

Email Remarketing and Compliance

An overview for marketers on the application of CAN-SPAM and the European Union Privacy Directives on shopping cart recovery and web form recovery emails.

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Introduction

Remarketing to website visitors that abandon shopping carts and web forms is perhaps the highest ROI marketing activity the online marketer can undertake. Abandoners are visitors that *almost* purchased from you, or *almost* completed a web form. It's not surprising really that a nudge by email works incredibly well.

Remarketing emails, when done well, provide good service to customers and these emails are often kept and used as a reminder, or quick path back to items in their shopping cart. In the case of a web form, being able to pick up where you left off on a long form is really appreciated, and can save the customer significant time and effort.

The regulatory landscape is confusing, however, in particular in Europe, and this whitepaper sets out what you need to do to be in compliance with the CAN-SPAM Act in the US and the European Privacy Directive in Europe.

In this white paper we've set out a simple checklist to explain the basics of remarketing, and set out what you need to comply with the legislation in the US and major European markets.

Remarketing checklist

Shopping Cart Recovery Step 1: Identify Your Visitors

To effectively identify a shopping cart or form abandoner, it is crucial to recognize the value in obtaining personally identifiable information about that person. To identify the customer, you must first capture an email address. Only with a valid email address can you use remarketing techniques that will allow you to start the recovery process with the individual.

Capturing the email address of a potential customer can be handled on your website in a number of ways:

- **Offer an incentive** - One technique used by several of the world's top 10 converting websites is to offer an incentive to any customer that opts-in to your permission-based email marketing list. For example, "sign up to our newsletter and get a free shipping coupon" is a classic incentive used and has been proven to be a successful tactic for capturing email addresses. When you offer this type of incentive, it is important to follow-up immediately with the reward—the customer is expecting the incentive in return for providing their email address.
- **Shopping Cart / website registration** - The email address is captured when a customer fills out a registration form before they make a purchase. Equally if your website provides a guest checkout option, then the email address would be captured as part of the guest checkout process.
- **Social Media** - If a visitor signs in to your ecommerce site using their Facebook account for instance, the email address for the individual can be captured. If this is done on the homepage, the entire journey through the website can be tracked. When a visitor signs into their Facebook account, a message box pops up asking for consent to share details with the ecommerce website. This allows the ecommerce website to use their Facebook account email address or a proxy of it.
- **Cookie** - If the individual has already purchased from the site and the email address has been historically captured, this email can be retrieved for remarketing purchases.

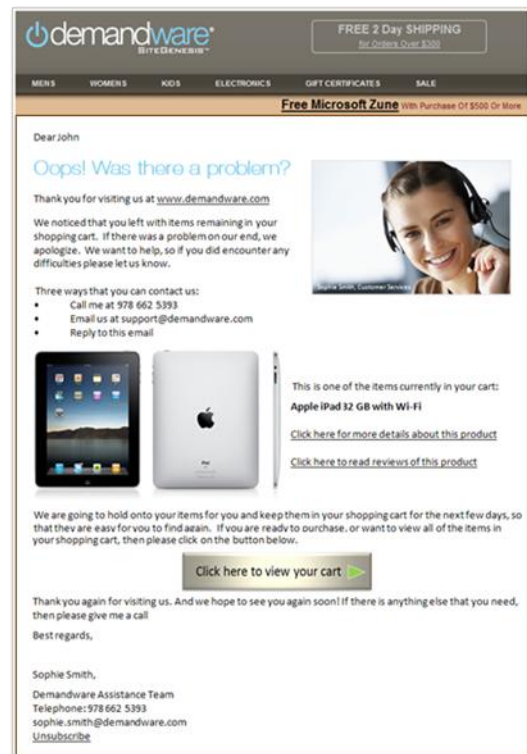
Shopping Cart Recovery Step 2: Use Customer Service Tone

When making the initial contact with the customer for the purpose of shopping cart or web form recovery, it is important that your marketing messages use a gentle, service-based tone. At this point in time you really don't know why the customer abandoned and an overt sales message can be too strong and even counter-productive to the recovery process.

- **Was there a problem?** - Rather than use phrases like “You didn't make a purchase, come back and get this great offer”, remember to use soft sales language so that the email reads like a customer service inquiry. For example, asking the customer if they experienced a problem you can assist with is a great way to open the lines of communication.
- **Include specific product information and direct links** - To keep the tone gentle and service-oriented, use your transaction confirmation email as a guide when making this initial first follow up.

This includes providing links to-and images of-the products the customer added to the cart but did not check out. Be sure to thank the customer for visiting the website and include an offer to assist the customer if they encountered a problem during their visit.

Another important item to include in this first follow up is a quick access button link to send the customer back to the contents of their shopping cart to complete the order or continue shopping on the website. It has been shown that these emails are often re-opened multiple times as they provide an easy and accessible way to link directly to information relevant to the individual.



This type of gentle, soft sell email has a lower unsubscribe rate than a more forceful sales message. Keeping a good service tone for shopping cart recovery messages adds value for the customer –they will appreciate your prompt customer service inquiry– and this type of message will meet their initial service expectations. Offer alternative contact details - A good service message should include links to more information and different options for the customer to contact you if they need help with completing the online transaction. A toll-free customer support number or direct link to your online customer service chat will also be helpful to the customer.

Shopping Cart Recovery Step 3: Initiate a Real Time First Follow up

The next step in the shopping cart recovery process is to connect with the shopping cart abandoner with a real time first follow up message. The big question: when is the best time to start the follow up process?

- **Real time follow up** - According to industry experts, only 16-percent of the e-retailing 500 currently follow up on abandoned shopping carts (although 90-percent who don't, want to start) and the average email follow up time is around 6.1 days after the shopping cart has been abandoned. Realistically, a customer can do a lot in six days—like forget about your website and make a similar purchase elsewhere.

When it comes to recovering abandoned shopping carts, timing is crucial. The faster you connect with the customer the better your chances of that individual completing the checkout process. Real time responses to an abandoned shopping cart must be an immediate action so the email message is always relevant to the customer. The very best time to send your real time follow up is **immediately after the cart has been abandoned on the website**; any significant delay in following up with the customer will lower your potential for conversion as the message is not as relevant to the customer after a time lapse.

- **Keep in sync with customer** - A delay may also cause other problems. If you are sending this message—even as early as 24-hours after an abandonment—with an incentive attached, a customer may have already returned and made the purchase and then be upset they paid full price rather than waiting for an incentive. A real time follow up keeps you in sync with the customer and their actions, and reduces complexity in the shopping cart recovery process.

Shopping Cart Recovery Step 4: Multiple Follow ups across Multiple Channels

A multiple stage shopping cart recovery process will convert more than a single immediate follow up. The multi-stage process is designed to convert those cart abandoners who did not convert on your first, immediate follow up.

When using multiple follow ups to recover abandoned shopping carts, two or more follow ups work best, however the timing of the emails really depends on the website and the sensitivity of the transaction.

When contacting the abandoner with multiple follow ups, intelligent visitor tracking is required. A tight connection between the individual's onsite activity and the contents of the

follow up messages must be maintained to ensure your shopping cart recovery program stays in sync with the customer. If you cannot track the customer's website behavior you may end up sending promotional incentive messages to a customer after they have already made the purchase. Also, you want to continue reminding the customer about the items they left in the cart and provide the same quick links and customer-service tone in the second and third follow ups as you offered in the initial follow up.

As an example, you could use the following sequence:

- **First Follow up : Immediate**
Adopting a service tone - the key message within this email may be to ask if there was a technical problem encountered during the shopping process
- **Second Follow up #1: 23 hours**
This message can help to reassure the customer - whether that be with customer endorsements or product reviews for example. The same quick links and product images as the first message should be inserted. Keep the message focused on the original abandonment, and avoid cluttering up messages with unnecessary detail - for example showing alternative products can serve to confuse and stall an abandoner who would otherwise come back and purchase.
- **Final Follow up #2: 6 days 23 hours later**
If there has still been no purchase, the final follow up could contain an offer, whether that be for free shipping or a discount on the purchase itself.

Send time Optimization: People are creatures of habit and, as such, tend to carry out the same activities at the same time each day. So the optimal timing for second and third follow ups is based on the timing of their original abandonment. This means sending their follow up emails individually, not as a batch. This can increase performance of your campaign by 20% so it is well worth doing. However, given the nature of email, it's advisable to have the remarketing email waiting in their inbox prior to them coming online, so remarketing after, say, 23 hours or earlier is generally better than 24 hours.

Shopping Cart Recovery Step 5: Automation

Automation is another important element of a successful shopping cart recovery process. Using an automated system allows the customer to determine the timing—not the marketer—based on website behavior. This is in contrast to manual batch emails where the marketer determines when the contact takes place.

- **First follow up email** - With an automated system, you can contact your cart / form abandoner in real time: less than one minute after the abandoned cart is detected.
- **Staying completely in sync with the customer through every step of the recovery process** - When automated processes are combined with intelligent visitor tracking, you can stay in sync with the customer throughout the recovery process. Automated website tracking of the customer lets you spot a customer when they return to your website, regardless of how they came back. Your email tracking can tell you if the customer clicked the cart link in your first follow up email but you won't know if they came back to the website by typing in the address or by way of Google search results. Intelligent visitor tracking is important to the success of your marketing process as it keeps you informed and up-to-date on the actions of the customer.
- **If a purchase has been completed, the follow up process stops** - A cart abandoner checking out at any point of the conversion process is another trigger that you would predefine in the automated system. Knowing the customer has returned and completed the transaction automates the process to stop the multi follow up so you do not continue to send promotions and incentives after the purchase has been made.

Compliance Step 1: Check your website privacy policy

For both the US and Europe the first step is to check your website privacy policy before embarking on a remarketing campaign.

Most website privacy policies already contain the required language which covers using the data that has been captured for remarketing. But you should check your privacy policy to ensure that yours does as well.

Typically, privacy policies contain sections on (i) what information will be collected, and (ii) what it will be used for.

You should check each section as follows:

What Information will be collected

Check that your privacy policy states that you will collect email addresses. This will look something like this clause:

What Information Do We Collect?

- *When you order from us, **we collect** your name, billing address, shipping address, **email address**, phone number(s) and credit card number (with expiration date) or gift card number.*
- *When you become a registered user, we collect your name, mailing address, email address, birth date and password. This information is gathered to make your shopping experience as a registered user as quick and easy as possible.*
- *Additionally, we collect certain personal information if you choose to opt-in to our email or mobile content marketing programs, or if you sign up for or respond to marketing incentives such as free shipping coupons.*
- *Our primary goal in collecting personal information-including your first name, last name, purchase history, phone number(s), valid email and residential address and credit card data-is to provide you with a smooth, efficient, customized shopping experience and to let you know about offers that may be of interest to you.*

What the collected information will be used for

Check that you have a clause similar to this:

How Do We Use Your Information?

We may use your information in a number of ways, including the following:

- *In order to serve you better, we may combine the information you provide us online, in our stores and through our catalogs. We use that information to improve your overall shopping experience.*
- *To improve the content on our website. For example, we may use cookies to find out which parts of our site or our products are visited most often.*
- *To enhance your online shopping experience. For example, we may use it to recognize you and welcome you to the site.*
- ***For marketing and promotional purposes.*** *For example, we send out email and direct mail to our online and store customers about products or events that we think may be of interest to them. We also may send you offers for discounts or free services (e.g., free gift wrap or shipping) on our site or in our stores.*

Your marketing and promotional purposes clause may cover remarketing, but it is best practice to add a clause similar to this:

- ***For customer service purposes, such as contacting customers who have not checked out to follow up on abandoned shopping carts or to see if there was a problem with their use of the site.***

The wording above is just a suggestion of what could be in your privacy policy: you will need to tailor the policy so it accurately reflects how you use personal data and requirements of the countries in which you operate.

Legal Background

You need to explain to your customers how you will use their information. This information should be included in a registration page/privacy policy that is readily available to your customer before they provide information. You do not need to refer to remarketing by name, but is best practice to explain that you will follow up on abandoned shopping carts.

Information about your customers, such as their e-mail address and shopping cart information is personal data. Both the US CAN-SPAM Act, Federal Trade Commission Act, certain state laws and the European Data Protection Directive say that website publishers must explain to individuals how they will use that data: it is important to make clear any uses of data which customers would not expect. Customers may not expect follow up e-mails about abandoned

purchases, so your privacy policy should explain that you retain e-mail addresses for marketing purposes and for customer service purposes, such as contacting customers who have not checked out to see if there was a problem with their use of the site.

Website publishers who use cookies, web bugs or similar technologies to trace the activities of customers have certain additional obligations and you need to ensure that this is covered in your privacy policy.

This information needs to be available to customers before they provide personal data - so before they provide an e-mail address. You can provide the information on your registration page, or you can provide key information on the registration page and more detailed information (such as information about cookies) in the privacy policy, which should be easily accessible through a link which is clearly labelled. For example, it should be accessible via a privacy policy link, not just behind terms and conditions.

Compliance Step 2(a): Remarketing in the US

In addition to checking that your website's privacy policy has the necessary language, there are no additional specific compliance requirements for remarketing. The other general requirements for email remarketing in the US to comply with CAN-SPAM legislation still apply, of course, and are very familiar to marketers:

1. **Don't use false or misleading header information.** Your "From," "To," "Reply-To," and routing information – including the originating domain name and email address – must be accurate and identify the person or business who initiated the message.
2. **Don't use deceptive subject lines.** The subject line must accurately reflect the content of the message.
3. **Identify the message as an commercial email.** The law gives you a lot of leeway in how to do this, but you must disclose clearly and conspicuously that your message is commercial email.
4. **Tell recipients where you're located.** Your message must include your valid physical postal address.
5. **Provide an unsubscribe mechanism.** Your message must include a clear and conspicuous explanation of how the recipient can opt out of getting email from you in the future. This can include the option to unsubscribe from Shopping Cart Reminder emails, but you must include the option to unsubscribe from all commercial email as well.
6. **Honor opt-out requests promptly.** Any opt-out mechanism you offer must be able to process opt-out requests for at least 30 days after you send your message. You must honor a recipient's opt-out request within 10 business days, though best practice is to honor their request immediately.
7. **Don't sell or transfer email addresses of individuals from whom opt-out requests have been received.** You may transfer the addresses to third parties that you've hired for purposes of complying with the CAN-SPAM Act, but all other transfers or sales are prohibited.
8. **Ensure that the individual has not opted out** of receiving marketing solicitations from your company or its affiliates that would prohibit this type of email solicitation.

If you've addressed these requirements, you are ready to start remarketing.

Remember that CAN-SPAM includes additional requirements that may be applicable depending on the circumstances, such as labeling of emails containing sexually explicit materials, rules regarding subsequent affirmative consent, and nuances for situations involving emails on behalf of multiple companies and emails with suggestions to forward to others.

Compliance Step 2(b): Remarketing in the European Union

Remarketing in the EU is more complicated than in the US because while there is umbrella Europe-wide legislation in the form of the European Union Data Protection and e-Privacy Directives, each of the individual countries in the EU have interpreted the legislation slightly differently.

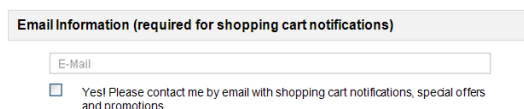
An Opt-in approach will work universally across the EU. However, some countries (such as the UK and France) will allow re-marketing on the basis of an Opt-out. If you are unable to have a different approach (for say the UK and France,) and are looking for a single Pan-European approach, then the Opt-In route should be followed. More details about the compliance requirements of the major European countries can be found in the Country Compliance Table in the next section below.

Legal Background: Consent, Opt-In, and Opt-Out explained

You need to explain to customers that you will keep their e-mail addresses for e-mail marketing and ask them to give consent to this - for example by ticking an opt-in box. In short, businesses can only send e-mail marketing to prospects who have given consent. Transactional email, such as a purchase confirmation, is exempt from this restriction. Although follow-up remarketing emails are related to an aborted transaction, they are not transactional and therefore count as e-mail marketing.

To maximise the number of prospects to whom you can send follow-up e-mails, you should design your registration page so that your e-mail marketing opt-in box is as close as possible to the place where the customer enters his e-mail address.

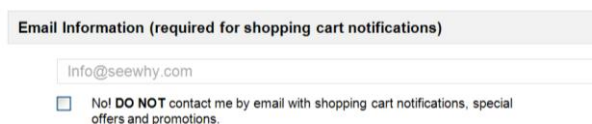
Example shopping cart Opt-In



The image shows a form titled "Email Information (required for shopping cart notifications)". It contains a text input field labeled "E-Mail" and a checkbox with the text "Yes! Please contact me by email with shopping cart notifications, special offers and promotions." The checkbox is currently unchecked.

The European Union e-Privacy Directive also allows businesses to send e-mail marketing on an opt-out basis in limited situations to customers who have not ticked an opt-out box. Some member states only allow marketing to be sent on this basis to customers who have made a purchase (not prospects); others, such as the UK and France, allow e-mails to be sent on an opt-out basis more widely where there has been a negotiation for a sale. This exemption varies country by country.

Example shopping cart Opt-Out



The screenshot shows a form titled "Email Information (required for shopping cart notifications)". Below the title is a text input field containing the email address "info@seewhy.com". Underneath the input field is a checkbox that is currently unchecked, followed by the text: "No! DO NOT contact me by email with shopping cart notifications, special offers and promotions."

In Germany, customers must also separately confirm their consent - e.g. by clicking an activation link in a follow up email sent by the ecommerce website.

Other aspects of compliance

As with all processing of personal data, you will need to comply with general data protection obligations (including, but not limited to ensuring security of data, accuracy and quality of data and filing requirements). In addition to checking that your website's privacy policy has the necessary language, and that you have an opt-in / opt-out on your shopping cart of web form, the only other specific requirements for email remarketing in the EU to comply with the EU legislation are very familiar to marketers:

- **Easy unsubscribe mechanism:** *The sender has to offer the recipient a free-of-charge, valid and an easy-to-use mechanism to say no to future emails (opt-out).*
- **Honor opt-out requests promptly.** *You must honor a recipient's opt-out request promptly.*
- **Don't use false or misleading information:** *You must not disguise or conceal the identity of the sender in a commercial email message.*
- **Tell recipients where you're located.** *Your message must include your valid physical postal address.*

Country Remarketing Compliance Table

Note: In this whitepaper, In addition to the United States, we have selected the major European countries in the European Union and examined which countries will permit remarketing on an opt-out or opt-in basis. These countries are France, UK, Italy, Germany, Belgium, Spain, Hungary, Sweden, Netherlands and Finland. This leaves 17 EU countries where we have not checked the legislation specifically, but for simplicity here we recommend an Opt-In policy which will enable you to comply.

Similar to the UK and France, some countries *may* allow e-mails to be sent on an Opt-Out basis using the ‘negotiation for a sale’ exemption discussed above.

Country	Email remarketing permitted	Check privacy policy	Opt-Out required in all emails	Opt-Out required in shopping cart	Opt-In required in shopping cart
United States	✓	✓	✓		
United Kingdom	✓	✓	✓	✓	
France	✓	✓	✓	✓	
Italy	✓	✓	✓		✓
Germany	✓	✓	✓		✓
Belgium	✓	✓	✓		✓
Spain	✓	✓	✓		✓
Netherlands	✓	✓	✓		✓
Sweden	✓	✓	✓		✓
Finland	✓	✓	✓		✓
Hungary	✓	✓	✓		✓
Other EC Countries	✓	✓	✓		✓

Country Summary Compliance Actions

Below is a summary of what is required for compliance in each country. This is not an exhaustive list or a substitute for reading the relevant section in this whitepaper.

US:

- Check the privacy policy for a 'marketing use' clause. This should cover the use of email addresses for marketing and promotional purposes. Best practice is to also insert an abandoned shopping cart specific clause into the privacy policy.

UK and France:

- Check the privacy policy for a 'marketing use' clause. This should cover the use of email addresses for marketing and promotional purposes. Best practice is to also insert an abandoned shopping cart specific clause into the privacy policy.
- **AND** provide an **Opt-OUT** box on the shopping cart

All other European countries (except Germany):

- Check the privacy policy for a 'marketing use' clause. This should cover the use of email addresses for marketing and promotional purposes. Best practice is to also insert an abandoned shopping cart specific clause into the privacy policy.
- **AND** provide an **Opt-IN** box on the shopping cart

Germany:

- Check the privacy policy for a 'marketing use' clause. This should cover the use of email addresses for marketing and promotional purposes. Best practice is to also insert an abandoned shopping cart specific clause into the privacy policy.
- **AND** provide an **Opt-IN** box on the shopping cart
- **AND** send a confirmation email to the abandoner getting them to confirm their **OPT-IN**. This could be the first remarketing email if written well / carefully.

Conclusions

Remarketing to visitors that abandon shopping carts and web forms is very effective in generating incremental sales.

Remarketing is permitted in both the US and Europe, and subject to checking your privacy policy, and in Europe providing either an Opt-In or Opt-Out tick box on your website, can be implemented in confidence of compliance with the various legislation.

This white paper gives general information only as at its stated date or, if none, the date of first publication as, for example, the law may have changed in the meantime. It is not intended to give a comprehensive analysis and should not be used as a substitute for legal or other professional advice. No warranty or representation is given that the white paper is free from inaccuracies or omissions, or that it is up to date.