



national do not call list

a **consumer's** choice • a **telemarketer's** responsibility



Canadian Radio-television and
Telecommunications Commission

le choix du **consommateur** • la responsabilité des **entreprises de télémarketing**



liste nationale de numéros
de télécommunication exclus



National DNCL Webinar Presentation Outline



- Definition of Telemarketing
- National DNCL Rules
- National DNCL Exemptions
- National DNCL Operations
- Telemarketing Rules
- Liability
- Complaints, Investigation, and Enforcement
- What Telemarketers can do to Prepare



Definition of Telemarketing



Telemarketing

- The use of telecommunications facilities to make unsolicited telecommunications for the purpose of **solicitation**

Solicitation

- The selling or promoting of a product or service, or the soliciting of money or money's worth, whether directly or indirectly and whether on behalf of another person. This includes solicitation of donations by or on behalf of charitable organizations



Are you a telemarketer?



- Do you use telecommunications technologies:
- To sell products and services to new or existing clients?
 - To prospect for new clients?
 - To sell or prospect, directly or indirectly, for yourself or another party?
 - To ask for charitable donations or recruit volunteers?

If you answered yes to any of the above, then

You are a telemarketer!





National DNCL Rules



**Any
Canadian
telephone
number can
be
registered**

- Land line

- Fax

- Wireless

- VoIP

- Do not call registered consumers unless you have prior explicit consent
- Telemarketers and clients of telemarketers must
 - Subscribe to the National DNCL prior to making any telemarketing telecommunications
 - Pay subscription fees and keep a record of proof of payment and subscription for three years
- May not use National DNCL for any purpose other than compliance with the Rules



National DNCL Rules



*Any
Canadian
telephone
number can
be
registered*

- Land line*
- Fax*
- Wireless*
- VoIP*

- May not sell, rent, lease, publish or otherwise disclose the National DNCL to any person outside of the telemarketer's or client of telemarketer's organization, including affiliates
- May provide National DNCL to person supplying services to enable compliance with the Rules
- 31-day grace period
- A consumer's registration is effective for 3 years



Express Consent



***Consent
can be
withdrawn
at any time***

- **Rule states**
 - “...express consent has been provided by such consumer to be contacted via a telemarketing telecommunication...”
- Part V of the Rules describes acceptable forms
 - Written, including a completed application form
 - Oral
 - Electronic via toll-free number or Internet
 - Other methods if record created by consumer or third party
- Personal referral not considered consent
- Onus on telemarketer and client of telemarketer to prove consent obtained



National DNCL Exemptions



**All
exemptions
except
Business
to
Business
provided for in
the Act**

- **Types of telemarketing telecommunications are exempt, not organizations**
 - Made by or on behalf of charities registered under *Income Tax Act*
 - Based on an existing business relationship with a consumer
 - Made for purposes of elections, surveys, and solicitations for subscription to a newspaper of general circulation
 - Made to businesses



Existing Business Relationship



Definition of existing business relationship

The Consumer has

1. Purchased services or purchased, leased, or rented products within the 18-month period preceding the date of the telemarketing telecommunication
2. Made an inquiry or application about a product or service within the 6-month period preceding the date of the telemarketing telecommunication
3. A written contract that is either current or has expired within the 18-month period preceding the date of the telemarketing telecommunication

*s. 41.7(2) of the
Telecommunications
Act*



National DNCL Exemptions



**Consumer
choice**

- **Organizations making exempt telecommunications must:**
 - Keep their own do not call lists
 - Identify the purpose of their call at the beginning of the call

The above requirements do not apply to organizations making calls for the sole purpose of surveys, polls, and a research



Affiliates



Request not to be called is not required to be passed on to an affiliate

- *One entity is affiliated with another entity if one of them is controlled by the other or if both are controlled by the same person*
- Affiliates:
 - Must obtain own subscription to the National DNCL
 - Consent to be called does not apply to affiliate unless specifically stated in consent
 - Existing business relationship does not extend to affiliate



National DNCL Operations



*National DNCL
launch date
September 30*

- **Subscription Types and Rates**
 - Download entire country or by area code
 - Query (designed for small businesses or individuals)
- **File formats**
 - Telephone numbers only
 - CSV or XML tagged
 - http://www.crtc.gc.ca/eng/INFO_SHT/t1028.htm
- **Who can access the National DNCL?**
 - Subscriber
 - Third party authorized by subscriber



National DNCL Subscription Rates



Subscription option - by area code				
Number of area codes	Annual	6-month	3-month	1-month
All area codes	\$11,280	\$5,640	\$2,970	\$1,125
By individual area code	\$615	\$310	\$155	\$55

Subscription option - by telephone number	
Telephone number query ¹	Per query
Any area code (maximum 100 queries per query session)	\$0.50

¹A query is available for those making unsolicited calls to a limited number of consumers. For example, an organization who is running business from referrals might find this subscription method to be useful.

Payable by credit card or electronic funds transfer

http://www.crtc.gc.ca/eng/INFO_SHT/t1028.htm



How it works



- **The process will be (the first time).**
 1. Register your information and set up your password.
 2. After submitting your registration you will see on the screen (to print), and receive via email, a registration access code
 3. Sign in using your registration number and pass code
 4. Purchase your subscription
 5. Payment by credit card through the website is processed immediately
 6. As soon as the credit card payment is accepted you will see your payment receipt on screen (to print) and you will also be sent the receipt by email.
 7. You can immediately access your subscription and download it.
- **Registration is good for 12 months.**
- **Your subscription is effective for the length of time you choose (3 month, 6 month, or 12 month)**
- **The second time you wish to download or use the query subscription you just sign in using your registration access code and password**



Information you need for registration



- Business information
- Legal name
- Business address
- Account manager contact information for up to three (3) contacts
 - The account manager(s) will receive account notifications and are the only contact(s) authorized to make changes to the account profile or to request technical assistance.
- Name
- Business mailing address
- Business phone number
- Business e-mail address
- Language preference
- Telemarketer context
- Description of telemarketing activities performed by your organization
- Business names used/displayed while making telemarketing calls
- Telephone numbers used/displayed while making telemarketing calls
- Account password (which you will create, minimum 8 characters)



Telemarketing Rule Changes



Telemarketing Rules apply to all telemarketers, except for calls made for the purpose of opinion polling, market research, surveys, or calls to collect overdue accounts.

- Once intended party is reached the telemarketer must identify
 - Name of person who is calling
 - Organization call is made on behalf of
 - Organization making the call
- Upon request
 - Provide local or toll-free number
 - If number answered by voice mail, must return consumer's call within 3 business days
- Calling hours for both fax and voice
 - 9:00 a.m. to 9:30 p.m. weekdays
 - 10:00 a.m. to 6:00 p.m. weekends



Telemarketing Rule Changes



Telemarketing Rules apply to all telemarketers, except for calls made for the purpose of opinion polling, market research, surveys, or calls to collect overdue accounts.

- Must keep individual do not call lists
 - Handle request at the time of the telemarketing call
 - Grace period for voice and fax is 31 days
 - Request in effect for 3 years and 31 days

- Predictive dialing devices and call abandonment rates
 - Call is abandoned if not connected to agent within two (2) seconds
 - May not exceed, in any calendar month, 5% abandonment rate
 - Maintain records of abandonment rates for 3 years



Telemarketing Rules



Telemarketing Rules apply to all telemarketers, except for calls made for the purpose of opinion polling, market research, surveys, or calls to collect overdue accounts.

- Restrictions on Automatic Dialing Announcing Devices (ADADs)
 - May not use for telemarketing unless have express consent from consumer to use ADADs

- Exemptions to the Telemarketing Rules
 - Surveys or market research (not considered telemarketing)
 - Telemarketing via voicemail broadcast (Commission will monitor complaints)



Telemarketing Rules



Telemarketing Rules apply to all telemarketers, except for calls made for the purpose of opinion polling, market research, surveys, or calls to collect overdue accounts.

Telecom Decision CRTC 2008-6

- All telemarketers making calls on their own behalf and clients of telemarketers, regardless if they are solely making exempt telemarketing calls shall
 - Register and provide information to the National DNCL Operator
- The CRTC intends to procure a third party to conduct investigations. At that time, all telemarketers and clients of telemarketers will be required to pay a fees to support investigations.





Who can be held liable for violations



Clients of telemarketing agencies are responsible for subscribing to the National DNCL

- Telemarketers who telemarket on behalf of themselves
- Telemarketers who telemarket on behalf of clients (i.e. agencies)
- Vicarious Liability (s.72.02 of the Act)
 - Clients of telemarketers provided there is an agent/mandatary relationship



Complaints



**Complaints
about National
DNCL
Telemarketing
ADADS**

- **Making a complaint**
 - By phone or online
 - Within 14 days
 - Require telephone number or name of telemarketer

- **National DNCL operator**
 - Collects complaints
 - *Prima facie* assessment
 - Forward to CRTC
 - Investigation
 - Enforcement



CRTC roles and responsibilities



***New
Enforcement
Powers***

- **Investigations**
 - Has a rule been violated?

- **Notices of violation and amount of Administrative Monetary Penalty (AMP)**
 - Examples of factors that will be considered
 - Nature of violation (minor, serious, very serious, negligent or intentional)
 - Number and frequency of complaints and violations
 - Relative disincentive of measure
 - Potential for future violation



New Enforcement Powers



➤ **Administrative Monetary Penalty (AMP)**

- Each contravention of the Rules constitutes a violation
- Individual - Up to \$1,500
- Corporation - Up to \$15,000
- Payable to the Government of Canada

➤ **CRTC intends to make public the Notice of Violation (after opportunity to represent a defence)**

- Name of the violator
- Amount of the AMP
- Reason for the AMP



Defences



**Section 72.1 of the
Telecommunications
Act**

➤ **Due Diligence ***

Demonstrates

- Telemarketing call resulted from an error and
- As part of routine business practice
 - Established and implemented adequate written policies and procedures to comply with the rules
 - Provides adequate ongoing training to employees
 - Has entered into an agreement between itself and a third party telemarketer requiring that the latter comply with the Unsolicited Telecommunications Rules.

* see *Liability Section in the Rules for a complete list*

➤ **Common law**



What telemarketers can do to prepare



*National DNCL
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- **Systems and processes**
 - Downloading of National DNCL and scrubbing of lists (31-day grace period)
 - Toll-free number or local number for consumer contact
 - Record Keeping Rules
 - Predictive Dialing Device Rules
- **Telemarketing and business processes**
 - Revise scripts (identification rules)
 - Process do not call request at time of call
 - Modify telemarketing faxes (12-point font and other rules)
- **Consent Rules**
 - Modify application and other consumer forms and contracts



National Do Not Call List



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Telecom Decision 2007-48

<http://www.crtc.gc.ca/archive/ENG/Decisions/2007/dt2007-48.htm>

Telecom Decision 2008-6

<http://www.crtc.gc.ca/archive/ENG/Decisions/2008/dt2008-6.htm>

Documents related to the National DNCL

<http://www.crtc.gc.ca/eng/dncl.htm>

Website to subscribe to the List

<http://www.innte-dncl.gc.ca/index-eng.html>