



Do Not Call Register Discussion Paper Submissions
Department of Communications, Information Technology and the Arts
GPO Box 2154
Canberra ACT 2601
Via email: donotcall@dcita.gov.au

November 2005

**Re: Introduction of a Do Not Call Register Possible Australian model
Discussion Paper**

Thank you for the opportunity to comment on the above discussion paper.

The Consumers' Telecommunications Network (CTN) is a national peak body of consumer and community organisations, and of individuals representing community interests, who participate in developing national telecommunications policy. CTN advocates policies for better access, quality of service and affordability of telecommunications facilities for all residential consumers.

CTN's members are national and state organisations representing consumers from non-English speaking backgrounds, deaf consumers, indigenous people, low income consumers, people with disabilities, young people including children, pensioners and superannuants, rural and remote consumers, women and consumers in general.

Overview

CTN strongly supports the establishment of a regulated solution to telemarketing. Whilst the Discussion Paper is framed around a Do-No-Call register, we believe a consent-based approach is a superior solution. The regulation of telemarketing is a long overdue protection for Australian consumers, because it is often a significant nuisance to individuals, in addition to harming business productivity. The wants of the individual must be given the highest priority in seeking a regulated balance between the right to privacy and the right of a telemarketer to conduct its business.

We believe that the same consumer protection principles of the recent spam legislation should underpin the regulation of direct marketing approaches via telecommunications (including facsimile). Accordingly, numbers should be automatically protected from telemarketers, with the individual consumer having the choice to opt-in to be telemarketed on a case-by-case basis. That is, consumers should only receive approaches from telemarketers when they have explicitly consented to receiving those approaches.

There are a number of other important decisions to be made concerning registration, types of calls covered, administration, funding and so on. This submission aims to inform these decisions from a consumer point of view. Above all, DCITA must aim to provide choice and improvements to the Australian public's experience with telemarketing. If the telemarketing industry in Australia is to sustain itself, the industry must be regulated to ensure that consumer privacy is no longer abused and their consent to being telemarketed is explicitly obtained.

Plan A: A Consent Based Approach

Accomplishing a meaningful level of consumer protection is not possible through self-regulation, as we have seen through the inability of the Australian Direct Marketing Association (ADMA) Do-Not-Contact register scheme to curb the problem of unwanted telemarketing. The failings of the ADMA scheme are well known, but we point particularly to the limitations of scope (only ADMA members), the lack of penalties for breaching the Code, and the lack of an underlying consumer protection framework. As we see unwanted telemarketing approaches reach pandemic proportions, it is clear that a more rigorous regulatory solution to the problem is necessary.

CTN sees no reason for telemarketing to be handled in a fundamentally different way to spam, or for the solution to exist in a different piece of legislation. Like spam, unwanted telemarketing has the capacity to significantly obstruct legitimate business activity and impose costs on users. We are in favour of facsimile telemarketing to be addressed by either revised spam legislation or a general protection from telemarketing scheme, however it may develop. Years of spam faxes have seriously eroded consumer confidence in this medium of telemarketing, and we note that recently the ACCC resorted to warning customers about the particular problem of fax-back scams on its website.

The basic premise of any new regulation must clearly establish the primacy of individual's right to privacy over the commercial desire of marketers to contact whoever they wish without prior consent. Express consent to be telemarketed must be given by the consumer to the organisation who contacts them. This gives the customer the maximum flexibility to opt-in to be contacted by organisations of their choice, rather than all and sundry. It is also highly improbable that consumers would agree to sign up to a central list that functions as a "Consent to be Telemarketed" register. The ability to be able to consent on a case-by-case basis is thus imperative to creating a workable solution.

An opt-in approach to being telemarketed should lead to an improvement in marketing practices and the relationship between consumers and companies. Telemarketers would be calling people who actually want to hear from them, and prevent the unnecessary waste of resources and people's time. This is an outcome desirable for all involved.

Plan B: A Do-Not-Call Scheme

We understand that the Do-Not-Call approach may be preferable from an industry perspective. Whilst we think it is more complex, less consumer protection oriented, more prone to exploitation from dual purpose activities, and a generally more confusing option, we offer the following comments to inform DCITA's thinking should this option be considered functional.

Registration

All individuals and businesses should be eligible to register numbers for a Do-Not-Call register – including landline, mobile phone numbers, and fax numbers. New Australian Voice over Internet Protocol (VoIP) numbers should also be eligible for registration. Silent numbers, whose preference for privacy is implicit (and also a feature consumers pay to have), should be automatically protected regardless of the model the Register takes. Disconnected numbers that are quarantined from use within 6 months between usage should be automatically removed from the protection list.

Considering that many individuals and businesses have multiple telecommunications services, there should be no limit on how many numbers can be registered. Likewise, there should be no time limit set on the period numbers remain on a Do-Not-Call Register. A period of no more than 30 days from the time a number is registered to the time it becomes active on a Do-Not-Call Register would be acceptable.

CTN supports individuals being able to register numbers on behalf of others. This is especially relevant in the case of minors and those who require authorised representation on their behalf. Calling from the number in question may be one approach. It is imperative that the process of registering to receive marketing contacts has integrity, else it should be open to abuse and thus weaken its effectiveness as a consumer protection tool.

There are additional issues to consider regarding registration that are not covered in the Discussion Paper. Registration must be accessible to the entire Australian community by telephone call, online and by written request. Telephone registration should be Telephone Typewriter (TTY) accessible. Online registration must take into account the needs and circumstances of rural and remote Australians and people with disabilities, specifically the use of low-bandwidth connections, adaptive technology, including screen readers for people with visual impairments, mouse-less navigation, and alternative browsers.

Particular attention needs to be paid to the personal information consumers will provide to be placed on the Register, including the extent of documentation needed to prove ownership of a number and the privacy of information provided. Registration calls originating from the number applying to be registered should be adequate proof of line ownership. For online and written registration, provision of an e-mail and/or postal address should suffice. In regards to privacy, all personal

information should be kept separately from phone numbers and should not be accessible to telemarketers.

Confirmation of registration also needs to be considered. A toll-free phone number should be provided to allow individuals and businesses to confirm their registration by phone. An e-mail confirmation should be automatically sent through the online registration process, with registration only becoming active once the e-mail confirmation is replied to.

Coverage/types of calls prohibited

To maintain public confidence in a Do-Not-Call Register, it will be an important to communicate to the public that inclusion on the list may not block *all* telemarketing calls to any particular number, for whatever reason. This will be a significant public education point.

This pertains directly to offshore initiated calls. These calls should be regulated if they can be traced back to a business operating in Australia. Australian companies outsourcing telemarketing operations overseas must be accountable for their practices. In the case that overseas calls cannot be connected to Australian businesses, Memorandums of Understanding (MOUs) should be sought with other countries regarding telemarketing calls to Australia. In the short term this ambition could prove onerous, but as the concept of a Do Not Call Register is adopted by more countries, there may be less obstacles to overcome.

Both automated and predictive dialling calls should be prohibited to numbers on the Register. Recorded message calls should likewise be prohibited unless they are of urgent public interest, such as announcements by the Emergency Services.

Dual-purpose calls should be prohibited, because individuals and businesses on the Register should be automatically protected from any telemarketing call involving a sales agenda.

Exemptions

To maintain the effectiveness of a Do-Not-Call Register we believe exemptions for individuals or organisations should be extremely limited, guided in this determination by individual and public interest. This is another reason why a consent-based approach is more attractive.

CTN supports exemptions for individuals or companies with which a person has an existing business relationship. However, the term existing business relationship should be defined as one in which an individual or company purchased goods or services from a company or made inquires regarding goods or services in the period within 12 months of a call. Marketing contact would only be legitimate if it directly related to goods or services offered by that company only (not, for example, a separate division within the same company as well). However, consumers should have the right to immediately unsubscribe from a company's lists verbally or in writing. Companies would then have 30 days to amend their databases. In this instances there would be a responsibility of

consumers and telemarketers to maintain their own records of these requests.

We do not support exemptions for affiliates or subsidiaries of companies one has an existing business relationship with. The connection between consumer and company needs to be direct and recent.

CTN does not support wholesale exemptions for charities. Though we recognise the important contribution they make to the Australian public, telemarketing calls from charities cause the same nuisances and disruptions as other telemarketing calls. However, we do support exemptions for charitable organisations if they have an existing relationship with individuals or businesses, as defined above, or have obtained consent for a telemarketing call through other means.

Likewise, CTN does not support exemptions for religious organisations, education institutions or registered political parties and candidates. The exception to this blanket rule would be in the instance that these groups have an existing business relationship with the call recipient. We also do not support exemptions for government bodies, except in the case of emergencies and other matters crucial to public safety. For example, government agencies contacting individuals and companies by phone in the lead-up or aftermath of a natural disaster should be exempt from the Register and, as mentioned, restrictions on the use of recorded messages.

Allowing exemptions for social research is a complex matter. We do not support exemptions for individuals or companies whose research calls either mask a sales agenda or lead to subsequent sales calls. We do, however, recognise the broad public value of legitimate social research initiatives. Further investigation of how to delineate between these two types of research calls is needed before we fully support a position on this matter. We note that the Association of Market and Social Research Organisations (AMSRO) may provide a means/framework through which research calls or organisations can be regulated on a case-by-case basis. Likewise, we also recognise the value of research companies having to gain consent from participants before making a call to them. The Department should undertake a more rigorous exploration of this issue.

Administration

The Australian Communications and Media Authority (ACMA) seems the obvious choice to manage a Register, whatever form it takes. However, CTN is not averse to operation of the Register being awarded after a tender process to an external organisation, provided that security issues are addressed and there is no conflict of interest. In this instance, effective monitoring must be undertaken by ACMA, especially in the areas of privacy of information, database maintenance (assuring data is as up to date as possible), registration and removal from the Register, and a functional complaint handling process. ACMA should maintain responsibility for public awareness of the Registry and ensure that its outsourcing doesn't create significant costs to Government and hence, the Australian public.

We strongly suggest ACMA be the sole body responsible for enforcement of the legislation relating to a register. To best support the effectiveness of the

Register, penalties for breaches should attract harsh financial penalties, much like those of SPAM legislation. For this to occur, the process through which registered individuals or businesses lodge complaints regarding telemarketing practices needs to be effectively dealt with, including timely investigations.

If ACMA directly takes both the administrative and enforcement roles, complaints regarding its performance, either by consumers or telemarketing businesses, should be directed to a third party such as the Telecommunications Industry Ombudsman (TIO).

Fees and Funding

CTN's main concern regarding the funding of a Register is that no financial burden be borne by Australian individuals. There should be no fees paid to be included on the Register, and the Government (therefore Australian taxpayers), should not significantly fund the Register's administration. For an initial period of one to two years, it may be expected for the Government to absorb some expense.

The fee structure for telemarketers' access to the list is another complex issue. A balance needs to be struck between a system that makes the Register a self-funded entity and a system that doesn't discourage telemarketers from keeping their calling lists up to date. We wish to make the point that profit should not be a major ambition in developing the fee structure. Apart from any outsourced administration, government bodies should not financially benefit unduly from the introduction of a Register.

General Telemarketing Issues

We support the establishment of a national telemarketing standard. This standard should include an unwelcome calls clause that stipulates telemarketing can only occur between 9AM and 5PM Monday through Saturday, with no telemarketing calls allowed at all for Sundays and public holidays. We also advocate a clause for disclosure of information. Telemarketing agents, at the outset of any call, should identify themselves, the organisation they represent, the location from where the call is originating and then inform the recipient that the call is a telemarketing call.

Furthermore, telemarketing calls should be terminated immediately at the request of those being approached. Similarly, individuals and businesses must have the right to request removal from the caller's telemarketing list. In this instance the individual should record the organisation's name, the date and time of the call and the representative they spoke to. If the individual or business continues to receive calls from the same telemarketing company, they should lodge a complaint with the Register.

Conclusion

We are pleased that the government is taking positive action to address the problem of unwanted telemarketing, and support fully the development of a consent based system that enables consumers to control who contacts them for

telemarketing purposes. The approach we advocate is clearly superior in terms of basic principles, ease of implementation and lack of complexity, compared to a Do-Not-Call register. A consent-based model enables the individual consumer to make choices based on informed consent, and achieves a better balance between the right to privacy and the right of sales people to conduct their business.

We hope these comments are of use to you. Should you wish to discuss this response in more detail please contact myself, Ryan Sengara or Sarah Wilson at Consumers' Telecommunications Network on 02 9572 6007 or at ctn@ctn.org.au.

Yours sincerely,

A handwritten signature in black ink that reads "Teresa Corbin". The signature is written in a cursive style with a long horizontal flourish underneath the name.

Teresa Corbin
CTN Executive Director

This submission was prepared by Teresa Corbin, CTN Executive Director, Ryan Sengara, CTN Project Officer, and Sarah Wilson, CTN Policy Officer. It has been approved out of session by the CTN Council.