

PUBLICATION

Don't Call, e-Mail, Fax: The Consumer Advertising Labyrinth

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You are a new company with a fantastic new product that every home and business owner could use. Now all you have to do is let your target customers know about your product. You have a great mailing list that contains addresses, phone numbers, fax numbers and email addresses for your targets. Now all you need to do is implement that fantastic marketing plan, calling everyone on the list, emailing the latest updates, and faxing out those one-page "features and benefits" slicks produced by your graphics department. Then, in the middle of your marketing campaign, you get a notice from the Federal Trade Commission (FTC) that you are in violation of half a dozen regulations.

Over the course of a meticulously prepared meal at your family dinner table, your 11-year-old daughter is enthusiastically describing her upcoming dance recital when, suddenly, the phone rings. "Who could be calling now," you ask yourself as you answer the phone, hoping the phone call will not be some sort of family emergency. No family emergency. It's just Lloyd with your local phone company wondering if you are happy with your current long distance service. By the time you tell Lloyd you are not interested in what he is selling, your family has finished dinner, and your daughter's enthusiasm has shifted to Instant Messaging her friends in her room.

Unsolicited emails, faxes and telephone calls are a consumer nightmare and a constitutional dilemma. How should we balance the valid commercial free-speech of an honest business trying to market its products/services against our individual right to privacy? It's a question that is even more perplexing in an expanding age of technology, where both unsolicited intrusions, and the loss of goodwill that overly aggressive and intrusive marketing cause, can occur more easily than ever before. In this balancing act, recent technological advances in telecommunications have resulted in a shift of federal and state regulations towards increased protections of personal privacy — a shift every business needs to be aware of.

The extent to which recent policy has shifted the scales in favor of increased personal privacy varies based upon the medium of communication. The FTC adopted a "National Do- Not-Call Registry" to prevent unsolicited telemarketing.¹ The "Controlling the Assault of Non-Solicited Pornography and Marketing Act (the "CAN SPAM Act") created a number of restrictions for online advertisers with respect to emails.² The "Junk Fax Prevention Act" placed prohibitions on fax solicitations unless the solicitor has an established business relationship with the receiving party.