



Conseil de la radiodiffusion et des
télécommunications canadiennes

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Bureau du Président

Canadian Radio-television and
Telecommunications Commission

Les Terrasses de la Chaudière
1 Promenade du Portage
Gatineau, Quebec
K1A 0N2

Office of the Chairman

JUN 27 2008

Reference #392251

John Gustavson
President & CEO
Canadian Marketing Association
1 Concorde Gate, Suite 607
Don Mills, ON
M3C 3N6

Dear Mr. Gustavson,

Re: Do not call requests made through iOptOut.ca

Thank you for your letter dated 21 April 2008 concerning do not call requests made by third-parties, and in particular through the website iOptOut.ca.

As you know, the Commission's *Unsolicited Telecommunications Rules* require all telemarketers and clients of telemarketers to maintain an internal do not call list and to abide by consumers' requests not to be called. These requirements apply to telemarketers and clients of telemarketers regardless of whether they are exempt from the National Do Not Call List (DNCL).

In Telecom Decision CRTC 2007-48 (Decision 2007-48), the Commission considered whether it should maintain its requirements related to internal do not call lists. The Commission noted, at paragraph 248, that some parties opposed continuing the requirement to maintain a do not call list as they considered that to do so would be confusing to consumers and costly to telemarketers and clients of telemarketers given that the Commission would be establishing a National DNCL. However, the Commission considered that consumers should be provided with the choice to limit telemarketing telecommunications from specific telemarketers or clients of telemarketers as an alternative to registering on the National DNCL. As a result, the Commission decided to continue to require that telemarketers and clients of telemarketers maintain their own do not call lists and to honour a consumer's request not to be called.

Canada

With regard to the means by which a do not call request may be made, I would note that there is no prohibition on consumers making such a request through a third party. In Decision 2007-48 the Commission determined that registrations and de-registrations on the National DNCL may be done by a person who has the authority to act on a subscriber's behalf. The Commission considered that certain consumers may be incapable of registering a telecommunications number on the National DNCL or may find it more convenient to grant another person the authority to register a telecommunications number on their behalf.

The Commission has also not placed any specific restrictions on how a consumer may grant authority to another person or on the nature of a consumer's relationship with that person (e.g. by requiring that that person be a family member or a person with power of attorney). Furthermore, in Decision 2007-48, the Commission considered that it would be difficult to confirm that all registrations on the National DNCL have been made by either the subscriber of a telecommunications number or a person with the authority to register on behalf of the subscriber. However, the Commission considered that there is limited incentive, if any, to falsely register a telecommunications number on the National DNCL. As such, the Commission did not impose any authentication requirements for registration on the National DNCL, either by a subscriber or a person authorized by a subscriber.

While many do not call requests will likely be made by a consumer during a telemarketing telecommunication, neither the *Unsolicited Telecommunications Rules* nor the *Telecommunications Act* (the Act) require a consumer to have received a telemarketing telecommunication from an organization before the consumer can make a do not call request to that organization. Similarly, a consumer can make a do not call request to an organization even though the consumer does not have an existing business relationship with that organization.

There are also no restrictions on the time, place, or method by which a do not call request may be made. In Decision 2007-48, the Commission determined that do not call requests must become effective within 31 days and that "this requirement should apply to a consumer's request regardless of the time, place or method by which the telemarketer or client of a telemarketer receives the request (e.g. at the time of the telemarketing telecommunication, at the time the consumer completes a transaction with an organization, or via an email or letter)." (Emphasis added)

As I understand it, the iOptOut website functions by allowing a consumer to grant the authority to iOptOut to send do not call requests to specific organizations on the consumer's behalf. The iOptOut website then generates an email which is sent to the organization(s) which the consumer has selected. To the extent that these requests are sent to organizations that engage in telemarketing, and that are therefore subject to the rules regarding do not call lists, these requests would be in compliance with the Act and the current *Unsolicited Telecommunications Rules* as outlined above. In short, on the basis of the facts as I understand them and have stated above, I consider that do not call requests made through iOptOut are valid and should be honoured.

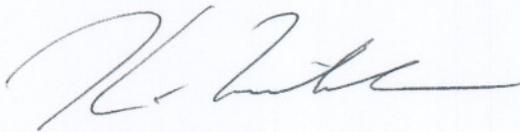
I note that some of your concerns with regard to do not call requests made by third parties relate to potential conduct by third parties that would be anti-competitive or criminal in nature. I believe such conduct, were it to occur, would be more appropriately dealt with under Canada's competition laws or the *Criminal Code*.

Your letter also raised a number of concerns related to the privacy of consumers who make do not call requests through third parties such as iOptOut. In my view, these concerns would be better addressed by the Privacy Commissioner of Canada.

Finally, I would encourage you to work with Michael Geist to resolve any technical or operational issues your members may have regarding the iOptOut service and the manner in which it generates do not call requests.

Thank you once again for taking the time to share your concerns with me on this matter. I can assure you that the Commission is prepared to address any issues that may arise in the future with respect to the implementation of its *Unsolicited Telecommunications Rules*.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Finckenstein', written in a cursive style.

Konrad von Finckenstein, Q.C.

c.c. Jennifer Stoddart, Privacy Commissioner of Canada
Michael Geist, Professor, University of Ottawa