

Misplaced marketing Do-not-call as the US Government's improvement to telemarketing efficiency

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Abstract

Under what might be one of the most well-known new consumer protection activities in the USA, people can register their phone numbers with the "Do-not-call" registry that assures to block most commercial telemarketing calls. While it is hard to find a member of the general public who is opposed to the program, the telemarketing companies claim that it would cause a massive loss of jobs and some legal scholars assert that it violates provisions of the US Constitution. However, the regulation could actually improve telemarketing practice and the general efficiency of the business, making it more profitable.

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By the time this issue of *Journal of Consumer Marketing* is published, it will have been more than a year since US regulatory agencies made a national "Do-not-call" registry available to the American public. Without any doubt, the new regulations were extremely popular from the outset. The first million people registered by early in the second day that the program was in operation, over ten million had signed up by the first weekend and over 30 million were listed by the first deadline for companies to start obeying the new rules.

As with any new regulation, the impacted businesses were claiming that there would be doom for the industry caused by skyrocketing costs and they predicted harm to the general economy from large numbers of lost jobs. Some companies quickly brought legal actions claiming that the new regulations violated the US Constitution (e.g. Hoefges, 2004), and at the time of this writing, at least one lower court agreed with their arguments, closely following the prescient legal logic of Galloway and Brown (2004) which was written and accepted for publication but not printed prior to the first court decision.

It is puzzling to some people that the impacted businesses are complaining at all. The Direct Marketing Association (DMA) has had a voluntary do-not-call registry for its members since 1985, meaning that the new regulations codified and publicized what the business itself had been doing for many years. In addition, even before the new regulations were first considered, similar laws existed in many individual states. Subsuming the numerous rules in different jurisdictions, the federal law makes it easier for interstate companies to comply with the now consistent guidelines.

Yet, self-regulation activities are voluntary, with no pressure to conform nor penalties for non-compliance. Many telemarketing companies did not follow the DMA guidelines. Unlike the new federal regulatory program, the trade association's list was not publicized and virtually unknown, possibly existing like many self-regulatory efforts in other areas of marketing practice, to enable businesses to claim they are serving public concerns but knowing that many companies would ignore it (Rotfeld, 2001, ch. 8). The individual states had widely varying degrees of enforcement of their own individual regulations such that some could be knowingly ignored without fear of penalties.

In addition, anyone who believes that new regulations are totally costless is either incredibly naive or has a personal stake in the regulations. The new "Do-not-call" registry forced many companies to undergo the immediate expense of changing call lists or random dialing programs to



lock out huge lists of numbers. To make matters worse from the companies' point of view, the costs are not one-shot problems, since the regulations require periodic updates of the lists of new names or numbers that have been added. Within six months after the list was activated, the number of listings of people and phones to not call had more than doubled.

At the same time, however, and inexplicably left unstated by either critics or supporters of the new rules, these costs should be offset by increased efficiency for the telemarketing companies. This efficiency might have been an unofficial corporate benefit of the DMA's selfregulation program, and now the federal government offers it to the companies on a large scale.

Watching Mildred talk to a telemarketing caller, you immediately understand a frustration that people like her must cause the salesperson. As far as I know, she has never made a positive response to a telemarketing call. To the contrary, after hanging up the phone, I heard a few minutes of great anger at the salesperson. But ever the polite and kind person to strangers, she talked for several minutes to the caller, saying a quiet "yes" to each sales point, but a repeated and firm "no thank you" at the end. This cold call for no sale, killed several minutes of salesperson time and, depending on the phone company contract for the telemarketer, also might have made a small incremental cost to the phone line usage charges. In any event, too many people like Mildred could quickly add up to large costs for the telemarketer and reducing the per hour income for a commission-paid salesperson.

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In Japan, the national culture has huge numbers of people talking to telemarketing strangers in a fashion similar to Mildred, causing such a low success rate that many companies are finding it not very efficient for making sales or developing new customers (Taylor *et al.*, 2000). In the USA, in addition to the polite people who talk and talk but will not buy, there are the amateur and professional humorists that try various stunts to keep the telemarketing salesperson on the phone for an abusive punch line. Some comedians now sell CDs of their prank recordings of the hapless

telemarketers. And while not as costly in caller time, there are the growing numbers of Americans who respond to telemarketers with loud and abusive anger.

Unlike Internet direct marketing via e-mail where each additional contact is virtually costless (Rotfeld, 1999), telemarketing has costs. The companies are known to focus on people previous contacts found to be most vulnerable to their appeals, though their targeting information for general call lists is not yet that precise nor are audience data that refined. With traditional direct mail, waste circulation is costly. Response rates are low under the best of conditions, while postage and printing combine for the high cost per thousand of anything sent through a country's postal service or any alternative carrier. Therefore, it is in the firms' best interests to spend time and effort to make certain as high a percentage of people as possible who receive the mailing are in the target audience. With telemarketing, salespeople on commission and bulk rates for phone lines make the costs much lower than the waste circulation for postal contacts, they can still add up.

Charities and politicians with vote programmed vote appeals are exempt from the "Do-not-call" lists, but from their point of view, there is no benefit to excluding names. Charities need to make cold calls to numerous people, but the calls are often local and the callers might be volunteers. Just prior to the elections, politicians will flood home phones with programmed recorded messages. Numerous calls will go to people who are not voters, or maybe not even citizens, and there does not exist a scintilla of evidence that these calls persuade anyone or encourage supporters to vote – yet the political efforts are a frenzy to do everything possible and spending like crazy in the hopes to have a positive impact.

For commercial telemarketing companies, it is a benefit to know the millions of people who do not want to be called, would probably not result in a sale if contacted and can only be expected to waste the caller's time. When these people are called they resent the contact, but then, the telemarketing callers wish they had a way to know the people who would probably be that waste of time.

With the new "Do-not-call" registry, the federal government is providing a list for telemarketers to help them clean up their calling programs. The older program from the DMA attempted to provide this same service for members, but as a self-regulation effort, it was forced to be low key and the successful help to business was limited. The companies probably resent the regulatory requirements, yet no one has shown that compliance costs are not offset by business

improvements in telemarketing. Jobs have been lost in the telemarketing business, but so far nowhere near as huge as predicted and those that remain might be making more sales.

Whatever the goals of the government in starting the program, the result is still greater telemarketing efficiency.

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