Telemarketing Debate

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Opinion: Telemarketing — Heading for a meltdown?

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Preface by Robin Fairlie

Direct marketers over the last fifty years have been bedevilled by problems of consumer hostility to personally addressed but untargeted (or just badly targeted) mass marketing campaigns. It was this hostility that gave rise eventually to the Data Protection Directive, and to the war fought by the industry – with remarkable success – over 'opt-out' versus 'opt-in' regulations. Latterly, the arrival of e-mail, and the even greater hostility of its users to 'spam' (a major nuisance where 'junk mail' is a minor irritant) gave rise to the concept of 'permission marketing' (effectively 'opt-in'), now enshrined in law so far as electronic communications are concerned – for what that is worth, since most spam originates from outside the lawmakers' jurisdiction.

So today the opt-in/opt-out wars have settled into an uneasy truce, so far as direct mail and electronic media are concerned – but telemarketing raises different issues. Of the three major media of mass communication – mail, email and telephone – the unsolicited telephone call (and especially the 'silent' call) causes by far the most customer anger. This is displayed not only by legislation making it illegal to cold-call subscribers who register with the Telephone Preference Service, but also by the unprecedented rise – and counting – in registrations with the TPS.

This has caused us to ask two contributors to give us their thoughts on how this developing situation may affect the future use of this major marketing medium.

Introduction

Have you been frustrated by unwanted telephonic intrusion? At home, at work? And have you noticed how the calls increasingly seem to come from India? And, unless you have been avoiding newspapers and TV, you will certainly have seen the BT privacy ads. Now, you may have heard of the Telephone Preference Service (TPS) — a list of people who do not want to receive unsolicited telemarketing calls. In November 2005 it hit 11.5 million numbers. Which means that fully 40 per cent of all UK landlines are now signed up to the TPS. What makes this so significant is not the absolute number but the sheer rate of change. As Figure 1 shows, the rate is accelerating with every month. This paper looks at how we got

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Figure 1: The growing popularity of the TPS

here, and how the marketing industry now gets out of the mess it has created.

Data protection — A brief history

The original Data Protection Act 1984 was largely created to address the frustrations of people faced with mountains of direct mail addressed to a deceased loved one. Up until that point no one had any right to prevent anyone marketing to them in any way they saw fit. Back then telemarketing was in its infancy — largely because of call costs. But things change. Privatisation of BT led to falling call costs, while spiralling TV ad rates made other routes more expensive. By 1990 consumer telemarketing was well established, and just ten years on from the 1984 Act consumer telemarketing had become a huge industry — anyone with a phone would get calls from people selling double-glazing and new kitchens. The unwarranted invasion of privacy became so bad that the Direct Marketing Association (DMA), under pressure, introduced the Telephone Preference Service (TPS) in 1994. The TPS is simply a database of those who do not wish to receive unsolicited telemarketing calls. The idea is that before undertaking a telemarketing campaign the call list is compared to the TPS list, and those numbers that appear on the TPS are removed from the call list. The TPS system was entirely

Data protection

voluntary — in other words it could be ignored by companies that were not part of the DMA or did not care about the DMA's censure.

The EU strikes back

The EU Privacy Directive

1994 was also the year in which the EU Privacy Directive was issued — for the first time recognising that all EU citizens have rights over the ways in which their personal data are used and, critically, the right to prevent direct marketing in any form. From 1994 to 1998 the DMA fought a lengthy battle to persuade legislators that 'opt-out' was all that was needed, and provided people could stop marketing after the event then this was fine. And, up until 2000, it was right. By 2000 barely 1 million people were sufficiently concerned about their data rights and privacy to have registered with the TPS. And in October 2000 the Data Protection Act 1998 finally gained the force of law. All over the country worried direct marketers scrambled to unravel the legislation to work out what it meant for their activities, only to find after spending thousands with consultants and lawyers that the answer was, er, nothing. Not because they did not need to do anything to comply, but because the Information Commissioner was not interested in stamping out poor/illegal marketing activities.

Spam

1998 was also interesting for another reason — it was the first year in which spam began in earnest. And as users jumped on the internet and got e-mail accounts, spam volumes skyrocketed. By 2003 dire warnings were being made about how spam could kill the internet by overloading it. MPs were incensed by 'pornospam' in children's in-boxes and were determined to do something about it. So in 2003 two things happened — the Electronic Communications regulations were passed and TPS registrations hit 5 million. Consumers were starting to fight back. For now consumers were being hit by not just double-glazers and kitchen fitters; there were conservatories, insurance, energy suppliers, cable companies, phone companies, holiday villas, prize competitions — a veritable Babel of telephonic cacophony — and e-mail. No longer was an Englishman's home his castle: if he had a phone line the enemy was not at the gates, he was right there in the living room, interrupting, cajoling, pestering, entreating and sometimes threatening. Finally, the telemarketing industry began to take the TPS seriously. Prior to the Electronic Communications regulations they could ignore the TPS and risk a notional slap from the DMA — now Ofcom could come after them.

Now, most industries, faced with such a threat and clear evidence of customer distress, would seek to address the problem. But not the telemarketing industry, oh no. Firstly, they redefined the rules: provided you had had 'prior communication' with someone, it did not matter if they had signed up to the TPS — you could still call them. And secondly, if the calls are made from India the UK rules do not apply — so we will replace badly handled UK calls with ones made on poor-quality lines, by people with little or no empathy and equally badly handled. The entire industry seemed hell-bent on cutting costs at the expense of everything. If poor call quality was not bad enough, poorly configured 'power-diallers' meant consumers were receiving millions of 'silent calls'. A silent call is

Silent calls

one where a 'power dialler' in a call centre dials a number before an agent is ready to handle the call. The connection gets made, and when the unwitting consumer picks up the phone all they hear is silence. Everyone complained — telemarketers threw up their hands and said 'nothing can be done'. In fact the industry lobbied the DTI to ensure that they could make up to 5 per cent of all calls 'silent calls' because it maximised call centre productivity.

Unfortunately, consumers began to realise why they were getting silent calls, and started to react accordingly.

Privacy becomes a marketing concept

Privacy becomes a competitive advantage

2005 arrived: Carphone Warehouse and then BT offered to help by registering you for the TPS (as well as providing call-screening services in BT's case). Suddenly 'privacy' had moved from being a legal concept to a marketing one. BT Privacy saturated the media. And by September 2005 registrations on the TPS had hit 10 million. Today, at the time of writing, new registrations are growing at 30,000 a day. Which means that by some time in 2007 every single domestic phone line will have signed up to the TPS and telemarketing will, to all intents and purposes, be dead.

What this tells us is that privacy law and the enforcement of privacy law is running behind what people want when their privacy is *directly* invaded — something that calls do with ease. The same is true of e-mail — it *invades* the privacy of my in-box. Somehow direct mail is much less invasive now — in fact it is almost quaint. Will this remain the case? The author does not think so.

Action against advertising

Consumers are about to score a remarkable victory over the telemarketers by killing telemarketing. This will engender a fundamental shift in attitudes to every form of marketing: and not just direct mail and e-mail, but advertising too. Already in the USA, personal video recorders (PVRs) are dramatically affecting advertising as viewers 'skip' ads. It seems consumers everywhere now want to be free of intrusion into their activities by advertisers. And last week Capital Radio announced that it was dramatically reducing the number of ads within its radio shows because they are causing people to turn off in droves.

So, what does this mean for companies? Some, like BT, will turn privacy into a positive message that gives them a competitive advantage. Others will try to 'get round' the law by various means of debatable legality. Many will simply ignore it and carry on as they are now. And, ultimately, three outcomes will crystallise.

- Those that follow BT's example will thrive as customers will trust them in preference to those that ignore privacy.
- Those that try to 'get round' the law will find themselves increasingly marginalised as consumers refuse to do business with them out of frustration.
- Those that ignore the law will thrive, as their costs will be sufficiently lower that they can persuade customers to ignore their privacy misgivings and buy on price alone.

On 1 November 2005 Ofcom finally announced that it would use its powers under the Communications Act 2003 (ss. 128—131) to take action against persistent misusers of the network. And misuse now includes silent calls. As from 1 November 2005:

New Ofcom regulations

- any abandoned calls must carry a recorded information message which identifies the source of the call and offers the person called an opportunity to decline further calls from that source
- calling line identification (CLI) must be presented on all outbound calls from call centres using automated calling systems; CLI allows people to dial 1471 and access the telephone number of the person or organisation calling them
- telephone numbers dialled then abandoned should not be called again by that organisation's automated calling system for at least 72 hours, unless a dedicated operator is available to take the call
- abandoned call rates must be below 3 per cent of total calls for any 24-hour period for each campaign; this is a lower threshold than existing published industry codes, which require a 5 per cent limit, and is intended to require operators to manage their systems more effectively
- records must be kept to demonstrate compliance with these requirements.

Additionally, Ofcom has asked the government to increase the maximum penalty that Ofcom can impose from £5,000 to £50,000 for each breach of the rules.

Now all we need is for Ofcom and the Information Commissioner to take concerted action against those who flout the law. Privacy is not optional — adherence to privacy law should not be optional.