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Response to Consultation Document:

Statement of policy on the persistent misuse of an electronic communications network or electronic communications service

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Introduction to Datainfo

Datainfo is an analysis and IT consultancy that has built specialised capabilities with the objective of improving telemarketing productivity and return on investment. Datainfo, as DMA members, advocates compliance to a minimum but often exceeding the DMA's Code of Practice.

Correct dialler set-up can have a massive impact on campaign performance and, despite the hype from dialler suppliers, predictive diallers need to be set up by an experienced dialler manager to work efficiently and ethically. All the diallers currently available in the marketplace are capable of causing persistent misuse in some form or another (dependent on your definition), therefore Datainfo offers an audit and optimisation service designed to give dialler supervisors the skills to identify issues and enable them to rectify these without adversely impacting performance.

Overview of Stance

Since Datainfo derives its income from advising UK dialler users, it is within our interest to allow dialler use in a sustainable fashion. We believe that to be a sustainable industry the dialler user community and dialler manufacturers need to accept that some form of strict and clear regulation is required.

Silent calls are undoubtedly a hot issue with the public and Datainfo welcomes Ofcom's stance to effectively label the making of *any* silent calls as "persistent misuse". By use of an "informative message"¹ containing no marketing or promotional material and a CLI which identifies the call originator the public will now be able to identify those companies whom have inconvenienced them. Should the level of these inconvenient calls be high then the public are unlikely to purchase from companies whom do not run their diallers considerately.

Datainfo does not agree that telemarketing and collections should be treated differently, a clear and standardised policy towards all dialler use is required whether the content is for marketing, collections or service related.

At present a number of UK (and overseas) companies are operating well outside of what should be considered reasonable and considerate dialler use, these companies are gradually destroying the industry and causing companies whom do act ethically to struggle. A number of UK outbound outsourcers have gone into liquidation recently due to the increasingly difficult environment and we believe this trend could continue as TPS² registrations are driven upwards through the actions of unethical telemarketing and

¹ The "informative message" should give details of who called and why (e.g. either for "marketing" or for "administrative" reasons)

² TPS, Telephone Preference Service

customer ring-fence scams³. The outbound industry is a major UK employer and deserves protection from the get-rich-quick practices of some companies.

It may already be too late to act to save the entire industry but that is no excuse not to act or to allow the current climate of misuse-tolerance to continue.

³ For example “BT Privacy” encourages TPS registration while attempting to retain the right to outbound call customers for their own marketing purposes. In the past BT has been one of the largest users of predictive dialler technology in the UK and therefore has made many thousands of silent calls.

Response to Consultation Questions

Q1 Do you agree that consumers are concerned by silent calls and that Ofcom is right to take enforcement action against the companies that make them?

Yes, there should be zero tolerance for the making of any silent or short⁴ calls.

Q2 Do you agree with Ofcom's proposed approach to taking enforcement action, guided by a sense of administrative priority?

Yes, although if possible, Ofcom should consider a licensing scheme to regulate dialler use. Unfortunately the current climate has resulted in the extreme temptation for dialler users to improve profits through "persistent misuse" and therefore a much more regulated environment is required. Failure by Ofcom to set strict and clear guidelines at this opportunity will undoubtedly result in the demise of outbound telemarketing within the UK.

Q3 Do you agree that the range of procedures proposed in the statement will be effective in reducing the degree of anxiety, annoyance and inconvenience caused by silent calls?

Yes they will reduce the degree to some extent, however unless rigorous and swift action is taken when transgressions occur, the measures will be ineffective. More investigation needs to be made as to how these procedures will apply to calls originating from overseas.

Comments on each procedure

Abandon call rate less than 3% - All silent calls are now disallowed in favour of an "informative message" but the rate at which these messages are played should be less than 3% of live person answered calls. Users with older diallers will need to upgrade to maintain their efficiency at the 3% level.

72-hour delay before re-calling abandoned calls with out a dedicated agent - Excellent and long overdue, will have minimum (if any) negative impact on user's efficiency.

CLI presentation - This is imperative to the minimisation of the called party's anxiety where a call is missed (either through abandonment, no-answer timeout or answer-phone screening⁵). People like to know who has called them and hiding this detail is not consistent with the actions of a reputable company. The opt-out should not apply for non-marketing calls. There are a number of inexpensive solutions available in the marketplace to achieve this functionality.

⁴ Short calls: calls that hang-up before the called party has answered but ring for less than 18 seconds.

⁵ Answer-phone screening: the called party uses their answer-phone to screen calls before pick-up.

15 second ring time - This is too short, discussed below.

Q4 Are there any additional procedures which call centres could adopt to reduce the degree of anxiety, annoyance and inconvenience caused by silent calls?

Yes, the procedures in the following section should be considered to further reduce the impact of responsible dialler-use.

Additional Areas for Consideration

Examples include:

1. Abandon Call Rate no greater than 3%

3% should be an absolute maximum⁶ which the dialler is unable to break under any conditions or at anytime throughout a 24-hour period (measured from midnight to midnight the next day).

2. Delay before next attempts

Datainfo believes that attempts to re-contact a customer after ring-no-answer or answer-machine detection within one hour to be a potential cause for anxiety. Many people deliberately ignore the telephone because they do not wish to be disturbed. In one case Datainfo has seen a predicted dialler user attempt customers every fifteen minutes, this we believe shows a blatant lack of consideration to the irritation this could be causing to the called party.

3. Minimum Call Length

With the exception of number pingging (discussed below) the minimum call length should be 18 seconds or ideally 20 seconds. Analysis conducted by Datainfo shows that only 71% of calls are picked up within 15 seconds, 85% within 18 seconds and 91% within 20 seconds. The DMA's code currently states a minimum of 15 seconds but this causes annoyance to consumers by hanging-up just before they reach the phone.

4. Number Pingging

This is currently defined as "persistent misuse" by Ofcom and effectively has been an outlawed activity for some time, there have been no penalties imposed on those companies continuing to offer this service however. Datainfo believe that Ofcom should reconsider and that number pingging should possibly (after careful consideration) be allowed to enable list managers to clean their lists provided that:

⁶ Some users make lots of abandons during the daytime hoping to catch-up later in the day.

- ✚ The service providers are licensed and audited by Ofcom.
- ✚ The service is *not* used to collect live numbers through random number generation.
- ✚ The dial hangs-up within 0.25 seconds of a live number cause code being detected. This means holding the line for fax detection should be prohibited.
- ✚ CLI is given out, when the CLI is called an explanation of the call purpose and an opt-out option is available.
- ✚ Number pinging to the same number is not repeated within one calendar month where a live line was detected.

1. Statistical Auditing

We suggest that Ofcom are able to randomly request statistical information from dialler users which should be available within 24-hours for auditing. Ofcom will need to develop the capability to reliably interpret reports to identify “persistent misuse” and identify if any misrepresentation has occurred.

2. Increase in Penalties

Datainfo believes that an increase in the penalty for persistent misuse is needed as a deterrent and that this penalty should be used.

3. Automatic Answer-Machine Detection (AMD)

AMD is a process where a dialler attempts to identify if a live person has picked-up the phone or an answer-machine. AMD can take up to one second to scan the call and therefore would fall outside of the Ofcom proposals since an agent is not immediately passed the call if live.

The use of AMD can lead to a major increase in productivity and where setup correctly should have a minimal detrimental impact on the public. The main issue with AMD is that it is rarely used correctly and appropriately because most dialler manufacturers are unable to alter the behaviour of their AMD on a record by record basis.

Datainfo advocates the clear definition of what AMD (if any) is allowable by Ofcom and recommends that consultation is made with dialler manufacturers before any decision is made. AMD is discussed further in Annex 1.

5. Licensing

As a tougher but probably the most effective option, Ofcom should consider licensing the use of predictive/automated dialling technology to end users and licensing the manufacturer’s diallers as compliant for use in the UK. Companies wishing to use overseas

operations for their dialling would be responsible for applying for a license and guaranteeing the actions of the overseas operation. Ofcom should conduct random audits of licensed users and unlicensed dialler-use should be subject to an automatic investigation.

Good Dialler Practice

Datainfo would like to encourage the industry to become more intelligent with dialler and data use, examples include:

1. Best Contact Time

Datainfo has run extensive analysis on campaigns and demographics to calculate the best time of day to contact. Using this type of analysis can help raise the contact rate achieved while lowering the abandon call rate required for maintaining acceptable productivity.

As an example of this, for dialling a list of the over 60s age group it can be sufficient to use a 2% abandon rate while still achieving 70-75% agent talk-time.

2. Intelligent Dialler Management

Datainfo has seen many examples where dialler users set the abandon rate at 5% and dial increasingly aggressively till the campaign is highly penetrated. This produces great productivity when a list is fresh but as the list becomes more highly penetrated the dialler is likely to over-dial the leads to an unacceptable level while achieving a 1-2% abandon rate. Had the dialler been set to 3% in the first place a significant number of abandons would not have occurred at all and less over-dialling would occur at higher list penetration. This effect will be more pronounced now the silent call be banned altogether in favour of the "informative message" with a dedicate agent ring-back (if within 72-hours). The logic is complex but a lower rate can produce better results with good dialler management especially if a dedicated agent is used for previously abandoned calls.

3. Data Targeting

The telemarketing industry in the UK is notorious for marketing consumers indiscriminately without regard for whether the called party will have any interest in or even be eligible for their products. As an example, Datainfo encountered a major financial services organisation that contacted over 100,000 customers who were too old for the product they were offering; some simple data analysis would have removed 95% of these customers from the campaign. The waste of marketing resource is minimal compared to the negative effects of ringing customers to tell them they are "too old".

4. Over-Marketing

A number of organisations collect data for cold telemarketing use and many companies (as list owners) allow their customers to be called by 3rd parties. Unfortunately many of these companies sell this data at every opportunity leading to an extreme situation of telemarketing fatigue in any fresh leads collected. Dialler use is common and therefore these customers will receive many calls and possibly many abandoned calls.

END OF PUBLIC RESPONSE