



PARAMOUNT
LISTS, INC.

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Office of the Secretary
Federal Trade Commission
Washington, DC

I conclude, based on legal research, common sense and my **42** years of business experience that Do Not Call laws either proposed or enacted are unconstitutional, discriminatory, unnecessary, damaging and extremely burdensome. Many believe **as I** do. Attorneys I've discussed this with agree that constitutional and other core rights and existing laws may be compromised by the unending rules of the states and FTC. This is a legal issue and, as such, should be decided in the courts, especially the Supreme Court of the **U.S.** Any FTC rules must be based on law and must not be arbitrary. Serious legal issues are involved and rules based on wrong assumptions will eventually be overturned.

Here are my further comments regarding Do Not Call laws.

First and foremost Do Not Call laws are probably unconstitutional. They are a violation of the First Amendment guaranteeing freedom of speech. "Freedom of speech is **not** a privilege it is a right," so said Supreme Court Justice Scalia in the Jehovah's Witnesses vs. Stratton, **OH** case recently heard by the Supreme Court. The FTC's attempts to control commercial speech treat it as a privilege and not a right.

Do Not Call lists discriminate against one form of commercial speech, telemarketing, while other forms of commercial speech such as print media, radio, TV, movies and newspapers are not affected.

Do Not Call lists frequently also discriminate not only against telemarketing but also against certain segments of telemarketing while allowing other select types of solicitations to be made. Examples of common exceptions to the rule are political calls and charitable calls. Perhaps it is these very exceptions which are most annoying to some.

Second, Do Not Call lists probably infringe on interstate commerce and probably violate interstate commerce laws. They are a burden on commerce and definitely have an impact on the economy and jobs. **As** it is, the state Do Not Call lists are, in effect, an unfair tax on telemarketers that probably violates interstate commerce laws.

Third, Do Not Call lists are unnecessary. The FTC has already stated that it would have to spend at least **3MM** annually to fund a bureaucracy devoted entirely to this totally unnecessary list. The Do Not Call list is a total waste **of** taxpayer money and FTC time since every person in the U.S. has the ability to easily disconnect any phone call they receive. Disconnecting a phone call is simple, and with all due respect, people do not need a Federal agency to do for them what they can do themselves.

With the probable passage of the new Caller ID law which will make it illegal to block Caller ID, every person with Caller ID will know exactly who is calling them and they can feel free not to answer the phone, if they so choose. Besides Caller ID, consumers can obtain Call Blocking as well as unlisted phone numbers.

On the other hand, outbound telemarketing contributes **66** 1 Billion to the national economy as well as **6** million outbound telemarketer jobs, according to statistics compiled by the DMA. Obviously, many people are listening to and buying what telemarketers sell.

Fourth, the FTC probably does not have the legal authority to mandate and administer a Do Not Call list. **If** anyone would have this authority it would more appropriately be the FCC.

Fifth, Do Not Call lists misrepresent that the people and phone numbers on them are strictly people who opted for the Do Not Call list, when, in fact, that is almost impossible to claim. The reason is that all current Do Not Call lists do not have a mechanism to "clean" them. What happens is that phone numbers are put on a Do Not Call list and they stay on the list for a period of time. In New York, for example, they stay on the list for three years. We estimate, conservatively, that due to disconnects and moves, the New York list will be **50%** in error within **3** years. It is completely unfair and a misrepresentation of the facts to say you have a **Do** Not Call list comprised of people who opted for it when, in fact, that is not true. When a person moves or their phone is disconnected their phone number is then assigned to another person. That other person would then be automatically put on the Do Not Call list. Considering that there are severe penalties for calling people on a **Do** Not Call list, such a list is inherently illegal. Such tactics fly in the face of everything the FTC claims to stand for.

Sixth, the penalties are excessive and put people who violate the Do Not Call laws into the category of a criminal. In Utah, the court noted that the Do Not Call statute's prohibition of potentially annoying or harassing calls swept too broadly because it potentially criminalized unwanted telephone solicitations to a private home. "The First Amendment," the court said, "does not prohibit the kind of essentially harmless communications" that some might find annoying. "Simply put," the court concluded, "the First Amendment is made of sterner stuff.." [In other words, the high principles of the First Amendment far outweigh any minor annoyances, such as an unwanted phone call.] **(brackets ours)**

Seventh, redundancy with existing and proposed state laws. This is yet another burden heaped upon this maligned industry. In fact, it is so blatantly burdensome that most reasonable people would likely conclude that Do Not Call laws are meant to destroy or severely cripple the Telemarketing Industry.

People know how to deal with unwanted phone calls. They have options and every person in the **U.S.** knows what those options are. These include telling the person you're not interested and then hanging up, just plain hanging up, not answering the phone or answering it, whatever the person's choice happens to be. The people of the United States, the land of freedom, with all due respect, do not need a large, expensive Federal agency to "protect" them from unwanted phone calls.

I believe Do Not Call laws are unconstitutional, unnecessary, discriminatory, and damaging. I believe the only way to resolve the Do Not Call issue as well as other related telemarketing issues is in the courts, especially the **U.S.** Supreme Court. They should decide the constitutional and discrimination issues. Do Not Call laws and related telemarketing rules are either legal or illegal. Any FTC rules should be made only after the court makes their decisions. This is the only way to insure that whatever rules might be made do not infringe on the rights of the Telemarketing Industry.

Respectfully yours,

A handwritten signature in black ink, appearing to read "Ralph Genovese", written over a circular stamp or seal.

Ralph Genovese