to keep getting my emails, they needed to re-enter their details, and linked to my sign-up form.
3. Deleted the temporary list, including all the subscribers.
4. I documented what I had done, including screenshots of the email that I sent.

I think about half of them re-subscribed.

Here are a few scenarios and examples having to do with GDPR compliance :

Example: Multi-Author Giveaway

You were in a multi-author giveaway. In order to get the books, people had to give their email address. The giveaway organizer then sent you a list of all the emails of people who had downloaded the books.

Scenario 1: The giveaway page says "Give us your email to get free books from Author 1, Author 2, and Author 3. » When the giveaway is finished, they send all the email addresses collected to Author 1, Author 2, and Author 3.

Scenario 2: The giveaway page says "Give us your email to get free books from Author 1, Author 2, and Author 3. Tick the box if you'd like to be added to the author's email list." It then has boxes for Author 1, Author 2, and Author 3. The boxes are *not* ticked by default. At the end of the giveaway, the organizers send those email addresses that ticked Author 1's box to Author 1, those that ticked Author 2's box to Author 2, and those that ticked Author 3's box to Author 3.

Scenario 1 is not GDPR compliant. If you add the addresses to your list, you will be in breach of the GDPR if any of those emails belong to people in the EU or UK.

Until May 25, 2018, what you can do is email those people with a note along the lines of "You entered a giveaway to get one of my books. Click here if you'd like to join my mailing list", with a link to your (GDPR-compliant) sign-up page. Any that sign up (having taken specific action to do so) are GDPR compliant. Delete the rest of the emails.

If **scenario 1** happens after May 25, the organizers would have broken the law by sending you the list of emails. You would be breaking the law if you didn't delete the emails you'd been sent.

Scenario 2 is GDPR compliant. You can add the addresses to your list.

Example: Getting New Consent

If your mailing list sign-up form wasn't GDPR compliant, here's how you can renew consent.

1. (Optional) Send some emails with good quality content, so that your subscribers value your list and want to stay on it.
2. Make sure your sign-up form is GDPR compliant.
3. Moved the subscribers that aren't GDPR compliant to a temporary list (named "GDPR Temp List")
4. Send an email to the temporary list, saying that if they want to keep getting your emails, they needed to re-enter their details. Include a link to your new sign-up form
5. Delete the temporary list, including all the subscribers.
6. Document what you have done, including screenshots of the email that you sent.

Jane Davis

[Novelist Jane Davis](#) gave this advice in our Facebook Forum.

The ICO's advice is "Be specific and 'granular' so that you get separate consent for separate things. Vague or blanket consent is not enough."

If taken literally this would mean separate opt ins (tick boxes) for free books, competitions, special offers, and news. I have separate lists for my blogs (author interviews, book reviews, big announcements) For my marketing list, I am clear that it is a marketing list. I use one overriding statement: a promise not to spam, a promise that I only email when I have something genuinely newsworthy to

While all the rules, examples, and scenarios might seem complicated or risky, most are just common sense good business practices, anyway. further segment my lists.

report, a promise that my subscribers will be the first to hear about competitions, special offers and free giveaways.

Conclusion

A few authors may decide that all this is just not worth it, and give up altogether on using email to market their books. That's a matter of personal and professional preference. There are many other ways to market books.

However, if the sole reason for giving up on email marketing is because of laws governing privacy, then that seems counterproductive.

While all the rules, examples, and scenarios might seem complicated or risky, most are just good business practices, anyway. If we had to write a paper about all the regulations and laws governing a quick automobile ride to the store, it would take pages upon pages to explain. Still, most drivers can easily follow the common-sense rules of the road.

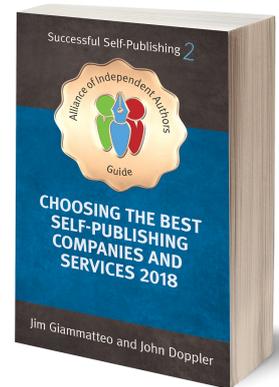
That's the way it is with your email list. Make sure these common-sense rules are applied, and you're good to go.

ALLi publishes:

Choosing The Best Self-Publishing Companies and Services 2018

The only annually updated guide to the global self-publishing services industry.

The 2018 edition is now available
(FREE to ALLi Members).



AskALLi

The AskALLi Quick & Easy Guides to Self-Publishing address the most common questions our members have about self-publishing.

The Guides are organized across the seven stages of the publishing cycle: editorial, design, production, distribution, marketing, promotion, and licensing rights. There are also guides to running a successful business as an indie author.

For more advice and a daily blog, visit our Self-Publishing Advice Centre at <http://selfpublishingadvice.org/blog/>

Founded by novelist and poet Orna Ross, the Alliance of Independent Authors is a global nonprofit organization offering authoritative advice, experienced guidance, and advocacy within and outside the publishing industry.

Its mission is ethics and excellence in writing and publishing. The Alliance offers a variety of member benefits, including discounts and incentives and collaboration and connection with the best self-publishing authors and advisers in the world.