

Court Lets U.S. Do-Not-Call List Go Into Effect

A nationwide do-not-call registry will go forward as a U.S. federal judge refuses to stop the registry while a lawsuit against it is pending. Enterprises using telemarketing should change tactics and regulate themselves.

Event: On 26 March 2003, a U.S. District Court judge in Oklahoma ruled that telemarketers must comply with do-not-call regulations adopted 18 December 2002 by the U.S. Federal Trade Commission (FTC). Meanwhile telemarketers can pursue their lawsuit against the rules. Consumers can put their phone numbers on the registry beginning 1 July 2003. Telemarketers will face fines if they call such numbers beginning 1 October 2003.

First Take: With the court unwilling to stay their implementation, the FTC's do-not-call rules will go into effect. In its appeal for the stay, the Direct Marketing Association (DMA) laid out the arguments it would make to show how the rules would harm telemarketers' free-speech rights under the First Amendment. In denying the stay, the judge signaled that the DMA's arguments weren't convincing. Gartner believes that the telemarketers must change their arguments or lose their appeal when the case comes to trial — assuming the court will even agree to hear the case.

Concurrently, the U.S. Federal Communications Commission has begun its own do-not-call proceeding affecting companies not under the jurisdiction of the FTC — for example, financial services providers, airlines and telecom companies. With both agencies' actions, Gartner believes that a nationwide do-not-call list applicable to all industries now has unstoppable momentum. Consumers want such rules, and Congress has already appropriated funds for implementation during tough budgetary times. Now the legality of such an action appears to be better established by the District Court denying telemarketers a stay of implementation.

Gartner recommends that the DMA, the telemarketing industry and enterprises that rely on telemarketing — especially telecom carriers — should recognize the strong tide of consumer sentiment against telemarketing and accept that a nationwide do-not-call registry will take effect. To avoid further regulation, the direct-marketing industry should establish its own code of conduct to police poor or unethical calling practices.

Analytical Sources: Ron Cowles, William Hahn and Tuong Nguyen, Gartner Research

Recommended Reading and Related Research

- “Can Telemarketing Survive a National ‘Do-Not-Call’ List?” — Consumer sentiment is mobilized against the perceived annoyance of telemarketing calls. **By William Hahn and Tuong Nguyen**

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- “Get Ready for a U.S. ‘Do-Not-Call’ List” — Enterprises should devise their own self-regulation practices to satisfy consumers’ privacy concerns. **By Ron Cowles**

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