Federal Trade Commission

KYC Requirements

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Presented by:

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Division of Marketing Practices
• The views expressed today are my own and not necessarily those of the Federal Trade Commission or any Commissioner
Legal Authority for KYC requirements
KYC under the FTC Act

- Section 5 of the FTC Act Prohibits deceptive or unfair acts or practices

- Something is unfair if it:
  - Causes an injury
  - Not reasonably avoidable
  - Not outweighed by Countervailing Benefits

- Failure to have adequate KYC can be an unfair practice
  - Payment processors
  - Lead generators
KYC under the TSR: Assisting and Facilitating

§ 310.4

(b) Assisting and facilitating. It is a deceptive telemarketing act or practice and a violation of this Rule for a person to provide **substantial assistance or support** to any seller or telemarketer when that person **knows or consciously avoids knowing** that the seller or telemarketer is engaged in any act or practice that violates §§310.3(a), (c) or (d), or §310.4 of this Rule.

- Failure to know your customer despite warning signs
- Communication from your customer
- Subpoenas
- Tracebacks
- Complaints

- VoIP service
- Payment Processors
- Dialing software
What Calls Are Covered?

• Calls that are part of a campaign or plan to get consumers to purchase a product or service

• Charitable solicitation calls by for-profit fundraisers

• Hybrid calls, e.g. “survey” calls that include a sales pitch

• Sellers are liable for calls made by their dealers / affiliates
What Calls Are *Not* Covered?

- Most true business-to-businesses telemarketing (currently)
- Debt collection calls
- Calls where the caller isn’t selling something. Customer service calls, market research calls, political polling calls
- Calls made by companies subject to special federal / state regulation (banks, insurance companies)
- Most inbound calls in response to an advertisement or a catalog or that are unsolicited
Prohibits Deceptive and Abusive Telemarketing Practices

• Deceptive
  — Misrepresenting any material aspect of the product.
  — Failing to disclose the cost to purchase, material restrictions on the use of the product, or the refund policy

• Abusive
  — Calling numbers on the — National DNC Registry without consent
  — Making “Robocalls”— calls delivering prerecorded messages, regardless of DNC registration without consent
  — Spoofing—using deceptive caller ID numbers

• Other distinctions
  — It doesn’t matter if the call is made to a land line or a cell phone
  — It doesn’t matter if it’s using an autodialer or not.
Actions against VoIP Providers
Cases Against VoIP Providers

• **Globex September 2020**
  – Assisted and facilitated telemarketing and robocalls pitching an interest rate reduction scheme. Globex and the scheme shared a CEO and had a close relationship.

• **Alcazar December 2020**
  – Assisted and facilitated telemarketing and robocalls pitching “medical alert devices.” Received multiple complaints but continued providing services. Also transmitted calls displaying 911 as the caller ID.

• **VOIP Terminator April 2022**
  – Assisted and facilitated illegal robocalls, including calls pitching an air duct cleaning filter that can stop covid. Received multiple tracebacks and law enforcement subpoenas.

• **Xcast May 2023**
  – Complaint alleges Xcast assisted and facilitated illegal robocalls including calls for auto warranties. XCast received dozens of tracebacks as well as inquiries from law enforcement agencies about transmission of suspected illegal traffic on the XCast network. Even after receiving these direct warnings, XCast transmitted illegal robocalls to consumers.
Cases Against Other Third-Parties

- **Christiano and TelWeb May 2018**
  - Christiano created the dialing software that could blast robocalls. Knew that his customers were using it to send illegal robocalls but didn’t terminate them. Hundreds of millions of calls, including neighborhood spoofing.

- **Stratics, February 2023**
  - Complaint alleges Stratics offered an outbound calling service and a ringless voicemail platform service.
  - Didn’t check whether the numbers being called were on the DNC. One of its customers, Atlas, sent 23 million ringless voicemail calls deceptively advertising a debt relief service.
  - Received tracebacks for robocalls using the ringless voicemail service. Stratics sometimes failed to comply with the tracebacks and often kept the customers active.
KYC provisions from orders

• Screening
  – Know who the customer is:
    ▪ Name of principles, controlling persons, owners
    ▪ Person responsible for TSR compliance
    ▪ Business and trade names and DBAs
    ▪ Address
    ▪ EIN
KYC provisions from orders

• Screening Continued
  — Know your customers’ business:
    ▪ What they’re selling
    ▪ How they’re selling,
      • Review websites
      • If they’re telemarking
        • Caller ID’s and callback numbers they’ll be using
        • Proof that the customer has authorization to use them.
  — Know your customers’ history
    ▪ Whether they’ve received subpoenas, CID’s
    ▪ Whether they’ve been the subject of lawsuits related to telemarketing or TSR/TCPA violations
KYC provisions from orders

- **Verify the information you’ve been given**
  - Review the website
  - Review databases of complaints
  - Check the FTC and FCC website
  - Review tracebacks
  - Perform google searches
  - Compare your customer’s numbers to the FTC’s daily list of DNC and robocall complaints.
Other Best Practices

• You don’t need a one size fits all approach
  — Are your customers end users or providers?
  — What’s their risk profile?
  — Why are they looking for a new provider?
• KYC is an ongoing obligation
  — Screen, monitor, repeat
• Take it seriously
  — Who are the people performing this
  — Who do they report to
  — How often do you train employees
  — How often do you update your policies
  — Do you document everything
• Use call analytics
Project Point of No Entry

- April 11, 2023, warning letters to point of entry or gateway VoIP providers
- 24 service providers. 307 campaigns
- 22 of the 24 targets significantly curbed or altogether stopped by the flow of robocalls
- 1,043 tracebacks before receiving letters, and 196 after receiving the letters, and 147 of those are linked to two particular companies
Consent for DNC and Prerecorded Calls
DNC and Robocall Exceptions

National Do Not Call

- Established business relationship
  - Transactional within the last 18 months
  - Inquiry or application within the last 3 months
- “Express agreement in writing:
  - that “clearly evidence such person’s authorization that calls made by or on behalf of a specific party may be placed to the person.”
  - Includes the telephone number and the signature (can be electronic)
- 16 CFR 310.4(b)(1)(iii)(B)

Robocalls

- Express written agreement that “the seller has obtained from the recipient of the call’
  - “only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize ... prerecorded calls”
  - “obtained without requiring ... that the agreement be executed as a condition of purchasing”
  - “evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific seller”
  - “includes such person’s telephone number and signature” (can be electronic)
- 16 CFR 310.4(b)(1)(v)
Business Center Guidance

• Complying with the Telemarketing Sales Rule

May a seller obtain a consumer’s written permission to receive prerecorded messages from a third-party, such as a lead generator? No. The TSR requires the seller to obtain permission directly from the recipient of the call. The seller cannot rely on third-parties to obtain permission.

• Q&A for Telemarketers & Sellers About DNC Provisions in the TSR

A good or service. Third, the seller must have obtained express consent directly from the consumer to place the calls. This means that a seller cannot place calls with prerecorded messages to consumers whose information the seller obtained from third-parties. For more information, please see the Exemptions to the National Do Not Call Registry Provisions section and the Telemarketing Calls that Deliver Prerecorded Messages section of Complying with the Telemarketing Sales Rule.
Complaint Data

• Sentinel Network – 5.2 million reports in 2022

• Our Tableau is a wonderful tool for analyzing the data
  — https://public.tableau.com/app/profile/federal.trade.commission#/
### Report Types

**Year:** 2023 YTD

<table>
<thead>
<tr>
<th>Report Type</th>
<th>Total Reports</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fraud</td>
<td>495,055</td>
</tr>
<tr>
<td>Identity Theft</td>
<td>280,318</td>
</tr>
<tr>
<td>Other</td>
<td>305,133</td>
</tr>
</tbody>
</table>

### Top 10 Fraud Categories

<table>
<thead>
<tr>
<th>Rank</th>
<th>Category</th>
<th># of Reports</th>
<th>% Reporting $ Loss</th>
<th>Total $ Loss</th>
<th>Median $ Loss</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Imposter Scams</td>
<td>176,040</td>
<td>20%</td>
<td>$532.6M</td>
<td>$905</td>
</tr>
<tr>
<td>2</td>
<td>Online Shopping and Negative Reviews</td>
<td>76,619</td>
<td>50%</td>
<td>$85.0M</td>
<td>$142</td>
</tr>
<tr>
<td>3</td>
<td>Prize, Sweepstakes and Lotteries</td>
<td>21,090</td>
<td>15%</td>
<td>$59.0M</td>
<td>$530</td>
</tr>
<tr>
<td>4</td>
<td>Telephone and Mobile Services</td>
<td>20,161</td>
<td>11%</td>
<td>$4.0M</td>
<td>$200</td>
</tr>
<tr>
<td>5</td>
<td>Investment Related</td>
<td>19,006</td>
<td>72%</td>
<td>$749.7M</td>
<td>$6,200</td>
</tr>
<tr>
<td>6</td>
<td>Business and Job Opportunities</td>
<td>19,817</td>
<td>51%</td>
<td>$86.2M</td>
<td>$2,000</td>
</tr>
<tr>
<td>7</td>
<td>Internet Services</td>
<td>19,081</td>
<td>7%</td>
<td>$8.1M</td>
<td>$200</td>
</tr>
<tr>
<td>8</td>
<td>Health Care</td>
<td>15,257</td>
<td>6%</td>
<td>$1.4M</td>
<td>$291</td>
</tr>
<tr>
<td>9</td>
<td>Foreign Money Offers and Fake Check Scams</td>
<td>10,771</td>
<td>33%</td>
<td>$35.5M</td>
<td>$1,985</td>
</tr>
<tr>
<td>10</td>
<td>Travel, Vacations and Timeshare Plans</td>
<td>10,385</td>
<td>20%</td>
<td>$19.9M</td>
<td>$1,237</td>
</tr>
</tbody>
</table>

### Identity Theft Types

<table>
<thead>
<tr>
<th>Rank</th>
<th>Theft Type</th>
<th># of Reports</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Credit Card Fraud</td>
<td>115,605</td>
</tr>
<tr>
<td>2</td>
<td>Other Identity Theft</td>
<td>75,607</td>
</tr>
<tr>
<td>3</td>
<td>Loan or Lease Fraud</td>
<td>38,799</td>
</tr>
<tr>
<td>4</td>
<td>Bank Fraud</td>
<td>33,680</td>
</tr>
<tr>
<td>5</td>
<td>Employment or Tax-Related Fraud</td>
<td>28,102</td>
</tr>
<tr>
<td>6</td>
<td>Phone or Utilities Fraud</td>
<td>20,791</td>
</tr>
<tr>
<td>7</td>
<td>Government Documents or Benefits Fraud</td>
<td>15,098</td>
</tr>
</tbody>
</table>

### Top 10 Other Categories

<table>
<thead>
<tr>
<th>Rank</th>
<th>Category</th>
<th># of Reports</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Credit Bureaus, Info. Furnishers and Report Users</td>
<td>257,017</td>
</tr>
<tr>
<td>2</td>
<td>Banks and Lenders</td>
<td>54,374</td>
</tr>
<tr>
<td>3</td>
<td>Auto Related</td>
<td>35,135</td>
</tr>
<tr>
<td>4</td>
<td>Debt Collection</td>
<td>24,620</td>
</tr>
<tr>
<td>5</td>
<td>Credit Cards</td>
<td>22,999</td>
</tr>
<tr>
<td>6</td>
<td>Home Repair, Improvement and Products</td>
<td>14,663</td>
</tr>
<tr>
<td>7</td>
<td>Television and Electronic Media</td>
<td>8,341</td>
</tr>
<tr>
<td>8</td>
<td>Privacy, Data Security, and Cyber Threats</td>
<td>5,182</td>
</tr>
<tr>
<td>9</td>
<td>Computer Equipment and Software</td>
<td>3,906</td>
</tr>
<tr>
<td>10</td>
<td>Education</td>
<td>3,843</td>
</tr>
</tbody>
</table>
FTC CONSUMER SENTINEL NETWORK

All Fraud Reports by Contact Method
Year: 2022

<table>
<thead>
<tr>
<th>Contact Method</th>
<th># of Reports</th>
<th>Total $ Lost</th>
<th>Median $ Lost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Text</td>
<td>329,603</td>
<td>$330M</td>
<td>$1,000</td>
</tr>
<tr>
<td>Phone call</td>
<td>297,109</td>
<td>$802M</td>
<td>$1,400</td>
</tr>
<tr>
<td>Email</td>
<td>277,002</td>
<td>$420M</td>
<td>$819</td>
</tr>
<tr>
<td>Website or Apps</td>
<td>184,106</td>
<td>$940M</td>
<td>$345</td>
</tr>
<tr>
<td>Social Media</td>
<td>162,698</td>
<td>$1,228M</td>
<td>$528</td>
</tr>
<tr>
<td>Other</td>
<td>141,291</td>
<td>$1,146M</td>
<td>$800</td>
</tr>
<tr>
<td>Mail</td>
<td>40,083</td>
<td>$77M</td>
<td>$800</td>
</tr>
<tr>
<td>Online Ad or Pop-up</td>
<td>36,079</td>
<td>$181M</td>
<td>$229</td>
</tr>
</tbody>
</table>

2,518,319
Number of Fraud Reports

1,467,971 (58%)
# of Reports with Contact Method

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Thank You!

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