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**The law sphere of digital marketing: Legislation in some countries**

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**Abstract:** The legal sphere of digital marketing encompasses a complex array of regulations and standards designed to govern online advertising, data privacy, and consumer protection. This article examines the key legal frameworks influencing digital marketing practices, including data protection laws such as the General Data Protection Regulation (GDPR) in Europe, the California Consumer Privacy Act (CCPA) in the United States, and the Personal Information Protection and Electronic Documents Act (PIPEDA) in Canada. It also explores regulations related to electronic communications, such as the ePrivacy Directive in the EU and Canada's Anti-Spam Legislation (CASL), as well as national advertising standards and self-regulation by industry bodies. The article highlights the importance of compliance with these laws to avoid legal penalties and maintain ethical marketing practices. By providing an overview of the current legal landscape, the article aims to guide digital marketers in navigating regulatory requirements and ensuring lawful and effective marketing strategies.

**Keywords:** *Digital Marketing, Legal Framework, Data Protection, GDPR, CCPA, PIPEDA, ePrivacy Directive, CASL, Advertising Standards, Consumer Protection, Compliance, Online Advertising, Data Privacy Laws, Electronic Communications*

Digital marketing refers to the use of digital channels and technologies to promote products, services, or brands to consumers. Unlike traditional marketing

methods, digital marketing leverages online platforms and tools to reach and engage with target audiences. It encompasses a broad range of tactics and strategies, including:

### **Key Components of Digital Marketing:**

#### **Search Engine Optimization (SEO):**

**Description:** The practice of optimizing a website to rank higher in search engine results pages (SERPs).

**Goal:** Increase organic (non-paid) traffic to the website by improving its relevance and authority.

#### **Content Marketing:**

**Description:** Creating and distributing valuable, relevant, and consistent content to attract and engage a target audience.[1]

**Goal:** Build brand awareness, establish authority, and drive customer action through blogs, videos, infographics, and more.

#### **Social Media Marketing:**

**Description:** Using social media platforms like Facebook, Instagram, Twitter, and LinkedIn to connect with audiences and promote content.

**Goal:** Enhance brand presence, engage with users, and drive traffic and sales through social interactions.

#### **Email Marketing:**

**Description:** Sending targeted emails to a list of subscribers to nurture leads, promote offers, and build customer relationships.

**Goal:** Personalize communication, drive conversions, and retain customers through regular and relevant updates.

#### **Pay-Per-Click (PPC) Advertising:**

**Description:** Running paid ads on search engines and other platforms where advertisers pay a fee each time their ad is clicked.

**Goal:** Drive targeted traffic to a website quickly, with measurable results and flexible budgeting.

### **Affiliate Marketing:**

**Description:** Partnering with other businesses or individuals to promote products or services in exchange for a commission on sales or leads.

**Goal:** Expand reach and generate sales through a network of affiliates.

### **Influencer Marketing:**

**Description:** Collaborating with influencers—individuals with significant social media followings—to promote products or services.

**Goal:** Leverage the influencer’s credibility and audience to enhance brand visibility and trust.[2]

### **Online Public Relations (PR):**

**Description:** Managing a brand's online reputation through digital media, including press releases, online reviews, and media outreach.

**Goal:** Build and maintain a positive brand image and handle public relations crises.

### **Analytics and Data Analysis:**

**Description:** Collecting and analyzing data from digital marketing campaigns to measure performance and inform decision-making.

**Goal:** Optimize strategies based on insights to improve campaign effectiveness and ROI.

Legislation governing digital marketing is designed to regulate various aspects of online advertising, data privacy, and consumer protection. These laws aim to create a fair, transparent, and secure digital environment for both businesses and consumers.[3] Here's an overview of key legislation impacting digital marketing:

## **1. General Data Protection Regulation (GDPR)**

**Overview:** The GDPR (Regulation (EU) 2016/679) is a comprehensive data protection regulation in the European Union (EU) that came into effect on May 25, 2018.

**Key Provisions:**

**Consent:** Requires explicit consent from users before collecting their data.

**Data Rights:** Grants users rights such as data access, correction, erasure, and portability.

**Transparency:** Mandates clear communication about how personal data is collected, used, and stored.[5]

**Data Protection Officer (DPO):** Requires some organizations to appoint a DPO.

**Penalties:** Imposes significant fines for non-compliance, up to €20 million or 4% of global annual turnover, whichever is higher.[6]

Digital marketers must ensure that they obtain valid consent for data collection and use, provide clear privacy notices, and adhere to data protection principles.

## 2. ePrivacy Directive

- **Overview:** The ePrivacy Directive (Directive 2002/58/EC) complements the GDPR by specifically focusing on privacy in electronic communications.
- **Key Provisions:**

**Cookies and Tracking Technologies:** Requires user consent before storing or accessing cookies on their devices, except for those strictly necessary for the website's operation.

**Marketing Communications:** Regulates unsolicited communications, including email marketing and SMS, requiring opt-in consent for promotional messages.

**Impact on Digital Marketing:** Marketers must obtain consent for using cookies and similar technologies and comply with regulations around electronic communications.

## 3. California Consumer Privacy Act (CCPA)

- **Overview:** The CCPA, effective from January 1, 2020, is a comprehensive data privacy law in California, USA.

- **Key Provisions:**

**Consumer Rights:** Grants rights to access, delete, and opt-out of the sale of personal data.

**Disclosure:** Requires businesses to disclose what personal information is collected, used, and shared.

**Penalties:** Imposes fines for non-compliance, with a private right of action for certain data breaches.

#### 4. Digital Markets Act (DMA)

- **Overview:** The DMA (Regulation (EU) 2022/1925) aims to ensure fair competition and open markets in the digital sector, focusing on large online platforms acting as "gatekeepers."

- **Key Provisions:**

**Fair Practices:** Prohibits unfair practices by gatekeepers, such as preferential treatment of their own services.

**Interoperability:** Requires gatekeepers to ensure interoperability and data portability.

**Transparency:** Mandates transparency in advertising practices and data usage.

**Impact on Digital Marketing:** The DMA may affect how major platforms operate and advertise, potentially impacting digital marketing strategies on these platforms.

#### 5. Children's Online Privacy Protection Act (COPPA)

- **Overview:** COPPA is a U.S. law that regulates online collection of personal information from children under 13.

- **Key Provisions:**

**Parental Consent:** Requires parental consent before collecting personal information from children.

**Privacy Policy:** Mandates a clear privacy policy outlining data collection practices.

## 6. Advertising Standards and Regulations

- **Overview:** Various national and international bodies, such as the Federal Trade Commission (FTC) in the U.S. and the Advertising Standards Authority (ASA) in the UK, set guidelines for ethical advertising practices.

- **Key Provisions:**

**Truthfulness:** Ads must be truthful and not misleading.

**Disclosure:** Requires clear disclosure of sponsored content and affiliate links.

**Impact on Digital Marketing:** Ensures that marketing practices are transparent, honest, and in line with ethical standards.

The legislation governing digital marketing encompasses a range of regulations designed to protect consumer privacy, ensure fair competition, and promote transparency. Compliance with these laws is essential for digital marketers to build trust, avoid legal pitfalls, and effectively engage with their audiences in a secure and ethical manner. As digital marketing continues to evolve, staying informed about regulatory changes and best practices will be crucial for maintaining compliance and achieving marketing objectives.

### **In German:**

Legislating digital marketing in the German Federation involves implementing and enforcing a combination of European Union (EU) regulations and national laws that govern various aspects of digital marketing. Germany, as an EU member state, adheres to overarching EU regulations while also having its own specific legal requirements. Here's a guide on how digital marketing can be legislated in Germany:

#### **1. Implement EU Regulations**



### *a. General Data Protection Regulation (GDPR)*

- **Overview:** GDPR is a comprehensive EU regulation that governs data protection and privacy. It applies to any organization that processes personal data of EU citizens, including those in Germany.[7]
- **Key Requirements:**
  - Consent:** Obtain explicit consent from users before collecting or processing their personal data.
  - Transparency:** Provide clear information about how personal data is used and processed.
  - Data Rights:** Ensure users can access, correct, and delete their personal data.
  - Data Protection Officer (DPO):** Appoint a DPO if required, particularly if the core activities involve regular and systematic monitoring of data subjects.
- **Enforcement in Germany:** The Federal Commissioner for Data Protection and Freedom of Information (BfDI) and state data protection authorities oversee GDPR enforcement.

### *b. ePrivacy Directive (Cookie Law)*

- **Overview:** The ePrivacy Directive complements the GDPR by regulating electronic communications and cookies.
- **Key Requirements:**
  - Cookie Consent:** Obtain consent before storing or accessing cookies on users' devices, except for those necessary for the website's operation.
  - Marketing Communications:** Obtain consent before sending unsolicited marketing communications, including emails and SMS.
- **Enforcement in Germany:** Integrated into the German Telemedia Act (TMG) and enforced by the BfDI and state authorities.

## **2. National Legislation**

### *a. Federal Data Protection Act (BDSG)*

- **Overview:** The BDSG works alongside GDPR, providing specific rules for data processing in Germany.
- **Key Provisions:**

**Employee Data Protection:** Includes provisions for the processing of employee data.

**Data Processing Agreements:** Specifies requirements for agreements between data controllers and processors.

- **Enforcement:** Administered by the BfDI and regional data protection authorities.

#### *b. Telemedia Act (TMG)*

- **Overview:** The TMG governs electronic information and communication services in Germany, incorporating aspects of the ePrivacy Directive.

- **Key Provisions:**

**Impressum Requirement:** Mandates that websites provide a clear and accessible imprint (impressum) with contact details.

**Consumer Information:** Requires transparent information about commercial communications.

- **Enforcement:** Enforced by regional authorities and consumer protection agencies.

#### *c. Act Against Unfair Competition (UWG)*

- **Overview:** The UWG regulates unfair business practices, including deceptive advertising and misleading marketing.

- **Key Provisions:**

**Misleading Advertising:** Prohibits false or misleading advertising claims.

**Comparative Advertising:** Regulates the use of comparative advertising to ensure fairness.

- **Enforcement:** Enforced by regional courts and consumer protection organizations.

### **3. Best Practices for Compliance**

- **Data Protection Impact Assessments (DPIAs):** Conduct DPIAs to assess and mitigate risks associated with data processing activities.

- **Privacy Notices:** Develop clear and concise privacy notices to inform users about data collection and usage.

- **Training and Awareness:** Provide regular training for employees on data protection and marketing compliance.

- **Legal Consultation:** Engage legal experts to ensure all marketing practices comply with GDPR, TMG, and other relevant laws.

#### 4. Monitoring and Enforcement

- **Regulatory Bodies:** The BfDI and state data protection authorities are responsible for overseeing compliance and handling complaints related to data protection and digital marketing.
- **Penalties:** Non-compliance with GDPR and other regulations can result in significant fines and legal actions.

#### 5. Emerging Legislation

- **Digital Markets Act (DMA):** As part of EU efforts to regulate large online platforms, the DMA may impact how digital marketing practices are conducted, particularly regarding fair competition and platform neutrality.
- **ePrivacy Regulation:** The proposed ePrivacy Regulation aims to update and strengthen rules around electronic communications and tracking technologies.

#### In Japan:

Legislating digital marketing in Japan involves a blend of national laws and regulations that address privacy, consumer protection, and advertising standards. Japan has its own set of rules governing digital marketing activities, which are influenced by international best practices and local requirements. Here's an overview of how digital marketing can be legislated in Japan:

##### 1. Personal Data Protection

###### *a. Act on the Protection of Personal Information (APPI)*

- **Overview:** The APPI is Japan's primary data protection law, revised significantly in recent years to align more closely with international standards such as the GDPR.

- **Key Provisions:**

**Consent:** Requires businesses to obtain consent from individuals before collecting, using, or disclosing their personal data.

**Data Rights:** Provides individuals with the right to access, correct, and delete their personal data.

**Data Breach Notification:** Mandates notification to individuals and authorities in the event of a data breach.[8]

**Cross-Border Data Transfer:** Sets conditions for transferring personal data to foreign countries, including ensuring an adequate level of protection.

## 2. Electronic Commerce and Communications

### *a. Act on Specified Commercial Transactions (ASCT)*

- **Overview:** The ASCT regulates commercial transactions conducted via electronic means, including online sales and marketing.
- **Key Provisions:**

**Disclosure Requirements:** Mandates clear disclosure of product information, pricing, and terms of service.

**Unsolicited Commercial Communications:** Regulates practices around unsolicited emails and telemarketing, requiring opt-out options for recipients.

**Consumer Protection:** Ensures that consumers have access to information about their rights and the processes for resolving disputes.

### *b. Act on Regulation of Transmission of Specified Electronic Mail (Anti-Spam Law)*

- **Overview:** This law aims to regulate unsolicited commercial emails to protect consumers from spam.
- **Key Provisions:**

**Consent:** Requires businesses to obtain consent before sending commercial emails.

**Opt-Out Mechanism:** Mandates that recipients have an easy way to opt out of receiving further emails.

**Identification:** Requires that commercial emails clearly identify the sender and provide contact information.

## 3. Advertising and Promotion

### *a. Act Against Unjustifiable Premiums and Misleading Representations*

- **Overview:** This law regulates advertising practices to prevent misleading or deceptive marketing.

- **Key Provisions:**

  - **Truthful Advertising:** Prohibits false or misleading claims in advertisements.

  - **Premiums:** Regulates promotional premiums to prevent unjustifiable or deceptive practices.

  - **Comparative Advertising:** Ensures that comparative advertising is fair and substantiated.

- **Enforcement:** The Japan Fair Trade Commission (JFTC) monitors and enforces compliance with this law.

#### *b. Self-Regulation by Industry Associations*

- **Overview:** Industry associations, such as the Japan Advertising Agencies Association (JAAA) and the Japan Direct Marketing Association (JDMA), provide additional guidelines and codes of conduct for digital marketing practices.

- **Key Provisions:**

  - **Ethical Standards:** Promote ethical advertising practices and transparency.

  - **Best Practices:** Develop guidelines for responsible digital marketing and data handling.

#### **4. Cross-Border Considerations**

- **International Cooperation:** Japan's data protection regulations are designed to align with international standards, facilitating cooperation with other countries and regions on data protection and privacy.
- **Data Protection Agreements:** Japan has agreements with various countries to ensure mutual recognition of data protection standards and facilitate cross-border data transfers.

#### **5. Best Practices for Compliance**

- **Obtain Consent:** Ensure explicit consent is obtained for data collection and use, and provide clear information on how personal data will be handled.
- **Transparent Communication:** Maintain transparency in advertising practices, including clear disclosure of promotional content and terms.
- **Data Security:** Implement robust data protection measures to safeguard personal data and respond to breaches promptly.

- **Stay Informed:** Regularly update practices in response to regulatory changes and new guidelines.

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