

Direct Marketing Association's

GUIDELINES

for

Ethical Business Practice



The Power of Direct:

Relevance ▶ Responsibility ▶ Results

DIRECT MARKETING ASSOCIATION GUIDELINES for Ethical Business Practice

The Direct Marketing Association's Guidelines for Ethical Business Practice are intended to provide individuals and organizations involved in direct marketing in all media with generally accepted principles of conduct. These guidelines reflect DMA's long-standing policy of high levels of ethics and the responsibility of the Association, its members, and all marketers to maintain consumer and community relationships that are based on fair and ethical principles. In addition to providing general guidance to the industry, the Guidelines for Ethical Business Practice are used by DMA's Committee on Ethical Business Practice, an industry peer review committee, as the standard to which direct marketing promotions that are the subject of complaint to DMA are compared.

These self-regulatory guidelines are intended to be honored in light of their aims and principles. All marketers should support the guidelines in spirit and not treat their provisions as obstacles to be circumvented by legal ingenuity.

These guidelines also represent DMA's general philosophy that self-regulatory measures are preferable to governmental mandates. Self-regulatory actions are more readily adaptable to changing techniques and economic and social conditions. They encourage widespread use of sound business practices.

Because dishonest, misleading or offensive communications discredit all means of advertising and marketing, including direct marketing, observance of these guidelines by all concerned is expected. All persons involved in direct marketing should take reasonable steps to encourage other industry members to follow these guidelines as well.



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DMA Member Principles

DMA Member Principles are the underlying framework for the *Guidelines for Ethical Business Practice* as detailed herein, and for Guidelines that will be drafted in the future. These Principles apply to DMA members' relationships with current and prospective customers, donors, and members, and are the grounding for all DMA members, which includes those who market directly not only to consumers, but also to businesses, government agencies, and "SOHO" (small-office/home-office) entities. The Principles provide a general statement to the public of the expectations they can have when dealing with DMA members.

A DMA Member:

1. Is committed to its customers' satisfaction
2. Clearly, honestly, and accurately represents its products, services, terms and conditions
3. Delivers its products and services as represented
4. Communicates in a respectful and courteous manner
5. Responds to inquiries and complaints in a constructive, timely way
6. Maintains appropriate security policies and practices to safeguard information
7. Provides information on its policies about the transfer of personally identifiable information for marketing purposes
8. Honors requests not to have personally identifiable information transferred for marketing purposes
9. Honors requests not to receive future solicitations from its organization
10. Follows the spirit and letter of the law as well as DMA's *Guidelines for Ethical Business Practice*

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The Terms of the Offer

HONESTY AND CLARITY OF OFFER

Article #1

All offers should be clear, honest, and complete so that the consumer may know the exact nature of what is being offered, the price, the terms of payment (including all extra charges) and the commitment involved in the placing of an order. Before publication of an offer, marketers should be prepared to substantiate any claims or offers made. Advertisements or specific claims that are untrue, misleading, deceptive, or fraudulent should not be used.

ACCURACY AND CONSISTENCY

Article #2

Simple and consistent statements or representations of all the essential points of the offer should appear in the promotional material. The overall impression of an offer should not be contradicted by individual statements, representations, or disclaimers.

CLARITY OF REPRESENTATIONS

Article #3

Representations which, by their size, placement, duration, or other characteristics are unlikely to be noticed or are difficult to understand should not be used if they are material to the offer.

ACTUAL CONDITIONS

Article #4

All descriptions, promises, and claims of limitation should be in accordance with actual conditions, situations, and circumstances existing at the time of the promotion.

DISPARAGEMENT

Article #5

Disparagement of any person or group on grounds addressed by federal or state laws that prohibit discrimination is unacceptable.

DECENCY

Article #6

Solicitations should not be sent to consumers who have indicated to the marketer that they consider those solicitations to be vulgar, immoral, profane, pornographic, or offensive in any way and who do not want to receive them.

PHOTOGRAPHS AND ART WORK

Article #7

Photographs, illustrations, artwork, and the situations they describe should be accurate portrayals and current reproductions of the products, services, or other subjects they represent.

DISCLOSURE OF SPONSOR AND INTENT

Article #8

All marketing contacts should disclose the name of the sponsor and each purpose of the contact. No one should make offers or solicitations in the guise of one purpose when the intent is a different purpose.

ACCESSIBILITY

Article #9

Every offer should clearly identify the marketer's name and street address or telephone number, or both, at which the individual may obtain service. If an offer is made online, the marketer should provide its name, an Internet-based contact mechanism, and a street address. For e-mail solicitations, marketers should comply with Article #38 (Commercial Solicitations Online).

SOLICITATION IN THE GUISE OF AN INVOICE OR GOVERNMENTAL NOTIFICATION

Article #10

Offers that are likely to be mistaken for bills, invoices, or notices from public utilities or governmental agencies should not be used.

POSTAGE, SHIPPING, OR HANDLING CHARGES

Article #11

Postage, shipping, or handling charges, if any, should bear a reasonable relationship to actual costs incurred.

Advance Consent Marketing

Article #12

These guidelines address marketing plans where the consumer gives consent to receive and pay for goods or services in the future *on a continuing or periodic basis, unless and until the consumer cancels the plan.*

The following principles apply to all advance consent marketing plans:

- Marketers should have the consumer's informed consent to participate in any advance consent marketing plan before the consumer is billed or charged. In telephone sales where the consumer pays in a way other than by credit or debit card, this consent must be written or audio recorded.
- Marketers may provide products or services and bills concurrently; however, consumers should not be obligated to pay bills prior to the expiration of any trial period.
- Marketers should inform consumers in the initial offer and in renewal reminders of their right to cancel their participation in the plan.

- Marketers should provide renewal reminders at the frequency specified in the initial offer. Marketers should allow consumers a reasonable length of time between receipt of renewal reminders and the renewal date, before which consumers can cancel the plan.
- Marketers should promptly honor requests for refunds due upon consumers' cancellation of the plan.

Marketers should clearly and conspicuously disclose material terms and conditions before obtaining the consumer's consent, including:

- A description of the goods or services being offered
- The identity of the marketer and contact information for service or cancellation
- The interval between shipments or services to be provided
- The price or the range of prices of the goods or services purchased by the consumer, including whether there are any additional charges
- Whether the consumer will be billed or automatically charged
- When and how frequently the consumer will be billed or charged
- The fact that the consumer must take affirmative action to cancel in order to avoid future billing or charges
- The specific and easy steps that consumers should follow to cancel the plan and avoid the charges, and
- The time period if any within which the consumer must cancel

When applicable, the following terms and conditions should also be clearly and conspicuously disclosed in the initial offer:

- That the current plan or renewal prices of the goods or services are subject to change
- The length of any free, trial or approval period in time or quantity
- The length of membership period, and the length of subsequent renewal or billing periods
- The fact that goods or services will continue after the free period unless the consumer cancels
- Any minimum purchase obligations, and
- The terms and conditions of any refund policy

In telephone sales where the marketer uses pre-acquired account information under a free-to-pay conversion plan, the marketer should:

- Obtain from the consumer the last four digits of the account to be charged
- Obtain consent from the consumer to charge such account, and
- Audio record the entire transaction

In telephone sales where the marketer uses pre-acquired account information but does not engage in a free-to-pay conversion plan, the marketer should:

- Identify with specificity the account that will be charged, and

- Obtain consent from the consumer to charge such account

All marketing partners or service providers should comply with these guidelines.

Marketing to Children

MARKETING TO CHILDREN

Article #13

Offers and the manner in which they are presented that are suitable for adults only should not be made to children. In determining the suitability of a communication with children online or in any other medium, marketers should address the age range, knowledge, sophistication, and maturity of their intended audience.

PARENTAL RESPONSIBILITY AND CHOICE

Article #14

Marketers should provide notice and an opportunity to opt out of the marketing process so that parents have the ability to limit the collection, use, and disclosure of their children's names, addresses, or other personally identifiable information.

INFORMATION FROM OR ABOUT CHILDREN

Article #15

Marketers should take into account the age range, knowledge, sophistication, and maturity of children when collecting information from them. Marketers should limit the collection, use, and dissemination of information collected from or about children to information required for the promotion, sale, and delivery of goods and services, provision of customer services, conducting market research, and engaging in other appropriate marketing activities.

Marketers should effectively explain that the information is being requested for marketing purposes. Information not appropriate for marketing purposes should not be collected.

Upon request from a parent, marketers should promptly provide the source and general nature of information maintained about a child. Marketers should implement strict security measures to ensure against unauthorized access, alteration, or dissemination of the data collected from or about children.

MARKETING ONLINE TO CHILDREN UNDER 13 YEARS OF AGE

Article #16

Marketers should not collect personally identifiable information online from a child under 13 without prior parental consent or direct parental notification of the nature and intended use of such information online and an opportunity for the parent to prevent such use and participation in the activity. Online contact information should only be used to directly respond to an activity initiated by a child and not to recontact a child for other purposes without prior parental consent.

However, a marketer may contact and get information from a child for the purpose of obtaining parental consent.

Marketers should not collect, without prior parental consent, personally identifiable information online from children that would permit any offline contact with the child.

Marketers should not distribute to third parties, without prior parental consent, information collected from a child that would permit any contact with that child.

Marketers should take reasonable steps to prevent the online publication or posting of information that would allow a third party to contact a child offline unless the marketer has prior parental consent.

Marketers should not entice a child to divulge personally identifiable information by the prospect of a special game, prize, or other offer.

Marketers should not make a child's access to a Web site contingent on the collection of personally identifiable information. Only online contact information used to enhance the interactivity of the site is permitted.

The following assumptions underlie these online guidelines:

- When a marketer directs a site at a certain age group, it can expect that the visitors to that site are in that age range, and
- When a marketer asks the age of the child, the marketer can assume the answer to be truthful.

Special Offers and Claims

USE OF THE WORD "FREE" AND OTHER SIMILAR REPRESENTATIONS

Article #17

A product or service that is offered without cost or obligation to the recipient may be unqualifiedly described as "free."

If a product or service is offered as "free," all qualifications and conditions should be clearly and conspicuously disclosed, in close conjunction with the use of the term "free" or other similar phrase. When the term "free" or other similar representations are made (for example, 2-for-1, half-price, or 1-cent offers), the product or service required to be purchased should not have been increased in price or decreased in quality or quantity.

PRICE COMPARISONS

Article #18

Price comparisons, including those between a marketer's current price and a former, future, or suggested price, or between a marketer's price and the price of a competitor's comparable product, should be fair and accurate.

In each case of comparison to a former, manufacturer's suggested, or competitor's comparable product price, recent substantial sales should have been made at that price in the same trade area.

For comparisons with a future price, there should be a reasonable expectation that the new price will be charged in the foreseeable future.

GUARANTEES

Article #19

If a product or service is offered with a guarantee or a warranty, either the terms and conditions should be set forth in full in the promotion, or the promotion should state how the consumer may obtain a copy. The guarantee should clearly state the name and address of the guarantor and the duration of the guarantee.

Any requests for repair, replacement, or refund under the terms of a guarantee or warranty should be honored promptly. In an unqualified offer of refund, repair, or replacement, the customer's preference should prevail.

USE OF TEST OR SURVEY DATA

Article #20

All test or survey data referred to in advertising should be valid and reliable as to source and methodology, and should support the specific claim for which it is cited. Advertising claims should not distort test or survey results or take them out of context.

TESTIMONIALS AND ENDORSEMENTS

Article #21

Testimonials and endorsements should be used only if they are:

- a. Authorized by the person quoted
- b. Genuine and related to the experience of the person giving them both at the time made and at the time of the promotion and
- c. Not taken out of context so as to distort the endorser's opinion or experience with the product.

Sweepstakes

USE OF THE TERM "SWEEPSTAKES"

Article #22

Sweepstakes are promotional devices by which items of value (prizes) are awarded to participants by chance without the promoter's requiring the participants to render something of value (consideration) to be eligible to participate. The co-existence of all three elements -- prize, chance and consideration -- in the same promotion constitutes a lottery. It is illegal for any private enterprise to run a lottery without specific governmental authorization.

When skill replaces chance, the promotion becomes a skill contest. When gifts (premiums or other items of value) are given to all participants independent of the element of chance, the promotion is not a sweepstakes. Promotions that are not sweepstakes should not be held out as such.

Only those promotional devices that satisfy the definition stated above should be called or held out to be a sweepstakes.

NO PURCHASE OPTION

Article #23

Promotions should clearly state that no purchase is required to win sweepstakes prizes. They should not represent that those who make a purchase or otherwise render consideration with their entry will have a better chance of winning or will be eligible to win more or larger prizes than those who do not make a purchase or otherwise render consideration. The method for entering without ordering should be easy to find, read, and understand. When response devices used only for entering the sweepstakes are provided, they should be as easy to find as those utilized for ordering the product or service.

CHANCES OF WINNING

Article #24

No sweepstakes promotion, or any of its parts, should represent that a recipient or entrant has won a prize or that any entry stands a greater chance of winning a prize than any other entry when this is not the case. Winners should be selected in a manner that ensures fair application of the laws of chance.

PRIZES

Article #25

Sweepstakes prizes should be advertised in a manner that is clear, honest, and complete so that the consumer may know the exact nature of what is being offered. For prizes paid over time, the annual payment schedule and number of years should be clearly disclosed.

Photographs, illustrations, artwork, and the situations they represent should be accurate portrayals of the prizes listed in the promotion.

No award or prize should be held forth directly or by implication as having substantial monetary value if it is of nominal worth. The value of a non-cash prize should be stated at regular retail value, whether actual cost to the sponsor is greater or less.

All prizes should be awarded and delivered without cost to the participant. If there are certain conditions under which a prize or prizes will not be awarded, that fact should be disclosed in a manner that is easy to find, read, and understand.

PREMIUMS

Article #26

Premiums should be advertised in a manner that is clear, honest, and complete so that the consumer may know the exact nature of what is being offered.

A premium, gift or item should not be called or held out to be a "prize" if it is offered to every recipient of or participant in a promotion. If all participants will receive a premium, gift, or item, that fact should be clearly disclosed.

DISCLOSURE OF RULES

Article #27

All terms and conditions of the sweepstakes, including entry procedures and rules, should be easy to find, read, and understand. Disclosures set out in the rules section concerning no purchase option, prizes, and chances of winning should not contradict the overall impression created by the promotion.

The following should be set forth clearly in the rules:

- No purchase of the advertised product or service is required in order to win a prize
- A purchase will not improve the chances of winning
- Procedures for entry
- If applicable, disclosure that a facsimile of the entry blank or other alternate means (such as a 3"x 5" card) may be used to enter the sweepstakes
- The termination date for eligibility in the sweepstakes. The termination date should specify whether it is a date of mailing or receipt of entry deadline
- The number, retail value (of non-cash prizes), and complete description of all prizes offered, and whether cash may be awarded instead of merchandise. If a cash prize is to be awarded by installment payments, that fact should be clearly disclosed, along with the nature and timing of the payments
- The estimated odds of winning each prize. If the odds depend upon the number of entries, the stated odds should be based on an estimate of the number of entries
- The method by which winners will be selected
- The geographic area covered by the sweepstakes and those areas in which the offer is void
- All eligibility requirements, if any
- Approximate dates when winners will be selected and notified
- Publicity rights regarding the use of winner's name
- Taxes are the responsibility of the winner
- Provision of a mailing address to allow consumers to receive a list of winners of prizes over \$25.00 in value

Fulfillment

UNORDERED MERCHANDISE OR SERVICE

Article #28

Merchandise or services should not be provided without having first received the customer's permission. The exceptions are samples or gifts clearly marked as such, and merchandise mailed by a charitable organization soliciting contributions, as long as all items are sent with a clear and conspicuous statement informing the recipient of an unqualified right to treat the product as a gift and to do with it as the recipient sees fit, at no cost or obligation to the recipient.

PRODUCT AVAILABILITY AND SHIPMENT

Article #29

Direct marketers should offer merchandise only when it is on hand or when there is a reasonable expectation of its timely receipt.

Direct marketers should ship all orders according to the terms of the offer or within 30 days where there is no promised shipping date, unless otherwise directed by the consumer, and should promptly notify consumers of any delays.

DRY TESTING

Article #30

Direct marketers should engage in dry testing only when the special nature of the offer is made clear in the promotion.

Collection, Use, and Maintenance of Marketing Data

For purposes of the *Guidelines for Ethical Business Practice*, the following definitions are used:

Consumer refers to the subject of the data.

Marketing data means actual or inferred information consistent with a person's commercial or charitable inquiry or transaction, or market research or market survey information. Such information can be derived from either a direct contact or marketing partnership when linked to a person's name, postal or e-mail address, or telephone number, or any other personally identifiable information. When obtained from a publicly available source, information (including public record information), not combined with other information, is not marketing data.

Marketing purpose means any activity undertaken to collect, aggregate, analyze, maintain, update, or sell information in order to allow or induce consumers to take action to purchase, rent, or exchange products, property or services, to solicit a charitable donation, to utilize market research or market surveys, or to provide verification services to marketers.

COLLECTION, USE, AND TRANSFER OF PERSONALLY IDENTIFIABLE DATA

Article #31

This article is applicable to all media, and includes special requirements for mailers.

- A marketer using the mail channel should provide existing and prospective customers with notice of an opportunity to modify or eliminate direct marketing communications to be received from that company or organization. This guideline applies to senders of marketing offers. (Online marketers should provide notice in accordance with Article #38. Email marketers should provide notice in accordance with Article #39 and the CAN-SPAM Act.)

- The notice in the mailing should:
 - appear in every marketing offer and
 - be easy for the consumer to find, read, understand, and act upon
- A consumer's request for elimination of future marketing offers should be processed:
 - within 30 days or as required by law, whichever is the shorter time period
 - for a period of at least three years from the date of receipt of the request
- A marketer periodically should provide existing customers with notice of its policy concerning the rental, sale, exchange, or transfer of data about them and of the opportunity to opt out of the marketing process. All such opt-out requests should be honored promptly.
- An in-house suppression request from a consumer should be interpreted as meaning that the consumer also wants to opt out of the transfer of his or her personal information.
- Where an affiliate, division, or subsidiary markets under a different company or brand name, and is perceived as separate by the consumer, each corporate entity or brand should separately honor requests received by it.
- A marketer should establish internal policies and practices that assure accountability for honoring requests, in compliance with this guideline, and at no cost to consumers. Should those policies substantially change, the marketer has an obligation to inform consumers of that change prior to the rental, sale, exchange, or transfer of data, and to offer consumers an opportunity to opt out of the marketing process at that time.
- For each prospecting list that is rented, sold, exchanged, or transferred, the names registered on the applicable DMAchoice name-removal lists should be removed prior to use. DMAchoice name-removal lists include:
 - the relevant categorical opt-out mailing lists for Catalog, Magazine, Pre-screened Credit Offers or Other categories, as well as future categories designated by the DMA; and
 - the eMail Preference Service and Telephone Preference Service, as well as future DMA preference service lists

Use of the above DMAchoice name-removal lists is not required on customer/donor lists.

The following DMAchoice name-removal lists should be used on current customer/donor lists, as well as prospect lists:

- the marketer's own DMAchoice company/organization brand opt-out mailing list

In all instances, the most recent *monthly* release of the relevant DMAchoice file should be used.

- In addition to adhering to these guidelines, a marketer should cooperate with DMA when requested in demonstrating compliance with the *Commitment to Consumer Choice*.
- Upon request by a consumer, a marketer should disclose the source from which it obtained personally identifiable data about that consumer.

PERSONAL DATA

Article #32

Marketers should be sensitive to the issue of consumer privacy and should only collect, combine, rent, sell, exchange, or use marketing data. Marketing data should be used only for marketing purposes.

Data and selection criteria that by reasonable standards may be considered sensitive and/or intimate should not be disclosed, be displayed, or provide the basis for lists made available for rental, sale or exchange when there is a reasonable expectation by the consumer that the information will be kept confidential.

Credit card numbers, checking account numbers, and debit account numbers are considered to be personal information and therefore should not be transferred, rented, sold, or exchanged when there is a reasonable expectation by the consumer that the information will be kept confidential. Because of the confidential nature of such personally identifying numbers, they should not be publicly displayed on direct marketing promotions or otherwise made public by direct marketers.

Social Security numbers are also considered to be personal information and therefore should not be transferred, rented, sold, or exchanged for use by a third party when there is a reasonable expectation by the consumer that the information will be kept confidential. Because of the confidential nature of Social Security numbers, they should not be publicly displayed on direct marketing promotions or otherwise made public by direct marketers. Social Security numbers, however, are used by direct marketers as part of the process of extending credit to consumers or for matching or verification purposes.

COLLECTION, USE, AND TRANSFER OF HEALTH-RELATED DATA

Article #33

Health-related data constitute information related to consumers':

- Illnesses or conditions
- Treatments for those illnesses or conditions, such as prescription drugs, medical procedures, devices or supplies or
- Treatments received from doctors (or other health care providers), at hospitals, at clinics, or at other medical treatment facilities

These fair information practices and principles apply to any individual or entity that collects, maintains, uses, and/or transfers health-related data for marketing purposes, whether or not marketing is a primary purpose. These principles are applicable to nonprofit as well as for-profit entities.

1. Personally identifiable health-related data gained in the context of a relationship between consumers and health or medical care providers or medical treatment facilities should not be transferred for marketing purposes without the specific prior consent of those consumers. Health or medical care providers include licensed health care practitioners, such as doctors, nurses, psychologists, pharmacists, and counselors, and those who support health care providers and therefore have access to personally identifiable information, such as insurance companies, pharmacy benefits managers or other business partners, and businesses that sell prescription drugs.

2. Personally identifiable health-related data, including the occurrence of childbirth, gained in the context of a relationship between consumers and health or medical care providers or medical treatment facilities (as defined in #1) should not be used to contact those consumers for marketing purposes without giving consumers a clear notice of the marketer's intended uses of the data and the opportunity to request not to be so contacted.

3. Personally identifiable health-related data volunteered by consumers, and gathered outside of the relationship between consumers and health care providers, should also be considered sensitive and personal in nature. Such data should not be collected, maintained, used, and/or transferred for marketing purposes unless those consumers receive, at the time the data are collected, a clear notice of the marketer's intended uses of the data, whether the marketer will transfer the data to third parties for further use, the name of the collecting organization, and the opportunity to opt out of transfer of the data. Such data include, but are not limited to, data volunteered by consumers when responding to surveys and questionnaires. Clear notice should be easy to find, read, and understand.

4. Personally identifiable health-related data inferred about consumers, and gathered outside of the relationship between consumers and health care providers, should also be considered sensitive and personal in nature. These are data based on consumers' purchasing behavior. Such data include, but are not limited to, data captured by inquiries, donations, purchases, frequent shopper programs, advertised toll-free telephone numbers, or other consumer response devices. Any entity, including a seller of over-the-counter drugs, which uses inferred health-related data should promptly provide notice and the opportunity to opt out of any transfer of the data for marketing purposes.

5. Marketers using personally identifiable health-related data should provide both the source and the nature of the information they have about that consumer, upon request of that consumer and receipt of that consumer's proper identification.

6. Consumers should not be required to release personally identifiable health-related information about themselves to be used for marketing purposes as a condition of receiving insurance coverage, treatment or information, or otherwise completing their health care-related transaction.

7. The text, appearance, and nature of solicitations directed to consumers on the basis of health-related data should take into account the sensitive nature of such data.

8. Marketers should ensure that safeguards are built into their systems to protect personally identifiable health-related data from unauthorized access, alteration, abuse, theft, or misappropriation. Employees who have access to personally identifiable health-related data should agree in advance to use those data only in an authorized manner.

9. If personally identifiable health-related data are transferred from one direct marketer to another for a marketing purpose, the transferor should arrange strict security measures to assure that unauthorized access to the data is not likely during the transfer process. Transfers of personally identifiable health-related data should not be permitted for any marketing uses that are in violation of any of DMA's *Guidelines for Ethical Business Practice*.

Nothing in these guidelines is meant to prohibit research, marketing, or other uses of health-related data which are not personally identifiable, and which are used in the aggregate.

PROMOTION OF MARKETING LISTS

Article #34

Any advertising or promotion for marketing lists being offered for rental, sale, or exchange should reflect the fact that a marketing list is an aggregate collection of marketing data. Such promotions should also reflect a sensitivity for the consumers on those lists.

MARKETING LIST USAGE

Article #35

List owners, brokers, managers, and users of marketing lists should ascertain the nature of the list's intended usage for each materially different marketing use prior to rental, sale, exchange, transfer, or use of the list. List owners, brokers, and managers should not permit the rental, sale, exchange, or transfer of their marketing lists, nor should users use any marketing lists for an offer that is in violation of these guidelines.

RESPONSIBILITIES OF DATABASE COMPILERS

Article #36

For purposes of this guideline, a *database compiler* is a company that assembles personally identifiable information about consumers (with whom the compiler has no direct relationship) for the purpose of facilitating renting, selling, or exchanging the information to non-affiliated third party organizations for marketing purposes. *Customer* refers to those marketers that use the database compiler's data. *Consumer* refers to the subject of the data.

Database compilers should:

- Establish written (or electronic) agreements with customers that define the rights and responsibilities of the compiler and customer with respect to the use of marketing data.
- Upon a consumer's request, and within a reasonable time, suppress the consumer's information from the compiler's and/or the applicable customer's database made available to customers for prospecting.

- Not prohibit an end-user marketer from divulging the database compiler as the source of the marketer's information.
- At a minimum, explain to consumers, upon their request for source information, the nature and types of sources they use to compile marketing databases.
- Include language in their written (or electronic) agreements with DMA member customers that requires compliance with applicable laws and DMA guidelines. For non-DMA member customers they should require compliance with applicable laws and encourage compliance with DMA's guidelines. In both instances, customers should agree *before* using the marketing data.
- Require customers to state the purpose for which the data will be used.
- Use marketing data only for marketing purposes. If the data are non-marketing data but are used for marketing purposes, they should be treated as marketing data for purposes of this guideline.
- For sensitive marketing data, compilers should review materials to be used in promotions to help ensure that their customers' use of the data is both appropriate and in accordance with their stated purpose. Sensitive marketing data include data pertaining to children, older adults, health care or treatment, account numbers, or financial transactions.
- Randomly monitor, through seeding or other means, the use of their marketing databases to ensure that customers use them in accordance with their stated purpose.
- If a database compiler is or becomes aware that a customer is using consumer data in a way that violates the law and/or DMA's ethics guidelines, it should contact the customer and require compliance for any continued data usage, or refuse to sell the data and/or refer the matter to the DMA and/or a law enforcement agency.

INFORMATION SECURITY

Article #37

The protection of personally identifiable information is the responsibility of all marketers. Therefore, marketing companies should assume the following responsibilities to provide secure transactions for consumers and to protect databases containing consumers' personally identifiable information against unauthorized access, alteration, or dissemination of data:

- Marketers should establish information security policies and practices that assure the uninterrupted security of information systems.
- Marketers should create and implement staff policies, procedures, training, and responsiveness measures to protect personally identifiable information handled in the everyday performance of duties.

- Marketers should employ and routinely reassess protective physical safeguards and technological measures, including data retention, destruction, and deletion practices, in support of information security.
- Marketers should contractually require all business partners and service providers that handle personally identifiable information to ensure that their policies, procedures, and practices maintain a level of security consistent with the marketer's applicable information security policies.
- Marketers should, in the event of a security breach where there is a reasonable likelihood of material harm to consumers, inform those consumers who may be affected as soon as reasonably practical, unless requested by legal authorities to delay such notification.

Online Marketing

ONLINE INFORMATION

Article #38

Notice to Online Visitors

If your organization operates an online site, you should make your information practices available to visitors in a prominent place on your Web site's home page or in a place that is easily accessible from the home page. The notice about information practices on your Web site should be easy to find, read, and understand so that a visitor is able to comprehend the scope of the notice. The notice should be available prior to or at the time personally identifiable information is collected.

Your organization and its postal address, and the Web site(s) to which the notice applies, should be identified so the visitor knows who is responsible for the Web site. You also should provide specific contact information so the visitor can contact your organization for service or information.

If your organization collects personally identifiable information from visitors, your notice should include:

- The nature of personally identifiable information collected about individual visitors online, and the types of uses you make of such information, including marketing uses that you may make of that information
- Whether you transfer personally identifiable information to third parties for use by them for their own marketing and the mechanism by which the visitor can exercise choice not to have such information transferred

- Whether personally identifiable information is collected by, used by, or transferred to agents (entities working on your behalf) as part of the business activities related to the visitor's actions on the site, including to fulfill orders or to provide information or requested services
- Whether you use cookies or other passive means of data collection, and whether such data collected are for internal purposes or transferred to third parties for marketing purposes
- What procedures your organization has put in place for accountability and enforcement purposes
- That your organization keeps personally identifiable information secure

If you knowingly permit network advertisers to collect information on their own behalf or on behalf of their clients on your Web site, you should also provide notice of the network advertisers that collect information from your site and a mechanism by which a visitor can find those network advertisers to obtain their privacy statements and to exercise the choice of not having such information collected. (Network advertisers are third parties that attempt to target online advertising and make it more relevant to visitors based on Web traffic information collected over time across Web sites of others.)

If your organization's policy changes materially with respect to the sharing of personally identifiable information with third parties for marketing purposes, you will update your policy and give consumers conspicuous notice to that effect, offering an opportunity to opt out.

Honoring Choice

You should honor a visitor's choice regarding use and transfer of personally identifiable information made in accordance with your stated policy. If you have promised to honor the visitor's choice for a specific time period, and if that time period subsequently expires, then you should provide that visitor with a new notice and choice. You should provide choices of opting out online. You may also offer opt-out options by mail or telephone.

Providing Access

You should honor any representations made in your online policy notice regarding access.

Data Security

Your organization should use security technologies and methods to guard against unauthorized access, alteration, or dissemination of personally identifiable information during transfer and storage. Your procedures should require that employees and agents of your organization who have access to personally identifiable information use and disclose that information only in a lawful and authorized manner.

Visitors Under 13 Years of Age

If your organization has a site directed to children under the age of 13 or collects personally identifiable information from visitors known to be under 13 years of age, your Web site should take the additional steps required by Article #16 of the *Guidelines for Ethical Business Practice* and inform visitors that your disclosures and practices are subject to compliance with the Children's Online Privacy Protection Act.

Accountability

There should be a meaningful, timely, and effective procedure through which your organization can demonstrate adherence to your stated online information practices. Such a procedure may include: 1) self or third-party verification and monitoring, 2) complaint resolution, and 3) education and outreach. This can be accomplished by an independent auditor, public self-certification, a third-party privacy seal program, a licensing program, membership in a trade, professional, or other membership association or self-regulatory program, or being subject to government regulation.

COMMERCIAL SOLICITATIONS ONLINE

Article #39

Marketers may send commercial solicitations online under the following circumstances:

- The solicitations are sent to the marketers' own customers, or
- Individuals have given their affirmative consent to the marketer to receive solicitations online, or
- Individuals did not opt out after the marketer has given notice of the opportunity to opt out from solicitations online, or
- The marketer has received assurance from the third party list provider that the individuals whose e-mail addresses appear on that list:
 - have already provided affirmative consent to receive solicitations online, or
 - have already received notice of the opportunity to have their e-mail addresses removed and have not opted out, and
- The individual is not on the marketer's in-house suppression list

Within each e-mail solicitation, marketers should furnish individuals with a notice and an Internet-based mechanism they can use to:

- Request that the marketer not send them future e-mail solicitations and
- Request that the marketer not rent, sell, or exchange their e-mail addresses for online solicitation purposes

If individuals request that their names be removed from the marketer's in-house online suppression list, then the marketer may not rent, sell, or exchange their e-mail addresses with third parties for solicitation purposes.

The above requests should be honored within 10 business days, and the marketer's opt-out mechanism should be active for at least 30 days from the date of the e-mail solicitation.

Only those marketers that rent, sell, or exchange information need to provide notice of a mechanism to opt out of information transfer to third-party marketers.

Marketers should process commercial e-mail lists obtained from third parties using DMA's E-Mail Preference Service suppression file. E-MPS need not be used on one's own *customer* lists, or when individuals have given affirmative consent to the marketer directly.

Solicitations sent via e-mail should disclose the marketer's identity and street address. The subject and "from" lines should be clear, honest, and not misleading, and the subject line should reflect the actual content of the message so that recipients understand that the e-mail is an advertisement. The header information should be accurate. A marketer should also provide specific contact information at which the individual can obtain service or information.

E-MAIL AUTHENTICATION

Article #40

Marketers that use e-mail for communication and transaction purposes should adopt and use identification and authentication protocols.

USE OF SOFTWARE OR OTHER SIMILAR TECHNOLOGY INSTALLED ON A COMPUTER OR SIMILAR DEVICE

Article #41

Marketers should not install, have installed, or use, software or other similar technology on a computer or similar device that initiates deceptive practices or interferes with a user's expectation of the functionality of the computer and its programs. Such practices include, but are not limited to, software or other similar technology that:

- Takes control of a computer (e.g., relaying spam and viruses, modem hijacking, denial of service attacks, or endless loop pop-up advertisements)
- Deceptively modifies or deceptively disables security or browser settings or
- Prevents the user's efforts to disable or uninstall the software or other similar technology

Anyone that offers software or other similar technology that is installed on a computer or similar device for marketing purposes should:

- Give the computer user clear and conspicuous notice and choice at the point of joining a service or before the software or other similar technology begins operating on the user's computer, including notice of significant effects* of having the software or other similar technology installed
- Give the user an easy means to uninstall the software or other similar technology and/or disable all functionality
- Give an easily accessible link to your privacy policy and
- Give clear identification of the software or other similar technology's name and company information, and the ability for the user to contact that company

*Determination of whether there are significant effects includes, for example:

- Whether pop-up advertisements appear that are unexpected by the consumer
- Whether there are changes to the computer's home page or tool bar
- Whether there are any changes to settings in security software, such as a firewall, to permit the software to communicate with the marketer or the company deploying the software, or
- Whether there are any other operational results that would inhibit the user's expected functionality

Cookies or other passive means of data collection, including Web beacons, are not governed by this Guideline. Article #38 provides guidance regarding cookies and other passive means of data collection.

ONLINE REFERRAL MARKETING

Article #42

Online referral marketing is a technique marketers use to get new marketing leads. Typically, the online marketer:

1. Encourages an individual to forward a marketing piece on to another individual (personally identifiable information is not collected), or
2. Asks an individual to provide the marketer with personally identifiable information about another individual so the marketer may contact that person directly

This guideline relates only to the second type of online referral marketing above, where personal information about a prospect is given to the marketer.

A marketer should not use personally identifiable information about a prospect provided online by another individual unless:

- The marketer has first clearly disclosed to the referring individual the intended uses of the information
- The marketer has disclosed to the referring individual that their own contact information will be provided to those they have referred to the marketer
- The marketer discloses to the referred person the fact that their contact information was obtained from another individual. The marketer should make the referring person's information available in the first e-mail communication to the prospect. Or, the marketer can tell the prospect how to get the referring person's contact information at no cost and
- The marketer provides, in the first and any subsequent e-mail communications, the ability to remove the referred person's name from future contact

Marketers should not contact referred individuals who are on their in-house e-mail suppression lists, and should not sell, rent, share, transfer, or exchange a referred e-mail address unless they receive prior permission from the referred person to do so.

E-MAIL APPENDING TO CONSUMER RECORDS

Article #43

Definition of e-mail address appending: E-mail address appending is the process of adding a consumer's e-mail address to that consumer's record. The e-mail address is obtained by matching those records from the marketer's database against a third-party database to produce a corresponding e-mail address.

A marketer should append a consumer's e-mail address to its database only when the consumer gives a marketer permission to add his or her e-mail address to the marketer's database; or

1. There is an established business relationship with that consumer either online or offline, and
2. The data used in the append process are from sources that provided notice and choice regarding the acceptance of receiving third-party e-mail offers and where the consumer did not opt out, and
3. Reasonable efforts are taken to ensure the appending of accurate e-mail addresses to the corresponding consumer records

Marketers should not send e-mails to appended e-mail addresses that are on their in-house e-mail suppression files. A marketer should not sell, rent, transfer, or exchange an appended e-mail address of a consumer unless it first offers notice and choice to the consumer. All messages to an e-mail appended address should include a notice and choice to continue to communicate via e-mail.

Marketers should have in place appropriate record-keeping systems to ensure compliance with these guidelines.

Telephone Marketing

REASONABLE HOURS

Article #44

Telephone contacts should be made during reasonable hours as specified by federal and state laws and regulations.

TAPING OF CONVERSATIONS

Article #45

Taping of telephone conversations by telephone marketers should only be conducted with notice to or consent of all parties, or the use of a beeping device, as required by applicable federal and state laws and regulations.

RESTRICTED CONTACTS

Article #46

A marketer should not knowingly call or send a voice solicitation message to a consumer who has an unlisted or unpublished telephone number except in instances where the number was provided by the consumer to that marketer for that purpose. A marketer should not call

consumers who are on the marketer's in-house Do-Not-Call list. A marketer should not knowingly place a call or send a voice or text message to a wireless telephone number for which the called party must pay the charge, in either business-to-consumer or business-to-business marketing, except in instances where the number was provided by the consumer or business to that marketer for that purpose. A marketer should also use DMA's Wireless Suppression Service or another comprehensive wireless suppression service prior to calling or sending text solicitation messages.

A marketer should use DMA's Telephone Preference Service as required in Article #31 and must use the federal Do-Not-Call registry and state Do-Not-Call lists when applicable prior to using any outbound calling list. Individuals with whom the marketer has an established business relationship do not need to be suppressed even if they are on the national registry. An established business relationship is defined as those persons with whom the marketer has had a transaction/received a payment within the last 18 months or those persons who have inquired about the marketer's products/services within the last 3 months. (Note: State laws may vary. DMA's Web site at: www.the-dma.org/government/donotcallists.shtml attempts to provide current information on state Do-Not-Call lists.) Consumers who have given written permission to the marketer do not need to be suppressed by any Do-Not-Call list. Individuals can add or remove themselves from company-specific Do-Not-Call lists either orally or in writing.

Marketers should not use randomly or sequentially generated numbers in sales or marketing solicitations.

CALLER-ID/AUTOMATIC NUMBER IDENTIFICATION REQUIREMENTS

Article #47

Marketers engaging in telemarketing should generate caller identification information, including:

- A telephone number for the seller, service bureau, or customer service department that the consumer can call back during normal business hours to ask questions and/or to request not to receive future calls by making a do-not-call request, and
- Whenever the technology is available from the marketer's telecommunications carrier, the name of the seller on whose behalf the call is placed or service bureau making the call.

Marketers should not block transmission of caller identification or transmit a false name or telephone number.

Telephone marketers using automatic number identification (ANI) should not rent, sell, transfer, or exchange, without customer consent, telephone numbers gained from ANI, except where a prior business relationship exists for the sale of directly related goods or services.

USE OF AUTOMATED DIALING EQUIPMENT

Article #48

Marketers using automated dialing equipment should allow 15 seconds or four rings before disconnecting an unanswered call.

Marketers should connect calls to live representatives within two seconds of the consumer's completed greeting (except in cases where a prerecorded marketing message is used, in accordance with Article #49). If the connection does not occur within the two-second period, then the call is considered abandoned whether or not the call is eventually connected.

For any abandoned calls, the marketer should play a prerecorded identification message that includes the seller's name and telephone number, states the purpose of the call, and provides a telephone number at which the consumer can request not to receive future marketing calls.

Repeated abandoned or "hang up" calls to consumers' residential telephone numbers should be minimized. In no case should calls be abandoned more than:

- Three percent of answered calls, measured over the duration of a single calling campaign, if the campaign is less than 30 days, or separately over each successive 30-day period or portion of that period during which the campaign continues (unless a more restrictive state law applies), or
- Twice to the same telephone number within a 48-hour time period.

Marketers should only use automated dialing equipment that allows the telephone to immediately release the line when the called party terminates the connection.

When using any automated dialing equipment to reach a multi-line location, whether for business-to-consumer or business-to-business marketing, the equipment should release each line used before connecting to another.

Companies that manufacture and/or sell automated dialing equipment should design the software with the goal of minimizing abandoned calls to consumers. The software should be delivered to the user set as close to 0% as possible. Manufacturers should distribute these Guidelines for Automated Dialing Equipment to purchasers of dialing equipment and recommend that they be followed.

The dialers' software should be capable of generating a report that permits the user of the equipment to substantiate compliance with the guideline.

Glossary of Terms Used

Automated Dialing Equipment -- any system or device that initiates outgoing call attempts from a predetermined list of phone numbers, based on a computerized pacing algorithm.

Abandoned Call -- a call placed by automated dialing equipment to a consumer which when answered by the consumer, (1) breaks the connection because no live agent is available to speak to the consumer, or (2) no live agent is available to speak to the consumer within 2 seconds of the consumer's completed greeting.

Abandonment Rate -- the number of abandoned calls over a 30-day period divided by the total number of calls that are answered by a live consumer. Calls that are not answered by a live consumer do not count in the calculation of the abandonment rate.

Campaign -- refers to an offer of the same good or service for the same seller. As long as the same good or service is being offered by the same seller, the offer is part of a single campaign, regardless of whether there are changes in the terms of the offer or the wording of any marketing material, including any telemarketing script, used to convey the offer. This definition applies to Article 48 only and is based on the FTC's definition of a "campaign" for purposes of calculating the abandonment rate.

Report -- reportable information that should be made available which contains key points, including the percentage of abandoned calls.

USE OF PRERECORDED VOICE MESSAGING

Article #49

Marketers who use prerecorded voice messaging should not automatically terminate calls or provide misleading or inaccurate information when a live consumer answers the telephone.

Marketers should only use prerecorded voice messaging to sell good or services if they have first obtained the call recipient's prior express written agreement to receive prerecorded messages. In obtaining the consumer's written agreement, a marketer should observe the following:

- Before obtaining the consumer's informed consent, the marketer should clearly and conspicuously disclose that the purpose of the agreement is to allow the marketer to make prerecorded message calls to the consumer.
- The written agreement should evidence the consumer's informed consent to receive prerecorded calls by or on behalf of the specific marketer
- The marketer should not require that the consumer agree to receive prerecorded calls as a condition of purchasing any good or service.
- The agreement should include the consumer's telephone number and signature.
- Marketers may obtain the written agreement electronically in accordance with applicable laws such as the E-Sign Act.

Marketers should begin making the initial disclosures as specified under Article #52 within two seconds of the call recipient's completed greeting.

Immediately following the initial disclosures, marketers should provide an opt-out mechanism that the call recipient can use to be placed on the company's do-not-call list. The type of mechanism that the marketer should provide depends on whether the call can be answered by a live person or by an automated device. If the marketer is able to determine whether a prerecorded call has been answered by a live person or an automated device, the marketer should tailor the prerecorded message to include the appropriate opt-out mechanism (either option 1 or 2 below):

- (1) If the call is answered by a live person, then the marketer should provide an automated interactive voice and/or keypress-activated opt-out mechanism that the recipient can use to make an opt-out request. The mechanism should be available for use at any time during the message.
- (2) If the call is answered by an answering machine or voicemail system, then the prerecorded message should provide a toll-free telephone number that the recipient can call to make an opt-out request at any time during the telemarketing campaign. The telephone number provided should connect directly to an automated interactive voice and/or keypress-activated opt-out mechanism. Consumers should be able to call at any time of the day, and on any day, during the duration of the campaign.

If the marketer is not able to determine whether a prerecorded call has been answered by a live person or an automated device, the prerecorded message should include both options 1 and 2.

The interactive voice and/or keypress-activated opt-out mechanism – regardless of whether the prerecorded call can be answered by a live person or automated answering device – should have the following features:

- The opt-out mechanism should automatically add the number called to the entity’s company-specific do-not-call list; and
- The opt-out mechanism should immediately disconnect the call once the opt-out request is made.

Marketers may use prerecorded messages that provide information, but do not induce the purchase of goods or services, without first obtaining written consent and without providing an opt-out mechanism. Such calls should promptly disclose the identity of the caller at the outset of the call and provide a telephone number sometime during the call.

USE OF TELEPHONE FACSIMILE MACHINES

Article #50

Unless there is an established business relationship, or unless prior permission has been granted, advertisements, offers and solicitations, whether sent to a consumer or a business, should not be transmitted to a facsimile machine, including computer fax machines. An established business relationship in the fax context is defined as a prior or existing relationship based on a voluntary, two-way communication between the sender and recipient of the fax. Such communication includes a purchase, transaction, inquiry, or application for or about goods or services offered by the sender. For business relationships formed after July 9, 2005, the fax number must be provided voluntarily by the recipient to the sender, or be made available voluntarily by the recipient in a directory, advertisement, or Internet site.

Each permitted transmission to a fax machine must clearly contain on the first page:

- the date and time the transmission is sent;
- the identity of the sender which is registered as a business with a state;
- the telephone number of the sender or the sending machine; and

- a clear and conspicuous opt-out notice.

The opt-out notice should:

- clearly state that the recipient may opt out of any future faxes and provide clear instructions for doing so;
- provide a domestic telephone number and fax number for recipients to transmit an opt-out request; and
- unless the telephone or fax number is toll-free, a cost-free mechanism to submit an opt-out request.

Senders must accept opt-out requests at any time.

Opt-out requests must be honored in 30 days, or sooner if feasible. An opt-out request terminates permission to send future faxes based only on an established business relationship.

PROMOTIONS FOR RESPONSE BY TOLL-FREE AND PAY-PER-CALL NUMBERS

Article #51

Promotions for response by 800 or other toll-free numbers should be used only when there is no charge to the consumer for the call itself and when there is no transfer from a toll-free number to a pay call.

Promotions for response by using 900 numbers or any other type of pay-per-call programs should clearly and conspicuously disclose all charges for the call. A preamble at the beginning of the 900 or other pay-per-call should include the nature of the service or program, charge per minute, and the total estimated charge for the call, as well as the name, address, and telephone number of the sponsor. The caller should be given the option to disconnect the call at any time during the preamble without incurring any charge. The 900 number or other pay-per-call should only use equipment that ceases accumulating time and charges immediately upon disconnection by the caller.

DISCLOSURE AND TACTICS

Article #52

Marketers should make the following initial disclosures promptly:

- The identity of the seller or charitable organization on behalf of which the call is made;
- That the purpose of the call is to sell goods or services or to solicit a charitable contribution;
- The nature of the goods or services offered during the call (if applicable); and
- If a prize promotion is offered, that no purchase or payment is necessary to be able to win a prize or participate in a prize promotion and that any purchase or payment will not increase the person's chances of winning.

Prior to asking consumers for payment authorization, telephone marketers should disclose the cost of the merchandise or service and all terms and conditions, including payment plans, whether or not there is a no refund or a no cancellation policy in place, limitations, and the

amount or existence of any extra charges such as shipping and handling and insurance. At no time should high pressure tactics be utilized.

FUNDRAISING

Article #53

In addition to compliance with these guidelines, fundraisers and other charitable solicitors should, whenever requested by donors or potential donors, provide financial information regarding use of funds.

LAWS, CODES, AND REGULATIONS

Article #54

Direct marketers should operate in accordance with laws and regulations of the United States Postal Service, the Federal Trade Commission, the Federal Communications Commission, the Federal Reserve Board, and other applicable federal, state, and local laws governing advertising, marketing practices, and the transaction of business.

Other DMA Resources

- "Do the Right Thing" Compliance Guide
- *Commitment to Consumer Choice* Member Compliance Guide
- Preference Services Subscriber Information
- DMA's consumer website: www.DMAchoice.org
- Privacy Policy Generators
- Environmental Resources and Generator (The "Green 15")
- E-Commerce Integrity Resource Center
- Information Security: Safeguarding Personal Data in Your Care

See DMA's *Resources for Businesses* Guide for numerous other resources developed by the Department of Corporate & Social Responsibility:
www.dmaresponsibility.org

DMA can also provide your company with information on the following Federal Trade Commission (FTC) and Federal Communications Commission (FCC) regulations and rules affecting direct marketers:

FTC:

- Mail or Telephone Order Merchandise Rule
- Telemarketing Sales Rule
- Children's Online Privacy Protection Rule
- Negative Option Rule
- Guides against Deceptive Pricing

FCC:

- Telephone Consumer Protection Act

The US Postal Service's *Fighting Mail Order Fraud and Theft: Best Practices for the Mail Order Industry Reference Guide* is available, as well as other DMA and government titles, and a variety of consumer education brochures.

DMA's Department of Corporate & Social Responsibility

In its continuing efforts to improve the practices of direct marketing and the marketer's relationship with customers, DMA sponsors several activities in its Department of Corporate & Social Responsibility.

- Ethical guidelines are maintained, updated periodically, and distributed to the direct marketing community.
- The Committee on Ethical Business Practice investigates and examines promotions and practices throughout the direct marketing community that are brought to its attention.
- The Ethics Policy Committee revises the guidelines as needed, and initiates programs and projects directed toward improved ethical awareness in the direct marketing area.
- The Committee on the Environment and Social Responsibility identifies ways for members to be good corporate citizens and recommends relevant best practices.
- The *Commitment to Consumer Choice* (www.DMACCC.org) reflects DMA's continued emphasis on empowering consumers and strengthening their trust with the direct marketing community.
- "Dialogue" meetings between direct marketing professionals and consumer affairs and regulatory representatives facilitate increased communication between direct marketers and their customers.
- DMAchoice offers consumers assistance in managing their marketing preferences, and provides consumer education on a number of topics.

For additional information contact DMA's Washington, DC office.

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