

EPISODE 117: GDPR: WHAT ALL AUTHORS NEED TO KNOW – WITH GEMMA GIBBS

Speaker 1: Two writers. One just starting out, the other a bestseller. Join James Blatch and Mark Dawson and their amazing guests as they discuss how you can make a living telling stories. There's never been a better time to be a writer.

James Blatch: Hello and welcome to a special edition of the Self Publishing Formula podcast with James and Mark.

Mark, are you in your element because we're going to be talking law, legal, lawyer stuff for this entire podcast? Does it take it back to you?

Mark Dawson: I hate law. That's why I'm not a lawyer anymore. So this is kind of traumatic for me to have to get back into the swing of it again.

James Blatch: Well, let's not try and make it too traumatic.

This episode is dedicated entirely to something called the GDPR, which I'm sure you are, by now, very familiar with. It's called the General Data Protection Regulations. They come into force originating from the EU, but they'll affect anybody who is running a mailing list or online communications around the world and you include EU members on your list.

So the point of this podcast is to go through the regulations, specifically for authors. We have invested in legal advice.

We've also been backwards and forwards a lot with our own opinions on this and how we've got through some of the initial ideas of the lawyers,

which didn't look very optimal to us through to a form of wording a methodology that is compliant with GDPR, but also we think is better than, well, better than what was strictly suggested by the lawyers to start off with.

We should say, I suppose, the overview of this, Mark, is that under GDPR, it's probably not going to be as optimal as it was before in terms of collecting email addresses.

But it's not too far away, the position we've got to in the end.

Mark Dawson: I'm not that worried about it. The more I looked into it, the less worried I am and we also need to caveat this several times in that I am not a practicing lawyer anymore. You've never been a lawyer and so we're not really giving legal advice.

We're giving an opinion here that people hopefully will benefit from and will learn a little from. But if you're worried about it in any way, then you take your own advice and also to go a bit further on that is this is all new stuff, right?

The GDPR springs off existing guidelines around Europe, including something called the BPECR in the UK. There's also case law on that and we will refer to some of that. But the GDPR has not been tested in court.

Some of the things that we're going to be talking about, in particular what consent means, hasn't been tested. So we are speculating on that.

What we've tried to do is to come up with a form of wording and kind of just our opinion that based on what we think is best practice and what the lawyers suggest might well be best practice and also combining that with something that is designed to be as attractive as possible when it comes to getting people to agree to sign up to join your mailing list.

But a lot of this is speculative. So you need to bear that in mind as well.

James Blatch: The bottom line that you can implement what we're talking about here. But we're making it up a little bit based on our best guesses and ultimately, you have to be the operative of your own decision in what you implement.

You might be in breach. You might not be compliant with the GDPR if you follow our advice and so we're going to put that out there at the beginning.

However, obviously, we're thinking about it from our own perspective as well and we hope it's going to be helpful to you.

But you can't sue us if they come after you. That's the bottom line here, right?

Mark Dawson: That's the bottom line. That's the first thing that I was taught in lawyer school.

It's intended to be helpful. But please don't take it as gospel because I've seen lots of webinars and things on this in the author space and also beyond that in the last couple of weeks and there are a lot of people saying, "This is what it means."

If people say that, then just bear anything else that they say with a big pinch of salt because no one really know what it means. We can look at past history, past legislation, past court decisions and try and work from there. But that is a lot of speculation at the moment.

James Blatch: We have a law firm in the UK called Arnold and Porter, who've been the people we've gone to and they've also prepared a document for you, which I'm going to give you the web address for in a moment to follow along with this podcast.

They make that point and we've been exchanging our views with the lawyers right up until a few minutes before we're recording this and this is Wednesday. This is going out on Friday. So it's right up to date and they have made the point continually that there is no case law on the GDPR yet.

Until somebody's taken to court for being in breach and we can then examine what exactly that was about, we're not that well informed at the moment.

And just from a legal point of view, Mark, to people who don't understand the law very well, it's all black and white.

Why isn't it obvious? Case law does shape law, doesn't it? It shapes the way it's implemented.

Mark Dawson: Absolutely. You start with the statutes. But it doesn't take very long before a body of case law will coalesce around the statute where words will be defined.

Lawyers get paid a lot of money to argue the definitions of certain words and in this case, consent is a big word. Freely given is another phrase that we'll touch on. There are mailing lists marketing. There's loads and loads of definitions that we think it's fairly obvious what they mean. But expensive lawyers can make them mean something quite different. So you do need to bear all that in mind.

James Blatch: If you head to selfpublishingformula.com/GDPR, you can download a document that's been prepared for you.

Now this document comes in three parts and there's a caveat at the beginning, which repeats what we've just said in terms of this being opinion based on some legal advice. It's got some links in there at the front.

So the actual legislation and the EU's own site of sort of a more plain English version of the GDPR, which I think is quite helpful. You should definitely have a look at.

But the main parts of it, so part one is what's come from our lawyers and I think it's quite readable. It's quite detailed. But it's a fairly readable explanation of the GDPR from an EU perspective. It's based in the UK because that's where that legal team are based in.

Mark mentioned the PECR. So that is our UK regulator for people who have email lists, etc, to abide by their regulations. You will have your own version in whichever country you're in. You need to find out who they are.

Mark Dawson: Not quite, James.

James Blatch: Not quite. Go ahead.

Mark Dawson: PECR is the Privacy and Electronic Communications Regulations, which are administered I think, by the ICO.

James Blatch: Yes, the ICO is the body and the PECR are the regulation. That's right. But that will be different in the United States.

There's a telecommunications act or something that you need to be aware of that governs you. But from the GDPR point of view, that is the same sort of regulations we're all talking about based out the EU. So that's part one.

Now part two is then when Mark and I look specifically at the type of landing pages that we all like to use, the way that we've been gathering email addresses over time and how that's going to be slightly different in the future based on that advice ahead and that's where you've really got to read what we're talking about and then make your own decision.

Let's talk about risk, Mark, because there is a sort of sliding scale of risk here. There will be some people who will be a bit gung ho about this and think, "Well, I'm small fry. They're never going to be interested in me," and for them, if they sleep easy, fine, not necessarily best practice.

There will be other people who are completely risk averse and won't want to, perhaps, deviate from part one, which comes straight from the lawyers in this PDF.

Mark Dawson: That's very true and yeah, I've already seen plenty of examples of both in the forms I've been analyzing and monitoring this kind of discussion.

There are some people in the States, I've seen, with small lists and they're like, "I'm not changing anything. I don't care if it's in breach. What are they gonna do? They're gonna come and see me?"

Well, no, they probably won't. I don't think the target for this legislation is people like us, authors. It's people buying and selling lots and lots of email addresses without the consent of those people and then spamming them. That's what this is intended to solve.

But saying all that, it is, theoretically possible that they could decide to go after you. You could have one of your subscribers complain and you could get investigated. It is possible.

The fines are reasonably substantial. Again, the odds of the European Union going after an author with 300 subscribers in Texas, it's probably very slim. But theoretically, there is a risk. So you need to bear that in mind.

Authors are going to need to make a commercial decision about this bearing in mind what the law says and what their appetite to risk is. I'm fairly risk averse. James drives without a seatbelt on. He flies aircraft.

Slightly less healthy attitude towards risk. But people have to think about this individually and make their own minds up.

James Blatch: Yeah and part three of the PDF, which you can download is a draft privacy policy. So the privacy policy's been updated by our lawyers to take into account the GDPR.

For SPF I then modified that for authors and sent it back to them to say, "Does this work?" They've had a look at that and they are happy that we have a privacy policy now that is GDPR compliant.

Before we move onto part two of that PDF, which is the bit where Mark and I talk about implementation of GDPR from a sort of nonlegal but officiant perspective, let's hear from the lawyers themselves.

Gemma, who's a lawyer at Arnold and Porter in London and Gemma's been going through the GDPR with an author perspective on our behalf and so let's hear from her about implementation of the GDPR. Then we'll come back and talk about some of the fun stuff.

Gemma, here we are. Thank you so much indeed for joining us. This is, I mean, talk about a hot topic. Amongst the world that we live in, authors who run mailing lists and businesses like ours that run mailing lists, there's every reaction from, "Don't worry about it. It'll all be fine," to people pulling their hair out and about to explode with panic.

So hopefully what we'll do in this interview is bust some of the myths and try and plot away forward for people who run a small business with a mailing list at its heart.

But do you know what I thought we'd start off with because I think whenever new legislation comes in, it's easy to be very negative about it.

Why don't we start with what the purpose of the GDPR is? From what I can see, it's quite consumer orientated, isn't it?

Gemma: It is. I think the first thing to say obviously is that it comes into force on the 25th of May. So it is imminent and as you say, it's been gathering a lot of attention and a lot of concern.

But the idea is that because the existing data protection framework was drafted in the '90s and obviously technology has moved a lot since then, there's a lot more of our lives online than ever before. Data is a commodity in itself. Things have had to change and move forward.

So there are various reasons why the European commission decided to update the framework, the first being sort of the technological changes, which I've just mentioned. But also because the existing framework was a directive, so it was implemented as a directive. But then it had to be nationally implemented in each of the 28 member states.

What you got was a hodgepodge of national laws across the EU, which meant that if you're a business trading in the European Union, you had to comply with a whole host of different EU national laws, which makes it obviously a lot more complex than just complying with the one law.

The idea with regulation is that it applies automatically across the whole the EU. You only need to comply with that one law, a lot simpler.

You mentioned consumer focus. Well, there are increased, strengthened rights for individuals. There was a lot in the press about the right to be forgotten. So that's the right for a data subject, an individual like you or I to request that all their data be erased. Well, unless the data needed to be kept for a particular reason, the data controller would be obliged to delete that information.

James Blatch: Let me interrupt some and ask you. We'll get into some of the practical side of things because I know that's what obviously people listening will be thinking, "Well, what does that actually mean?"

So we'll be charitable and say that this is coming from the EU to make it easier for companies to operate and also to make it easier for individuals not to have their data held by companies if they wish not to.

Gemma: Exactly.

James Blatch: In terms of the changes we would have to make, from somebody who has a mailing list at the moment, let's say an author has 10,000 names on their mailing list of people who are receiving their newsletter every fortnight and they use the mailing list to inform them about their new book coming out and that's an important part of business.

What changes will they have to make to be complaint with the GDPR?

Gemma: When you're collecting names and email addresses, you're processing personal data and processing has a very wide definition under the GDPR, as it did under the existing regime.

Basically, it's all a manner of handling, storing, collecting, using data. So if you are handling data control under the GDPR, we can discuss what that is later.

But if you're a controller and you are processing personal data, so you're collecting email addresses and you're perhaps storing on your database, then if you're caught by the GDPR, then you need to comply with the obligations under that regulation.

In terms of what has actually changed, things like the **definition of consent**. We now have a new definition and that is slightly more stringent than it was in the existing regime.

James Blatch: Should we pause on the consent then for a bit?

There's one big question I want to come to. Perhaps we should do it now at the beginning before we get into some of the, what a landing page opt in will look like in the future and the big question is this is if people have done things, have landing pages at the moment that you as a lawyer would look at and say, "Actually, it needs to be a bit clearer that people are clearly opting into your list."

If they've been using that for the last few years and for some people, it might be 10 years, people that have been building an email list for years, do they now have to email their entire list and ask them to proactively opt in ahead of GDPR?

Gemma: I think we need to break down the various legal aspects that are going on.

So marketing, there are, in the UK, is what is called the Privacy and Electronic Communications Regulations and that sits alongside the data protection framework and it governs direct marketing specifically. So that hasn't changed.

It might change in the future, but at the moment, it hasn't changed and that, since it came into force into 2003 has always required you to obtain consent if you want to send direct marketing via email or fax or SMS.

If you've been running a mailing list for years but you've been asking people to give you email addresses and you've been sending them direct marketing material, then you should have had consent in place and you should have done for a period of time.

What changed under the GDPR is that it's a slightly different framework. A lot of it is actually the same as before.

But where you're relying on consent under the GDPR, there's a slightly new more positive affirmative active that's required on your subscribers, your user's part to sort of tick and say, "Yes, I've opted in to receive this direct marketing."

James Blatch: Okay, I understand that. So I think what you're saying is that if you find yourself ... I mean, we're all getting it.

I got one today from a silversmith who I'm on her list because we did some work for her a few years ago and she's emailed her entire list saying, "Click this because of the GDPR. Click this if you want to say on my list," and I'm thinking two things.

I think the gist of what you're saying is if you're asking somebody, "Do you want to give your consent to be on my list?"

You shouldn't be emailing them. Either you have permission them or don't.

Gemma: Exactly, either you have consent or you don't. I have been receiving numerous emails like you have from organizations big and small saying, "In light of the GDPR, we're asking whether you're still happy to receive," well, "either you're still happy to receive," assuming that they've already got my consent or maybe I didn't consent originally. But now they're asking, "Would you like to receive?"

So they're actually asking for consent and there are a couple of decisions in the UK last year where the ICO, the Information Commissions Officer, who's the regulator in the UK for this type of thing held that those types of emails where you're saying, "Would you like to receive marketing and future ... We're making sure we've got all our checks and balances in place." They found that actually those in and of themselves are marketing communications, even though on the face of it, you wouldn't necessarily

say, "Well, it can't be marketing because there isn't any marketing material on his face."

The ICO was quite clear that unless you have consent to send these or any kind of marketing, you shouldn't even be sending these sort of, what I would term, perhaps more customer service emails.

James Blatch: That was really interesting. You sent me that link from the Honda decision and that was really interesting and I think it's a really good point to make that it's extremely unlikely that that is a good course of action to go down, which is to email your list and ask them to practically click something to stay on it because, as you say, you're almost implicitly admitting that you don't have permission to email them if you're asking them to opt in again.

I suppose some people are thinking, "Well, okay, my list goes back 10 years and 10 years ago, the framework was very different," but if somebody's been on your list for 10 years, they've had every single email with a link at the bottom of it to unsubscribe.

I would think of the balance of probabilities, you're not going to be at massive risk of somebody saying, "You've breached my consent."

Gemma: Yeah. I think, if you've always given the option to unsubscribe and people haven't, then you would say more implicitly consent. But by the strict letter of the law, I suppose you would need an opt in rather than an opt out.

James Blatch: Okay. But we're going to, I think, with our list, we do a bit of list hygiene anyway and this is prompted us to do that.

One of the things we've done is we've looked at people who haven't opened an email for six months and we've emailed them, "Do you want to stay on our list?" Which is a different thing.

We know we've got permission to email them. They're on the list. But we're just asking if they want to stay on it and I think 1,000 people have emailed to say yes, they do and few thousand have just let it go. So they'll go.

But my worry about that is within the few thousand who've gone are people who actually wanted to stay on the list but don't open emails very often by their nature and the danger of emailing your whole list now and asking them to be proactive is you are going to lose people who want to be on your list because not everybody opens every email. So it's a quite risky path to go down. I'm quite pleased we've discussed it and got some clarity on that.

To circle back then, as they say in business speak, you were alluding to a slightly more explicit idea of consent in the future. So on a landing page, let me give you an example and I've given some of these to you in advance.

You might have a landing page that says, "The Last Flight is my forthcoming book. If you want to be the first to hear about it, just drop me an email and I'll let you know when it's available." Now that could be a landing page in itself.

Would that be explicit permission for them, once they put their email address in, to be on my list?

Gemma: So consent under the GDPR has to be, well, several things.

One of them is it has to be freely given. So although they've given you their email address because they want to receive the book, there is possibly an argument which says because the sort of consent to marketing and future is tied to that delivery of that one book, it's not completely freely given.

So there isn't their option to say, "I would love the free book. But I don't necessarily want to be on your mailing list in sort of perpetuity." It probably

would fall on the right line. But it's difficult to say with certainty and if there was a complaint what the ICO or other national regulators would say on it.

The safest option is always to have a tick box separate from what you're offering as your goods and services.

So you say, "Please send your email address if you'd like to receive our free book or podcast," or whatever and then underneath it, you could have a little tick box which says, "We'd love to send you information about things that we think would be of interest to you," books or podcasts or whatever courses. "Tick here if you're happy to receive emails about this," and then if they tick, obviously you've complete certainty that they've opted in to do that.

James Blatch: What about if you make it explicitly clear that the book is in return for joining the email list? So you say, "To receive a free copy of my book, sign up to my newsletter," and you could put, "You can unsubscribe at any time."

Gemma: It's probably fine because you're making clear what you're doing and as long as there's no risk that the individual wasn't aware of what they were signing up to.

It's just looking at your wording and making sure that it covers exactly what you're intending to do and then as long as you give the options to unsubscribe in each email, that's probably fine.

James Blatch: We should underline that. That's obviously current practice and current regulation and no email you send from your list should go without an unsubscribe option at the bottom and if you use Mail Chimp, etc, they all force that on you anyway, which is quite right.

A more general question, Gemma, this is a legislation that's been talked about from far and wide and I think companies that keep more sensitive

data than typically authors would have a slightly more problematic challenge ahead implementing. I mean, you keep financial data and so on on people. In reality, how much risk is there to an author who makes a mistake, even through good faith, whose landing page they don't notice is still out there and it's not explicit that somebody's joining their list?

What sort of danger are they placing themselves in?

Gemma: So under the GDPR or under the direct marketing? Or both?

James Blatch: Both.

Gemma: I suppose it depends how many individuals you're marketing to or how big your mailing list is. If you're talking of hundreds of thousands of people, then that puts you perhaps more on the radar of enforcement agents.

The Honda, the case that I mentioned, they were sending hundreds of thousands of emails.

James Blatch: With authors, we're talking 500 to 20,000 is perhaps is the mid-range.

Gemma: Okay, so it's smaller mailing lists, perhaps slightly less risk. But I mean, under the GDPR, if you were in breach, the fines can be quite significant.

But I think they're generally aimed at large businesses, large organizations, rather than an individual author, such as the people that we're talking about here. But obviously, if you breach the regulation, there's still a risk or fines and enforcement actions, no matter what your size.

James Blatch: And how is this actually enforced, Gemma, because as I say in that example where somebody's done everything they can to comply but

forgotten that there's an old landing page out there somewhere that isn't quite right, isn't sort of got that very crystal clear opt in, there's no intent there to break the law. But they've done it accidentally, I mean, who notices it?

How's it brought to anyone's attention and is there somebody at some point who looks at it and says, "Well, just correct that and you'll be fine. We're not going to have the police at your door."

Gemma: In the UK, it's the ICO that enforces and around Europe, there are other national regulators.

All it takes is one complaint for it to be on the ICO's radar. But just because someone's made a complaint, doesn't necessarily mean that there will be sanctions. They'll obviously look into the issue and give a chance to rectify.

The large fines that you see of the enforcement action are usually where organizations have got it pretty wrong and they want to make an example. So businesses that are sending a lot of spam emails or your cases like the Honda case that I mentioned where actually, Honda believed what they were doing was legitimate. In good faith, they were sending those customer service emails. But I think the ICO in that case wanted to make an example and show that those types of emails weren't acceptable to send.

James Blatch: A couple of points to move onto.

One is a lot of people listening will be based in the US or outside the EU. This obviously does pertain to them if they're emailing people inside the EU.

Gemma: The GDPR, what is quite new about the GDPR as opposed to the existing and soon to be old data protection framework is that even though you have no presence in EU, if you are directing goods and services to people in the EU, you're likely to be caught.

If you're based in the US, but you have a website, let's say where people in the EU can buy goods or services.

It can be a bit of a gray area because it's just a website that just happens to be accessed by somebody in the EU. It doesn't necessarily mean that the entity or individual in the US would be caught. But if, say, they had currency in pounds or in Euros on their website, then it would be more likely that they would be considered to be targeting, offering goods and services to the people in the EU.

James Blatch: Just to clarify with your language here about being caught, what you mean is being caught within the scope of the act.

Gemma: Yeah, sorry. No, not being caught like red handed, but being subject to the regulations.

James Blatch: Okay, so that's interesting, actually, because I do wonder from an author website point of view where you're simply getting people onto your mailing list, keeping them in touch, letting them know that your book's available on Amazon. But you're not selling direct to people.

It's a relationship-building mailing list. It sounds to me like it might even be in a gray area.

If you're based in New York and a third of your list are in the EU, it might be a gray area as to whether you're caught in the scope of the act at all.

Gemma: Possibly. One point to note is that you don't have to be selling goods or offering services for money. They can be free goods or services and I suppose it depends how actively you are trying to obtain details for your mailing list.

If you just happen to have a website and some European Union individuals found, they heard about you and they went onto your website and they wanted to get a free copy of a book, arguably, you'd say, well, you're not actually targeting.

But if the object is that you want a worldwide global mailing list and say you're making it available to individuals in the EU, that's more likely to put it on the side of you'd be caught by the GDPR. But you're right. It is arguably a gray area.

James Blatch: You mentioned the data controller position. I mean, this sounds slightly comical for usually a one-man band author who runs his or her own website from their laptop.

But somebody in the company, i.e., them, has to be designated a data controller in the future.

Gemma: Well, not necessarily in the future. But if your subject to European data protection law, you're either what's called a data controller and that's the individual entity organization who decides why and how personal data is processed.

An author that's deciding that you're going to collect email addresses and names of individuals in the EU to add to your mailing list, they would be a data controller. So you're looking at what they're doing with data and why and that's where you get this term data controller.

On the other side is data processor and they act on data controllers. Sorry if this is really technical. But they act on a data controller's instructions and they just purely process, do the storage or they do the collecting on the behalf of the controller.

A real world example would be an organization outsources its payroll, let's say, to a third party payroll provider. The organization themselves is a data

controller in respect of the employee data that they're collecting because they employ them and they decide why it's being processed. But they're actually outsourcing the day-to-day handling of the data to a third party.

The data process would be the third party and the data controller would be that organization.

James Blatch: Okay. Sort of brings some clarity to it. But basically, you need to be in a position to answer a letter and if you're the only person in the company, actually, this is fairly simple, isn't it? Because it's you.

You are doing all the roles. You're deciding how the data's used. You're also using the data. But I think that there's a specific role sometimes under the GDPR. People have a little bit more rights in terms of their confirmation that they've had their information deleted and also accessed to know what information's being held on them.

Gemma: That's usually what you'd see in a privacy policy. So under the GDPR, you have to make individuals aware of how you're using their data, what data you're collecting, how you're using it, where it's going to be transferred to, if it's gonna be a broad or whatever or to third parties and then letting them know what their rights are under the GDPR, so the right to be forgotten or have your data erased, the fact that you can ask to see a copy of the data that's being processed about you.

You can ask for it to be rectified if it's incorrect. So that's the type of thing that you usually put into a privacy policy or an information notice, which you make available usually on your website or at the point that you're collecting data from individuals in the EU.

James Blatch: Okay and then presume there's an email address as part of that privacy policy. People can contact you.

Gemma: Exactly.

James Blatch: I did give you some examples, didn't I, before this interview of potential author style landing pages with various forms of wording. I've been through a few people's landing pages as we call them to see what language people are using at the moment.

I'm going to give you some of these examples and you're going to give a kind of yah or nay as to whether this is gonna be okay in the slightly more stringent rules going forward.

First one is a big picture of your book and the lines is, "Tell me where to send your free book," with a space underneath for them to enter their email address. We're assuming once they've entered their email address, they go straight onto your mailing list, by the way.

Gemma: Obviously, it's fine to send them the free book. But if you're going to be emailing them with more information about your books or other types of marketing, then you would need opt in consent. **So, no. Arguably, that's not enough.**

James Blatch: Okay. So that's a fail.

Example two, "Tell me where to send your free book," and in brackets underneath, possibly in smaller font, "and I'll keep you up to date with my new releases."

Gemma: Again, it's a bit better. But it would run the risk of falling foul of the regulations, which **require a more positive opt in.** But the good thing about it is you are letting people know what's going to happen and that they will receive some marketing.

James Blatch: I suppose that one does also transgress the free will because what was the expression you used? Because here they are putting their email address in return for a book.

Gemma: Yeah, freely given.

James Blatch: Freely given.

Gemma: So it shouldn't be tied to, well, you'd say the purchase of goods and services. But obviously this is free, but to provision of goods and services.

James Blatch: Okay. As always with the law, is a matter of interpretation and there's kind of a slight nuanced view here.

We are pulling together a PDF handout that's going to go with this and I think what I might do with these is to put these and the opinion that you've given underneath, which is not necessarily, "That's definitely wrong or definitely right," but, "That's not best practice and you could be caught."

So people are just going to have to look at the information we're giving out and make their own best guess.

We're onto example three then, which is, "Tell me where to send your free book. I will also add you to my newsletter list so you'll be the first to hear about new releases." That's similar to the previous one.

Gemma: Well, it's similar to the, yeah, similar to the second. So it has the same issues.

James Blatch: Example four, "Tell me where to send your free book. By entering your email address, you give your consent to be added to my email list."

Gemma: Obviously it has more of the consent language. But again, the issue is that it's all tied up in one package. It's the, "I would like the free

book. But I don't necessarily want to be added to the mailing list and there's no way to separate those as the user."

James Blatch: Because no author wants to give out a free book to somebody who's not going to stay on their mailing list. There literally is no point in that.

Gemma: Of course. No, no, of course. I get that.

James Blatch: And the other thing I'm trying to avoid is any kind of slightly distancing language here. So we always encourage people to write their web pages and their landing pages in good English and friendly English.

Example five, which is the one I like the best, but I think falls under the same category I think you're going to say is, "Tell me where to send your free book and let's stay in touch. [You can opt out at any time]."

Now if I saw that, that would be crystal clear to me that I'm going to get a free book. If I want to opt out after the moment I've got the free book, I can do that.

But I'm going onto their list and probably, if I'm interested in the book, I'm going to stay on the list. I'm arguing already.

As a punter point of view, I think that does the job. But are you going to say it's still a gray area?

Gemma: I mean, I'm going to say it's the same as the first few. But I agree. It's clear what's going to happen with your data and that you can opt out.

As a lawyer, I'm always going to say that best practice is to have a separate tick box. But I appreciate that runs the risk of less people signing up to these types of things.

James Blatch: Yeah and this is a numbers game. The more people on your list, that's how that works, converting factors.

Example six, which is not there, but I guess is the one I should have put there is, "Tell me where to send your free book," and then a tick box underneath to say, "And yes, I would like to join your newsletter."

They're going to put their email address in. If they haven't ticked the box, they just get the book. If they've ticked the box, they also go onto your newsletter.

Gemma: Exactly, yup. That would be the one I would give the gold star to.

James Blatch: That's the two thumbs up from the legal team. But of course, that's the one that I think authors are going to be the most reluctant to do because they don't want to be giving the book out to somebody who's not going to stay on the list. That's not the point of this exercise.

Gemma: I agree. Yeah, I understand totally. It's a numbers game, like you say.

James Blatch: So I'm going to draw you in a little bit here. So if we take the best of those examples, whichever one you preferred. "And let's stay in touch, you can opt out at any time."

If somebody goes ahead with that, what is the risk?

Gemma: The risk is that somebody makes a complaint. The ICO, if it's somebody in the UK, looks at it and says, "It's not enough. You needed to have an opt in rather than an opt out."

That's the risk and worse case, they could find, particularly if it was going out to a lot of people and there are lots of people on the mailing list, then there's a risk that the ICO could say, "Well, you didn't have the valid

consent. Therefore, subsequent emails that you're sending are in breach of the regulations and we're gonna fine you." So obviously, that's worst case scenario.

James Blatch: Okay. It sounds a bit nitty going through these word by word. But I think for authors listening to this, they are starting to get a very good idea of what they need to be doing and there's probably going to be some bright sparks out there, going to come up with some better ways of doing it than I've done it here, which does both that clearly indicates that they're opting in.

I suppose the real difficulty is if you are doing this for a free book, authors are going to be reluctant to have an option for somebody to get the book and not be on a list.

But then having said that, there's still a benefit for them having the book because you do want the book in people's hands. You want it on their Kindles. You want them to read it.

You want them to get to know you and like you and potentially buy books in the future. What you don't want is hordes of free loaders.

Gemma: Of course. So I think if you're not going to go down an active tick box route and that's entirely choice, then I think the language needs to make clear that by signing up, you're agreeing to be added to a list.

But you can opt out when you want, if you want and also to make sure that each email contains an unsubscribe link. So that would be my solution.

If authors are particularly reluctant to have a tick box, then I would say as long as the language makes it clear what you're doing with the data and what they can expect to receive, that would be my advice.

James Blatch: From what you're saying, it does sound to me like I don't imagine the commissioners are going to be very preoccupied with people running a list of 5,000 names.

Post GDPR, every company in the EU and some of them have millions of people on their list, are more likely to be the ones where the attention is.

That's not to say you should be breaking ... absolutely should be trying to comply with it. But probably not going to be a sort of army coming down, walking around, checking everybody, every tin pot little mailing list like ours.

Gemma: I think that's probably right. Everyone's concerned that once the 25th of May comes about, the regulators are going to be on their case, looking at all their practices.

=But realistically, they're not going to be able to do that. They're going to be looking at the huge organizations like your Google, your Facebook and looking at their practices.

They're probably not going to be as concerned with small organizations, one man bands, unless, of course, there is a complaint made and then they would give it their attention.

James Blatch: Yeah. And like all good laws, a lot of this is common sense, right? It's about being very clear with people that they're going to be on your mailing list and being friendly and accessible if they want anything from you and also being quick and efficient if they don't want to be on your mailing list anymore.

I think if you follow those principles, you can't go too far wrong.

Gemma: Definitely. It's what the whole new regime's about. It's about being transparent, being clear, informative, granular with the information

that you're providing and you can't go, like you say, can't go too far wrong if you adopt and follow those principles.

James Blatch: And something we should say, which Mark and I can talk about after the interview, is just to be really careful, particularly with list management.

I put my hands up here. I've been guilty myself on one occasion of inadvertently emailing about 700 people who had opted out just because I put one list in the wrong place and it's easily done when you're dealing with computer lists. It's very easily done.

But you do have to be ever so careful about that because that is the time where you're going to suddenly get potentially 4 or 500 complaints in one go. That presumably is going to raise a flag somewhere.

Gemma: Obviously it is good idea to have, well, or to regularly check your mailing lists and if people have opted out, just delete their data so that it doesn't happen again in the future.

James Blatch: Brilliant, Gemma. Thank you so much. I do want to just revisit the opening area we talked about just briefly at the end again because I've been mulling it over a little bit, which is this practice.

We're seeing a lot of emailing your current list to get them to positively confirm that they're going to be in in the future. So just to sort of reiterate, you've got a main list at the moment and it may have developed from a few years ago with landing pages that did all those things I've just talked about.

But people have sat there and they've had ample opportunity to unsubscribe if they want to.

You don't think there's any need, in fact, you might potentially be in breach, by emailing them and asking them to positively tick a box to say that they're going to be on your list post GDPR.

You'd agree with that.

Gemma: There's definitely a risk if you're emailing and you're not sure that you had consent in the first place that you'd fall out of the regulations just by sending that followup email saying, "Are you happy to continue to receive marketing information and more in future."

So I suppose if you're sure that people have already opted in, then there's no concern. For those where you know that you've not got consent in the first place, emailing them, asking for consent would raise a red flag.

One possible alternative is if you've got telephone numbers is just to phone people up because that's not ... So marketing by email, you need an opt in consent. But for telephone calls, you don't need that.

James Blatch: Wow. That's amazing because that's far more intrusive, getting a phone call.

Gemma: Yeah, well, unless somebody's on the ... they've signed up to the telephone preference of the Do Not Call list, in which case, you shouldn't be phoning them. But yeah, arguably, that is more intrusive.

Nobody wants cold calls from people. But the regulations around emails and SMS messages rather than live phone calls.

James Blatch: Gemma, thank you so much indeed for joining us. We're going to do a PDF to go out to people to give them the guidelines that they need and that will be at selfpublishingformula.com/GDPR. General Data ... What does it stand for? Protection Regulations?

Gemma: Yeah, General Data Protection Regulation.

James Blatch: There you go. Forward slash GDPR. Gemma, from London and Arnold and Porter. Thank you very much indeed.

Gemma: Thank you very much, James.

James Blatch: Okay, so there's Gemma, a paid for lawyer, bona fide lawyer who stuck with her legal career, Mark.

Mark Dawson: Well, what can I say? Good for her.

James Blatch: We may have broken her this week.

That is the legal side of it and that goes hand in hand with the part one of the PDF, which is the advice from lawyers on implementation of the GDPR for authors.

Let's start going through and we want to get through to, I mean, the juicy bit of this really is what working you use to collect email addresses on your landing pages and that's ultimately what we want to get to and that's one of the debates people are having.

Before we get to that though, I just want to address one area, which is I've had in the last 24 hours, two emails, one from my accountant, would you believe, and one from an online shop, retailer that I use.

These emails have said what many, many emails have said that I've heard over recent weeks, which is because of GDPR, you need to give us your consent again to be on our list and my accountants have sent this, which worries me because I really need them to understand law, particularly tax law. From what I can tell, they don't understand the GDPR because one of the things lawyers told us quite early on is that you don't have to do that.

I'm going to caveat it slightly in a moment. But I'm going to raise two cases that have already taken place.

One is Honda in the UK. Now Honda, a Japanese car manufacturer, and Flybe, who are an airline, big organization in the UK. Both of these organizations have been fined because they did exactly that.

They emailed their entire list and they said, "Under GDPR, we have to get your consent to email you. So you're going to have to click this link to stay on our mailing list," and the ICO, looking at the PCR regulations said GDPR changes the test of consent a little bit.

But you always needed consent to email people. You've just emailed people saying you don't have their consent to email them. That's a very serious breach of regulations and they were both fined. Not a lot, 13,000 pounds, I think, about \$17,000 for Honda.

For a company that turns over a couple of billion, that's small fiber. I think they did it early to send a signal to people that you shouldn't routinely be emailing your entire list asking them for fresh consent because you don't need to.

Now I'm going to caveat that by saying this and this is what we're gone through with the lawyers.

First of all, if you know there are people on your list who probably shouldn't be there, you copied and pasted them in from another source, you bought them, which is really ill advised, do not email them.

To email them without consent would land you in trouble, GDPR or not. Delete them off your list. If your list is like Mark's or my list, which is being gathered in conventional terms using even a landing page that's not best practice under GDPR, but basically said, "Get my free book in return for an

email address," and they've been on your email list and you've been giving them an opt out chance with every email that comes to them.

You don't need to get their fresh consent, even though the test for consent is going to be slightly different under GDPR.

Now this is where this gets a little bit complicated and I know, Mark, you don't like this section. But I am going to talk about it because I've been through it with Richard, the lawyer.

One of the things you have to establish and we're going to talk about the steps you need to take under GDPR, is that you have lawful grounds to email people. So you can't just send emails to strangers without having lawful grounds and the most obvious one is consent.

We're going to teach you under GDPR how you can establish consent, good establishment of consent. There is, however, another lawful ground. There are about five that it specifies in GDPR and one of them is marketing as a legitimate business interest.

If you have a legitimate business interest to email people, that is a lawful ground for sending them an email, even if you don't have consent. Now the reason that's there is that airlines, for instance, might want to email people who've opted out of their list to say, "Your flight's canceled."

That would count as a legitimate business interest. It specifically specifies that marketing counts as a legitimate business interest. As a bare minimum, for people who are ordinarily on your list who've come through fairly transparently in that are a part and parcel of your list and happy to receive emails and haven't opted out, you can claim lawful grounds for emailing them as a legitimate business interest and that is marketing.

Now in the future, you're going to use consent because we're going to clarify how you can be sure that you've got consent.

That's the long and short of why you do not need to email your current list and ask them to opt in again and I really would advise against doing that.

You're going to lose. I'll be fascinated to know what my accountants do because I'm not going to reply to that email. 50% if they're lucky might reply to that email and stay on their list.

So then they're left with half their client saying they don't want emails from them and where they're going to go with that, I don't know. So don't do it. You're going to lose a lot of your emails. So I've got that bit out of the way.

How did that sound to you?

Mark Dawson: Well, I don't agree with a lot of it. So this is how it's going to be. This is still early days. I haven't studied that bit in enough detail myself. So you may be ahead of me on that.

James Blatch: I did send you the relevant law this morning.

Mark Dawson: I know. You need to be bearing all this in mind. It's constantly evolving. A lot of that sounds counterintuitive to me. So we're going to have different opinions in a lot of this content and all authors are having different opinions on it.

What we're trying to do is to plot a course through it that is as straightforward and noncontroversial as possible.

James Blatch: Okay, but just to underline that what I've just explained is in the legal part, the middle part from the lawyers on the PDF. It does spell that out about legitimate interests pursued by the business organization. So you can get that in black and white there.

Let's move onto the more friendly bit of the PDF you're going to get, part two, what you need to do and are [non-legal] for you on being compliant [but efficient].

Before we get onto the landing page and that form of words, which is the meat, there's a couple of things to say that you should do beforehand.

First of all, you need to understand that you are a data controller. So you got a new title, a new arrow to your quiver. That's right, isn't it? To your bow.

Data control, basically, anybody who processes data, who sends emails, who moves the data about is a data controller. If you're a bigger organization, you need to appoint a data protection officer and there's a test for that on your local organization that regulates this stuff in your country.

They all have the guidelines for whether you need to appoint a DPO. It's extremely unlikely, from what I've seen, that anybody in the office space is going to be big enough to have to register and appoint a data protection officer.

But you are a data controller as defined by law if you manipulate data and the reason that's important is because under the GDPR, there's an increased right of your members, your subscribers, contacting you to find out what information you hold on them and where you've passed it and as data control, it's your job to be able to access that and pass it onto them. So that's something you've got to do.

Now one thing's recommended under GDPR and it's really strongly recommended, it won't take you very long, is to carry out what's called a data audit and data audit is simply a list of what data you hold on individuals, a note of where it came from, so for instance, a list of the URLs

or the landing pages that you use, a list of who you share it with and what you use it for. Now who do you share it with?

A lot of people don't share their data very obviously with anybody. Sometimes, they link it to their account's platform, like zero.com or something else like that. I'm trying to think of another example. We don't, as it happens.

But if you do, you need to make that clear. You will probably occasionally upload your mailing list to something like Google Ad Words or Facebook to create a look alike list or a custom audience or to target people on your list. That is sharing your data.

So you need to make a note that that's who you share it with and that is covered in the privacy policy. You're right to do that and explain that that's going to happen.

If you keep that up to date, so if you create new landing pages or a new way of gathering emails and sometimes, people might have handed you a bit of paper at a conference with their email address on it. So that's legitimate, by the way.

Verbal consent is legitimate. But you do need to make a note of where all of that came from.

Now that data audit allows you, for instance, to establish the legal grounds, the lawful grounds to use the wording in the law of why you are legally able to send emails to your list.

First of all, you can use consent if people have very clearly consented to be on your list. You might have a double opt in, for instance, in which case, that's really straightforward for you.

But it might be that if people came through what probably not a GDPR compliant landing page in the past that marketing is the legitimate interest, business interest that you are relying on as legal, lawful grounds for emailing. You can only really do that if you've got your data audit.

There are, if you Google online, you'll find some data audits pro formas to help you make a note of that. But you could just do it in a spreadsheet. At our level, that's all they're expecting. You just need to know where it is and be able to access that information.

What you've done so far, you've understood that you're the data controller and you've done a data audit as you made a note of where all your data comes from, your contacts come from and what you do with them and who you share it with. So what you've done is you thought carefully about where your subscribers have come from and if, as a result of that process, you think, "Do you know what? I don't really have consent to email those people," don't email them to ask them for consent because that would be in breach.

Delete them off your list and you just have to live with that.

Let's move onto the subject of consent. Now you heard in the interview with Gemma that they basically have favored a tick box method. In the past, a good landing page, that, one that Mark's been teaching for you to use to gather subscriptions would simply say, "Get my exciting free book. Just tell me where to send it," and that would more or less be it and there would be a submission box for an email.

You might have a link to a privacy policy in small letters at the bottom. But you would take the email in and then you'd send the book as basically email 1 out of them joining your list. There'd then be an onboarding sequence where they'd get a series of emails welcoming them to the list.

Now under GDPR, that is problematic and do you know what, Mark? Probably as time moves on and our inbox gets more and more crowded, that's not a bad thing that we clear this little area up because in some cases, you could argue you slightly hoodwinked people into joining your list without explicitly saying they're going to join the list.

Mark Dawson: Well, I disagree with that and, again, this is not going to be unusual. I think there is implicitly that there is consent provided.

Also, bear in mind holistically how that process looks. So you come to a landing page. You see the offer. You enter your email address. **The first thing that you get isn't the book. It's a double opt in.**

I've actually gone through this and looked at it quite carefully the last couple of weeks and the first email is, "Would you like to be on the mailing list?"

Mail Chimp offers this and they all do, really, the opportunity to put a little message in that double opt in and that's where I have been and I would recommend authors continue include information about what they will be getting into.

So of course, if they don't click that double opt in, they won't join the list. So they haven't. That's where they give consent. They're not giving consent by putting their email address on the front page of a website. **They're actually giving consent at the moment they click to be added to your mailing list.**

It's at that point that they need to know what is involved and what the deal is from their perspective. They're giving their email address to get a free book and then as we go into, later on, to also to join a community, to get emails and discounts and promotions and all that kind of stuff.

James Blatch: To play devil's advocate on that, your double opt in email does that and then when do they get the book delivered? Is that part of that same email?

Mark Dawson: No, that's the next email.

James Blatch: Is that a bit dodgy because they've consented to receive the free book, not an email asking whether you want to join the list. I mean, I think that's the lawyer's position.

Mark Dawson: No, they see at the front page. They enter their email address. Mail Chimp sends them the double opt in.

Now in that double opt in, so they haven't joined the list at this point. Their consent hasn't been given. The deal is spelt out.

So it is, "Would you like to get a free book? Would you like to get updates on new books and that kind of stuff."

At that point, they know what they're signing up for and then the first things that they get after that is one of those things. It's the free book. So I'm comfortable about that.

What I wouldn't be comfortable about is if you had on the front page the sign up and then there is no double opt in. So they sign up and they think it's a free book that they're getting and they join the list and that's immediately what they receive. They may not know they're joining a mailing list.

James Blatch: I think that's useful discussion and for people hearing you say that, particularly if they're open to taking a slightly different tack.

Going back to the legal advice and how we then come up with something that's gone back to lawyers and they've eventually said, "Yes. That's okay." Let's go through that first.

So the first tack for the lawyer, and you heard Gemma saying it in the interview is they prefer a tick box that's a separate opt in to your list and the reason they prefer that is because they like the separation of the free book and the opt in to the list and the reason they like that is one of the tests, which Mark alluded to earlier is that people should be transparent in joining your list and their consent should be freely given, i.e., and one of the examples they give is it shouldn't be tied to a higher rate of service.

They give an example in some of the EU language of a television company, like PBS or BBC, where you can join their mailing list and if you join their mailing list, you get access to premium content and if you opt out of mailing list, you don't.

They say that is not freely giving consent because it's tying it to something. So that put the lawyers in a bit of a spin in terms of giving away this free book because they thought, "Well, you're basically tying in getting the free book into joining the mailing list." So they prefer the tick box method.

We didn't like the tick box method for a couple of reasons. It's an extra step and we're percentage people, right? Every extra step means you get a drop off of people joining your list and this is a numbers game. We want more people joining our list.

However, obviously, we want to be compliant with the GDPR. But there was something interesting and you'll notice it in the middle of the legal document is that the very first example that Gemma has written for us doesn't actually include a tick box.

It says, "Sign up for your free eBooks, videos, and community," and then a space for the email address to go in and then the next one, which is the one

she was expecting us to use with a free book giveaway is, "Sign up to receive your free copy of X book," and then underneath, "We would love to keep you in touch with news, videos, communities, podcasts, blah, blah, blah. Tick here if you'd like to receive emails from us," a very clear, set put explicit opt in.

But of course, a chance for people just to take the free book and not join your list, which, by the way, is not necessarily the end of the world because they have got your book and if you got chances to join your list at the beginning and end of it, it's not without value. But it's not ideal.

But we really liked the first one and started to think about a way of using that particularly with an advert being slightly separate from the landing page, the point at which they put their email address in.

So I started coming up with examples and this has gone backwards and forwards and this is where we've got to now and as of this morning, the lawyer seems happy with this version. So this would be a version we think would work under GDPR.

First of all, your advert would be not that much changed. So for an advert leading to a landing could, say, an explosive thriller cover or billionaire romance cover. "Get your free copy. Click here."

They're not actually joining a list at that point. They're going through to a landing page. So it's just an advert drawing to a landing page. The landing page is where the consent wording really matters. So the advert can stay more or less the same, offering a free book.

The landing page would say this. You can have a big picture of the book then the wording would be, "Sign up to my newsletter for free books, updates, book release details and more. Email submission form," and then underneath that, a little reminder that they can opt out at any time and the link to your privacy policy.

Now that's the point at which we've got to with the lawyers and I had to explain because obviously lawyers deal with lots of different companies and aren't necessarily familiar with the way authors operate. So it's taken a little while for them to understand what we're trying to do and they think that is fine.

As long as you are wrapping up getting the free book as part and parcel of what being on the mailing list and I think that's entirely reasonable, by the way because ultimately, what's the difference between a well crafted newsletter and a book? You could argue one's a product with value. But you put time and effort into a newsletter.

You're basically saying this is what you get for being on my mailing list. When they get your free book, it's part and parcel of that and that's the rather clever way of being GDPR compliant without having to use a separate tick box.

What do you think of that, Mr. Dawson?

Mark Dawson: I'm slightly more gung ho about that than the other. They're going to be cautious because lawyers can be sued by clients who they get poor advice from. So they're going to be very careful about it.

But I think the bit I'm concerned is I think the main thing is you need to be transparent. The mischief we're trying to avoid here is, "I offer you a free book and then without telling you, you join my mailing list."

You've accepted the free book. You haven't accepted that you're going to be on my mailing list. So the way around that is to be very transparent and use that kind of wording to say, "I'll give you a free book and you'll join my mailing list. Just leave your email address and then I'll add you to it."

They know everything that they need to know at that point. They can make a decision upon whether they want to give you their email address in return for those things, the book and being on the list.

That to me, I think that would be enough to avoid the problems that the regulations are trying to tackle. When we start to get into tick boxes and things, for me, that's lawyers being careful.

I don't feel the need to be that careful. Come back to me in six months and I might feel different. But right now, I'd be comfortable with that kind of wording.

James Blatch: Yeah and again, to underline, I hope you appreciate the openness that we're having with this is discussion and Mark is being open about what he thinks might or might not work.

This is ultimately your decision and if you think, "Oh, yeah, Mark's doing that. I'm going to do that," it's got to be your decision because you both might not be in compliance with the GDPR as a result of that.

Do make your own mind up. We're giving you all the information we can.

Let's just talk about lead generation ads, where your email goes directly from the ad into your list rather than via a landing page.

Now Mark, you deal with lead generation ads much more than me. I know Facebook are working on this.

Mark Dawson: Facebook is catching up with this as well.

A lead generation ad, for those who haven't run one, is one that appears on something like Facebook and it gives you the option. You offer a free book, for example. You give someone the chance to sign up for it just by tapping a couple of times. So just a tap and the email address is automatically

transferred either directly from Facebook to something like Mail Chimp or via Zappier to something like Aweber.

James Blatch: What does it say at that point?

Mark Dawson: Well, that's what I'm getting to. On that form, you can write whatever you want. You can customize this however you want.

If you want to be really, really safe, I would say on your ad itself, you need to use that kind of wording. So, "To get your free book and to join the community," and all the other things we said, you could put that on the ad.

At that point, people know what the deal is. The alternative is to amend the lead form itself. So the thing that pops up when someone taps on the ad, they want to learn more, there are places where you can include things like descriptions of your privacy policy. You can have a link to your privacy policy.

Basically, you can amend the small print and you can also amend the bigger print as well. There are bits where you can set amount of 200, 250 characters where you can describe what the offer is.

Again, there, I would say that is the kind of place that you need to also be working on being transparent upon what your offer is.

For us, for SPF, we run lots of lead gen ads. At the moment, we're giving away an updated video on, very meta, how to run Facebook lead gen ads. One of the things that we will be amending on those forms is that we'll make it very, very obvious that in addition to being emailed with the links to those videos, you'll also join the SPF mailing list.

If at that point people don't want to ... that that's not a deal that's attractive to them, they don't need to hit the button to accept it and they would never join the list. So there's a little tiny bit of housekeeping that we need to do

and the same thing, the same principles apply to authors as well running those ads.

James Blatch: I think at the beginning of this PDF, our bit, I set out four bullet points, which is consent under GDPR and I think this is more important than almost anything else.

Any other detail is understanding the spirit of the GDPR and these four bullet points, just to sum up, in terms of the consent side of things is this.

One, subscribers should be clear that they're joining your list if they pass their email address to you.

Two, your list should only receive emails from you.

Three, subscribers should be able to see your privacy policy easily.

Four, subscribers should be able to unsubscribe easily and best practice is this should be brought to their attention particularly at the time of them signing up, but also at the bottom of every email.

If you follow the spirit of that, if you look, if you bear that in mind and look at your landing page wording and it doesn't really fit, then you might not be in compliance.

Mark Dawson: I can sum that up.

James Blatch: Go ahead.

Mark Dawson: Four words. Don't be a dick.

That is basically what it comes down to and it's something that applies to not just GDPR, but lots and lots of different ways and the way that we run our businesses. Just don't be a dick.

Don't add people to your mailing list when they didn't ask to be added. Don't buy lists. Don't cut and paste from other people's list. Don't do things that you know, if you think about it, are wrong.

This is not rocket science. Things are really complicated at the moment and even James and I are having differences of opinion here. It's completely normal because no one ... I don't agree with a lot of the legal advice. That's fine. That's completely understandable.

This is new stuff. But the touchstone that you need to come back to and this should illustrate everything that you do is just don't be a dick.

James Blatch: Absolutely.

Mark Dawson: Mark says don't be a dick.

James Blatch: We might get the explicit tag. Yeah. There you go. Let's just finally sum up. Not sum up, let's finish with the privacy policy.

This is pretty straightforward. So we've created a privacy policy. We've had one for a while. We had it amended for GDPR and then we had it amended again as a sort of template for an author website.

This is the sort of thing that you can start with, have a look, see if it fits you. The only thing I'd draw your attention to is there's a few GDPR specific things in there and then there's a section making it clear that you have the ability, the right to share data with audience creation on social media platforms, so, for instance, Facebook and Google.

Now the way that's worded at the moment, I'm not 100% with that because I think if I read that as a punter, I would think, "Oh, right. So you're going to give my email address to Facebook and Google," and although you are

giving your email address to Facebook and Google, of course, they're ever going to email you.

They're using it to generate an audience and using it to target some ads. It's not 100% clear. But that is the legally tested paragraph.

It might be that we have a little play with that, Mark.

Mark Dawson: It's also much more complicated and then what Facebook actually does with that information, they generate something called hash data, which is way beyond the scope of this podcast. This is way beyond really what I understand. So yeah, we can tweak that a little bit.

James Blatch: But they become the data controllers at that point when you upload a list to them. So they are going to be responsible for that.

And by the way, Facebook and Google are the people the GDPR are going to be very interested in rather than you and me mostly likely.

Okay. I think we've got to the end of it. You and I just need to do some finishing touches to this document and make sure that we are completely happy with it and it goes out.

I'm going to repeat that caveat that we said at the beginning, which is ultimately, this is your decision, depending on what sort of risk level that you want to take.

We've helpfully put some legal advice that's quite safe in the document and we've hopefully had a discussion in this podcast and within the document in part two of interpretations that you might want to go down. But your decision.

Mark Dawson: This is not legal advice.

James Blatch: This is not legal advice.

Mark Dawson: This is intended to give you some information to start to think about. But we are not advising you legally.

James Blatch: There are quite a few people online who are advisers rather than lawyers. They do have to be aware whose advice you're listening to.

There's nothing to be massively scared of with this. I quite like a lot of the changes. I think it's fair to consumers that they understand that there's transparency and if we have fewer dicks around, as you say, Mark, in this space, and there aren't many anyway, then that's probably gonna be a good thing. So all hail the GDPR.

Mark Dawson: Now this is a very meta. You can get your handout by ... Have you got a URL yet, James?

James Blatch: We do. We do. It is.

Mark Dawson: What is it?

James Blatch: [Selfpublishingformula.com/GDPR](https://selfpublishingformula.com/GDPR).

Mark Dawson: So now let's put it into practice. If you want to get that document and the privacy policy, you need to visit that URL, put in your email address, but also bear in mind that you will be joining a mailing list if you do that.

So we will give the document. But you will join the mailing list. You'll get our weekly Friday podcast reminders. You'll get information about the courses when we open them and all that kind of good stuff. But you will be joining a mailing list. So you need to think about that and that's what you'll be consenting to.

James Blatch: The wording on that landing page is going to be scrutinized. I haven't written it yet. But I've got 48 hours to get that wording right. And then we need to go back through all other landing pages, which is my fun job before May 25, which is implementation day of the GDPR.

Okay, good. That's it. Don't have nightmares.

Thank you, Mark. I think we got through it and I hope you find that useful. We've had quite a lot of questions, a lot of questions in the group and instead of taking those questions one by one, we have structured this discussion and this document around those questions, those key points.

Hopefully, we've addressed everything that people have asked for and if we haven't addressed it, it's probably because we can't at this stage.

We'll have an update over time. We'll keep an eye on those test cases. But we've given you all the main pointers today and hopefully, that enough to get you going.

Thank you very much indeed for listening and bearing with us through this special edition of the podcast and it's been a long one, but an important one for us to get this bit right so we can focus on the good stuff, getting books written and getting books sold. Mark, thank you.

Mark Dawson: Bye, James. I'm gonna go put bullets in my head.

James Blatch: Next week, it's all about how to deal with bad reviews and we're back at the London Book Fair for that. So that's a good one to feel good about. See you later.

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