

Submission to DCITA on the Introduction of a Do Not Call Register

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This submission can be found at: <http://www.firstpr.com.au/issues/dnc/> .

This is in response to the Discussion Paper at http://www.dcita.gov.au/tel/do_not_call .

Key Points

- There should be no restrictions on the types of phone numbers which should be protected. The Register should protect all businesses, government agencies, community groups etc.
- Opt-in regulation of telemarketing is the easiest and best approach.
- If telemarketing is regulated on an opt-out basis, the definition of "telemarketing" should cover all fund-raising calls, and likewise all sales, fund-raising and promotional calls from political or religious organisations. All telemarketers should be required to offer the recipient details of the Register with which they can opt-out of such calls in the future.
- If social and market research calls are to be regulated, they should be regulated separately from telemarketing calls, on an opt-out basis, ideally with separate user preferences for social / scientific and for commercial research calls or with some over distinction which aims to preserve minimal opting-out of the most socially valuable types of research calls.
- For reasons of security and privacy, an opt-out list for telemarketing calls, social / scientific research calls and commercial research calls must be implemented on the basis of "list flagging" (AKA "cleaning" or "washing") rather than by exporting the entire list of numbers to telemarketers etc.
- In order to help deter and detect breaches of the Register's protective arrangements, and for many other reasons relating to one-off calls involving bomb-threats, emotionally abusive calls etc. it is vital that all home, business and mobile telephone services have an easy-to-use Customer Activated Malicious Call Trace facility, which does not require prior arrangements to activate.
- The whole concept of a caller encouraging a recipient to divulge personal information, especially credit card details, is at odds with common sense. Governments should educate the public about the risks of doing this, since there is no way the recipient can be sure of the identity of the caller. To this end, all telemarketing calls, including fund-raising calls, should be prohibited from asking the recipient to divulge such information - and should be limited to encouraging the recipient to make a donation or purchase via some means by which the recipient can be sure of the identity of the persons they reveal their credit card and other information to.
- My tentative view of the level of research calls is that it is currently too low to warrant a full government-mandated regulatory regime. However, I believe that those who wish not to receive such calls should have their wishes respected. To this end, I advocate that the researcher's national organisations create their own self-regulatory opt-out list. I further explore ways by which research calls could be classified so that an opt-out scheme could be

created for two classes of research call. The aim of this is to allow people to opt out of one type, such as the most numerous and least interesting or least socially valuable, while still being available for the other kind.

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Introduction

My background is in electronics, technical writing and consumer advocacy, especially telecommunications privacy. The views expressed here are my own and do not represent the views of any organisation. I have been advocating proper regulation for outbound telemarketing since making submissions to and meeting with the the AUSTEL Privacy Inquiry in 1992.

Federal legislation to properly protect the Australian public from outbound telemarketing calls will be a most welcome development!

For years, the advocates have been saying the same thing - that telemarketing is an unacceptable burden on society, and that the inherently exploitative, manipulative nature of this business practice makes it unsuitable for self-regulation. Since the vast majority of people do not want to receive telemarketing calls, proper regulation would largely end the practice - and this proper outcome could never be brought about by an organisation representing outbound telemarketers.

Telemarketing imposes high social and economic costs on the whole nation, and I particularly welcome the proposal to protect small business telephone customers, as

well as residential consumers.

The bulk of this submission concerns the scope of the Register, how it would operate, and how non-complying calls can best be detected and deterred. Further information on the social costs of telemarketing, how it is more intrusive and less helpful than any other method of marketing, and some history of the debate in this country can be found at my site <http://www.firstpr.com.au/issues/tm/>. I apologise for this material not being as organised and well presented as it might be. It represents a subset of the work I have done on this matter since 1992.

Large, billion-dollar, revenue and employment figures are often bandied about for "telemarketing". However, these figures typically encompass all call-centre-based sales, which are mainly "inbound" calls taking orders. The concern here is outbound telemarketing calls, primarily from the point of view of them being systematic misuse of the telephone network, rather than from the consumer protection perspective concerning any sales or donations which are actually made. For simplicity, this submission makes no further reference to the use of inbound call centres for sales or fund raising. All further references to "telemarketing" refer to "outbound telemarketing".

I need a term to refer collectively to the persons whose telephone numbers will be protected. "Consumers" is not adequate, because the scheme should cover all telephone users, including business and government. I will use the somewhat antiquated term "subscribers".

This Do Not Call Register proposal is an opportunity for Australia to build on progress made in the USA, UK and EU and to provide robust protection against telemarketing calls (including charity and political calls) whilst preserving the ability to conduct social, scientific and commercial market research surveys by phone to those people who do not express a preference to the contrary.

Opt-In vs. Opt-Out

Unfortunately the term "Do Not Call Register" implies Opt-Out. A better approach would have been to frame this discussion in a wider scope, by addressing the need to regulate the telephone network to avoid the systematic making of calls which are unacceptable to the recipients.

Since it is clear that the great majority of people (70% in a 1992 ADMA phone survey - www.firstpr.com.au/issues/tm/) do not want to receive any telemarketing calls, it makes sense that a subscriber should express an explicit preference to receive such calls before being subjected to them.

Outbound telemarketing has developed without proper regulation. This systematic abuse of subscribers' telephone services and the consequent intrusion into their lives, has become a way of doing business and raising funds for a small proportion of businesses and charities. Since governments are reluctant to ban established practices which involve employment and revenue, it seems likely that the Register will go ahead as an Opt-Out scheme. The majority of this submission assumes this will be the case, but it must be remembered that the Register would be vastly simpler, less costly and more effective if telemarketing was regulated on an Opt-In basis. This is consistent with spam regulation and with the principle that people should not

have to take action to preserve a state of privacy and peace which virtually every person in Australia (telemarketers excluded) desires for themselves and provides for all others.

Firstly, the size of the list would be very small indeed. With Opt-Out, the Register will have to cope with pretty much the entire population, in time, registering their existing and new telephone numbers.

Secondly, because there will be no reason for any action, any new information flows etc, regarding ordinary people who wish to protect their privacy, the great majority of privacy and security difficulties discussed below would not arise with an Opt-In scheme.

Scope of the Calls

The first thing to be decided about the Register is from which types of telephone call will subscribers be protected from. The Register may cover a single category of call, in which case the inclusion of a number in the register carries a single bit of information about that number. If the Register covers multiple types of calls, for which subscribers can express different preferences, then the Register's database will have multiple bits for each number.

Market and Social Research calls

In discussing different types of call, I think it is worth considering to what extent subscribers' preferences are likely to be correlated for each type. It is impractical to provide too many preference options for a potentially large taxonomy of unsolicited and unwanted calls. However, I think there are extremely strong reasons for treating Market and Social Research (M&SR) calls separately from Telemarketing (TM) calls. The main reasons I advocate this are:

- M&SR calls can be of genuine social benefit. Telephone surveys are far more effective for researching important social questions than Internet or paper-based surveys - whilst being vastly more cost effective than what is usually regarded as the best method: face-to-face interviews.
- M&SR callers seek only the recipient's time, attention and help in providing information. They do not seek money or try to instil particular beliefs. Properly conducted MR calls, according to AMSRO's guidelines and principles (www.amsro.com.au) are respectful, non-manipulative and are always terminated without fuss if the recipient wishes to end the call. This is a complete contrast to the manipulative and exploitative purpose of a TM call, which is typically to convince the recipient to pay money for a product, service or donation as quickly as possible.
- I understand that since the early 1990s, M&SR call response rates have been dropping due, in large part, to recipients being impatient with unsolicited callers, who are primarily telemarketers. In particular, the practice of SUGging (Selling under the Guise of market research) has made it very difficult for recipients to distinguish, at first, whether the call is genuine M&SR or whether the call is really for the purpose of telemarketing or "push-polling". A good

TM regulatory regime should enable M&RS calls to continue to those who wish to accept them.

- I believe there is a significant difference between many people's willingness to receive and respond to M&RS calls and their willingness to receive TM calls. Other than lonely mentally ill people, I have no reliable reports of anyone actually wanting to receive telemarketing calls. (Nonetheless, many people who hate telemarketing calls occasionally respond positively to them.) Quite a number of people, myself included, are prepared to accept some fairly low level of M&RS calls (my view would change if they came more than once every few months) because we believe they are important (at least in some cases) and because we are happy to contribute our opinions, desires and experiences to the development of policy, products or services, and/or to the advancement of social research. Evidence of this is the above-mentioned 1992 survey conducted by a market research company for ADMA, in which 70% of the people who responded positively to the survey call said they did not want to receive any telemarketing calls at all. (While purely commercial market research may not always have any great social value, some of it does provide genuine benefits to all of society, by enabling businesses to properly estimate demand, tailor the products and services accordingly, and so meet genuine demand without wasting money on products, services and new outlets which will not be successful. All costs of business are ultimately born by consumers, so there is genuine social benefit in enabling businesses to operate efficiently. Businesses are owned by real people and often by thousands or millions of investors, so imposing costs on business for no good purpose ultimately burdens consumers as customers and in many cases as investors.)
- A regulatory scheme which fails to properly distinguish between TM and M&RS calls and which is effective against TM calls will impose extreme burdens on M&RS professionals and companies. Any such scheme is likely to be strongly opposed by a respectable, commercially and socially useful sector of society, which would probably weaken the ability of the scheme to protect subscribers from TM calls.

In summary, because M&SR calls can have unique social benefits, they should be clearly distinguished from TM calls and subject to differing regulatory requirements. In the event that TM calls are regulated on an opt-in basis, I advocate that M&SR calls be regulated either on an opt-out basis, or not at all. I discuss the regulation of M&SR calls in a section below.

I think an Opt-Out Do-Not-Call register would enable subscribers to flag their desire not to receive one type of call:

- Telemarketing, including for fund-raising and political purposes, as broadly defined below.

While I believe that research calls should be regulated, my current, tentative, view is that there are too few research calls to justify their inclusion in any opt-out scheme which is developed for telemarketing. I propose that the scheme be designed and established to cater in the future for individual preferences for different kinds of call. I propose that the research community implement its own opt-out self-regulatory scheme. I propose that in the even the research community fails to establish such a

scheme, or that it proves to be unsuitable, that in the future research calls be regulated by the government, as is proposed for telemarketing calls, but strictly on an opt-out basis, completely separately from telemarketing calls, and ideally with two distinct types of research call for which people could express individual preferences.

Some may argue that subscribers may want to avoid commercial sales calls whilst accepting calls from charities. I suggest that rather than try to split "telemarketing" into multiple categories, that it would be better for the small number of people who wish to receive these calls to communicate explicitly with the charities when they wish to be called by, rather than being inactive and expecting the charities to waste time and money calling them and thousands of other potential donors.

Fax calls

I believe that because marketing via fax calls is such a universally despised practice and because there is no role for unsolicited fax calls in any socially useful activity such as Market and Social Research, it would be much easier and better to ban the practice outright, except where the recipient has given clear, explicit, un-pressured, properly informed consent to receiving such calls.

Other modes of communication

For simplicity, this submission concerns purely telephone calls, made to ordinary telephone services (fixed and mobile) - not to VoIP telephone-like services which have no ordinary telephone number. I am not trying to contemplate all the variations on telephony which are now being spawned, such as "Push-To-Talk" for cell-phones (a VoIP application) or voice/video emails.

In general, communications services and networks should be regulated to prevent their systematic abuse, such as for intrusive communications regarding marketing, or any other purpose. In the UK, the regulator is empowered to prevent systematic abuse of the telephone network. This is a broad and potentially very useful power, which can adapt to a variety of novel misuses - rather than the current situation in Australia where legislative action is needed to tackle each specific type of misuse. The regulation of systematic misuses of communications networks (the post, the phone system, email, instant messenger systems and SMS messages) has been fragmented. It's time to do much better, and to tackle the problem from the point of view of intrusion and misuse of the recipient's service, rather than from a fair-trading basis, as "telemarketing" is often considered.

Types of call to be included as "Telemarketing"

Here I list the types of calls which I believe should all be classed as (Outbound) "Telemarketing" - which subscribers should be protected from by a single flag in the Register. (This is for an Opt-Out scheme. For an Opt-In scheme, these are the types of calls which should be banned to all numbers except those on the Opt-In list.) All these types of calls have a number of features in common:

- There is no benefit to the recipient compared to less intrusive methods by

which the recipient could also learn about or purchase goods and services, find out information about political parties, churches etc. or make donations.

- The great majority of the community, at home and at work, do not wish to receive such calls.
- There are no overall significant negative impacts on any legitimate business or charity in banning or restricting such calls - all such organisations have other, less intrusive, methods of engaging in their activities, and the great majority of businesses and charities currently use those less intrusive methods without using telemarketing at all.

Social and Market Research, in contrast cannot be conducted satisfactorily by less intrusive means - except at tremendous and often prohibitive expense for face-to-face interviews (which involve door-knocking, and so are probably no less intrusive). Furthermore, the relatively anonymous nature of phone surveys may be more effective at gaining detailed information for some sensitive topics concerning health and personal preferences than a face-to-face interview. Telephone services can be mounted in a very timely fashion - for instance in a single evening to cover the entire nation, which would be impossible with face-to-face interviews. Surveys mailed to people at random generally have far too low a response rate to be useful or to produce statistically valid results. Internet based surveys or any survey which people choose to participate in after reading an advertisement cannot be done with proper sampling, because the respondents are all more self-selected than the subset who respond to telephone surveys.

There is a direct tension between privacy and accuracy of research. For instance, if it was desired to find out exactly what is happening in people's sex lives, a rigorously random sample of people must be selected from all over the country, and each person must reveal every pertinent detail. The practical, moral and legal impossibility of doing this means that a large number of fields of inquiry are impossible to accurately research.

There can be tremendous, vital, impossible to obtain by other means, benefits to society from social and scientific research. Telephone surveys are often the best way such research can be conducted.

It is vital that the Do Not Call scheme not throw out the social/scientific and commercial market research baby with the telemarketing bathwater.

Each of the three points listed above for "telemarketing" calls do not apply, in general, to genuine Social / Scientific and Commercial Market Research calls. However the willingness to participate in these calls has probably fallen a lot in the last decade, and I believe that for all but the most crucial health survey calls, it is more important to respect people's choices about such calls, than to give the researchers the unfettered access which would maximise their ability to sample the population.

Here my attempt to list the types of call which I believe should be classed as "telemarketing". As with spam, telemarketers' ploys diverge and proliferate in an attempt to remain effective against recipient's defences. The proper definition of telemarketing needs to be very broad, whilst absolutely avoiding the inclusion of

research calls which comply with AMSRO guidelines.

Traditional commercial telemarketing

Calls soliciting any commercial relationship involving sales, hire etc. for purposes such as:

- Goods.
- Services, including telecommunications services.
- Investment schemes.
- Financial advice, including "free" advice.
- Changing to new schemes for using or paying for existing services.
- Announcing that the person has won a free gift, prize, or could win a prize if they call a particular number, listen to a radio station etc.
- Encouraging people to take part in business opportunities, investment schemes, marketing schemes such as Amway etc.
- Any attempt to promote a product or service, including encouraging the recipient or their associates to visit a location, a website, to call for further information etc.
- Calls ostensibly seeking information from the recipient which are not part of a genuine M&SR call, according to AMSRO/AMSRS guidelines. (SUGging.)

Likewise, any calls concerning matters such as those listed above, which may not be soliciting an immediate sale or donation, but may be providing "information" about such matters, or offering "free samples", "free quotes", "free safety checks of the home's wiring" etc. etc. *and etc.*

Fund-raising calls of any kind

This is an issue of intrusive and generally unwanted communications. It is irrelevant that charities consider themselves such worthy causes that they think they can justifiably compromise the privacy and peace of people who have not previously agreed to receive charity calls. It is irrelevant that most or all people might think very highly of charities in general or of the particular charity which is making the call. There is no reason why people should be expected to suffer persistent, unstoppable, manipulative calls from any person or organisation. Charities can publicise themselves by many non-intrusive means - and virtually every method of fund-raising is more respectful and less costly than outbound telemarketing.

- Calls from charities, from call centres working for charities or

from companies representing charities in any way.

- Similarly, calls which solicit the donation of goods - for instance unwanted clothing.
- Similarly, any call of any kind, such as one intended to inform the recipient of something the caller considers they should be aware of.
- Similarly, a call seeking information from the recipient.

Political and religious calls of any kind

As with charities and commercial operators, the purpose of the call is irrelevant to the question of protecting people from systematic sources of calls they do not wish to receive. People who want to engage in such interactions can initiate it themselves by calling the party or church concerned, or by indicating in some way that they wish to be called. The passionate convictions and higher purposes of the organisations and individuals who want to make these calls is irrelevant to the question of whether they should be able to override people's expressed desire not to be called in this way.

- Calls from individuals or organisations promoting particular political or religious viewpoints or seeking donations, support etc.
- Similarly calls seeking information from the recipient, including especially when the call involves questions which contain disinformation, have a manipulative effect or which develop into requests for financial or voting support.

Other abuses

The "telemarketing" definition needs to include such abuses as leaving a message on voicemail or an answering machine encouraging a person to call back, where the message does not clearly state the nature of the communication which the caller desires to engage in. This is especially important with mobile and other voicemail services which make it very easy for the recipient to call the caller's number. This can be a way of tricking people to call the telemarketer without realising the reason for the call. The cost of the call and the waste of time and attention are completely unreasonable impositions by the telemarketer. I have heard there is a scam where mobile voicemails encourage the recipient to call a number for the chance of winning a prize, for instance \$40. However, calls to that number cost \$3! It would be relatively easy for telemarketers to create a totally automated system to call mobile numbers and leave recorded messages on all calls which went to voicemail, hanging up on those which were answered by a person.

Systematic outgoing calls not to be covered by the Do Not Call Register

There are a number of types of call which I believe should not be covered by this Register, even though some of them are unwelcome.

Bill reminders and debt collection

In these instances, the recipient (or at least a person who can normally be contacted at the recipient's number) has an ongoing business relationship with the caller (or someone the caller is working for) and since monies are owing, the caller has a right, within certain limits, to repeatedly initiate contact for the purpose of having the debt paid. I think existing state fair trading legislation sets limits for the frequency, timing and nature of such calls.

Emergency and health-related information

In emergencies or in the event of an outbreak of disease, there may be a need for government agencies, including the police, fire authority etc. to call people to warn them of fires, floods, etc. or to pursue important matters regarding the spread of infectious disease.

Automatically dialled calls

I discuss this matter further at the end of this submission, in the responses to questions posed by the Discussion Paper.

Computer controlled dialling is widely used by most call centres for all types of outgoing call. The question of technically how the call is made is irrelevant if the call is of a type which the recipient has flagged their wish to be protected from. The question of how calls should be made by telemarketers to people who have not registered is a separate question, which I won't pursue at length here. The same question arises in the case of bill reminders, debt collection and potentially M&SR calls. However, it is my impression that market and social researchers are so keen to get along well with the people they call that their calls are typically made with a human operator from the very start.

Predictive diallers which dial ahead of operators becoming available, on the basis that not all calls will normally be answered, inevitably lead to some calls being answered before a human operator can talk to the recipient. This is a source of great annoyance, distress and wasted time and is a problem space which goes well beyond telemarketing and other unwanted calls. I request that DCITA fully appraise themselves of the work done in the UK, starting with David Hickson's pages on the problem of "silent calls": <http://www.users.waitrose.com/~silentcalls/>.

Recorded message calls

As telecommunications costs fall, it becomes increasingly tempting to some callers to use a fully automated system to deliver recorded messages to the hapless recipients. In Australia to date, there are no prohibitions against this practice, and it has been used occasionally, even in the mid to late nineties, such as one instance in which the subscriber answered a call only to be told that he should listen to a commercial radio

station for the purpose of winning a prize.

Generally, I don't think the exact mode of making the call is what makes it acceptable or unacceptable to the recipient. A telemarketing call is unacceptable to most people in any circumstances, irrespective of whether it is made by a machine or a person.

The purpose of the Do Not Call Register is to protect people from one or more entire categories of call. If a person fails to protect themselves in this way (this is assuming an Opt-Out arrangement), and if they have preference for the automated or un-automated nature of the calls they receive, then they should make specific arrangements with the callers.

There are legitimate uses of automated dialling and recorded information calls - primarily in disaster situations where large numbers of people must be alerted in a short time. These may not work reliably, since it is typically not possible to ascertain whether the call has been received by an adult, or whether the adult understands the message.

Voicemail and Answering Machines

The Register must also prohibit callers leaving telemarketing (however defined) messages on voice-mail services or answering machines.

Scope of Numbers Protected

A prominent and excellent feature of the Discussion Paper is that it contemplates the protection not just of residential "consumers" but also people in business - albeit "small" business.

I can't see any reason why a Do Not Call Register should be restricted to protecting numbers assigned to particular classes of citizen.

Here is a list of some of the types of telephone service which I believe should be protected by the Register, whether the numbers are for fixed line or mobile services:

- All residential homes.
- All businesses.
- All local, state and federal government departments, agencies and quasi-autonomous non-governmental organisations.
- Hospitals, churches, sporting clubs, political parties, houses of parliament, offices of MPs and Senators etc.

I can't think of a single type of telephone number which should not be provided with the protection contemplated in the Discussion Paper and further advocated here.

Why should anyone (other than telemarketers themselves) be subjected to telemarketing calls when they wish to be protected?

Anyone who suggests that certain categories of telephone user should be excluded from protection needs to justify this in terms of:

- The benefits, or avoidance of problems, which result from not protecting this class of telephone user.
- Why those benefits exceed the considerable costs of:
 - The need to define more complex rules and have the public understand and accept these rules.
 - More complex administration and testing of the nature of the telephone users who request protection.
 - Court cases and other disputes from people who wish to be protected and who challenge a decision by administrators to exclude them from protection.
 - Problems caused by people who are able to fool the system - such as when a telemarketer is fined for calling a person whose number was flagged as not to be called, where the telemarketer argues in court that this number should not have been flagged, because the telephone user did not fit the Register's criteria.

(The above assumes an Opt-Out scheme. With Opt-In scheme, none of these problems exist, because everyone is protected by default. Telemarketing calls can only be made to those people who explicitly express the desire to receive such calls.)

I sense in some aspects of the Discussion Paper, such as the proposal not to protect businesses above a certain size, that the authors consider that telemarketing has some redeeming features, or that restrictions on telemarketing should not be so complete as to effectively eradicate the practice. Telemarketing should be regulated to the point where no-one who doesn't want the calls ever gets a call. Since telemarketing calls are so unpopular proper regulation would effectively eradicate this misuse of the phone network. [Below](#) in my comments on page 13 of the Discussion Paper, I argue that "big-business" should not be burdened with telemarketing or any other encumbrance unless there are very good arguments.

List Flagging (AKA "washing" or "cleaning")

The Discussion Paper contemplates - indeed it assumes - that the Register will enable telemarketers to avoid calling people by making a list of "banned" numbers available to the telemarketers, such as by download via the Internet.

There are a number of potentially serious privacy and security problems associated with this.

Here I will argue why such lists must *never* be made available to anyone outside the government-run agency which administers the Register.

This is an area where Australia needs to improve on the US practice. Doing so will greatly aid the purpose of the Register by reducing or eliminating its privacy and

security problems and therefore making it easier for anyone to avail themselves of its protection.

In a practical sense, it is largely irrelevant what contractual arrangements a list export facility is operated under, because it only takes one staff member in one company to take a copy of the list, and the data can become available to every stalker, criminal, dodgy detective agency etc. who cares to pay for it.

Distributing a list of telephone numbers not to call, as is contemplated in the Discussion Paper, is not such a security and privacy risk as ADMA's current practice of distributing lists of names linked to a phone number and/or address. However, there are still some security problems which I will attempt to explore here.

Privacy and security problems of exporting a list of numbers

There are many possible scenarios in which problems may occur, which can't be anticipated. This example illustrates one sort of problem.

In this example person A is attempting to keep a low profile, either to the general public or to a particular person B. A may be an estranged spouse of B. A may be a person fearing retribution by a criminal B. A may be a politician, public figure, actor, actress etc. who wishes to ensure their privacy against threats from the public (some of whom can be vicious and dangerous, considering the capacity of the Internet to violate people's privacy and spread false information about them) or from stalkers and/or aggressive photographers (AKA "paparazzi").

B is seeking any information at all about A, especially a phone number, some indication of where they live etc. B may be working alone, or may hire people such as private detectives to help him or her find out all they can about A.

B may have information from various sources that A has moved, or acquired a new telephone service. For instance, B may know to the day or hour when A cancelled one phone service, and so can be assumed to have acquired another.

If we assume that A has their number flagged with the Register for protection against telemarketing etc. as soon as they acquire that number, then B can greatly ease the task of finding A's new number if he or she has access to a fine-grained version of the Register's list of "banned" numbers - by creating a short list of numbers which were added to the Register in the relevant time period.

For instance, in the USA, telemarketers can download, on a daily basis, lists which show numbers added and deleted from the "banned" list - and it seems that the file contains exact times of day when this was done. See: "Flat Text File - Change List":

<https://telemarketing.donotcall.gov/FAQ/FAQBusiness.aspx#fileformats>

Another problem with the "list export" model as assumed in the Discussion Paper is that it provides anyone who is interested with a list of valid telephone numbers which are not available in public directories, or by any other means. This list would be large, but it would contain the numbers of many public figures and other people who expect and need their privacy to be protected.

A properly run Register on an opt-out basis would list all government telephone numbers as "do-not-call" for telemarketing and for research calls. Exporting the list of such numbers enables enquiring minds to learn about the internal structure of government phone systems, including in the houses of Parliament, the defence department etc. This may render those phone services to being exposed to aggressive practices, such as tying up defence department, or police, lines with a coordinated attack from "zombied computers" - computers with attached dial-up modems which have been formed into a "(ro)bot-net" by hackers who have installed viruses, worms, Trojan horse programs or other malicious software on personal computers all over the country.

(All the above assumes an Opt-Out list. None of these problems occur with Opt-In regulation of telemarketing calls.)

List "Flagging" arrangements

Here are some suggestions for a practical, purely "list flagging" approach to operating the Do Not Call Register. (I have adopted "flagging" rather than "washing" or "cleaning", which imply that the numbers flagged for protection are in some way unclean.)

ADMA's current Do-Not-Call list is implemented both as a list for download, and as what they call they call a "cleaning" service - where telemarketers send ADMA a list of numbers they wish to call and receive the same list with some numbers flagged as not to be called. ADMA charge no extra fee for this. (This information comes from a pre-decision conference I attended on 14 November 2005 at the ACCC regarding ADMA's application for authorisation of its Code of Practice:
<http://www.accc.gov.au/content/index.phtml/itemId/479780> .)

If, as I hope, the Register proceeds on a purely "List Flagging" basis, there may be criticisms from telemarketers who prefer to download the entire list that the purely "flagging" arrangement is inconvenient or costly. However, there is no reason to believe that high costs or any practical problems will arise from this approach. Even if they did, the purpose of the Register is to protect privacy - not to make life easy or economical for those from whom the Register is protecting people.

The basic concept of List Flagging is simple. This example contemplates an opt-out registry with separate preferences for each number not to receive "telemarketing" calls, "commercial/non-public research" calls and "social/scientific public research" calls. However, as noted above at present I am advocating the Register be only concerned with a single category of calls: "telemarketing". The other two categories are mentioned for completeness in the flagging discussion, and would not need to be implemented if the researchers self-regulate themselves properly.

The Register Agency maintains a database of numbers, each with one or more single bit fields as are required to record the preferences for the subscriber whose number

this is. For instance there will be one field for "No telemarketing calls", another for "No Commercial Non-Public Research Calls" and another for "No Social/Scientific Public Research Calls". The database would also contain other fields as required for continued management, such as records of each contact with the subscriber, their address etc. and other items discussed in the following section on Register Management.

The telemarketer (or researcher) submits an electronic file to the Register Agency, in a format suitable for carrying one or more flags - each flag for the one or more "Do Not Call" categories. The Register Agency processes the file against the current database and returns it to the telemarketer or researcher with the flags written according to those in the database for each number. For example, here is a small section of a text file as sent by the telemarketer:

```
0394592880 ,  
0394592885 ,  
0394592889 ,  
0394592896 ,
```

and as it is returned by the Register Agency after flagging:

```
0394592880 ,  
0394592885 ,  
0394592889 , T  
0394592896 ,
```

The T indicates not call that number for the purposes of telemarketing. It should not be necessary for the submitted list to be in numeric order.

If the telemarketer's list included a number which is not in fact a valid telephone number, the Register Agency should not flag that number in any special way. To do so - to tell the telemarketing company that it is not a valid number - would be to divulge information about the structure of the telephone network which cannot be justified.

The Register Agency needs to define one or a small number of acceptable file formats. These can be trivially simple, such as a text file with one number per line, including area code, followed by three comma-separated fields where the characters T, C and S may appear, indicating do not call for Telemarketing, Commercial or Social research. Since plain text files are easy to manipulate for import and export into any company's list management software, a simple format such as this is probably all that is required.

Another approach is an Internet-based transaction system in which, in real time, the telemarketer's system sends one or more numbers in an HTTPS form data element to the Register Agency server, and receives back within a second or so, the flag information for each number. This could be used by a manually organised telemarketer, who may have numbers written on paper or in some non-computerised form. They would simply type the numbers into the web-form and get the results back within a second or so.

All these approaches are straightforward to program at the Registry Agency, and for the telemarketer companies to integrate with their list systems. In the event that companies lack the expertise to do this themselves, then they can easily contract the work to another company with appropriate software and access to the Do Not Call list flagging service. ADMA's adoption of list flagging at no extra cost indicates that there shouldn't be major problems with a purely List Flagging approach.

List flagging would operate in a similar way for Opt-In as for Opt-Out.

List Flagging Safeguards

The purpose of the list flagging arrangement is to provide the necessary service to telemarketers and market/social researchers, enabling them to reliably avoid calling people who have registered their numbers for protection, whilst giving away no further information which might cause privacy or security problems.

To this end, there needs to be some administrative and technical mechanism to limit the ability of any one telemarketer, or potentially multiple telemarketers acting together, to systematically interrogate the list with such a large range of numbers that each one is tested, and so the telemarketer(s) can construct a complete list of numbers which have been flagged for protection. There are some questions about how this can be done, which I won't consider further here, other than in the discussion [below](#) on fees for access to the Register.

I also suggest that the timing of changes to the list be done in relatively large steps, to reduce the ability of an aggressive Register service user finding out a small number of telephone numbers which were added or deleted from the list at a given time. For instance, all changes to the internal database's flags could be exported to a second database - the one used for flagging telemarketer's lists - once a week. There is a direct trade-off here between trying to obscure timing information about numbers being added to the list and the desire to provide protection from telemarketing on a rapid basis.

Register Management

The entire data processing requirements of the Register Agency are trivial by modern PC standards. While the data needs to be carefully managed and audited, the file sizes and the amount of processing needed to match numbers from the input file to the database are small by modern standards. Creating a database for the relevant data with an indexing system to suit the entire Australian number range of a billion (0 0000 0000 to 9 9999 9999) is relatively straightforward on an ordinary PC running a reliable operating system such as Unix or Linux, with freely available database software such as PostgreSQL.

There need to be backups, secure premises, software and network security etc. as needed for any government IT system involving large amounts of private information, but the system performs simple, easily defined functions and should not involve the expensive complexities of the large departmental systems which take years to develop.

The major facets of the Register's IT operations would include:

- A Web-based public-facing system by which people can register their numbers for protection, check their level of protection etc.

There are some problems to be solved here, such as ensuring that each person who requests the number be protected is the genuine "owner" of that number. This would involve the IPND in some

way: Integrated Public Number Database

http://www.dcita.gov.au/tel/numbering/integrated_public_number_database_ipr

. This is more important for any action to remove the number's protection, as might be done by a prankster. It is hard to imagine why anyone would fraudulently seek to protect numbers which were not their own.

- Several ways, including a manual Web-based method, by which registered telemarketers, researchers etc. can check one, a few or a whole list of numbers and have them flagged according to the protection the Register gives them.
- A management system for the entire system - Web-servers, main database server, backup servers etc. This includes methods by which Register Agency staff can manipulate and check the data, respond to telephone queries etc.

In the following discussion, I assume that the one agency handles both the Registry itself and complaints against telemarketers. (There are arguments for the investigations to be carried out by a separate agency, such as a fully government agency whereas the Registry itself could be run by a contractor.)

The Register Agency also needs a method of handling complaints about apparent breaches of the protection arrangements, or any other problems with the Register. This need not be highly specialised, but would need to access the main database, and be able to work with saved copies of the database in order to reliably establish the protection status of numbers at any time in the past.

The Registry Agency either needs to be an agency of the Federal Government, or a company working to a government contract - *where that company has no involvement or interest whatsoever in direct marketing.*

Consumer advocates are entirely opposed to this promising Do Not Call Register falling into the hands of an organisation such as ADMA. ADMA has distinguished itself over the years by running the barest, most minimal set of so-called "protections" required to gain ACCC authorisation for its Code of Conduct, despite the protests of privacy advocates. ADMA's "Code Authority" has failed to properly account for its activities - such as the second half of 2003 not being covered by any annual report and the 2004 annual report not being available by late-November 2005. The ACCC draft determination of 12 October 2005 ([D05+61663.pdf](#) at <http://www.accc.gov.au/content/index.phtml/itemId/479780>) clearly indicates the Commission's disappointment that the proposed new Code does not offer greater protection for consumers.

In a conference with the ACCC and advocates on 14 November, ADMA admitted its failure to publish its Code Authority 2004 annual report, despite the Code Authority chairman providing it to ADMA in November 2004. Still, by 30 November 2005, the 2004 report was still not available at ADMA's website. The most recent report was for the period to June 2003. Meanwhile, ADMA's main page contained fresh material, including press releases, about their Annual Awards night less than two weeks earlier. The following image and text is verbatim from that page: <http://www.adma.com.au/asp/index.asp> .



ADMA Awards 2005

A sell out congregation of over 650 guests joined in to help celebrate and reward the 'work that worked' at the ADMA Awards ceremony held at Melbourne's Crown Casino last night. The setting was a religious 'Holy Grail' theme, with guests joined by the pope, priests and other religious figures at the presentation ceremony, which was then followed by dinner and dancing in 'Heaven'.

Winning trophies were awarded to a much broader range and size of companies this year, whilst there were also many new, first time entrants that picked up medals.

I suggest that protecting the public and accounting for that work properly are not the highest of ADMA's priorities. I believe that an organisation such as ADMA should never be trusted with the responsibilities of a Do-Not-Call register.

The entire operation of the Registry Agency - whether or not it is a direct government agency - needs to be audited on an annual basis by a widely respected company such as Price Waterhouse Coopers, to ensure that all the requirements are met to the satisfaction of the government, consumer advocates, telemarketers and researchers.

For instance, consumer advocates need to be able to see from the audit that the information really is protected as planned. Telemarketers and researchers (in the event, which I am not advocating now, that research calls be regulated by the

government) need to be sure that the lists they submit for flagging are never divulged to another company or in any other way, other than to whatever degree necessary to maintain a proper audit trail.

Assuming this proposal goes ahead, there will be a time for more detailed thinking about the exact functions to be performed and how these can be reliably audited. This requires careful consideration, but the project itself is not inordinately complex.

I won't consider here the administrative arrangements for pursuing callers who violate the protection arrangements, but there needs to be a reliable way of determining the source of the problem calls, and there needs to be straightforward ways of fining those callers who systematically break the rules. The US legislation allows for steep fines for single calls - but I think that what is really needed in practice is steep fines for a pattern of calls, either to the one person or to several people, such that it is clear that the caller is repeatedly engaging in calling behaviour which the Register is designed to prevent.

All the above assumes Opt-Out. The system would be vastly simpler and less expensive to implement with Opt-In regulation for telemarketing.

Deterring and Detecting calls - Customer Activated Malicious Call Trace

The question of detecting and deterring unwanted calls goes far beyond the problem of telemarketing.

There are a variety of calls where the recipient needs to be able to have the source of the call reliably traced in order that investigators can understand what has happened, and take appropriate steps to prevent it happening in the future. Many of these are one-off events, where the usual long-winded procedure for dealing with repetitive "nuisance" calls cannot work. (This typically involves weeks of waiting for repeated calls, after a trace facility has been activated, which can take a lot of administrative work and several days of delay.)

Reliably detecting telemarketing is not the most important reason for advocating the widespread adoption of Customer Activated Malicious Call Trace (sometimes called simply MCT). A far stronger case for its widespread adoption can be made when considering how the public and the police can detect and deter bomb hoaxes and other disruptive calls, and a wide variety of extremely disturbing personal malicious calls - all of which can currently be made with impunity.

Calling Number Display is useless for any of these purposes. Firstly, the caller can call without their number being available. Secondly, the delivery of the number to the recipient's phone does not leave a legally valid record which would stand up in court. Thirdly, the line the call is made from does not necessarily have a phone connected to it for the purposes of incoming calls. (Many PABXs use separate sets of lines for incoming and outgoing calls.) So even if the recipient called the number they see on the CND box, there is no reliable way of determining the true identity of the caller.

Telephone exchanges always know the number the call originates from (except in certain instances where the call originates from overseas). The CND service is the potential delivery of that number to the recipient, depending on the state of a "Display" bit in the data sent to the recipient exchange, as a normal part of

establishing the call.

Many modern telephone exchanges, for mobile and fixed line phones have (to the best of my knowledge) built in software functions for MCT.

What is required is for carriers to make these systems available for immediate use by ordinary telephone users with some safeguards.

I wrote about CAMCT ten years ago on a page which is now at www.firstpr.com.au/issues/mct/. I don't have time at present to research this field properly, but here are the important characteristics of a CAMCT system which would best serve the interests of telephone users, carriers and regulators by enabling the prompt, reliable, detection of one-off and repetitive unwanted calls. This will greatly facilitate deterrence, and so reduce the number of problem calls and therefore the need to investigate such calls.

- The CAMCT system needs to be easily activated, such as by hanging up the problem call and making another "call" which involves the use of a particular code such as *64.
- The system should be available by default to all users.
- There should be a recorded message explaining the nature of the trace facility, advising of any charge for activation, and explaining which keys to press to complete the trace. The voice announcement should also advise who to report the call to. (A fee for activation is intended primarily to deter frivolous use, and may be waived when the call is deemed by investigators to be a genuine problem call.)
- The time and number of the previous incoming call, answered or unanswered (or better, recent calls, since the problem call may have been recorded on an answering machine, or may have been received by a person, such as a child, who did not immediately recognise its malicious or telemarketing nature) is captured and sent to a central location where it is stored reliably, and can constitute court-admissible evidence. The number is *not* made available to the recipient of the problem call. Some ISDN systems enable the activation of MCT while a call is in progress. This may also be possible with handsets such as cellphones.

MCT arrangements do not exist, as far as I know, for messages left on voicemail. However, the network does presumably store full caller information on the voicemail system, even if the CND display bit is not set. In these cases, the carrier would be able to retrieve the information by manual interrogation of the voicemail system, rather than by an automated exchange function as is the case for normal MCT.

A proper CAMCT system will greatly improve the ability of investigators (in the carrier, the registry agency or the police) to find the source of a wide range of problem calls. In the case of telemarketing calls which violate the protection arrangement, a proper CAMCT arrangement would automate and streamline investigations, by completely removing the need for the recipient to extract from the caller reliable information as to their identity. This would also help with calls which are fraudulent - such as a call which seems to be a telemarketing or charity call, but the recipient feels is "not right" - such as a caller ostensibly seeking donations, but really seeking credit card details.

Problem telephone calls cannot always be instantly and reliably classified, either by the recipient or the investigators. Only once the call is reasonably well classified, can the matter can be handled by appropriate investigators - but in all cases it is vital that the exact time and source of the call is captured reliably.

A more widely used technical term is "[Malicious Call Identification](#)", "MCI" or "MCID". This is a standard part of ACIF standard G500-2002:

http://www.acif.org.au/_data/page/3323/G500_2002_Intro.pdf - the Australian standard for interconnection signalling between telephone exchanges. This covers how exchanges within one carrier's network communicate, and how exchanges from different carriers networks are joined to create a national telephone network. The MCID protocol is a part of the standard protocols all modern exchanges use. The question is how to make it available, technically and administratively so that it can play its proper role in detecting and deterring a variety of anti-social misuses of the telephone network.

ACIF standard C525:2002 Handling of Life Threatening and Unwelcome Calls (www.acif.org.au/documents_and_lists/codes), which is currently being revised (draft:

www.acif.org.au/_data/page/13950/DR_C525_PUBLIC_COMMENT_DRAFT.pdf), concerns administrative arrangements for certain types of unwanted calls, including a "malicious" call, as defined by 474.17 of the Criminal Code Act 1995 (previously section 85ZE of the Crimes Act):

474.17 Using a carriage service to menace, harass or cause offence

(1) A person is guilty of an offence if:

- (a) the person uses a carriage service; and
- (b) the person does so in a way (whether by the method of use or the content of a communication, or both) that **reasonable persons would regard as being, in all the circumstances, menacing, harassing or offensive.**

Penalty: Imprisonment for 3 years.

The ACIF draft states "The management of Unwelcome Calls can be greatly simplified using MCT technology and Carriers / Carriage Service Providers are encouraged to provide this facility on their networks."

MCT is available on certain Optus services (optusbusiness.com.au/doclib/prodserv/documents/OptusDirectLine_0905.pdf). I am not able to ascertain to what degree the service is available on the various exchanges used by Telstra, Optus and other other carriers, but the basic inter-exchange protocol supports it, and most exchanges have a variety of features as a standard part of their software, which can be configured and made available to users by the carrier's engineers. Traditional telephone exchanges are computerised, but are highly specialised and not particularly flexible systems. Adding novel features to their software can cost millions of dollars. There is now a move to completely software-based "exchanges" using standard PCs, VoIP (Voice over Internet Protocol) technology etc. In the future, it is reasonable to expect that the addition or customisation of features such as MCT will be a lot easier than with traditional telephone exchanges.

Unfortunately, the management of the various types of unwanted telephone call has developed in an ad-hoc and fragmented fashion. This long overdue government regulation of telemarketing calls is an opportunity to look at the entire spectrum of unwanted calls, and to devise better technical and administrative arrangements for detecting and deterring them - including the one-off calls which are typically impossible to trace with the traditional cumbersome arrangements which cannot be activated by the recipient.

Social and Economic Costs of Telemarketing

A fuller account of these costs can be gained from my site - especially www.firstpr.com.au/issues/tm/2003/rw/ADMA-1.html .

DCITA will no-doubt be subjected to a barrage of arguments about the economic value of outbound telemarketing. Here are some challenges to those arguments:

Telemarketing provides some jobs, but I believe they are soul-destroying jobs offer little or no development of skills which are of value in any other facet of business. Turnover of staff in telemarketing call centres is notoriously high. A window shutter company in Bell St Preston has a prominent, permanent, expensive, multi-sentence sign outside their front-door offering employment in telemarketing. Stress and dissatisfaction with the basic nature of the work is a feature of telemarketing, necessitating constant efforts to enrol new staff.

Telemarketers waste a lot of time of sole traders, small and large businesses - as well adding to the costs of running community organisations such as health services and counselling agencies. To the extent that businesses are protected from such calls, the productivity of the nation will improve and there will be more jobs, to offset or overtake whatever low-grade jobs are lost in telemarketing.

Charity telemarketing is particularly pernicious. Firstly, the practice brings some charities into disrepute, because they engage in privacy invasive and manipulative practices. Secondly, a lot of the money raised must go into paying for phone calls, call centre costs, and paid staff. (I have never heard of volunteers being used.) Thirdly, the public is encouraged to give money to people who call them, including the businesses which licence charity's names - while the charity receives a small percentage of the "donations". This wastes millions of dollars of the public's money and turns a great deal of goodwill into deep cynicism about trusting and giving.

There is a general consumer protection argument against all outbound telemarketing, including fund raising. To the extent that such practices are regarded as legitimate and acceptable, this encourages the public to give their full credit card details to people who call them - despite the impossibility of reliably identifying the true identity or purpose of the caller. A credit card number and expiry date (especially with the 3 digit code on the back) can be turned into money by unscrupulous operators. For instance, they can use the details of hundreds or thousands of cards to subscribe (in an automated process) to adult web sites all over the world. Many of these sites offer commission kickbacks to sites which direct paying customers, so the operators can direct these hundreds of bogus customers through their site and profit from the commissions. Other misuses of credit card details are well known.

A properly crafted government advisory on credit card use would include the clear

requirement never to give credit card details, or any other private information, to people whose identity cannot be reliably ascertained - and recipients can never reliably ascertain the identity of the people who call them. Proper consumer protection laws would ban any caller from asking for such information.

Telemarketers do not deserve any consideration or recompense for the opportunities they lose due to the successful operation of this Do Not Call Register. They know exactly what they are doing, calling, interrupting and trying to manipulate thousands of people. They wouldn't do it to their friends and they wouldn't want it done to themselves. Their entire approach is exploitative and manipulative. Most other businesses and charities conduct their affairs without such systematic abuses. The companies and charities who are currently heavily involved in telemarketing should be able to do fine by using non-intrusive forms of communication like the other businesses and charities.

Charity telemarketers and their management are skilled at portraying themselves as in need, as worthy etc. They are used to having their way and having people stop doing whatever they were doing, to give them what they ask for. A successful Do Not Call Register will result in the majority of telephone numbers being unavailable for telemarketing calls. There is no legitimate argument for telemarketers' interests to be given priority over the public's right to be left alone.

The successful launch of this Do Not Call Register will turn the tide against the mounting levels of intrusion which most people are subject to at any time, at home, at work or with their cell-phone in almost any situation. Continually peppering people with such calls has a damaging effect on people's generalised proclivity to trust other people. Each call to anxiety and irritability. These are all pervasive, socially corrosive effects - and every effort to remove the burden of telemarketing from Australian society reduces these corrosive influences, and helps us maintain a happier and more open and sociable outlook.

A good economic case could be made for eradicating telemarketing purely in terms of reducing corrosive effects on Australians, so enabling us to preserve something we treasure, and which is worth billions of dollars per year in tourist revenue - our relaxed, trusting, friendly nature.

Regulating Research Calls

Before discussing this matter, I wish to acknowledge the assistance provided by an experienced market and social researcher who is part of the AMSRO team responding to this Discussion Paper. I will refer to him as my "Informant". I don't claim to understand this field in detail and I don't necessarily accept his views as representative of other researchers. I am not arguing for his position (which is against research calls being covered by any type of Do-Not-Call list, other than those apparently individually maintained by some research companies) and I cannot be certain that I have understood correctly, or explained in this submission, the information he tried to convey to me. With his permission, I have quoted verbatim some of his responses to my questions.

His view, and I imagine the view of many researchers, is that their calls should not be regulated at all. I believe that a self-regulatory opt-out approach would be the best one - the best way researchers can respect the wishes of people who do not want to receive such calls.

The discussion below is tentative, except for the vital requirement that regulation of telemarketing must not in any way affect legitimate research calls, whilst it must cover calls which pretend to be research, but which fail to adhere to AMSRO guidelines, for instance by involving a sales, donation request or other telemarketing component.

I hope that the discussion below will help inform any decision about regulating research calls, by suggesting some of the information the Department should seek before making a final decision. I believe AMSRO could provide reasonably reliable information on the nature and quantity of research calls, by considering the response rates, "screen-out" rates and the total number of completed interviews per year.

Whilst devising the long overdue regulation of telemarketing, it is important to consider market and social research calls, which are also arguably in need of regulation, because some people never want to receive such calls.

Some recipients make no distinction between telemarketing and research calls. Furthermore, some telemarketers pretend to be researchers. This is SUGging - Selling Under the Guise of research. This raises some problems in detecting the true nature of an unwanted call, and some problems with some members of the public not drawing the distinctions discussed here. Nonetheless, there are great distinctions between telemarketing and research calls (according to my understanding of AMSRO guidelines), including:

- Telemarketing calls are hated almost universally, while some proportion of recipients - perhaps a majority (depending on the nature and timing of the research call) - are happy to receive and respond to a genuine research call.
- Telemarketing calls provide no benefits whatsoever for the recipient over other less intrusive methods by which they can find out about purchasing goods and services, donating to charities, or about religious or political organisations. Research calls have some unique advantages: lower cost to the researcher and greater convenience for many recipients compared to face-to-face interviews and ease of sampling large geographic areas. Telephone surveys are an important means by which people can contribute their views and statements about their needs and wants to researchers, and through them to companies, policy makers etc.
- Telemarketing is an anti-social activity with no redeeming benefits. While not all telephone surveys involve matters of great public importance, many are part of the vital process of business, government, community organisations and scientists trying to understand society, people's needs and life-situations etc. Commercial and social / scientific research in general has profound social benefits which cannot be realised by any other method. I understand that telephone surveys play a major role in such research, with a number of attributes which cannot be replicated at all by any other means, or by any means of comparable cost. Furthermore, "better" methods of surveying the population - such as face-to-face interviews - are often prohibitively expensive and impractical, and are arguably no less privacy invasive.
- Privacy of information provided by recipients is probably better regulated by the AMSRO guidelines and associated research privacy principles than the

regulations which apply to telemarketers.

How Many Research Calls are Received per Year?

In this section I want to discuss my tentative understanding of the research call process, and estimate how many calls are received on average, by people at home.

My Informant told me that according to AMSRO figures (which he did not reference, and which I have not found the source of), about **1.6 million** research call telephone interviews are completed every year. He was unable to give me an estimate of the number of calls made. For the purpose of this discussion, I will ignore calls to business numbers and consider only people at home. I am assuming there are no research calls to mobile numbers, but I am not confident that this is the case or that such calls would not be made in the future. I will also ignore research calls from outside Australia. My Informant tells me that some calls into Australia come from New Zealand, and that the Australian research industry has something of an export industry in making research calls to some other countries.

. . . mainly doing research in Asia using community language speakers in Australia.

It was my initial impression that sample sizes were typically of the 1,000 order, but my Informant told me that sample sizes were typically much lower than this. I believe sample sizes over 1000 are the case for some surveys, such as the one conducted by Roy Morgan Research in 2004 for the Federal Privacy Commissioner: "Community Attitudes Towards Privacy 2004" <http://www.privacy.gov.au/publications/rcommunity04.pdf>, hereafter referred to as **Roy-Morgan-2004**. This survey involved 1507 respondents completing the interview. This research also involved asking three questions as part of Roy Morgan's weekly "CATIBUS" survey, a telephone survey of 600 respondents aged 14 and over. I accept that the majority of surveys probably involve sample sizes less than 1000. (As an aside, page 27 of the PDF of this report PDF - page 19 on paper - shows that only 36% of respondents thought that market research organisations were trustworthy, while 52% thought they were untrustworthy. I believe this public perception underestimates the trustworthiness of most research companies.)

My Informant wrote:

The most common quantitative sample size is around 400, which yields +/- <5% at 95% confidence. Qualitative studies typically use sample sizes of around 30-50, given the objective is understanding the range of responses, rather than measuring their frequency.

I understand that M&RS reports typically include response rates, which are vital to interpreting the information gained from respondents. I imagine that AMSRO would be able to provide the Department with good estimates of sample sizes, response rates etc. from which a reliable estimate can be made of the total number of research calls made each year, and therefore their average frequency as experienced by people at home.

The response rate details in [Roy-Morgan-2004](#) (PDF page 13, paper page 5) are instructive.

Number	Response	My notes
1,507	Interviews achieved	
8,462	Refusals	
1,007	Terminated mid-interview (respondent drop out) or terminated due to communication difficulty	
1,599	Quota fail (i.e. no-one in household meets criteria. This would occur towards the end of the survey when many of the age quotas had already been filled)	AKA "Screen-outs". In order to improve the quality of sampling, researchers seek quotas of different categories of people, by age-group, sex, city / rural etc. This is a way of partially correcting for differences in response rate between these groups.
2,230	Number called 4 times and no answer or engaged on each occasion	Unless the person was home and decided not to answer, based for instance on the number in their CND device being unfamiliar to them, then these were not perceived by people and do not constitute an intrusion.
2,275	Appointments, engaged, no answer (called 1-3 times)	I understand these are calls which lead to the respondent requesting to be called back at a later time, but where those three return calls were not answered.
4,475	Unobtainable (number invalid, fax, data or no longer in use)	Except for calls to fax machines, which make a noise and so may distract the owner and make them concerned about someone trying to send them a fax without success, I do not regard these calls as being intrusive.

Adding the figures in bold gives a good estimate of the number of phone calls

received by people as a result of this survey. The total is **14,850** calls.

In this survey, 14,850 separate telephone numbers received at least one call which was answered by a person. Typically there was one call, but sometimes follow-up calls were made. The ratio of calls received to interviews completed is $14,850 / 1,507 = 9.8$.

I believe this survey is likely to be perceived as relatively interesting and important, and the report notes that the response rate is "acceptable" and "similar to response rates of comparable surveys" with similarly long interviews. The report states that the response rate is 14%, based on the first three items listed above: interviews achieved, refusals and interviews terminated. However the "response rate in terms of calls received" is lower - $1/9.8 = 10.2\%$ - because it counts "quota fail" calls and "appointment calls which did not result in attempts to interview. I hope that the Department will consider these differing notions of "response rate" when trying to estimate the incidence of M&SR calls.

The report notes some reasons for the low response rates to telephone surveys:

There is an increasing trend for more households to refuse to respond to surveys. Invasion of privacy and being too busy are the main reasons given for these refusals.

My Informant tells me that most telephone surveys involve calls to numbers which are in the White Pages.

Most numbers in Australia are not assigned, so Random Digit Dialling is less used than you might think. Moreover, in many studies, we prefer not to call unlisted numbers. In some studies, (e.g. to establish the incidence of domestic violence) it is vital to include unlisted numbers, so Random Digit Dialling has advantages.

The above survey was presumably an exception to this, since a large number of invalid, modem and fax machine numbers were dialled. This is necessary in order to avoid biasing the sample by excluding those people who have chosen to pay to have their number be unlisted in the telephone directory - to have a "silent-line". Such people are highly likely to have differing views on and experiences of privacy than the rest of the population, so the researcher must try to reach them. (Bizarre though it may seem, I think there are arguments for a regulatory arrangement which gave researchers working for the federal or state privacy commissioners the legal right to call all telephone numbers, without regard to any opt-out lists, because this is the best way of gaining vital information about the broad community experience of matters concerning privacy, crime and health. Similar exemptions are arguably justified for a narrow range of government or academic research projects concerning these fields.)

I assume that the time of calling resulted in most calls in this survey to business numbers not being answered.

I understand that by usually calling only White-Pages numbers - presumably residential numbers - researchers firstly avoid annoying "silent-line" people and secondly save themselves the trouble of calling a subset of the population who are less likely to respond to telephone surveys.

In this discussion, I am thinking only of residential landline telephone numbers,

assuming that researchers are only trying to contact people at home. However some companies, not necessarily companies who are operating to AMSRO guidelines, do call businesses for "research" purposes. One IT manager I know suffers a continuous onslaught of these calls, including from one prominent IT research company who calls about every week. These calls are probably relatively few in number on a national basis, but they constitute a significant burden and drain on productivity for the individuals who are targeted, and their support staff, since the callers are adept at burrowing through the protective efforts of support staff in order to reach the coveted "IT Manager".

I question my Informant's statement that "most numbers in Australia are not assigned". That is not my impression of the numbering system, and the figures above - 4,475 invalid, fax, modem or no-longer in use numbers out of about 21,555 called - indicate that the invalid or no-longer in use numbers comprise less than 20% of the total number range.

My own experience of research calls has been minimal in recent years, since my number no longer appeared in the White Pages, for reasons unknown. Before that, I guess I used to receive 2 to 4 a year. This concords with my Informant's statement that most calls are made to listed numbers.

Here are some tentative results from a micro-survey which attempted to estimate the incidence of genuine research calls over a year. I asked members of the Link discussion list (<http://mailman.anu.edu.au/mailman/listinfo/link>) to let me know their experience. I received a handful of responses which I summarise here.

Home number, listed in White Pages. Approximately 3 calls in last year, about one of which did not apply due to restrictions on age, sex etc.

Home number, not listed in White Pages. "Virtually no research calls" since having a "silent-line" AKA "silent-number."

Home number, presumably listed in White Pages. "About 2 calls in the last year. No research calls to the mobile number."

Number is both home and business, listed in White Pages twice, under two names. Approximately 20 research calls in the last year. At least 3 such calls did not proceed after checking age/sex/income-bracket.

One respondent stated that he worked for a research company in the 1990s and their "strike rate" was about 1 completed survey per 4 or 5 calls. This is consistent with what research callers told me in the middle of the last decade, and it seems the rate is considerably lower now.

My Informant wrote about declining response rates:

Response rates are declining very slowly, mainly due to SUGging, we suspect.

This small set of personal reports of research call rates are, of course, extremely cursory, but the results are consistent with the following tentative conclusions I have reached regarding genuine research calls originating from AMSRO members:

- If we accept the estimate of 1.6 million completed interviews per year, and a

10:1 ratio between calls received and completed interviews, we arrive at a figure of 16 million research calls received by Australians at home per year. There would be additional calls from overseas and from those researchers who are not AMSRO members.

- The Australian Bureau of Statistics states that there were 7.4 million "households" in 2001. Let's assume 8 million now. I guess they all have at least one fixed phone line and that (very approximately, I don't have an accurate figure) 15% of them pay for a "silent-line". That leaves about 6.8 million households to receive the great majority of 16 million calls a year. This gives a figure of 2.3 calls per year per household.
- This 2.3 calls per household figure is broadly compatible with my experience in the past and the experience of the few Link discussion list people who wrote to me. My Informant told me that "1 to 2" calls per year is the current AMSRO estimate.
- I don't expect this rate of calling to change significantly in the foreseeable future. Calls from cheap labour countries may increase, but such surveys are likely to have a low response rate and be of little value to clients in Australia - so I expect they would not be very prevalent. Response rates to genuine research calls may improve with the reduction in telemarketing, or they may be impacted negatively if people think their telemarketing preference should also apply to research calls.

Costs and Benefits of Various Modes of Regulating Research Calls

No Government Regulation

The most obvious problem is that some proportion (I don't know how high, maybe 20 to 70%) of research calls will be contrary to the recipient's desire. Some proportion of these objections will be very strong, because these people never want such calls, and are frustrated at their inability to stop being intruded upon by such calls, which can occur at any time and which they will answer. Many of the people who had gone to the trouble of opting out of telemarketing calls would be frustrated and angry at getting any unsolicited call which even vaguely resembled a telemarketing call. They don't necessarily have the patience to stop what they are doing and engage in a detailed thought process about the nature of the call and all the arguments about public benefit of research surveys etc. They just want to be left alone.

A further complication is that such people are unlikely to spend much time on the call. They will want to end the call ASAP and probably report the call to the Do-Not-Call Registry. *So there is a major potential problem for the Do-Not-Call (telemarketing only) enforcement system in that protected numbers would still get calls which are not covered by the regulations - calls which some or many people understandably believe are telemarketing calls.* This

is made all the worse by telemarketers who have been SUGging (Selling Under the Guise of market research).

I can see several benefits of not regulating research calls. Firstly, by far the greatest problem - telemarketing calls - will be properly regulated, with a relatively simple "one-flag" system. (However, I think one-off and repetitive malicious calls are a very serious problem which to date has not received enough attention.) Meanwhile, assuming the "telemarketing" rules does not apply at all to research calls, then the researchers can continue to sample the entire telephone-using population without any biases due to some people self-selecting themselves not to be contacted.

Opt-Out Government Regulation of all Research Calls - Single Category

One benefit is the simplicity, compared to the Two Category approach discussed below, of protecting the significant number of people (my guess is 10 to 60%) who do not want to get any research calls - or who decided to get no research calls, because although they might want to get some of them, the others are too much of a burden.

This approach means that researchers can save a lot of time and expense in not calling people who don't want to get research calls.

It also means that people who are unhappy about the call can be told about the Do-Not-Call list, so they can be satisfied that the caller has helped them find out how not to get such calls in the future.

Researchers can get along much better with the public because they are respecting people's expressed desire not to be called. This means less stress for the people who are working in the researchers' call centres. See [above](#) for the relatively low trustworthiness the public ascribe to research companies - even within the small proportion of people who fully answer a telephone survey.

One problem with this approach is that the pool of people getting the researcher's calls is reduced in number, so those in that pool get more calls per person per year. This could, in principle, have a runaway effect - with the pressure of calls causing more people to opt out. To a large extent, this happens anyway, regulation or not - if people get too many research calls, they won't feel like doing the surveys, so the researcher just calls another number and so, on average, contributes further to the public fatigue and wariness of research calls.

Depending on how the Do-Not-Call system is presented,

and how the public understands the nature of telephone research surveys and why they might want to participate, I guess the opt-out system could take 10 to 30 percent of numbers out of reach for researchers, and probably more in the future. However, to a large degree, these will be the people who are not responding to telephone surveys now.

The most serious problem, I think, with people opting out of telephone research calls is that the remaining people are not an even sample of the population. They have been left behind by a self-selected group who would have, on average, significantly different personal characteristics, experiences, proclivities for behaviour etc. than those who did not opt-out. This unavailability already happens with these people to quite a high degree, because they generally don't to the survey, but a proper Do-Not-Call arrangement for research calls makes the effect stronger. At present, the cohort of people who would opt out of research calls can still be called, and quite a few of them will respond.

While the low response rate of telephone surveys today results in a substantially "self-selected" group of respondents, a Do-Not-Call list would tend to increase this effect and so further skew the range of people who might respond to at least some telephone surveys.

In this scheme, the regulator would have a somewhat more complex task of regulating two types of call. In some ways this might be easier than regulating only telemarketing calls, with many people mistaking research calls for telemarketing calls, and so generating a lot of sincere, but false, complaints.

Opt-Out Government Regulation of Research Calls in Two Categories

While this is more complicated, I think there are significant benefits. In a section below, I discuss ways of categorising research calls into two categories which are meaningful to many recipients and for which they are likely to have different preferences. For now I will refer to "commercial - non-public" and "social / scientific - public" as the two categories.

The main benefit is that I think there is a sizable group of people who would be happy to participate in a low level of calls for "social / scientific - public" research projects, who really don't want to get non-public, proprietary research calls, which are probably less interesting anyway. (I guess that non-public survey calls are more numerous too.)

In the single category model, the "social / scientific - public" researchers would lose access to a lot of these people,

because these people's only way of protecting themselves from the "commercial - non-public" research calls is to opt-out of the calls for "social / scientific - public" research too.

I am not suggesting that a lot of people dislike doing commercial surveys. The way many people seem to identify with brand-name products and listen to commercial radio etc. makes me think that these commercial products and services are often welcome additions to their lives. For instance, if the average teenager or young adult was called by a company researching user desires for the next generation video-game system or MP3 player, I imagine many of them would drop whatever they were doing and have lots to say! There are a variety of commercial products and services I would have a lot to say about too.

The researchers would need some guidelines and would need to decide at the start whether their project was "commercial - non-public" or "social / scientific - public".

Assuming for the moment that less people opt out of "social / scientific - public" research calls than opt out of "commercial - non-public" calls, a major, and unique, public benefit of this two category approach is that it creates a strong incentive for researchers (or rather their clients, including especially for-profit clients) to fully publish the results of the research. This is a benefit going well beyond the question of intrusive communications, but I think it is an important benefit for all people, since publication of good research generally helps many aspects of society work better and so keep everyone healthier and happier. Full publication is also a good way that research companies can display their expertise to potential clients, and be seen by the public to be doing the good work they feel themselves to be doing.

Self-Regulation for Research Calls - One or More Categories

If the Do-Not-Call list applied only to telemarketing calls, and not at all to research calls, then it would be open to the research industry to create its own Do-Not-Call register, which would be binding on all members.

A one or two category self-regulatory scheme such as this would have similar benefits to the above two scenarios. Such an opt-out scheme should also operate along similar principles as described above for the government-run telemarketing opt-out register, including using "list washing" rather than "list export" and being subject to external audit.

Here are some differences I can think of.

The public would be confused and annoyed that they have to go to one place (the government Do-Not-Call Register) to protect themselves from telemarketing calls, and to another, non-government, system to protect themselves from research calls. Remember that there's something wrong with the system if people have to go to any trouble at all just to be left alone. (This could be largely resolved by regulating telemarketing, as broadly defined above, on an Opt-In basis - few people would need to take any action, only those who wanted to receive telemarketing calls.)

Whereas ADMA's self-regulation of telemarketing is incomplete and not at all to be respected, if the Australian market and social research organisations developed their own scheme, I am confident it would be well run and very effective - probably completely effective. I believe that self-regulation can be effective in an industry or business practice like this, where the professionals are generally bright and well motivated.

It is my impression the market and social research industry is relatively well placed to self-regulate itself well. The biggest problem I perceive is that the industry organisations do not cover all the industry. (My Informant told me that AMSRO estimates its members represents \$500 million of the \$587 million industry.) Calls from New Zealand or other countries would also be a problem for any regulatory system.

Although some modes of research involve intrusive impositions on people at random, I think that most members of the industry, and more so those members in the peak organisations, are painfully aware of their dependence on public goodwill and have a genuine commitment to high standards of conduct and the need to respect the needs of individuals. In contrast, I have nothing good to say about telemarketers or their peak body ADMA being willing or able to properly self regulate.

Self-regulation of research calls would not impose costs on the government, and would generally be light, adaptable and efficient compared to fully legislated approaches.

The research industry may well be tempted to provide self-regulation - or to promise self-regulation along these lines in an effort to avoid legislative controls. An incentive to self-regulate would be a fully functioning government run telemarketing system with a database ready to accept user preferences for one or more types of research call.

The research industry could also, via advertising and its website (most Australian households now use the Net), tell people why they might be interested in participating in one

or more kinds of research call, what the public benefits are, what the personal benefits might be (eg. satisfaction that the individual's tastes, desires and suggestions have been heard and will influence outcomes) etc. (See: <http://www.yourviewscount.com.au>).

Then, the industry can say "If you really don't want to get these kinds of calls, let us know and we will make sure that none of our members call you." I understand that virtually all, or absolutely all, research companies of any standing are members of the relevant organisations, and so would be bound by this self-regulatory scheme. The scheme would need to be authorised by the ACCC, but I think there would be no problem with such approval.

Giving people control over whether or not they get these calls - especially by self-regulation, rather than having it done by an external government protective agency - is likely to significantly improve the impression that people have of researchers. To the extent that this occurs - to the extent that individuals feel more respected and more in control, it might be expected that fewer of them would opt-out of such calls and more would respond positively when asked to complete an interview. The simplest description of privacy is a person's autonomy in controlling personal boundaries. If a person feels that the researchers respect his or her desires in the event they decide not to get any calls, they may be more inclined to allow the researchers to call them anyway.

Also, a self-regulatory scheme could be much more flexible than a government scheme is likely to be regarding the types of call. The scheme could be extended to giving people the option not to be called at certain times - which would greatly improve the likelihood of people being accepting of these calls. The most common complaint I hear about both telemarketing calls and research calls, is that "They always call when we are trying to have dinner!"

While we are about slaying the telemarketing dragon, I think it is important to find a way of helping researchers do their work with few impediments and with as broad a sample of the population as possible, consistent with the desires of some people who do not want to be called. If all we can solve in 2006 is the telemarketing problem, then it's not a bad thing to do just this and leave the research call problem to another day. I think there will be a way through all this, perhaps involving two or more categories of research preference, via either self or government regulation.

If it can be established that my estimate of 2 or 3 research calls per person per year on average is realistic, I do not think that this level of calls is sufficient to justify a government-run regulatory system. In the 2007 timeframe, with a proper regulatory arrangement for telemarketing calls already in place, and in the absence of self-regulation for research calls, I think it would be worth considering government

regulation if the incidence of calls grows and especially if the unregulated nature of research calls creates significant trouble for the public and the telemarketing regulators. The best outcome, I believe, in the 2007 timeframe would be proper government regulation of telemarketing and a self-regulatory opt-out system for research calls, ideally for two or more categories of research calls.

Two Categories of Research Call

The following discussion assumes that there will be regulation of research calls either by the government or the research industry. I am trying to find a distinction between types of research call so that a significant number of people who request that they not get one type will be accepting of the other. The purpose is to retain as many people as possible for access by researchers, to enable them to more accurately gauge the experience and opinions of the entire population.

The Discussion Paper (Glossary) makes a distinction between two types of research:

Market researcher: One who gathers and evaluates data regarding consumers' preferences for products and services.

Social research: Research undertaken with the intention of describing, exploring and understanding social life. Research can be qualitative attempts to understand the meaning of social phenomena or quantitative attempts to quantify social phenomena by collecting and analysing numeric data.

My Informant critiqued this market-commercial vs. scientific-social dichotomy:

We researchers (in academia, the research profession and the public health community) certainly do not want to be in the business of determining, by careful examination of the content of surveys, the extent to which they are social, scientific or commercial. Most properly-conducted surveys are scientific, almost all social and government surveys have a commercial component and every survey is to some extent social.

We would argue that it is the ethical precepts of confidentiality, anonymity and the lack of any link to selling that should distinguish all genuine research from other unsolicited calls.

. . . we do know (from [ADMA's own research!](#)) that the public is much more favourably disposed towards research than telemarketing.

Furthermore, the fact that researchers voluntarily opted for a legally-binding, higher standard of privacy protection than that found in the NPPS has been well received by members of the public and the privacy community.

Even the Privacy Commissioner relies on research with representative samples of the Australian community. Surveys represent only a tiny fraction of unsolicited calls. That's because we want to call as few people as possible in order to get a statistically reliable result. Opt-out provisions

would introduce sampling error and would simply mean that we had to call more people for a given level of statistical precision! No one really wants this.

I tend to agree that the "market-commercial" vs. "scientific-social" dichotomy is unclear.

In response, I proposed a "non-public" vs. "public" dichotomy which is not concerned with who is doing the research, who the client is, or the subject matter - but whether the full results of the research would be made available to the public. This is a dichotomy which would be helpful to people like me, who don't feel inclined to donate time and energy to a private project, but who would be quite prepared to help a research project from which the public could benefit widely, via full publication.

Another dichotomy might be whether the research project has been passed by a university ethics committee. In general, such research would be fully published.

It is my impression that research conducted by commercial enterprises is likely to be kept secret, so I think there is a strong, but incomplete, correlation between the "commercial" vs. "academic, government, community organisation" distinction and the "non-public" vs. "public" distinction.

In general, with or without government-imposed regulation or their own self-regulation, researchers face a series of challenges maintaining good relations with the public - on whose generosity and thoughtfulness the entirely depend. The best - generally the only - way of getting proper sampling of the population without biases due to particular types of people not being asked, or not responding at all, is to be pushy: to call people, or knock on doors, at random, and to be reasonably persuasive (or at least respectfully enthusiastic and appreciative) about proceeding with the survey.

Here is a new dichotomy to replace the "social - scientific" vs. "commercial - market" research distinction found in the Discussion Paper.

Public (Open) Research

This is research for which the final outcomes - analysis and as much raw data as possible - will be made public, either on the Net or in a substantial publicly available academic journal, in which case the title of the project and probably the abstract should soon turn up in search engines and journal websites. (See www.plos.org for information on the problems with traditional, commercialised, academic publishing and how the Net can be used for free and open publishing with the same - or higher - standards.) I mean that the full research details will be published - the background, references to relevant papers and surveys, detailed analysis and most importantly all the questions and a meaningful breakdown of responses - *not just the questions and answers which were most agreeable to whoever the research is being done for.*

It doesn't matter whether the research calls are conducted by not-for-profit people or organisations (students, post-grad researchers, environmental advocacy groups researching community attitudes etc.) or

research companies.

Note on some assumptions I have made:

I had assumed:

Running a phone survey typically involves many hundreds or thousands of calls. This is a huge amount of work, and it needs to be done to proper standards with an automated telephone system, computerised data entry etc. It also needs to be supervised very well, and perhaps externally audited in some way, to ensure the public is being treated properly, and to ensure the research methodology is being adhered to. In short, running a telephone survey is almost certainly not a job for amateurs or unpaid, untrained, callers.

However I am not an expert in the field. I understand now that research is often conducted by people who are not paid, for instance students and post-graduate psychology researchers. I regret that my submission does not properly consider the needs of academic and community-group researchers.

This Public / Non-Public distinction does not concern the client for the research or the organisation carrying out the research is a for-profit entity or a non-profit organisation, such as a university, government department, community group, Privacy Commissioners Office etc.

The primary criteria is that the research outcomes will be made fully and freely available to the public. This needs to happen no matter what the results of the research reveal.

There probably needs to be some additional condition that the research is not simply a PR exercise aimed at promoting a particular product or service. One way of doing this is to require that the research surveys a complete field, rather than concentrating on the products and services of a particular company.

This definition resonates strongly with the open-source software movement, freedom, democratic principles etc. Unfortunately, "Open" may not be a good label for this category of research, especially since it could be misunderstood as "open" meaning respondent's names and answers to questions will be open for public inspection.

Non-Public (Closed, Proprietary, typically Commercial - AKA "Private") Research

There's a terminological problem here. I mean "private" in terms of the research outcomes not being published - not the privacy accorded the respondents.

"Commercial" doesn't quite work either, because a company could well do a survey, with the intention of the information it gains helping to boost its profits, whilst also making the research fully public. (This might be the case if they were trying to portray how happy people were with the company's products.)

"Non-Public" is the best term I can think of for now.

This research involves asking members of the public for information which will help a research project for which the outcome will not be made public. This doesn't necessarily mean that the research has no public benefit. For instance if it saves a company building of a fast-food restaurant in an area where no-one wants it, then this has direct public benefit for the people in that area, as well as a flow-on public benefit through the business putting its money into a restaurant in an area where the public really benefits.

Non-public research isn't necessarily for profit, as such. For instance a political party might do a survey to find out what people think about policy matters, or how they perceive the party, its leader etc. The criteria for this type of research is that the research outcomes are not made public - so the recipient is being asked to donate their time and knowledge for the pursuit of profit, political influence etc. of a small group of people, who do not want to share their research with anyone else. I am not suggesting that people shouldn't want to help such researchers.

Let's imagine, for the sake of discussion, that some dichotomy such as the above was adopted as the basis for subscribers flagging whether or not they wish to be protected from one or both types of call. Here are some possible benefits and problems.

The major benefit, over having a single category of research calls, is that a significant number of people will be able to get one type of call but not the other. So the dichotomy has to involve two classes of call for which a significant number of people have differing preferences.

How would the distinction be made in practice? I think that guidelines could be developed to make a distinction like this, and that before the phone survey was conducted, the researchers would decide which category it was in. (AMSRO people will probably object to this in principle and in terms of practicality - it is understandable they don't want any government or self-regulation which restricts their ability to sample the public randomly.)

Here are some cases where the distinction would not be so clear:

- Australia Post wants to survey satisfaction rates with the postal system, and will publish the full results. It could be argued that this is PR exercise, involving commercial services, and so should not be accorded the status of "Public, Open". However, assuming the research was done well, and all the questions and response figures were published, I would say it is more than just a PR piece. Furthermore, the postal system is a vital public service, so there needs to be public research about how satisfied people are with it.
- A courier company wants to do much the same as the above Australia Post

example - but it is only going to survey people who use its service, rather than the services of its competitors. I would say this is not proper research in the public interest, because the most important questions about comparing the services of multiple companies are being avoided. I would call this Non-Public, Proprietary, research, even if the results were freely published - so maybe my second category needs another name.

While the privacy of the information is protected by privacy principles and AMSRO guidelines, how can the recipient be sure the caller is a genuine researcher, or that they are formally bound by AMSRO guidelines? This relates to the problem of encouraging people not to give away personal information to anyone who calls them. The ideal solution, from a privacy and security point of view, would be to ask the respondent to call a number to complete the interview, where the number can also easily be found to belong to a recognised research company in the White Pages.

Comments on the Discussion Paper

Here I comment on specific questions and other items in the discussion paper.

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It can be argued that direct marketing fulfils the desire of consumers to widen their choices in purchasing goods and services and that it provides them with easy access to the marketplace.

Any such argument would be completely wrong. Consumers have endless access to opportunities to purchase and enquire about products, services and charities. They can make a telephone call, read advertisements and use the Internet. Actually, we are bombarded by the "marketplace" at every opportunity available - in most public spaces, in public transport, in electronic media, print media, many forms of Internet communication. The "marketplace" also intrudes into our email and letterbox - but at least junk mail can be genuinely informative and does not arbitrarily interrupt our life as telemarketing calls do.

Telemarketing interrupt and annoys consumers. It is an expensive technique which survives because a small proportion of consumers can be cajoled into parting with money. Telemarketing gives virtually no information about the product, service or charity. It does not enable the recipient to be sure of who they are giving money and information to. It has no benefits to the recipient whatsoever over other less intrusive means of communication.

Direct marketing can also reduce search costs for consumers in finding suitable goods and services and transaction costs associated with purchasing those goods and services. Sales figures in Australia can be

used to support this view, with expenditure on goods and services resulting from direct marketing exceeding \$9 billion per annum.

I am baffled as to why such statements appear in government documents. Everyone's experience is that they hate telemarketing and that telemarketing is hated by virtually everyone they know. It is bizarre to suggest that the small proportion of recipients who are cajoled into making a choice to purchase or donate have the benefit of "reduced search costs"! Outbound telemarketing revenues are a very small proportion of whatever the total value of direct marketing is.

The statements on this page attributed to ADMA are also at odds with common sense.

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These differing views of direct marketing have highlighted the need for governments to find solutions that balance two important sets of rights: an individual's right to privacy, and the rights of legitimate businesses and organisations to access the community for commercial and non commercial reasons.

People have rights. Businesses and organisations do not.

Just because in the past there has been a failure to protect people from systematic use of the telecommunications network - such as telemarketing - does not mean that such practices constitute a "right" or a reasonable expectation into the future for any business or organisation. There are plenty of ways of making information available to people without engaging in intrusive communications.

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1.4 Could a self regulatory scheme provide a suitable solution?

No.

Self regulation or co-regulation is often the best approach where an industry is made up of people who do something productive and useful, and who take pride in their contribution to society. Telemarketing is an exploitative, low-grade, activity which people need to be protected from. This will never be done by the telemarketers themselves. Please refer to the ACCC deliberations over ADMA's Code of Practice and all the objections for consumer advocates to see what a failure self-regulation is. After years of their "Code Authority" operating, they can't produce annual reports on time, they can't publicly account for who uses their do-not-call/mail lists (only 8 member companies and 15 non-members in 2005, as they reported to the ACCC in a

meeting on 14 November 2005) and the ACCC, the TIO and others get more complaints about telemarketing than ADMA's "Code Authority".

The experience in the USA has been similar - why else would a government so keen to lift restrictions on business finally take the telemarketing bull by the horns and corral it, forcibly, as should have been done decades ago?

Self regulation cannot work for exploitative business practices such as telemarketing.

Self regulation can work, I believe, in a field where the individuals and companies are doing something useful, when they are generally intelligent and well meaning, and when their representative organisations have a genuine will to lift standards. In this respect, I think the market and social research field is very different from the direct marketing field.

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2.1 Should a do not call register address direct marketing approaches by facsimile?

I think this is such a pernicious practice that it should be banned outright unless the recipient has made an explicit, informed, un-pressured request to receive such material.

Trying to run a special list category for such calls when virtually every fax machine owner will be highly motivated to protect their number would be a huge exercise. It would be much easier to legislate, just like spam, that this can only be done on an opt-in basis. (The same is true of voice telemarketing, but I think few companies or charities will kick up a fuss about fax telemarketing being effectively outlawed by a legislated Opt-In regime.)

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3.1 Should individuals and small businesses be able to 'opt in' to receive telemarketing calls?

3.2 Should individuals and small businesses be able to 'opt out' if they wish not to receive telemarketing calls?

The easiest and most effective way to regulate intrusive communications is to ban the practice except when the recipient makes an informed, explicit, un-pressured decision to opt-in.

It has been claimed that an opt in approach for Australia could be

potentially disastrous for the local telemarketing industry with one commentator remarking that telemarketers would be decimated and many would choose to move offshore if it were adopted.

There's no problem here. The public owe nothing to telemarketers. Telemarketers' activities are entirely parasitic - feeding on people's generosity and impressionability. The less telemarketing there is in Australia - and elsewhere - the better. The economy will expand once their burden of calls is lifted and the people who currently think of themselves as "telemarketers" will be able to get jobs doing something more interesting, sociable and genuinely productive.

Proper regulation will ensure that telemarketing diminishes to a very small level, according to how many people are prepared to tolerate it. Those who currently work as telemarketers will be working at something which is bound to be more productive and worthwhile. It's hard to think of any currently legal activity which is valued more lowly by society in general than outbound telemarketing. Even debt-collectors, parking attendants and used car salespersons are held in higher regard - because they all do something of value. Outbound telemarketing gives nothing of value to the targeted people. So yes, it's righteous and proper for this so-called "industry" to be decimated.

Proper regulation will ensure that there will be no benefit to charities or businesses who use overseas call-centres, as long as the charity or business beneficiaries of the telemarketing have assets in Australia.

However, to date, telemarketing can not be labelled as the same type of international threat.

Telemarketing from overseas call centres is a growing problem, due to low labour costs and very low telecommunications costs, such as using a VoIP private network between countries to land calls cheaply in Australia at local call rates.

A properly designed Do Not Call scheme will prohibit Australian companies benefiting in any way from telemarketing calls which violate the scheme, including when those calls are made from outside Australia.

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It seems likely that the rights of individuals can be better balanced with the rights of legitimate businesses to conduct their affairs by the adoption of an 'opt out' model.

It is not a legitimate practice to systematically call people

when everyone knows that most people do not want to receive such calls. The aim of this Do Not Call Register is to protect people from such practices, so it makes no sense to discuss previously unregulated abuses as if they were rights, or "legitimate".

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4.1 Who should be eligible to register numbers on a do not call register?

Everyone - every private, business, community and government telephone subscriber.

4.2 Should mobile numbers be included on a register?

Yes, every type of telephone service should be protected.

4.3 Should there be a limit on how many numbers can be registered overall?

No.

4.4 Should there be a time limit set on the period numbers remain on a register?

No. However there should probably be some integration with the IPND to remove a number when a service is cancelled.

4.5 Should individuals be able to register numbers on behalf of others?

Yes, but I am not sure it is necessary - other than for the phone numbers of minors, and elderly people who are not able to do so themselves.

While anecdotal evidence suggests that telemarketing in Australia is not the substantial problem it is in the United States, where consumers can receive up to 15 telemarketing calls a day, telemarketing is of growing concern to many Australians. A do not call register could allow individuals who are concerned about telemarketing to register their home numbers and, as telemarketers also target mobile numbers, their mobile phone numbers.

It is vital that this proposal go ahead.

There is some evidence to suggest that a number of Australian small businesses are similarly concerned about telemarketing practices. For this reason, small businesses could also be eligible to register on a do not call register. Consistent with the Australian Bureau of Statistics definition, small businesses would be defined as those employing 20 or less people. These businesses would be able to register all, or some of their contact numbers, on the register.

Most businesses have a sign on their door saying "*Absolutely no Hawkers!*" or similar. Hawkers and telemarketers are a terrible drain on the productivity of all businesses, community organisations etc. There should be no limits at all on whose numbers are protected by this scheme.

It is fashionable to think of "Big Business" as some kind of robust whipping person who should pay for everything, put up with everything etc. without complaint. But even if we ignore the legitimate needs of the personnel and shareholders of "big business", consumers and small businesses rely on the output of big business, and anything which degrades the productivity of "big business" puts up the costs of vital services for smaller businesses and consumers.

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Do not call listing in the United States is for five years from the date telephone numbers are accepted on the Registry, unless people request removal of their numbers or their phones are disconnected. After five years consumers need to re list their numbers on the Registry. Individuals are able to verify their registration expiry date on the Federal Trade Commission website at any time.

There is no possible justification for this along the lines of a possibility that people might naturally find telemarketing calls acceptable after escaping them for 5 years.

There is no justification for this in terms of the phone service coming into use by another person or for a different purpose - the linking to the IPND will detect such changes.

This seems to be a sop to the US direct marketing lobby. It means that in 5 years time, they will pounce on those people who neglected to renew their protection.

There is no justification for further inconveniencing telephone subscribers, or for the necessary increase in costs and complexity of administering the register. The public doesn't owe telemarketers anything.

5.1 Should Australia attempt to regulate offshore telemarketers?

Yes, if they are related to any business, charity, political or religious organisation etc. in Australia.

Any overseas systematic source of calls which are unwanted in Australia, including in violation of the anti-telemarketing laws here, might be best dealt with by requesting or insisting overseas networks disconnect the offending party, or at least carry the calls into Australia in a way that Australian carriers can recognise them as being

problematic. Telecommunications legislation may need to be updated to allow carriers to systematically block streams of telemarketing calls from overseas without having to ask each recipient first.

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6.1 Should automated calls be prohibited to numbers on a do not call register?

6.2 Should predictive dialling calls be prohibited to numbers on a do not call register?

I think these questions are unclear and can't be answered directly.

The term "automated calls" needs to be more clearly defined. There's nothing wrong in principle with using computer software to dial numbers. It is more cost effective than manual dialling and eliminates manual errors.

The problem is the aggressive use of automatic dialling so that some calls are answered when there is no human operator available.

If the question is redefined to be:

Should automated calling systems be prohibited to numbers on a do not call register, when there is a chance that the answered call will not have a human operator available instantly?

then I would say that the question of "silent calls" is a separate one from preferences for telemarketing, social/science research or commercial research calls.

In an Opt-Out arrangement, for a number flagged appropriately in the Register, telemarketing calls are banned anyway, so it doesn't matter what sort of dialling arrangements such calls have.

Generally speaking, it is annoying, burdensome and quite likely distress provoking to call a person without having firstly, a good purpose (from the recipient's point of view) and secondly, a person to speak and listen the moment the call is answered. This is a completely separate question from people's desire to be protected from telemarketing and research calls.

An automated dialling system which does not always connect a live operator the moment the call is answered does not have to present the recipient with silence. It should have, at the least, an apologetic spoken announcement about the nature of the call - but this cannot be relied upon in all circumstances to be helpful, for instance if a child answers,

if the call is answered by voice mail or answering machine, if the recipient cannot hear the message clearly (such as in a noisy environment) or if the recipient can't understand English.

I believe there should be a general regulation regarding proper standards of all telephone calls to ensure that recipients are never presented with a call with no human operator, unless they had already consented to this. This would have nothing to do with regulating telemarketing or research calls. For instance, I have been told that Victorian CFA (Country Fire Authority) volunteers may be called by an automated recorded voice system when they are required to report for a fire. Also, any credit card company which pursues late-payers with calls from a system which leaves the recipient waiting for a human operator, is only calling people who have chosen to have an ongoing business arrangement. I believe ordinary market forces can handle this situation: annoyed recipients can simply pay off their card.

6.3 Should recorded message calls, providing information only, be prohibited to numbers on a do not call register?

Yes.

A properly designed regulatory system will classify all such unsolicited calls as "telemarketing" calls - irrespective of whether the dialling is automated or whether a human operator is involved.

While the problems of telemarketing is the major driving force behind this Do-Not-Call Register proposal, it must be remembered that this is not a "fair-trading" problem. The proper framework for considering these problems is to consider them as part of all the systematic abuses of the telephone network. Some or many of these abuses involve sales calls, but not all of them. Recipients typically don't care if a caller tries to get them to buy or donate something or whether the caller simply tells them prices, where to buy, where to donate etc. This is not an important distinction from the recipient's point of view, and a properly crafted definition of "telemarketing" will catch such "information" calls just as surely as a "sales" call.

6.4 Should calls which have dual purposes, that is, to provide information or test customer satisfaction, for example, as well as offer goods or services for sale, be prohibited to numbers on a do not call register?

Yes.

Likewise, a drafted legislation will classify such calls as "telemarketing" or if under the guise of genuine "research" as a "SUGging" call (Selling Under the Guise of market research). In the first case, the call will be controlled as an ordinary telemarketing call. In the second case, it would be controlled as a telemarketing calls, but may also be subject to fair-trading laws, because it is fraudulent.

Genuine research calls (according to my recollection of the AMSRO guidelines) never involve dual purposes such as sales, gifts etc.

Imagine a situation where a person (the recipient of the call) has purchased a product, or service (which may be ongoing) from a company, and that company calls to "see how the customer is going". Unless the recipient has previously explicitly agreed to such calls, I regard this as an unwanted, unexpected, unnecessary call which should be classified as "telemarketing". It doesn't matter whether the caller is ostensibly seeking information or whether they are promoting further sales, donations etc. Purchasing a product or service should not be seen as permission for the company to engage in intrusive communications.

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7.1 Should exemptions to the prohibition on calling numbers listed on a do not call register be permitted?

...

7.4 If you think exemptions should not be permitted to the prohibition on calling numbers listed on a do not call register, why do you oppose granting all/some/particular exemptions?

No. A proper, broad, definition of "telemarketing" should not have any exemptions. It doesn't matter what the caller thinks about their product, service, party or religion, or how convinced that the information they have to impart will be welcomed by the person they call, it is telemarketing and people rightfully expect the government to protect them from such calls.

7.5 If you think exemptions should be permitted do you think existing business relationships should be exempted?

No. As noted above, there should be no exemptions, other than when the recipient makes an explicit, informed, un-pressured, decision to allow calls from a specific company which would otherwise be classified as "telemarketing".

7.6 Should this exemption also apply to affiliates or subsidiaries of companies with whom people have existing relationships?

It makes no difference whether the call comes from one company or another or whether the recipient has a business relationship with the calling company or their affiliates - unless the recipient has made an express, informed, un-pressured decision to allow the call in question, then it should be regulated just like any other telemarketing call.

There's no reason why people should automatically lose protection from telemarketing calls just because they purchase some goods or services, or have an ongoing business relationship.

7.7 Should exemptions be granted to charities?

No.

The fact that charities believe that people should give them money, or that people in general agree with this, is irrelevant to the question of properly regulating the telephone network to prevent systematic abuses such as calling people against their wishes, without their prior explicit, un-pressured, well-informed consent.

7.8 Should exemptions be granted to religious organisations?

No.

As above, the question of whether the caller is an individual, a business, a charity or a religious organisation is irrelevant to the question of regulating systematic abuses of the telephone network and of recipient's phone services and their time and attention.

I assume this question relates to a religious organisation calling a person who is not associated with that organisation. If a person is a member of a religious organisation, or any other kind of organisation, then it is generally reasonable for the organisation to expect that the member will be happy about being contacted in various ways. If an organisation persistently calls its members against their wishes, the recipients can either pressure the organisation to change its ways, or leave the organisation.

This is different from having a business relationship with a company. Being a member of an organisation gives, or should give, the person some influence over the policies and practices of the organisation. If not, they don't have to be a member of the organisation. If they are not a member, then the calls in question are telemarketing calls and should be regulated as such.

7.9 Should exemptions be granted to educational institutions?

No.

As with the previous question, I assume the calls are to people who are not currently associated with the educational institution. Such calls are telemarketing calls and it doesn't matter who makes them, or who they are directed to - the person has not consented to such calls and they should be protected from such calls.

7.10 Should exemptions be granted to government bodies?

There is no justification for government bodies performing general sales, promotion or marketing activities using outbound telephone calls. So they too should be subject to regulation just like all other callers.

There are instances where a government body, in order to perform its statutory obligations, does need to communicate with particular people, such as farmers in a conservation project. Unless the body is purely a propaganda unit, such activities are genuine government business and it can't be ruled out that communication may involve unsolicited phone calls. A proper definition of "telemarketing" will exclude such genuine activities of government bodies and agencies.

For instance, if there was a government body which was charged with the responsibility of "improving community understanding of the new IR legislation", this should be seen as a marketing operation, and any such call should be classified as a "telemarketing" call. An agency calling farmers in a drought affected area to see if they need help, or to make sure they know where to ask for assistance, is performing a service likely to be of genuine functional value to the recipient - which is the proper work of the agency. There could be cases where an unsolicited outbound call is the best way of doing this work. If the agency is the Fire Brigade and the call is to inform residents to evacuate, such a call would not be classified as "telemarketing" despite it being unsolicited and probably unwanted.

7.11 Should exemptions be granted to registered political parties and registered political candidates?

Absolutely not.

7.12 Should exemptions be granted to market researchers undertaking social research?

I believe that research calls must be regulated completely separately from "telemarketing" calls. Please see the previous sections for more details of how I think research calls might best be regulated.

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8.1 Should the Australian Communications and Media Authority directly administer a do not call register?

Yes. The operation must be subject to annual or at least regular auditing by a company with expertise in consumer affairs, security and privacy, so that the public and the telemarketers can all be confident that the system works as intended.

8.2 Should operation of a do not call register be awarded after a tender process?

Perhaps, but any company or organisation which operates the scheme day-to-day must have no connection whatsoever with direct marketing, sales or market research. See my notes [above](#) on how inappropriate it would be to entrust ADMA with any responsibility for protecting the public.

8.3 What specific tasks should be entrusted to an administrator?

8.4 What specific tasks should be entrusted to an enforcement body?

8.5 What penalties should apply?

I won't write in detail about these. Clearly there needs to be a reliable, easy, way of making complaints, which also involves a reliable, legally valid way of determining the source of the problem calls.

I don't think it is necessary to fine problem callers a huge sum of money for a single call - but if there are dozens of calls made, then they are clearly systematically violating the regulations, and so should be fined in a way which deters further abuses. I think it is also best that persons or businesses who receive more than the odd, relatively random, number of calls which violate the regulations should be provided with financial compensation.

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9.1 Should the telemarketing industry solely fund a do not call register?

9.2 Should the telemarketing industry primarily fund a register?

If the scheme is opt-in or opt-out and purely regulates telemarketing calls, without prohibiting social / scientific or market research calls, then (ideally) yes.

However, this ideal is unlikely to be realised, because an effective scheme will reduce telemarketing activity to such low levels that the remaining telemarketers will be in no position to fully fund the scheme.

If the scheme provides opt-out arrangements for research calls, then research companies and institutions (such as universities or government agencies who may directly conduct research) will need to have their lists flagged as well, so they should pay some proportion of the costs of running the Register. However, the primary problem is caused by telemarketers, and they should pay most of the costs. If there were no telemarketing calls, and only genuine social / scientific and commercial research calls, I believe that there would be relatively little need for a Do-Not-Call Register. High levels of telemarketing have caused severe difficulties for researchers who conduct telephone surveys. Since such researchers often perform services which cannot be done by any other method and which have lasting social benefits, I don't think it is fair that they should have to pay as much as the telemarketers, who have caused most of the trouble.

Having said that, it is a mistake to think of a "telemarketing industry". It is a much smaller, and less economically significant subset of businesses and charities than they portray. They will put up a big front lobbying against this Do Not Call Register, but when it comes to asking them for money to run it, they will be very hard to find!

A properly run Do Not Call Register is needed as a basic function of government. Governments are supposed to protect the public from things they cannot protect themselves from individually - such as aggressive foreign powers, terrorists, criminals, infectious disease pandemics and telemarketers. Arguably, the cost of the Register should be paid largely or entirely by the telephone companies. However, since telephones are used by virtually every taxpayer, it is not unreasonable to fund the scheme partly or largely out of consolidated revenue.

Ideally it would be possible to charge the entire cost of the police force and corrections departments to the criminals who are convicted. However, it is more important to do a proper job than to do a poor job by limiting total funding to whatever can be extracted from the people the system is designed to control.

9.3 Should individuals and small businesses be expected to pay a small fee to be included on a register?

Absolutely not.

It is an affront to common sense and decency to suggest that individuals at home or at work should not need to pay to maintain privacy and to be left in peace. Likewise to charge businesses for protection from systematic attempts to distract their staff make no moral or practical sense

Telemarketing is an antisocial activity, just like burglary or the aggressive and intrusive use of digital cameras on non-consenting people in public. It so happens that due to regulatory oversight, telemarketing and (until recently) intrusive photography have not been legal prohibited. The government doesn't charge citizens a fee to ensure that no-one takes their photo when lying on a beach. The government shouldn't charge anyone, including business people, a fee simply to give them a level of privacy (in this case, freedom from intrusive communications) which they can naturally and reasonably expect, and which the vast majority of the population naturally provide them with by never making such calls. The problem here is a small subset of society who make telemarketing calls. Its not an accident - they know what they are doing. There is no possible justification for charging people to protect them from telemarketers.

9.4 How should fees to access a register be set?

There should be some kind of cost recovery process. Since it is important to stop telemarketers etc. systematically enquiring about every possible number, in order to create their own complete copy of the flagged numbers in the database, some kind of sliding scale fee is appropriate. A fee proportional to the number of telephone numbers to be checked and flagged is probably the best idea.

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10.3 Are there any other standards that should apply to telemarketers?

These are fair-trading matters, which are unrelated to the question of systematic calling against the recipients' wishes. They are already covered by state and/or federal legislation, but the legislation should be extended.

There should be a requirement that for all telemarketing calls, the caller inform the recipient of the Do Not Call Register and how to place their number on it in order to protect themselves from such calls in the future.

As noted earlier, I believe the notion of a person giving any personal information, including especially credit-card details, to anyone who calls them, leave them so open to fraud that that governments should unite and legislated to

prevent any individual or business in their jurisdiction from asking people to do this. Telemarketers should be prohibited from asking for any personal information, especially credit card details. If donations or payments must be made by phone, the telemarketer should be required to give the recipient a name and number (which can be verified in the White Pages) to call in order to make their payment.

The whole notion of outbound telemarketing and funds raising is completely at odds with consumer protection, so I think these practices should not be regulated as if they were legitimate. Like tobacco, they could be legal, subject to proper controls - and the public educated never to entrust someone who calls them with any personal information whatsoever, *especially* credit card details.