

# Report for Congress

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## **Telemarketing: Dealing with Unwanted Telemarketing Calls**

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# Telemarketing: Dealing with Unwanted Telemarketing Calls

## Summary

In recent years, Congress has enacted seven federal laws addressing telemarketing fraud and practices. As a result, both the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC) have established regulations covering the \$669 billion telemarketing industry in the United States. It is estimated that consumers lose over \$40 billion a year to fraudulent telemarketers. Although the vast majority of telemarketers are legitimate business people attempting to sell a particular product or service, there are unscrupulous individuals and companies violating telemarketing rules and promoting various fraudulent schemes aimed at parting consumers from their money.

The FCC, FTC, and several consumer groups and government/business partnerships identified in this report provide extensive information on telemarketing. This report provides summaries of the federal laws and regulations particular to telemarketing and on the options that are available to consumers to attempt to limit the calls that they receive from telemarketers and to report questionable telemarketing practices to local or federal authorities. The report also lists sources of additional information with addresses, phone numbers, and Internet sites (if available) and will be updated as legislation or news events warrant.

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# Telemarketing: Dealing with Unwanted Telemarketing Calls

Telephone marketing, better known as telemarketing, was an approximately \$669 billion business in the United States, according to the Direct Marketing Association (DMA). As telephone technologies become more advanced, it becomes more and more cost-effective for telemarketers to use these technologies to sell various products and services directly to consumers. There are only a few households that have not received a telemarketing call. However, with the expansion of the telemarketing business comes the expansion of telemarketing fraud. Although the vast majority of telemarketers are legitimate business people, there are other individuals and companies who violate existing laws and rules and bilk unsuspecting customers of \$40 billion a year according to some estimates.

**Table 1. Telemarketing in the United States**  
(dollars in billions)

	1995	1999	2000	2001	2005
<b>Consumer</b>	\$167.0	\$236.0	\$256.9	\$276.6	\$373.3
<b>Business-to-Business</b>	\$200.2	\$317.6	\$354.7	\$392.2	\$566.3
<b>Total</b>	\$367.2	\$553.6	\$611.7	\$668.8	\$939.5

**Source:** Direct Marketing Association. *2000 Economic Impact: U.S. Direct Marketing Today*. [[http://www.the-dma.org/library/publications/charts/dmsales\\_medium\\_market.shtml](http://www.the-dma.org/library/publications/charts/dmsales_medium_market.shtml)]

## Federal Laws

In recent years, seven federal laws that deal directly with telemarketing issues have been enacted. Each of the laws has a different focus relative to telemarketing, but all attempt to limit or prohibit certain abusive, fraudulent, or deceptive practices. Because both the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC) are responsible for different aspects of telemarketing, both agencies were directed to promulgate regulations. The FCC generally covers consumers' privacy rights relative to telemarketing practices and the use of the telephone system by telemarketers to transmit information whether via facsimile machine, automated dialing mechanisms, recorded calls, or by a live person. The FTC is concerned more with the content and consequences of the call, and its regulations focus on whether certain sales practices are misleading, fraudulent, or

deceptive. Individual states have passed laws relating to telemarketing practices within a state.

## **Telephone Consumer Protection Act of 1991 (TCPA)**

The TCPA, P.L. 102-243, was signed by President Bush on December 20, 1991. It was the first of the six federal laws passed dealing specifically with telemarketing issues. This Act directed the Federal Communications Commission to issue rules balancing the fair business practices of telemarketers with the privacy concerns of consumers.

Some of the provisions of the FCC rules resulting from this Act are:

(1) Telemarketing companies must maintain a do-not-call list for calls placed to residential telephone numbers. If a consumer requests that his/her name be placed on such a list, the company must honor the request for 10 years. Nonprofit and charitable organizations are exempted from this provision, and the rules do not apply to calls placed to business telephone numbers.

If a consumer's name is on a company's do-not-call list and the company places more than one call to that consumer in the year after the consumer has been placed on the list, the consumer may, if he/she wishes, sue the telemarketer in state court, usually a small claims court. Should a consumer pursue court action, he/she should maintain records of all calls and contacts with the company.

(2) Telephone solicitations to private residences may only be made between the hours of 8 a.m. and 9 p.m.

(3) Use of autodialers or prerecorded (artificial) voice messages to call any emergency telephone line (911, hospital, medical office, health care facility, poison control center, police, or fire lines), a guest or patient room in a hospital, health care facility, or home for the elderly, any phone number assigned to a paging service or cellular telephone, or services for which the person called would be charged for the call are prohibited unless prior consent was given to receive such calls.

(4) Prerecorded (artificial) voice calls to private homes are prohibited. However, such calls are permitted if the person called has consented to receive such calls, the call is noncommercial (from a charitable, nonprofit, political, or polling organization or government agency), the entity calling has an established business relationship with person called, or the call is an emergency. Such calls to business numbers are permitted.

(5) Any person or entity making a telephone solicitation to a private home must provide the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address where that person or entity may be contacted.

(6) Any person or business using autodialers or prerecorded (artificial) voice calls, including calls placed to businesses, must state its identity at the beginning of the message and its telephone number or address during or after the message.

(7) Autodialer calls may not lock onto a phone line. Within 5 seconds of a phone being hung up, the autodialer must release the phone line. In some areas of the country, due to different telephone system technologies, this release may take longer. Customers should check with their local telephone company for additional information.

(8) Calls transmitting unsolicited advertisements to home or business fax machines are prohibited unless permission has been granted to do so or there is an established business relationship. Any message sent to a fax machine must include the date and time the transmission is sent, identity of the sender, and the telephone number of the sender or the sending fax machine.

The FCC's initial final rule can be found in the *Federal Register* of October 23, 1992, on pages 48333-36. After some modification, the rule was finalized in August 1995 and published in the *Federal Register* of August 15, 1995, on pages 42068-69. The Consumer Information Bureau of the FCC provides more detailed information concerning the Telephone Consumer Protection Act of 1991 at its Web site [<http://www.fcc.gov/cib/consumerfacts/Nofaxes.html>]

## **Telemarketing and Consumer Fraud and Abuse Prevention Act**

P.L. 103-297 was signed by President Clinton on August 16, 1994. The Act directed the Federal Trade Commission to establish rules to prohibit certain telemarketing activities. The FTC's final Telemarketing Sales Rule (TSR) was adopted on August 15, 1995. The rule covers most types of telemarketing calls and also applies to calls consumers make in response to material received in the mail, but it is not intended to affect any state or local telemarketing laws. The rule went into effect on December 31, 1995.

Some of the provisions of the rule are:

- (1) The rule restricts calls to the hours between 8 a.m. and 9 p.m.
- (2) It forbids telemarketers from calling consumers if they have been asked not to. Violations of this provision may be reported to the state Attorney General.
- (3) It requires certain prompt disclosures, prohibits certain misrepresentations and lying to get consumers to pay, and makes it illegal for a telemarketer to withdraw money directly from a checking account without the account holder's specific, verifiable authorization.

Telemarketers calling consumers must promptly identify the seller of the product or service, that the purpose of the call is to sell something, the nature of the goods or services being offered and, in the case of a prize promotion, that no purchase or payment is required to participate or win. In addition, prior to a consumer paying for any good or service, the consumer must be provided with material information that is likely to affect their choice of the good or service. Material information includes cost and quantity; restrictions, limitations, or

conditions; refund policy; and, in the case of a prize promotion, information on the odds of winning, that there is no payment required to enter the promotion, how the consumer may enter the promotion without paying, and information on any material costs or conditions that may be required to receive or redeem any prize.

(4) Telemarketers and sellers are required to maintain certain records for 2 years from the date that the record is produced. Records includes items such as advertising and promotional materials, information about prize recipients, sales records, employee records, and all verifiable authorizations for demand drafts for payment from a consumer's bank account.

There are exceptions to the Telemarketing Sales Rule. For example, calls initiated by a consumer that are not made in response to a solicitation, business-to-business calls (in most cases), and sales of 900-number (pay-per-call) services and franchises (covered by other FTC rules) are not covered. Certain types of businesses—banks, federal credit unions, federal savings and loans, common carriers (long-distance telephone companies and airlines), non-profits, insurance companies, and many types of companies selling investments—are not covered by the rule because they are exempted from the FTC's jurisdiction and, in most cases, are regulated by other federal agencies. However, individuals or companies providing telemarketing services under contract for these companies are covered. The application of the rule can be complex. Consumers should check with state authorities or the FTC for clarification of coverage.

With certain limitations, the FTC, the states, and private individuals may bring civil actions in federal district courts to enforce the rule.

A statement of purpose and the text of the Telemarketing Sales Rule can be found in the August 23, 1995, *Federal Register*, pages 43842-438477. The full text of the sales rule is also available at the Federal Trade Commission Web site at [<http://www.ftc.gov/bcp/telemark/rule.htm>]. Additional FTC information concerning telemarketing is available at [<http://www.ftc.gov/bcp/menu-tmark.htm>]. Complaints may be filed electronically at this site.

**Telemarketing Sales Rule Review.** During 2000, as required by this Act, the FTC began conducting a review of the rule's effectiveness, its overall costs and benefits, and its regulatory and economic impact since its adoption. In addition, the FTC examined telemarketing and its impact on consumers over the past 2 decades.<sup>1</sup> Results of the review will be reported to Congress. For further information, see [<http://www.ftc.gov/bcp/rulemaking/tsr/tsr-review.htm>].

On January 22, 2002, the FTC announced substantial proposed changes to the TSR. Among the FTC's proposed changes is the creation of a national do-not-call list. If enacted, consumers would place their name on the list by calling a toll-free telephone number. It would then be against the law for a telemarketer to call those consumers. Because certain businesses are exempt from the TSR (see above), notably those that consumers have given permission to contact them, placing a name

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<sup>1</sup>*Federal Register*, February 28, 2000, pp. 10428-10434.

on the list would not stop all telemarketing calls. Details concerning the procedures and operation of the national list will be addressed during review of the FTC proposal. If implemented, the national list will not be operational for many months.<sup>2</sup>

In addition, the FTC proposed that telemarketers be prohibited from blocking caller ID systems, that telemarketers be prohibited from obtaining a consumer's credit card or other account number from anyone but the consumer or from improperly sharing that number with anyone else for use in telemarketing, and that use of predictive dialers resulting in "dead air" (i.e., no one on the line) violates the TSR.

More detail concerning the FTC proposal may be found at the FTC Web site at [<http://www.ftc.gov/opa/2002/01/donotcall.htm>]. The full text of the FTC Notice of Proposed Rulemaking is available at this site. In addition, the Notice was published in the *Federal Register* on January 30, 2002, on pages 4491-4546. The FTC accepted comments on the proposed TSR rule changes until March 29, 2002.

On May 24, 2002, the FTC announced that it had not yet made any final determination regarding the establishment of a national do-not-call registry. However, concerned with funding for operation of the registry should it be implemented, the FTC amended its January 22 proposal to include the assessment of user fees on all telemarketers that access or obtain data from any national do-not-call registry that might be established. The Commission also reiterated that it is not proposing any charges to consumers for adding their names to the registry. Currently, the FTC estimates that development and implementation of a national list would cost approximately \$5 million. Of that, approximately \$3 million would come from user fees. According to the FTC, there are approximately 3,000 telemarketers that would be required to pay the user fee.

The Direct Marketing Association (DMA), a national trade association serving the direct marketing industry, believes this amendment to the original proposal would be counterproductive to the industry's efforts at self-regulation and would be a financial burden to telemarketers. The DMA currently operates the DMA Telephone Preference Service, an industry-run national do-not-call list with 4.5 million names on the list.

The full text of the Notice of Proposed Rulemaking concerning the proposed user fees may be found in the *Federal Register* of May 29, 2002, on pages 37362-37369. The FTC announcement of the Notice with links to the text of the proposal may be found at [<http://www.ftc.gov/opa/2002/05/fyi0229.htm>]. Comments on this issue will be accepted until June 28, 2002.

## **Senior Citizens Against Marketing Scams Act of 1994**

This Act was Title XXV of the Violent Crime Control and Law Enforcement Act of 1994, P.L. 103-322, and was signed by President Clinton on September 13,

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<sup>2</sup>For additional information on do-not-call lists, see CRS Report RS21122, *Regulation of the Telemarketing Industry: State and National Do Not Call Registries*, by Angie A. Wellborn.



1994. It included provisions that increased penalties for telemarketing fraud against people over 55 years old. Provisions of this law allow imprisonment up to an additional 5 years for certain telemarketing crimes or up to 10 additional years if 10 or more persons over the age of 55 were victimized or the targeted persons were over 55. Also, the Act requires that full restitution be paid to victims and directs the U.S. Attorney to enforce any restitution order.

## **Telecommunications Act of 1996**

P.L. 104-104, signed by President Clinton on February 8, 1996, was a substantial amendment to the 62-year old Communications Act of 1934. Section 701 of the Act closed a loophole that allowed information service providers and telemarketers to connect callers to “pay-per-call” services even though the callers had initially dialed a toll-free telephone number.

## **Telemarketing Fraud Prevention Act of 1997**

P.L. 105-184 was signed by President Clinton on June 23, 1998, and attempts to deter fraudulent telemarketers by raising the federal criminal penalties for telemarketing fraud and permitting the seizure of a criminal’s money and property to make restitution to victims. Also, if persons over the age of 55 were targets of the fraudulent telemarketing activities, criminals may be sentenced to additional prison time.

## **Protecting Seniors from Fraud Act**

President Clinton signed the Protecting Seniors from Fraud Act, P.L. 106-534, on November 22, 2000. This Act finds that an estimated 56% of the names on calling lists of illicit telemarketers are individuals aged 50 or older and that, as a result, older Americans are often the target of telemarketing fraud.

Among other things, this Act:

(1) Authorizes \$1 million for each of the fiscal years 2001 through 2005 to be appropriated to the Attorney General (Department of Justice) for senior fraud prevention program(s) and directs the Comptroller General to submit a report to Congress on the effectiveness of the program(s).

(2) Directs the Department of Health and Human Services to provide and disseminate within each state information that both educates and informs senior citizens about the dangers of fraud, including telemarketing fraud. This information may be distributed via public service announcements, printed matter, direct mailings, telephone outreach, or the Internet.

(3) Instructs the Attorney General to conduct a study of crimes against senior citizens. Among other issues, the report must address the nature and extent of telemarketing fraud against seniors.

(4) Directs the Attorney General, not later than 2 years after the date of enactment of this Act, to include statistics relating to crimes against seniors in each National Crime Victimization Survey.

(5) Expresses the sense of the Congress that state and local governments should incorporate fraud avoidance information and programs into programs that provide assistance to the aging.

## **Crimes Against Charitable Americans Act of 2001**

The Crimes Against Charitable Americans Act of 2001 was passed as Section 1011 of the Uniting and Strengthening American by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT ACT), P.L. 107-56, and was signed by President George W. Bush on October 26, 2001.

Passed following the September 11 attacks, Section 1011 amends the Telemarketing and Consumer Fraud and Abuse Prevention Act (see above) to expand the coverage of the FTC's Telemarketing Sales Rule to apply to calls made to solicit charitable contributions. The rule currently covers only calls made to sell goods and services. Charitable organizations are exempt from the rule. Although this law does not remove that exemption, it does permit the FTC to take action against a for-profit company that fraudulently, deceptively, or abusively solicits charitable contributions for charities.

In addition, the Act increases the penalty for impersonating a Red Cross member or agent.

## **What Consumers Can Do**

### **Hang Up**

Simply say, "No, thank you. I'm not interested." No one has to make any special excuse or listen to the presentation of the person on the line.

### **Be Informed**

Consumers can go to a local library and ask for help in finding information on telemarketing and telemarketing scams. The library's Internet connection (if available) will provide access to the Web sites listed in this report. If no Internet connection is available, one may contact the FTC to request information about the Telemarketing Sales Rule.

Federal Trade Commission  
Public Reference Branch  
6<sup>th</sup> Street and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580  
[<http://www.ftc.gov>]

Contacting the local Better Business Bureau (BBB) to obtain information about telemarketing and the various types of telemarketing scams is another option. The BBB also provides information at its Web site [<http://www.bbb.org/library/ba-tele.html>].

## **Be Cautious**

If a letter or postcard arrives or there is a message on a home answering machine stating that someone has won a free trip or a prize or a sweepstakes, be cautious. Consumers should check the area code for the number that must be called to claim a prize or respond to a telemarketing call before they make the call. Most Caribbean countries and Canada have area codes that are integrated into the U.S. telephone system and may be reached by direct dialing without using separate country codes. Simply making a call to certain area codes may incur substantial long-distance charges. Those charges will depend upon the area code called, long-distance carrier, length of call, a customer's long-distance calling plan (or lack thereof), and other factors. 800, 877, 888, 866, and 855 are the toll-free telephone prefixes used in the United States.

A list of area codes and the state, territory, or country served by a particular area code may be viewed at the Web site of the North American Numbering Plan Administration (NANPA), the administrator of the North American telephone numbering plan. The Web site is [[http://www.nanpa.com/area\\_codes/index.html](http://www.nanpa.com/area_codes/index.html)]. Also, the front section of a local phone book usually contains maps and listings identifying area codes. If a particular code is not listed, customers should call the phone company to determine what area an unfamiliar area code serves. According to an FCC Fact Sheet, there are approximately 317 area codes in service today. About 207 of them are within the United States. Area codes are constantly being added or revised.

If people respond to a prize announcement, they should not give out credit card, bank account, or Social Security numbers or send money to cover taxes, customs fees, etc., unless they completely understand all charges, procedures, and details concerning the offer. There are many different types of telemarketing scams involving many different types of products and services. For example, some of the known scams deal with stocks and other investments, automatic debit, charitable donations, easy credit, credit cards, credit repair, advanced fee loans, magazine subscriptions, international telephone calls, prizes, sweepstakes, work-at-home schemes, and travel. If there is doubt, people can request that written documentation explaining the prize, product, or service be forwarded to them. Any reputable telemarketer will send the information. Consumers should take their time and not be pressured into responding immediately.

## **Report Incidents to the Authorities**

If a consumer believes that he/she is a victim of a telemarketing scam or that a telemarketing concern is violating existing rules, they should report the incident(s). First, contact a local or state consumer affairs office or the state attorney general's office. The FTC's Telemarketing Sales Rule permits local authorities to prosecute

telemarketing scam operators who operate across state lines, and individual states may have passed their own laws or established regulations concerning telemarketing.

**Federal Trade Commission.** Federal authorities may also be contacted. Victims of false or deceptive telephone solicitation sales practices may file a written complaint with the FTC by sending a description of their situation to:

Federal Trade Commission  
Consumer Response Center  
Drop H285  
Washington, D.C. 20580  
1-877-FTC-HELP (382-4357)(toll-free)

An electronic complaint form and information are available at [<http://www.ftc.gov>]. Click on “File a Complaint Online” at the bottom of the screen.

The information that is provided to the FTC may help the agency establish a pattern of violations that may require action. However, the FTC generally does not get involved in individual disputes with telemarketing companies.

**Project Know Fraud.** In November 1999, President Clinton announced a new mail campaign designed to fight telemarketing fraud. The campaign, known as Project Know Fraud, mailed postcards about telemarketing fraud to every household in the United States and made a Know Fraud video available at libraries throughout the country. The project is a joint effort of the AARP (formerly known as the American Association of Retired Persons), Council of Better Business Bureaus’ Foundation, Department of Justice, Federal Bureau of Investigation, Federal Trade Commission, National Association of Attorneys General, Securities and Exchange Commission, and U.S. Postal Inspection Service. For information on telemarketing fraud or to report suspected fraudulent telemarketing activity:

Know Fraud  
P.O. Box 45600  
Washington, D.C. 20026-5600  
1-877-987-3728 (toll-free)  
[<http://www.consumer.gov/knowfraud>]

**National Fraud Information Center.** Suspected fraudulent telemarketing activities may also be reported to the National Fraud Information Center (NFIC), a private, nonprofit organization that assists consumers with telemarketing complaints. NFIC forwards all appropriate complaints to the FTC. One may obtain information on telemarketing or report suspicious incidents to NFIC via telephone, mail, or the Internet.

National Fraud Information Center  
P.O. Box 65868  
Washington, D.C. 20035  
1-800-876-7060  
[<http://www.fraud.org>]

**Federal Communications Commission.** One may also contact the Federal Communications Commission if they believe violations of the Telephone Consumer Protection Act have occurred. Send a letter describing the complaint in detail to:

Federal Communications Commission  
Consumer Information Bureau  
Complaints  
445 12<sup>th</sup> Street, N.W.  
Washington, D.C. 20554  
[<http://www.fcc.gov/cib/consumerfacts/Nofaxes.html>]

**Ask to Be Placed on a Do-Not-Call List.** If someone wants to be placed on a firm or individual's do-not-call list, they should state clearly and firmly to the caller that their name is to be added to the list. The caller must take the name, add it to their list, and keep it there for 10 years. In addition, consumers should take down the name of the caller, the name of the firm or individual for whom they are making the call, and the address and telephone number where they can be reached. Note the date and time and keep a record of any additional calls that are received (if any) from the same source. If additional calls from the same source continue, a consumer may consider filing a suit in small claims court.

**State Do-Not-Call Lists.** Several individual states have passed laws establishing do-not-call lists within the state. Consumers should contact a local consumer affairs office, Better Business Bureau, or an appropriate state office to find out the particulars of their state's do-not-call list or if such a state list exists. In some cases, there may be a (monthly or annual) charge to be added to the list. If charges are assessed, state law, not FCC or FTC regulations, will determine the charges.

The FTC provides a list of states with do-not-call lists and contact phone numbers for those states at [<http://www.ftc.gov/bcp/online/pubs/alerts/dncalrt.htm>].

**Direct Marketing Association.** The Direct Marketing Association, a national trade association serving the direct marketing industry, maintains a national do-not-call list. If someone adds their name to the national list, it will take a few months for it to take effect, and the name will go *only* to the companies who subscribe to the DMA's list service. Telemarketing companies are not required to subscribe to the service, and getting a name on any do-not-call list does not remove it from all telemarketers' lists. The list is updated four times per year, in January, April, July, and October. There is no charge to add a name to the list. Send name, address, and home telephone number (including area code) to:

Telephone Preference Service  
Direct Marketing Association  
P.O. Box 9014  
Farmingdale, NY 11735-9014  
[<http://www.the-dma.org/consumers/consumerassistance.html>]

In some instances, telemarketers use automated dialing mechanisms that call every number in a targeted geographic area or with a certain prefix. If someone is in one of those areas or has the designated telephone prefix, they will not escape the call even if their name is on a do-not-call list. Even unlisted numbers are called in these situations. The DMA has established operational guidelines for its members using automatic dialing equipment and software.

The DMA also offers a free Mail Preference Service (MPS) for those who wish to receive less advertising mail at home. As with the Telephone Preference Service, to register for the MPS, a postcard or letter providing name, home address, and signature must be sent to the DMA.

Mail Preference Service  
Direct Marketing Association  
P.O. Box 9008  
Farmingdale, NY 11735-9008  
[<http://www.the-dma.org/consumers/consumerassistance.html>]

***DMA Privacy Promise.*** On July 7, 1999, the DMA announced implementation of its “*DMA Privacy Promise to American Consumers.*” This effort requires all DMA members to adhere to a set of consumer privacy protection measures. These measures include:

(1) Disclosing to consumers when contact information about them may be shared with other marketers;

(2) Providing a means for consumers to opt-out of any information sharing arrangement;

(3) Honoring any individual consumer’s request not to receive any further solicitations from the marketer; and

(4) Requiring member companies to use the DMA’s Mail Preference and Telephone Preference Services to maintain updated marketing lists of consumers who have chosen to place their name on these lists.

DMA members were given reasonable time to comply, and through the use of secret shoppers, decoys, review of consumer complaints, and random staff contacts, the DMA seeks to assure that its members comply with these measures. If a member refuses to correct its procedures when asked to do so, the DMA Board may expel the company and make its actions public.

In addition, the DMA, in conjunction with the FTC and FCC, has developed a Web page providing advice to consumers who shop by phone. The site provides shopping tips, information on federal laws and regulations, and provides information on filing complaints [<http://www.the-dma.org/consumers/shoppingbyphone.html>].

The Direct Marketing Association  
1120 Avenue of the Americas  
New York, NY 10036-6700  
(212) 768-7277