



# Staying Compliant with the TSR

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## TSR History

- The TSR has been amended 5 times:
  - 2003 creating the National Do Not Call Registry and expanding to cover charity calls
  - 2008 limitations for using prerecorded messages
  - 2010 limitations for telemarketing related to debt relief
  - 2015 banning the use of certain payment mechanisms (remote created payment orders and cash-to-cash money transfers)
  - 2024 increased record retention requirements and certain applicability to B2B

## What is Telemarketing?

- A plan, program, or campaign conducted to induce the purchase of goods or services (or charitable contributions) by the use of one or more telephones and which involves more than one interstate telephone call
- FCC regulates both intrastate and interstate calling

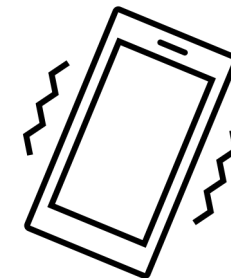


## Deceptive Acts or Practices

- Deceptive acts or practices include:
  - Failing to disclose material terms related to the goods or services being sold in a conspicuous manner
  - Misrepresentations, directly or implication in the sale of goods or services
  - Causing billing information to be submitted for payment without the customer's express verifiable authorization
  - Making false or misleading statements to induce payment for goods or services

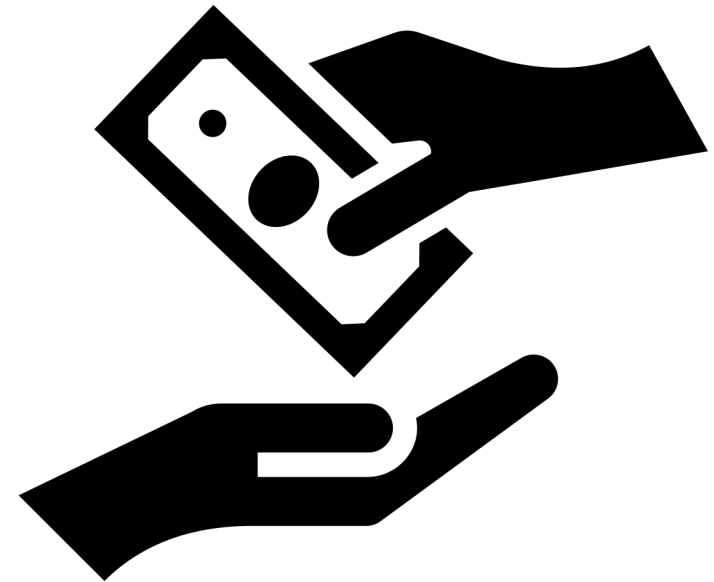
## Abusive Acts or Practices

- Abusive practices include:
  - Threats, intimidation, use of profane or obscene language
  - Failing to transmit a telephone number
  - Causing any telephone to ring continuously with intent to annoy, abuse or harass
  - Denying or interfering with a person's right to be placed on a do-not-call registry
  - Initiating an outbound call to a person who has previously stated they do not want to receive calls made on behalf of the seller or when that person's number is on the FTC's do-not-call registry
  - Abandoning an outbound call
  - Outbound calls to a person's residence any time other than between 8:00 AM and 9:00 PM



## Lender Specific Abusive Practice

- If the seller or telemarketer guarantees or represents a high likelihood of success in obtaining or arranging a loan or extension of credit
- It is an abusive practice to request or receive payment (or any consideration) in advance of the customer obtaining a loan or extension of credit



## Required Oral Disclosures

- In an outbound telephone call or during an upsell the following must be disclosed (truthfully, promptly, clearly and conspicuously)
  - Identity of the seller
  - Purpose of the call is to sell goods or services
  - The nature of the goods or services
  - If a prize promotion is offered, that no purchase or payment is necessary, and that purchase will not increase a person's chances of winning

## Prerecorded Messages

- When initiating an outbound call that delivers a prerecorded message, such calls can only be made when:
  - Seller has obtained an express written agreement from the recipient, or
  - Where the seller or telemarketer allows the phone to ring for 15 seconds (or 4 rings) before disconnecting and within 2 seconds after the completed greeting plays a prerecorded message that provides the required oral disclosures





## Safe Harbors

- Safe harbor for compliance with the do-not-call registry requirements
- Safe harbor for requirement to abandon an outbound telephone call



## 2024 TSR Amendments: Record Retention

- Old Record Retention Requirement:
  - Sellers or telemarketers were required to keep records for 24 months including:
    - (1) all substantially different advertisements or telemarketing scripts;
    - (2) lists of prize recipients, customers, and telemarketing employees involved in sales or solicitations; and
    - (3) records of express informed consent or express agreements.

## 2024 TSR Amendments: Record Retention

- New Record Retention Requirements
  - (1) increase the record retention period from 24 months to five years;
  - (2) clarify which records are necessary to demonstrate that the person calling has received consent to call; and
  - (3) specify formatting for records that include phone numbers, time, or call duration.
- Final rule expands the recordkeeping requirements such that sellers or telemarketers are required to retain many additional documents

## 2024 TSR Amendments: Record Retention

- Additional Documents Include:
  - a copy of each unique prerecorded message;
  - call detail records of telemarketing campaigns;
  - records sufficient to show a seller has an established business relationship with a consumer;
  - records sufficient to show a consumer is a previous donor to a particular charitable organization;
  - records regarding the service providers that a telemarketer uses to deliver outbound calls;
  - records of a seller or charitable organization's entity-specific do-not-call registries;
  - records of which version of the Commission's DNC Registry were used to ensure compliance with this rule



## 2024 TSR Amendments: B2B Exemption

- Traditionally the TSR exempted B2B calls
- Final rule narrows the B2B exemption such that B2B telemarketing calls must comply with prohibitions against:
  - (1) certain material misrepresentations in the sale of goods or services; and
  - (2) false or misleading statements to induce a person to pay for goods or services or induce a charitable donation
- Final rule did not require that B2B sellers and telemarketers comply with TSR recordkeeping requirements

## TSR Violations

- Unlike TCPA there is no private right of action under the TSR
- TSR makes up for this with the potential for high penalties of up to \$51,744 for each violation





## FTC's Annual Do Not Call Registry Data Book (November 3, 2023)

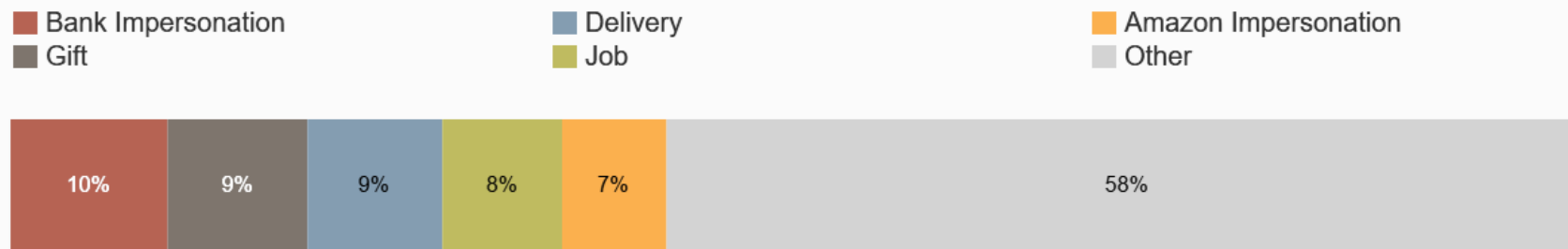
- **2.6 million** - signed up for DNC registry,
- **>249 million** – total numbers on registry
- **1.8 to 1.2 million** – drop in robocall complaints, but still largest category





## FTC Biennial Report to Congress on the National Do Not Call Registry (January 8, 2024 )

Over 40% of people who reported a text scam in 2022 said the text impersonated a bank, was about a gift, delivery or job, or claimed to be Amazon.



The top scam types were identified by hand-coding a random sample of 1,000 2022 text fraud reports containing a narrative description. For each scam type, the margin of error for the share of complaints in that type is +/- 3.1%, given a 95% confidence level.



## Litigation Updates and Trends – 2023-24

### Trends

- Continued “sweeps”
- VoIP platform actions
- “Consent farm” actions
- New law
- Penalties – high fines, bans, individual liability



## E-I-E-I-NO: Operation Stop Scam Calls (July 2023)

- 100 federal and state partners, Attorneys General from all 50 states and DC
- 180 actions against telemarketing, including robocalls and DoNotCall violations





## **E-I-E-I-NO:** Operation Stop Scam Calls (July 2023)

### **FTC Actions vs.**

- Fluent, LLC
- Viceroy Media Solutions
- Yodel Technologies, LLC
- Solar Xchange LLC
- Hello Hello Miami, LLC

### **Focus**

- Continued actions against VoIP
- New “consent farm” actions



## Voice over Internet Protocol (VoIP) Cases

- Continuation of “Project Point of No Entry” sweep (April 2023)
- Allegations that VoIP facilitates
  - Large numbers of robocalls
  - Deceptive calls from overseas
  - Calls to # on DoNotCall registry.

### Example

- U.S. v. Hello Hello Miami, LLC
  - assistance to 11 foreign telemarketers
  - 37.8 million robocalls to U.S. consumers
  - 52% on the DNC list
  - Recorded messages: (i) Amazon account on hold, (ii) Amazon Prime account experienced a suspicious change, or (iii) Amazon Prime account was about to be renewed.



## Consent Farm Actions

### “Consent Farms”

- Deceptive emails, websites, and calls allegedly used to:
  - Collect personal information
  - Receive general “consent” for future solicitations
- Leads sold to other telemarketers

### Example

- U.S. v Viceroy Media Solutions
  - quick-jobs.com and localjobindex.com allegedly promised local jobs
  - Sold leads to Yodel, which allegedly used its platform to make 14 million robo calls related to car insurance, cruises, medical devices, auto warranties, and Social Security benefits.

We found **250 Sales Jobs** in **94103!**



Enter Your Contact Info Below

\*First Name:

\*Last Name:

\*Email Address:

\*Phone:

Receive Daily Job Updates by email - Confirm the request to get started!

By clicking the button, I agree that I'm a U.S. Resident over the age of 18 and I agree to this site's [terms and privacy policy](#). I also agree to be contacted by QuickJobs, Fuentes, NewJobConnections, or its [partners](#) regarding career alerts or other opportunities via text, phone, email, artificial voice messages with an automated telephone system and prerecorded messages. Message frequency may vary. This is not required as a condition of purchasing services or for employment. I may revoke consent at anytime. Messaging and data rates may apply. Text HELP to receive help. [Skip Here](#) if you are not interested

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Career Placement Advisors, Career Finder Network, Career Resource Center, Rocket Jobs, Nexxt, Infinity One, MyJobHunter, My Job Group, Home Protectors, Educa, Iberdrola, American Disability Helpline, United States Disability, Email Magic LLC, Home Support Group, Heard and Smith, Premier Disability, Advocacy Center, Consumer Council, Medical Support Group, Home Support Group, Advocate Group, Citizens Disability, Miami Media, Insurance Proz, royal sea cruises, Gerber Life Insurance, Blogly, Transparent Truth, DMS, SOS Team, National Disability, Disability Advisor, AiMediaOne, Help Advisors, Debt Help Express, SMG, Follow My Lead, Job Funnel, Insurance Guide, Complete Home Services, American Police Officers Alliance, Fit Funnel, FindCredit, EZLiving, Eligo, Nordic, Indra, Park Power, RPA Energy, Titan, Tomorrow Energy, WGL, Town Square, Residents Energy, IDT, Citycom Solar, WMG, Direct Energy, CleanSky Energy, Solar Simplified LLC, Insurance Guide, Complete Home Services, 21st Century, Allstate, All Web Leads, American Family, Amica, Charity Guide, Farm Bureau, Farmers, LCN, Liberty Mutual, MAPFRE, Nationwide, Plymouth Rock, Progressive, Safeco, Select Quote, Solid Quote, State Farm, The General, The Hartford, The Lead Company, Travelers, Tri-State Consumer Insurance, USAA, National Debt Helpers, Senior Aid Helper, JobsFunnel, Career Helper, Arcamax, Career Guide.



## New Law

### *US v. Stratics Networks, Inc.*

2024 WL 966380 (S.D. Cal. March 6, 2024) (Mot. to Dismiss)

#### **Ringless Voicemail**

- Deemed to be “telephone call”
- Covered by the TSR
- Follows previous treatment by FCC

#### **Section 230 Immunity**

- Court found platform provider of ringless voicemail was shielded from liability under Section 230 of the Communications Decency Act.



## Fines and Judgements **\$**

- \$195 mln – *Simple Health Plans*
- \$26 mln – *Restro-Reimage*
- \$10 mln – *XCast Labs* (suspended)

## Penalties

### Bans

- Robocalls, must delete old data - *Fluent*
- Assisting high risk” (non-US) telemarketers - *XCast*
- All Telemarketing - *Yodel*

### Individual Liability

- CEO TM ban – *Simple Health*
- President robo ban – *Response Tree*
- Owner TM bans – *Yodel, Viceroy Media*
- Manager, Sales Rep bans – *other FTC/DOJ cases.*





## Take-Aways:

### **Compliance with new amended TSR**

- Update your internal procedures - capture the details and expanded data retention period of the new TSR,
- Ask vendors what they capture and how they can aid in compliance.

### **Lead Generation:**

- Ask about specific consent related to your services
- Ask if lead generator company or INDIVIDUALS are covered by an FTC order.

### **DoNotCall requirements**

- Scrub your lists!
- Minimize calls generated from overseas via VoIP.



**OLA**  
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