



**Emerging Best Practice in Do Not Call
Registers (August 2009)**

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Document Control

Version

1.0

Date

8 September 2009

Source

The latest version of this article is available from

http://www.galexia.com/public/research/assets/do_not_call_best_practice_2009/

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1. Introduction

Do Not Call Registers have grown in popularity and are starting to deliver real privacy benefits for consumers. Several large Do Not Call Registers have been set up by national Governments and, after some initial teething problems, they appear to be working well – with large numbers of registered consumers and numerous examples of enforcement action.

This article compares six of the largest Do Not Call Registers (Australia, Canada, India, Spain, UK and the US) and highlights best practice that has emerged in the establishment and management of these Registers.

2. Comparative Analysis

There are numerous national Do Not Call Registers in operation – consumers are seeking protection from intrusive marketing calls, and Governments are responding.

There are two main categories of Do Not Call Registers. The first category is national, Government run registries backed by legislation and enforceable regulations. There are only a small number of registers of this type in operation.

The second category consists of smaller industry-led do not contact lists that apply to a particular industry sector. Directories of these lists can be purchased online for a small fee. These smaller self-regulatory lists have been criticised for delivering limited privacy benefits to consumers. They suffer from low rates of registration and a lack of visible enforcement. There are thousands of these smaller lists and they are not examined in detail in this article.

2.1. Australia

Australia established a National Do Not Call Register in 2006. It is administered by the Australian Communications and Media Authority (ACMA). The register is established by Commonwealth legislation.¹

The register currently includes fixed lines, satellite numbers, VOIP numbers and mobile phone numbers used for private or domestic purposes. More than 3.6 million numbers have been registered.²

The register utilises ‘list washing’ to remove numbers from marketing campaigns. Marketing organisations send their target lists to the register and numbers are removed for a small fee. This approach protects the privacy of individuals on the register and the integrity of the list.

The regulator has been active in enforcing the Do Not Call legislation. ACMA has taken a number of high profile enforcement actions and received substantial fines and settlements from a number of marketers. For example, Telstra paid a \$100,000 fine for calling numbers on the register in August 2009.³

¹ *Do Not Call Register Act 2006* (Australian Commonwealth), <[http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/0/2EC7E2794C032A45CA25730500230995/\\$file/0882006.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/Act1.nsf/0/2EC7E2794C032A45CA25730500230995/$file/0882006.pdf)>.

² Number of registrations at August 2009, <http://www.acma.gov.au/WEB/STANDARD/pc=PC_310882>.

³ See; <http://www.acma.gov.au/WEB/STANDARD/pc=PC_311856>.

The Australian Do Not Call Register is considered a success. It has attracted a large number of registered users, especially when compared to the previous self-regulatory do not call list managed by the Australian Direct Marketing Association (ADMA). That list had a very small number of registrations and ADMA undertook virtually no enforcement action – it was the subject of widespread community dissatisfaction.⁴

One outstanding issue with the Australian approach is that registration on the Do Not Call Register only lasts 3 years. Consumers will be forced to renew their membership after this date – a step that is widely viewed as unnecessary.

In 2008 the Australian Department of Broadband, Communications and the Digital Economy (DBCDE) released a discussion paper considering the expansion of the Do Not Call Register.⁵ As part of the discussion paper the DBCDE looked at two important improvements to the Australian register.

The first option is to make small business numbers registrable. The paper considered the benefits to the community including the money and time involved with employees taking unwanted telemarketing calls that could be saved. The paper also highlighted the benefits for the telemarketing industry in removing those organisations less receptive and therefore less likely to purchase goods or services from telemarketers. By widening the scope of the register, the success rate per call would be increased.

The second option is to include fax lines on the register. This would be a way of minimising the waste of resources such as toner and paper for businesses as well as stopping fax machines being occupied with telemarketing.

Both of these options were strongly opposed by telemarketers, but they received widespread community support. In May 2009 the Government announced that the expansion would proceed, and allocated additional funds in the Budget.⁶ However, the legislation to expand the operation of the register has not yet been submitted to Parliament. It is expected that the expansion will now take place in early 2010.

2.2. Canada

Canada established a National Do Not Contact List in 2005. The register was established by legislation⁷ and is administered by the Canadian Radio-television and Telecommunications Commission.

The register covers residential, wireless, fax and VOIP numbers. More than 2.7 million numbers are registered.⁸

Telemarketers are required to submit each of their target numbers to the National DNCL and to remove any numbers that return a positive match. This approach protects individual privacy.

⁴ See for example the numerous submissions to the Australia Competition and Consumer Commission (ACCC) regarding the ADMA Code of Conduct, <<http://www.accc.gov.au/content/index.phtml/itemId/744646/fromItemId/401858/display/submission>>.

⁵ Department of Broadband, Communications and the Digital Economy, *Discussion Paper: Eligibility Requirements for registration on the Do Not Call Register*, August 2008, <http://www.dbcde.gov.au/_data/assets/pdf_file/0006/86442/Discussion_paper.pdf>.

⁶ See, <http://www.minister.dbcde.gov.au/media/media_releases/2009/038>.

⁷ *An Act to amend the Telecommunications Act 2005* (Canada), <<http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2333924&Language=e&Mode=1&File=24#1>>.

⁸ Number of registrations at July 2009 <<http://www.thestar.com/sciencetech/article/580741>>.

Unfortunately this approach was not in place when the register was first launched, and this resulted in significant problems during the first year of operation. For example, the complete list of registered users was initially released to telemarketers for a small fee, and this actually led to an *increase* in telemarketing calls. It is likely that the list was sold to overseas telemarketers and this information, once released, was difficult to retrieve. The Canadian register is therefore considered an example of how *not* to introduce a Do Not Call Register.

Numbers stay on the Canadian register for 5 years – renewal is required every 5 years or when phone numbers are reassigned. This renewal step is unnecessary and has been abandoned in other jurisdictions.

The Canadian register is in the early stages of operation and there has been little enforcement activity to date. In August 2009 the regulator issued fines against three small organisations for sending faxes to numbers on the register.⁹ This resulted in some criticism that the regulator was failing to take action against major telemarketers.¹⁰

2.3. India

India set up a National Do Not Call Register in 2007.¹¹ The register is established by legislation¹² and is administered by the Telecom Regulatory Authority of India.

The Indian register covers landlines and mobile phones. Telemarketers have to submit their target numbers to the National Registry for matching. There is a strong focus in India on SMS marketing, as this is more prevalent than telemarketing to landlines. To date, 18 million numbers have been registered. Although this may seem like a very high number, there are reportedly over 340 million mobile phone numbers in operation in India.

The register is relatively new, but there have been concerns in the community about the low level of fines and the lack of visible impact of enforcement action in India.¹³ Although more than 12,000 telemarketers have been fined for breaching the Do Not Call register already, this does not appear to have had a significant impact on the number of calls.¹⁴

There is no requirement to renew registration in India – numbers stay on the register until they are deregistered or disconnected.

⁹ Canadian Radio-television and Telecommunications Commission (CRTC) News release, *The CRTC fines three telemarketers*, August 26, 2009, <<http://www.crtc.gc.ca/eng/NEWS/RELEASES/2009/r090826.htm>>.

¹⁰ Toronto Star, *No-call watchdog targets small fry telemarketers*, 30 August 2009, <<http://www.thestar.com/news/canada/article/687129>>.

¹¹ <<http://ndncregistry.gov.in/ndncregistry/index.jsp>>.

¹² *Telecom Unsolicited Commercial Communications Regulations*, 2007.

¹³ See for example: Prasad S, *India's 'Do Not Call' registry farce*, ZD Net Asia, 18 March 2008, <<http://www.zdnetasia.com/blogs/insideindia/0.3800011235.63002728.00.htm>> and Pahwa N, *India's Do Not Call Registry: A Failure*, Content Sutra, 17 January 2008, <<http://contentsutra.com/article/419-indias-do-not-call-registry-a-failure/>>.

¹⁴ Sinha, *Only 18 Million Registrations for Do Not Call Registry*, Pluggd.in, 13 October 2008, <<http://www.pluggd.in/indian-telecom-industry/only-18-million-registrations-for-do-not-call-registry-2883/>>.

2.4. Spain

In 2003 Spain established a register known as Listas Robinson or The Robinson List. (Do Not Call Registers are sometimes known as Robinson Lists – a reference to the privacy and isolation of the Swiss Family Robinson.) The Spanish register was instituted under Law 32/2003 – *General Law of Telecommunications*, and Law 34/2002 – *Services of the Society of the Information and of Electronic Commerce*.

Initially the Listas Robinson was designed to cover direct mail campaigns, but in 2009 it was extended to cover mobile phones and email.¹⁵ It now covers email, SMS, MMS, postal mail and telephone landlines. Registration covers both domestic and business purposes. Once registered, users have an online log-in to a system where they may update details or deregister from the list.

The Listas Robinson is administered and operated by the Federation of Electronic Commerce and Direct Marketing (or in Spanish the Federación de Comercio Electrónico y Marketing Directo (FECEMD)). There is some additional oversight by the Spanish Agency for Data Protection (AEPD) who can receive complaints about breaches of Spain's data protection legislation, including breaches of the Listas Robinson rules.

Although the register is established by legislation, it is run by the private sector. This approach is quite common in Europe and works well where there is some ongoing oversight and supervision by the Government.

In an interesting innovation, Spain also has a 'positive' list – a list of people who want to receive additional direct marketing. As the Listas Robinson has only been operating for telephone calls and email for a short time there are no figures available on the number of registered users.

2.5. United Kingdom

The United Kingdom established a national Telephone Preference Service (TPS) in 2003.¹⁶ The register is established by legislation¹⁷ and is administered by a series of private sector operators, overseen by the Information Commissioner's Office.

The UK register covers home phones and mobile phones. In 2004 the register was expanded to include businesses numbers through a separate service known as the Corporate Telephone Preference Service (CTPS).

More than 14.5 million home telephone numbers and 1 million business telephone numbers have been registered.¹⁸ This represents over 60 per cent of UK households and more than 55 per cent of businesses.¹⁹

¹⁵ IT Online Communities, *Spain unveils Robinson List service to fight commercial spam*, 7 July 2009, <<http://it.tmcnet.com/news/2009/07/07/4260191.htm>>.

¹⁶ <<http://www.tpsonline.org.uk/tps/>>

¹⁷ The Privacy and Electronic Communications (EC Directive) Regulations 2003 (UK), <http://www.opsi.gov.uk/si/si2003/uksi_20032426_en.pdf>.

¹⁸ PR Leap, *Over 60% of UK phone numbers now registered with the Telephone Preference Service*, 12 November 2007, <<http://www.prleap.com/pr/102600/>>.

¹⁹ Marketing Services Talk, *TPS signs up 60 per cent of UK phone users*, 12 November 2007, <<http://www.marketingservicestalk.com/news/sel/sel101.html>>.

Individual residential numbers registered on the databases do not require renewal. However, numbers registered on the Corporate TPS require annual renewal.

The TPS is considered a success, with a very high number of registrations and regular enforcement action by both the industry itself and the Information Commissioner's Office. The effectiveness of the Corporate TPS is less clear and is the subject of considerable debate. Although the number of registrations is extremely high, the annual renewal requirement may become a burden.

The UK register does not cover SMS, however, unsolicited SMS marketing is already prohibited in the UK without a company having established prior consent.

2.6. United States

The United States set up a National Do Not Call Registry in 2003.²⁰ It is established by legislation²¹ and is administered by the Federal Trade Commission (FTC). It is enforced in part by the FTC, the Federal Communications Commission (FCC), and state law enforcement officials.

The establishment of the US register was heavily influenced by concerns regarding the content of telemarketing calls and related sales tactics in the US. It was seen as a consumer protection initiative rather than a privacy initiative.

In 2007 the US register was reformed so that renewal of membership is not required.²² Telephone numbers will only be removed from the register if they are reassigned or disconnected.

The US register includes home and mobile phone numbers. Telemarketers are required to search through the register every 31 days for numbers they call using the wash method (although in the US they call it the 'scrub' method).

In October 2008 (latest available figures) 172,523,062 numbers had been registered, making it the largest do not call register in operation.²³ More than 75% of US consumers have registered at least one number on the list.

The US register is considered a success, with a large proportion of US numbers now registered. There have also been a number of significant, high profile enforcement actions under the legislation. These have resulted in numerous settlements and penalties. However, telemarketing is so prevalent in the US that even after registering on the Do Not Call List the average US consumer will still receive 6 unwanted telemarketing calls per month (this compares with 30 calls per month for numbers not on the list).²⁴ US consumers have to actively report calls to the regulators, and several services have emerged to assist in this process.²⁵

²⁰ <<https://www.donotcall.gov/>>

²¹ *Do-Not-Call Implementation Act 2003* (US, 15 USC 6101), <<http://www.thomas.gov/cgi-bin/bdquery/z?d1108:HR00395:@@L&summ2=m&>>.

²² *Do-Not-Call Improvement Act 2007* (US), <<http://thomas.loc.gov/cgi-bin/bdquery/z?d1110:H.R.3541:@@L&summ2=m&>>.

²³ National Do Not Call Registry, *Current Do Not Call Registrations*, 30 September 2008, <<http://www.ftc.gov/bcp/edu/microsites/donotcall/pdfs/DNC-Registrations-10-06-2008.pdf>>.

²⁴ *Economic Report of the President 2009*, page 244, <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2009_erp&docid=f.erp_c9.pdf>.

²⁵ See for example <<http://www.everycall.us/>>.

The US also has a series of state-based Do Not Call Registers, and these also have a long history of enforcement action. In one high profile case, a for-profit organisation attempted to circumvent the Do Not Call legislation by using a non-profit organisation as a ‘front’ for making sales calls. The local state regulator was able to obtain an injunction to stop this practice.²⁶

3. Best Practice Recommendations

Although national Do Not Call Registers are a relatively recent development, some best practice is beginning to emerge in the establishment and management of these registers:

- **Widest possible coverage**
Registers with the widest possible coverage have been the most successful. This may require registers to include mobile phones, VOIP and faxes as well as traditional home telephone numbers. The gradual expansion of the registers to cover small business numbers also appears to be inevitable.
- **List washing**
It is now clearly established that there are dangers in releasing the entire list of numbers registered on the Do Not Call register to telemarketers. This occurred briefly during the establishment of the National Do Not Contact List in Canada, and resulted in an *increase* in telemarketing calls. All major registers now require telemarketers to present their target numbers for washing or verification against the numbers on the register. This approach protects privacy and maintains the integrity of the list.
- **No renewals**
Do Not Call Registers sometimes require renewal of registration every 3-5 years. This requirement seems unnecessary as a person is unlikely to change their preferences regarding telemarketing. In the US the renewal requirement was dropped in 2007 and registration is now permanent. Registration is also permanent in the India, Spain and the UK. All jurisdictions should consider removing renewal requirements.
- **Enforcement**
Most jurisdictions have undertaken high profile enforcement activity – setting an example to the entire industry about compliance with the Do Not Call rules. This enforcement activity is in stark contrast to the previous self-regulatory approaches that existed in jurisdictions like Australia and the US, where enforcement was virtually non-existent.
- **Additional restrictions**
In addition to Do Not Call Registers, many jurisdictions have other limits on telemarketing. For example, telemarketing is completely prohibited in Germany, and in Australia telemarketing of financial services products is prohibited. Many jurisdictions have additional restrictions on calling hours, banning calls on Sundays and holidays or outside reasonable hours. Some jurisdictions also ban computerised calls. A combination of these types of specific restrictions and a national Do Not Call Register appears to deliver the best results for consumers.

²⁶ Missouri v Feature Films For Families Inc (2006), <<http://ago.mo.gov/newsreleases/2006/032706.htm>>.

Overall, there has been a shift towards Government run Do Not Call Registers. Countries that previously had industry managed lists (with just a few thousand numbers on them) have embraced national Government lists, resulting in millions of consumers registering their numbers. Countries that are still relying on self regulatory options have very low numbers of registered numbers (e.g. there are only around 50,000 numbers on the industry Do Not Call Register in New Zealand²⁷).

4. Emerging Issues

Although Do Not Call Registers are considered to be a successful form of privacy protection for individuals, there are a number of emerging issues and concerns in the day-to-day operation of Do Not Call Registers. These include:

- **Avoidance**
Unfortunately a number of organisations have developed schemes and products to help telemarketers avoid compliance with Do Not Call registers. This has included the use of non-profit organisations as ‘fronts’ for telemarketing and the use of off-shore call centres. Some technical avoidance also occurs where companies hide their calling line identification to avoid enforcement action.
- **Exploitation**
Some organisations have seen the establishment of Do Not Call Registers as an opportunity to exploit consumers who may be confused about the operation of the registers. This has included simple phishing email and SMS scams in India where criminal organisations have pretended to be the operators of the register in order to obtain personal information. In other jurisdictions a number of services offer commercial do not contact schemes, which offer to have your details removed from a range of marketing lists for a fee. This is despite the presence of free services run by the Government that will be much more effective.
- **Exemptions**
There are a large number of exemptions in the rules of most Do Not Call Registers. Typical exemptions cover charities, market research organisations and political parties. There may be a requirement to reconsider these exemptions in the future, so that consumers can avoid particular types of calls.

5. Conclusion

Do Not Call Registers are a vital privacy protection tool. They are enjoying solid growth and are starting to deliver real improvements through high profile enforcement action and a genuine reduction in intrusive calls. In those jurisdictions with Government regulated Do Not Call Registers consumers are experiencing a welcome break from telemarketing.

However, the implementation of Do Not Call Registers in the six countries examined in this article has shown that there are some issues that require careful management. A clear set of best practice guidance has emerged for any jurisdiction considering implementing a Do Not Call Register of their own.

²⁷ New Zealand Do Not Call Service, <<http://www.marketing.org.nz/>>.

6. Summary Table

	Australia	Canada	India	Spain	UK	US
Register	National Do Not Call Register	National Do Not Contact List	National Do Not Call Register	Listas Robinson	Telephone Preference Service	National Do Not Call Registry
Year	2006	2005	2007	2003	2003	2003
Regulator	Australian Communications and Media Authority	Canadian Radio-television and Telecommunications Commission	Telecom Regulatory Authority of India	Federation of Electronic Commerce and Direct Marketing	Information Commissioner's Office	Federal Trade Commission
Coverage	<ul style="list-style-type: none"> • Residential • Mobiles • VOIP • Business (from 2010) • Fax (from 2010) 	<ul style="list-style-type: none"> • Residential • Mobiles • VOIP • Fax 	<ul style="list-style-type: none"> • Residential • Mobiles 	<ul style="list-style-type: none"> • Residential • Business • Mobiles • Mail • Email 	<ul style="list-style-type: none"> • Residential • Business • Mobiles 	<ul style="list-style-type: none"> • Residential • Mobiles
Size	3.6 million	2.7 million	18 million	Not available	14.5 million	172.5 million
Renewal	3 years	5 years	Permanent	Permanent	Permanent	Permanent