

Telephone Consumer Protection Act of 1991. Pub. L. No. 102-243, § 2, 105 Stat. 2394 (codified at 47 U.S.C. §§ 227 (1991))

SEC. 2. FINDINGS.

The Congress finds that:

(1) The use of the telephone to market goods and services to the home and other businesses is now pervasive due to the increased use of cost-effective telemarketing techniques.

(2) Over 30,000 businesses actively telemarket goods and services to business and residential customers.

(3) More than 300,000 solicitors call more than 18,000,000 Americans every day.

(4) Total United States sales generated through telemarketing amounted to \$435,000,000,000 in 1990, a more than four-fold increase since 1984.

(5) Unrestricted telemarketing, however, can be an intrusive invasion of privacy and, when an emergency or medical assistance telephone line is seized, a risk to public safety.

(6) Many consumers are outraged over the proliferation of intrusive, nuisance calls to their homes from telemarketers.

(7) Over half the States now have statutes restricting various uses of the telephone for marketing, but telemarketers can evade their prohibitions through interstate operations; therefore, Federal law is needed to control residential telemarketing practices.

(8) The Constitution does not prohibit restrictions on commercial telemarketing solicitations.

(9) Individuals' privacy rights, public safety interests, and commercial freedoms of speech and trade must be balanced in a way that protects the privacy of individuals and permits legitimate telemarketing practices.

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Moser v. F.C.C., 46 F.3d 970 (Or. 1995), cert. denied 515 U.S. 1161 (1995)

“Congress held extensive hearings on telemarketing in 1991. Based upon these hearings, it concluded that telemarketing calls to homes constituted an unwarranted intrusion upon privacy.” (972)

“Congress adequately demonstrated that such calls pose a threat to residential privacy.”  
(p 975)

The United States Court of Appeals for the Ninth Circuit, in reversing the District Court, found that the Telephone Consumer Protection Act of 1991’s provisions banning prerecorded telemarketing calls was not unconstitutional.

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S. Rep. No. 102-178 at 4, *reprinted in* U.S.C.C.A.N. 1968, 1971

“The Supreme Court also has recognized that "in the privacy of the home\*\*\*the individual's right to be left alone plainly outweighs the First Amendment rights of an intruder." FCC v. Pacifica Found., 438 U.S. 726, 748 (1978) (patently offensive, indecent material presented over the airwaves confronts the citizen, not only in public, but also in the privacy of the home, where the individual's right to be left alone plainly outweighs the First Amendment rights of an intruder.)

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Jeffrey F. Ghent, Annotation, *Unsolicited Mailing, Distribution, House Call, or Telephone Call as Invasion of Privacy*, 56 A.L.R.3d 457 (1974).

The courts have typically not construed telemarketing to be invasions of privacy, with the exceptions being persistent telephonic intrusions by a single entity and harassing telephone calls by bill collectors.