ANA Accountability -

Guidelines for Ethical Business Practice (as developed by DMA)
These Guidelines for Ethical Business Practice ("Guidelines") are intended to provide individuals and entities involved in data-driven marketing in all media with generally accepted principles of conduct. These Guidelines reflect the marketing industry’s long-standing policy of promoting the highest levels of ethics in data stewardship and marketing and are the result of decades of development by marketers (via the Direct Marketing Association which was acquired by ANA in 2018.)

These Guidelines represent the general philosophy that self-regulatory measures are preferable to governmental intervention and regulation. Self-regulatory actions by our industry are more readily adaptable to changing technology and economic and social conditions. They encourage widespread use of sound business practices that lead to better results for entities and valuable customer and donor experiences that improve lives while respecting individual privacy concerns.

In this 2018 version of the Guidelines, we examined many data-specific provisions and revised and updated them to reflect today’s practices. These revised provisions make up the Data Standards (“Standards”) contained in Part I of the Guidelines. Part II contains the Marketing Guidelines.

In addition to providing general guidance and enforceable standards to the industry, the Guidelines are used by ANA’s Committee on Ethical Business Practice Enforcement ("Committee") as the standard to which data and marketing promotions are examined. The Committee is comprised of seasoned marketing professionals who review consumer complaints and seek voluntary compliance with these Guidelines to enhance consumer trust in the marketing process. The guidelines are meant to “do what is right” in addition to legal compliance which must be reviewed by legal counsel.

Because dishonest, misleading, or offensive communications discredit all means of advertising and marketing, observance of these Guidelines is important. All persons involved in data stewardship and marketing should take reasonable steps to encourage industry members, partners, and affiliates to follow these Guidelines as well.

Guidelines provide the basis for ethical data and marketing practices and compliance primarily under U.S. standards and expectations. Global companies should review international standards and rules. For compliance examples and best practices that may be more specific and illustrative than the baseline Guidelines, send questions or marketing complaints to ethics@thedma.org.
Marketing Principles

Marketing Principles ("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 relationships with current and prospective customers, donors, and members, and are the foundation for all, which includes those who market 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 it can have when dealing with ethical marketing practitioners.

An ethical and accountable marketer:

1. Is committed to customer satisfaction, good corporate citizenship, and responsible environmental, community, and financial stewardship.

2. Clearly, honestly, and accurately represents its products, services, and 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 data.

7. Provides information on its policies about the transfer of personally identifiable data for marketing.

8. Honors requests not to have personally identifiable data transferred for marketing.

9. Honors requests not to receive future solicitations from the entity.

10. Follows the spirit and letter of the law as well as these Guidelines for Ethical Business Practice.
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PART I: DATA
I. DATA DEFINITIONS

**Affiliate**
Affiliate refers to an entity that controls, is controlled by, or is under common control with, another entity.

**Connected Device**
A Connected Device is any device, sensor, or similar item that connects to the Internet.

**Consent**
Consent means an individual’s action in response to a clear, meaningful, and prominent notice regarding the collection and use of data.

**Consumer**
Consumer refers to the subject of the data.

**Consumer Data-Driven Marketing ("Marketing")**
Marketing is the use of data to efficiently, predictably, or persuasively connect Consumers with products and services.

**Control**
Control of an entity means that one entity (1) is under significant common ownership or operational control of the other entity, or (2) has the power to exercise a controlling influence over the management or policies of the other entity.

**Digital Identifier**
A Digital Identifier is an identifier that can be used to advertise or market to a specific individual through a digital channel, including computers, handheld devices, and smart appliances.

**Interest-Based Advertising ("IBA")**
IBA shares the same definition of “online behavioral advertising” (“OBA”) as defined in codes developed by the Digital Advertising Alliance (“DAA”).

**Material Change**
Material Change refers to a change in an entity’s practices that, if known to a reasonable Consumer, would likely affect the Consumer’s conduct or decisions with respect to the entity’s products or services.

**Means of Collection**
Means of Collection includes any method an entity uses to collect data about a Consumer, including both active and passive means (e.g., cookies and pixel tags).

**Non-Affiliated**
Non-Affiliated means not Controlled by, or under common Control with, another entity.

**Personally Identifiable Data**
Personally Identifiable Data refers to name, address, or other similar data that, on its own or as combined with other information, could reasonably be used to identify a specific individual.
II. EDUCATION

Entities should participate in efforts to educate individuals and businesses about Marketing.

III. TRANSPARENCY

ARTICLE 1. POINT OF CONTACT FOR DATA USE IN MARKETING COMMUNICATIONS

Entities should provide Consumers with a point of contact where the Consumers may:

1. Obtain the entity’s privacy policy regarding collection, use, and transfer of Consumer data; and
2. Express preferences about Marketing communications from the entity.

The point of contact (such as a website, email, telephone number, or valid physical postal address*) should appear on or within each Marketing offer or upon request by the Consumer. The point of contact should be easy for the Consumer to find, read, understand, and act upon.

* A requirement for email marketing communications.

ARTICLE 2. PRIVACY POLICY

Placement. Entities should make their data practices available to Consumers in a prominent place on their website’s or application’s home page or in a place that is easily accessible from the home page or the functional equivalent.

Clarity. The privacy policy about data practices should be easy to find, read, and understand. Consumers should be able to comprehend the scope of the notice and how they can exercise choice regarding use of Personally Identifiable Data.

Timing. The privacy policy should be available prior to or at the time Personally Identifiable Data is collected.

Content. Entities that collect Personally Identifiable Data about Consumers should include the following content in their privacy policies:

- **Scope**
  - The scope of data practices covered by the notice.

- **Data Collection**
- The type and categories of the data collected.
- How such data is collected, such as with cookies or by other means.
- Whether third parties may collect Personally Identifiable Data about a Consumer’s activities over time and across different websites or the functional equivalent when a Consumer uses the entity’s service.

• **Data Use**
  - The types of uses the entity makes of such data.

• **Data Sharing**
  - The entity’s policy concerning the rental, sale, exchange, sharing, or access to Consumer data.
  - Whether the entity shares data with, and/or allows access to, third parties for Marketing.

• **Combination of Marketing Data and Digital Identifiers**
  - Whether the entity collects Consumer data for combination with Digital Identifiers for Marketing purposes and/or combines data with Digital Identifiers for Marketing purposes.

• **Connected Devices**
  - Whether the entity collects Marketing data for Marketing purposes via a Connected Device.

• **Choice**
  - The means by which Consumers can exercise choice, if provided, not to have data shared and/or accessed.
  - If Non-Affiliated third parties may collect Personally Identifiable Data about a Consumer’s activities over time and across different websites or the functional equivalent when a Consumer uses the entity’s service, link to a mechanism by which a Consumer can exercise choice not to have such data used by these types of entities if they provide such choice.

• **Service Providers**
  - Whether Personally Identifiable Data is collected by, used by, or shared with service providers.

• **Accountability**
  - The policies, procedures, and compliance mechanisms the entity has put in place to ensure adherence to these Standards.
• Security
  - That the entity maintains physical, electronic, and administrative safeguards to protect data collected.

• Access
  - If an entity provides Consumers access to the data the entity maintains about them, the entity should indicate how Consumers may obtain such access.

• Consumer Correction
  - If the entity maintains a process for a Consumer to request changes to data about the Consumer, the entity should describe that process.

• Material Changes
  - The process by which the entity notifies Consumers of Material Changes to the entity’s privacy policy.

• Effective Date
  - The effective date of the privacy policy.

**ARTICLE 3. MATERIAL CHANGES TO EXISTING POLICIES**

If an entity makes a Material Change to its privacy policy, the entity should update its policy and give Consumers notice to that effect and, where appropriate, offer Consumers an opportunity to manage or select their preferences. Prior to making a materially different use of data collected from a Consumer, entities should obtain Consent to such a new Marketing use from the Consumer.

**ARTICLE 4. ACCOUNTABILITY**

An entity should have a meaningful, timely, and effective procedure through which it can demonstrate its adherence to its stated data practices. Such a procedure should include self or third-party verification and monitoring. Such verification and monitoring can be accomplished by:

1. An independent auditor;
2. Public assertion of compliance;
3. A third-party privacy seal program;
4. A licensing program; or
5. Membership in a trade, professional, or other association with a self-regulatory program.

Additionally, an entity may elect to provide complaint resolution, internal education, and external outreach. Such education and outreach can be accomplished by:

1. Mechanisms to put privacy policies into effect, including tools, training, and education;
2. Systems for internal education and ongoing oversight and assurance reviews;
3. Transparency and mechanisms for individual participation; and/or

**ARTICLE 5. DATA SOURCE**

Where appropriate, and upon reasonable request by a Consumer, an entity should disclose the nature and types of sources from which it obtained Personally Identifiable Data about that Consumer.

**IV. CHOICE**

**ARTICLE 1. CHOICE**

**In General.** Entities should provide Consumers choice with respect to the transfer of Personally Identifiable Data to Non-Affiliated third parties for Marketing purposes.

Entities should honor a Consumer’s choice regarding use of, access to, or sharing of Personally Identifiable Data made in accordance with the entity’s stated policy. If the entity has promised to honor the Consumer’s choice for a specific time period, and if that time period subsequently expires, then the entity should provide that Consumer with a new notice and opportunity for choice.

**Timing.** All opt-out requests must be honored promptly.

**ARTICLE 2. MEANS OF PROVIDING CHOICE**

Where choice is required, entities should provide choice through one of the following channels: online, application, mail, or telephone.

**ARTICLE 3. COMBINATION OF CONSUMER DATA AND DIGITAL IDENTIFIERS**

An entity that combines Consumer data with Digital Identifiers for Marketing on Non-Affiliated digital properties should provide Consumers with choice with respect to such practice by that entity.
**ARTICLE 4. CONNECTED DEVICES**

An entity that collects data via a Connected Device should provide Consumers choice with respect to the transfer of such data to Non-Affiliated third parties for Marketing.

**V. LIMITATIONS ON THE USE OF DATA FOR CONSUMER DATA-DRIVEN MARKETING**

Data used for Marketing should not be used for the following purposes:

- **Employment Eligibility.** Determining adverse terms and conditions of or ineligibility for employment, promotion, reassignment, sanction, or retention as an employee.

- **Credit Eligibility.** Determining adverse terms and conditions of or ineligibility of an individual for credit.

- **Health Care Treatment Eligibility.** Determining adverse terms and conditions for or ineligibility of an individual to receive health care treatment.

- **Insurance Eligibility and Underwriting and Pricing.** Determining adverse terms and conditions of or ineligibility of an individual for insurance, including, but not limited to, health insurance.

Data collected exclusively for Marketing should be used only for Marketing purposes. Entities should not use data for Marketing where such use has been prohibited.

Notwithstanding any other provision, credit card numbers, checking account numbers, and debit account numbers are considered to be sensitive personal data and therefore should not be exchanged, rented, sold, allowed access to, or transferred for Marketing when there is a reasonable expectation by the Consumer that the data will be kept confidential.

Such financial account numbers should not be publicly displayed on Marketing promotions or otherwise made public.

Social Security numbers are also considered to be sensitive personal data and therefore should not be transferred, rented, sold, or exchanged for use by a third party for the third party's own Marketing. Social Security numbers should not be publicly displayed on Marketing promotions or otherwise made public. Use of Social Security numbers for Marketing is prohibited, unless used for:

- Fraud detection;

- Identity verification;
• Data matching;

• Data accuracy; or

• Data integrity.

Use of Social Security numbers in connection with an extension of credit is subject to the requirements of the Fair Credit Reporting Act and corresponding state laws.

Use of data for Marketing is subject to limitations set forth in agreements between the owner, broker, or manager of the data and the recipient or user of the data. Data should not be used for purposes beyond those for which it was authorized. Agreements regarding the use of data for Marketing should include reasonable assurances that the data was collected in a responsible manner and in accordance with applicable laws.

VI. DATA SECURITY

The protection of Personally Identifiable Data is the responsibility of all entities.

Entities should assume the following responsibilities to help protect the security and integrity of Personally Identifiable Data:

• **Written Policies and Procedures.** Establish written data security policies and procedures reflective of current business practices (including written policies and procedures related to personal devices and entity-provided devices, where applicable). Entities should ensure there are reasonable data security policies and practices that seek to assure the uninterrupted security of data systems within their organizations.

Entities should, as reasonable, within their organizations:

- Periodically audit data retention practices.

- Employ appropriate data loss prevention technologies.

- Employ an appropriate data minimization plan including a data destruction and purge process.

- Maintain an inventory of system access and credentials.

- Segment and isolate networks based on business function to avoid compromising sensitive personal data that is used in a network.

- Create a reasonable incident response plan including vendor and law enforcement contacts as well as notification requirements.
- Maintain a reasonable and ongoing employee training program.

- Maintain a reasonable password policy including maximum password age and minimum standards for passwords complexity and changes.

- **Data Security Training.** Provide data security training for relevant staff. Entities should create and implement reasonable staff procedures, training, and responsiveness measures to protect Personally Identifiable Data handled by relevant staff in the everyday performance of their duties.

- **Personal Devices.** Train staff that use their own devices on steps designed to help prevent unauthorized access to the entity’s data as well as educate them about the inherent risks and ensure the entity has reasonable data security policies and safeguards in place for such devices.

- **Monitoring.** Monitor and assess data security safeguards periodically. Entities should employ and routinely assess protective physical safeguards and technological measures within their entities, including data retention, destruction, deletion practices, and the monitoring and analysis of systems logs in support of data security.

- **Contractual Safeguards.** Entities should contractually require all business partners and service providers that handle Personally Identifiable Data to ensure that their policies, procedures, and practices maintain a level of security consistent with or higher than the entity’s applicable data security policies, including partners’ own employees and contractors accessing data through their own devices. In addition, entities should contractually require all business partners and service providers to handle data in accordance with applicable laws and regulations.

- **Breach Plan.** Entities should develop and maintain a data security breach readiness plan reasonable for the size and nature of the entity, their level of data collection, and type of data collected.

- **Notice.** If a data security breach occurs, immediately inform compliance or legal staff as identified in the data breach readiness plan. Entities should, in the event of a security breach, inform Consumers as required by state and federal law.

- **Email.** Entities should implement the appropriate email authentication protocol (SPF, DKIM, DMARC, or successor standards, as appropriate) to help reduce the risk of spoofed emails.

- **Sensitive Data.** Entities collecting sensitive data must ensure appropriate data security measures are taken to protect such data. The appropriate digital certificate should be employed, meaning the Extended Validation Secure Socket Layer Certificates ("EV SSL"), or successor standards, should be used on all relevant pages of sites requesting sensitive data.

- **Data Transfers.** If Personally Identifiable Data is transferred from one entity to another for Marketing as established by written agreement, the transferor should arrange the appropriate security measures to assure that unauthorized access to the data is not likely during the transfer process.
• **Employee Use of Data.** Employees who have access to Personally Identifiable Data should agree in advance to use such data only in an authorized manner.

## VII. COMPLIANCE WITH OTHER LAWS, REGULATIONS, AND CODES

### ARTICLE 1. IN GENERAL

Entities should operate in accordance with applicable laws and regulations, including those of the Consumer Financial Protection Bureau, the Federal Communications Commission, the Federal Reserve Board, the Federal Trade Commission, and other applicable federal, state, and local laws governing advertising, Marketing practices, and the transaction of business. Transfers of Personally Identifiable Data should not be permitted for any Marketing that is in violation of any of the Guidelines or state or federal laws. In addition, where applicable, entities should comply with self-regulatory codes related to ANA, such as the codes developed by the Digital Advertising Alliance (“DAA”), of which ANA is a member organization.

### ARTICLE 2. HEALTH

**In General.** Where applicable, entities should comply with the Health Insurance Portability and Accountability Act (“HIPAA”). In addition:

1. **Data Gathered Outside the Individual-Covered Entity Relationship.** Individually identifiable health-related data volunteered by individuals, and gathered outside of the relationship between individuals and covered entities (a health plan, or a health care clearinghouse, or a health care provider), should be considered sensitive and personal in nature. Such data should not be collected, maintained, used, allowed access to, and/or transferred for Marketing unless those individuals receive, at the time the data is collected, a clear notice of the entity’s intended uses of the data, whether the data will be transferred to third parties for further use, the name of the collecting entity, and the opportunity to opt out of transfer of the data. Such data includes, but is not limited to, data volunteered by individuals when responding to surveys and questionnaires. The notice should be easy to find, read, and understand.

2. **Inferred Data.** Individually identifiable health-related determinations inferred about individuals, gathered outside of the relationship between individuals and covered entities, should be treated as sensitive. Entities that use or transfer such health-related determinations should provide notice of such practice and an opportunity to exercise choice with respect to such use or transfer.

3. **Appearance and Nature of Solicitations.** The text, appearance, and nature of solicitations directed to individuals on the basis of their health-related data should take into account the sensitive nature of such data.

4. **Fundraising.** Entities are allowed to use or disclose to a business entity or institution or institutionally-related foundation limited protected health data (demographics and dates of care)
about an individual for that entity’s fundraising without a prior written authorization. However, the fundraising entity must ensure its fundraising material includes an opt-out notice that is clear and conspicuous, and if it is over the phone, an opt-out disclosure must be made. If the individual opts-out, no more fundraising communications across all Marketing channels may be made.

**Opt-Out Notice:**

- The opt-out notice must be included in each fundraising communication.
- The opt-out method must be free.
- The entity cannot condition the treatment or services on an individual’s choice to receive fundraising communication.

**Aggregate Data.** Nothing in these Standards 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 because there are no restrictions on the use of de-identified health data.

**ARTICLE 3. CHILDREN**

**In General.** Where applicable, entities should comply with the Children’s Online Privacy Protection Act ("COPPA"). In determining the suitability of a communication with children online, via wireless devices such as a mobile phone, or in any other medium, or by providing a commercial website or other online services directed to children under 13, entities should first determine whether the collection and use of the child’s data for Marketing or the sending of Marketing material to the child is permitted under federal law, such as COPPA, or state law. Where Marketing to children is permitted by law, entities should ensure the Marketing is suitable for the child taking into account the age range, knowledge, sophistication, and maturity of their intended audience. When an entity directs a site at a certain age group, it can expect that the visitors to that site are in that age range.

**Parental Responsibility and Choice.** Parents must be provided the choice of consenting to the operator’s collection and internal use of a child’s data. Such data may never be disclosed to third parties (unless the disclosure is integral to the site or service, in which case that must be made clear to the parent).

**Collection and Use of Data from or about Children:**

- Entities should limit the collection, use, and dissemination of “personal information,” as defined in COPPA, collected from or about children to that data that is required for the promotion, sale, and delivery of goods and services; the provision of customer services; conducting market research; and engaging in other appropriate Marketing activities.
- Entities should effectively explain that the data is being requested for Marketing. Data not appropriate for Marketing should not be collected.
• Entities should implement the strictest security measures to ensure against unauthorized access, alteration, or dissemination of the data collected from or about children, and should provide data regarding such measures upon request to the parent or guardian of the minor.

• Operators of websites and online services must provide a privacy notice with clear and concise description of their data policies and practices. This notice should be easy to read on smaller screens (e.g., mobile devices) for parents and allow them to provide verifiable consent.

• Entities should not knowingly collect, without verifiable prior parental consent, “personal information,” as defined in COPPA, online or via a wireless handset or device from children that would permit any offline contact with the child.

• Entities should not knowingly distribute to any third parties, without verifiable prior parental consent, data collected from a child that would permit any contact with that child.

• Entities should take reasonable steps to prevent the online publication or posting of data that would allow a third party to contact a child offline unless verifiable prior parental consent has been obtained.

• Entities should not make a child’s access to website or mobile content contingent on the collection of “personal information,” as defined in COPPA. Only online contact data used to enhance the interactivity of the site is permitted.
PART II: MARKETING
## MARKETING DEFINITIONS

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Automated Dialing Equipment</strong></td>
<td>Automated Dialing Equipment is any system or device that automatically initiates outgoing call attempts (including text messages) in a random or sequential manner or from a predetermined list of phone numbers. This term includes any equipment that constitutes an “automatic telephone dialing system” as defined under the Telephone Consumer Protection Act (&quot;TCPA&quot;) and/or the FCC’s TCPA regulations.</td>
</tr>
<tr>
<td><strong>Abandoned Call</strong></td>
<td>An Abandoned Call is 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.</td>
</tr>
<tr>
<td><strong>Abandonment Rate</strong></td>
<td>An Abandonment Rate is 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.</td>
</tr>
<tr>
<td><strong>Campaign</strong></td>
<td>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 Part II, Section XI, Articles 5–6 only and is based on the FTC’s definition of a “Campaign” for purposes of calculating the Abandonment Rate.</td>
</tr>
<tr>
<td><strong>Consumer</strong></td>
<td>Consumer, as used in Part II, Sections VII and VIII, refers to the subject of the Marketing Data.</td>
</tr>
<tr>
<td><strong>Individual</strong></td>
<td>Individual, as used in Part II, Section XII, refers to the Recipients or potential Recipients of Mobile Marketing communications. For purposes of opting out (refer to Part II, Section XII, Article 3), Individual refers to the number(s) and/or electronic address(es) of the Wireless device(s) used by the Recipients.</td>
</tr>
<tr>
<td><strong>Location-Based Services</strong></td>
<td>Location-Based Services means marketing Text Messages targeted to a Recipient dependent on their location, by a handset or user’s physical location.</td>
</tr>
<tr>
<td><strong>Marketing Data</strong></td>
<td>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 email address, or telephone number, or any other personally identifiable information. When obtained from a publicly available source, information</td>
</tr>
</tbody>
</table>
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.

Mobile Marketing refers to a sales and promotion technique in which promotional materials are delivered to a Wireless phone or device. It can include both “direct Mobile Marketing” (i.e., marketing communications targeted, sent or “pushed” to a Wireless Handset or device, such as marketing text messages) and “indirect Mobile Marketing” (i.e., marketing that can be accessed or “pulled” by an individual via a Wireless Handset or device such as a mobile enabled website). Examples include the sending of SMS, MMS, or WAP push messages, Bluetooth messaging, and other Internet-based marketing to Wireless devices.

An MSCM is a commercial electronic message that is transmitted directly to a Wireless device that is utilized by a subscriber of commercial mobile service.

MMS are an extension of the Short Message Service technology that permits the marketer to send marketing messages to a Wireless Handset that include multimedia objects such as images, audio and video.

A Mobile Subscription Service is a service that is provided periodically or on an ongoing basis that is delivered to an individual via a Wireless Handset or device. This includes free services and paid subscription services.

Prior Express Consent, as used in Part II, Section XII, refers to affirmative, express and informed consent. A marketer should be able to demonstrate that Recipients knowingly and affirmatively consented to be contacted on their Wireless devices by that marketer for any purposes. Consent may be obtained orally, in writing or electronically. The notice to obtain consent should include a clear and conspicuous disclosure and require an active step on the part of the Recipient to demonstrate that he/she agrees to receive the communication and/or product or service. This consent may be obtained via any channel. A pre-checked box, for example, would not suffice as an adequate means for obtaining consent.

Recipient, as used in Part II, Section XII, is any natural or legal person or business that receives a Mobile Marketing communication.

A Report is reportable information that should be made available which contains key points, including the percentage of Abandoned Calls.
Short Message Service ("SMS")

An SMS is a marketing message sent as a text message.

Telemarketing

Telemarketing means a telephone call, prerecorded message or text message placed to a landline or Wireless number for the purpose of promoting, advertising, marketing, or offering goods or services.

Text Message

Text Message, as used in Part II, Section XII, is a brief electronic message sent between mobile phones, containing text composed by the sender.

Wireless Application Protocol ("WAP")

WAP refers to a secure specification that allows users to access information instantly via handheld Wireless devices such as mobile phones, pagers, two-way radios, smartphones, and communicators.

Wireless

Wireless refers to telecommunications in which electromagnetic waves (rather than some form of wire) carry the signal over part or all of the communication path.

Wireless Handset

Wireless Handset is an umbrella term for devices, typically with keys to input data that are mobile and can be operated by hand. Examples are mobile phones, pagers, two-way radios, smartphones, and communicators.

I. TERMS OF THE OFFER

ARTICLE 1. HONESTY AND CLARITY OF OFFER

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.

ARTICLE 2. ACCURACY AND CONSISTENCY

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.

ARTICLE 3. CLARITY OF REPRESENTATIONS

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.
ARTICLE 4. CONDITIONS

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

ARTICLE 5. DISPARAGEMENT

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

ARTICLE 6. DECENCY

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.

ARTICLE 7. PHOTOGRAPHS AND ARTWORK

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

ARTICLE 8. DISCLOSURE OF SPONSOR AND INTENT

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 regardless of the marketing channel used.

ARTICLE 9. ACCESSIBILITY

Every offer should clearly identify the marketer’s name and street address or telephone number, or both, at which the individual may obtain service and exercise their marketing preferences. If an offer is made online, the marketer should provide its name, an Internet-based contact mechanism, and a street address. For email solicitations, marketers should comply with Part II, Section X, Article 2 (Commercial Solicitations Online). For Mobile Marketing solicitations, marketers should comply with Part II, Section XII, Articles 1–3 to provide adequate notice to consumers to allow them to exercise their marketing preferences.

ARTICLE 10. SOLICITATION IN THE GUISE OF AN INVOICE OR GOVERNMENTAL NOTIFICATION

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

ARTICLE 11. POSTAGE, SHIPPING, OR HANDLING CHARGES

Postage, shipping, or handling charges, if any, should bear a reasonable relationship to actual costs incurred.
II. ADVANCE CONSENT/NEGATIVE OPTION MARKETING

These Guidelines apply to all media and 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 should apply to all advance consent or negative option marketing plans:

1. Initial Offer

   **Consent.** Regardless of channel, marketers should have the consumer’s express informed consent to participate in any advance consent or negative option marketing plan before the consumer is billed or charged. For example, a pre-checked box without further action, such as clicking a response button or sending back a response to confirm individual consent is not sufficient. In telephone sales where the consumer agrees to the offer in a way other than by credit or debit card payment, the consumer consent must be written or audio recorded.

   - Marketers should inform consumers in the initial offer of their right to cancel their participation in the plan and any outstanding fees that may be owed.
   - Marketers should inform consumers in the initial offer of the length of any trial period, including a statement that the consumer’s account will be charged after the trial period (including the date of the charge) unless the consumer takes an affirmative step to cancel, providing the consumer a reasonable time period to cancel, and the steps needed to avoid charges.

   **Material Terms & Conditions.** Regardless of channel, marketers should clearly and conspicuously disclose all material terms and conditions before obtaining the consumer’s billing information, 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;

Any terms with regards to a “free to keep” incentive as applicable;

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 to stop recurring charges from being placed on the consumer’s account; and

The time period 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 instances where the marketer uses pre-acquired account information under a free-to-pay conversion plan, the marketer should:

Obtain from the consumer the complete account number to be charged within the appropriate data security protocols (such as PCI compliance);

Obtain affirmative consent from the consumer to charge such account; and

Provide channel specific proof (an email or hard copy confirmation, or if via telephone, audio record the entire transaction).

In instances 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 affirmative consent from the consumer to charge such account.

2. Providing the Goods & Services to the Consumer

• 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 renewal reminders of their right to cancel their participation in the plan, and any outstanding fees owed.

• Marketers should provide renewal reminders at the frequency specified in the initial offer.

3. Cancellation

• Marketers should promptly honor requests for refunds due upon consumers’ cancellation of the plan.

• Marketers should allow consumers a reasonable length of time between receipt of renewal reminders and the renewal date, after which consumers can cancel the plan.

• Marketers should honor the time period they provided for a cancellation and should honor a cancellation after the expiration of the trial period.

4. Internet Sales

The initial merchant must never disclose a credit card, debit card or other financial account number or other billing information that is used to charge the customer of the initial merchant to any post-transaction third party seller for use in an Internet-based sale of any goods or services from that post-transaction third party seller.

5. Post-Transaction Third-Party Sales

No charges should apply to a consumer’s account before obtaining the consumer’s billing information as follows.

The third-party seller has first clearly and conspicuously disclosed to the purchaser a description of the goods and services being offered and all material terms of the offer including:

• The fact that the third-party seller is not affiliated with the initial merchant;

• The costs of such goods or services; and
The consumer has provided express informed consent for the charges by providing the complete account information to be charged, providing the consumer’s name and address and a means to contact the consumer, and providing confirmation such as clicking a confirmation button or otherwise demonstrating consent to the charges.

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

### III. SPECIAL OFFERS AND CLAIMS

**ARTICLE 1. USE OF THE WORD “FREE” AND OTHER SIMILAR REPRESENTATIONS**

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 (e.g., 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.

**ARTICLE 2. COMPARISONS**

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.

**ARTICLE 3. GUARANTEES**

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.

**ARTICLE 4. USE OF TEST OR SURVEY DATA**
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.

**ARTICLE 5. TESTIMONIALS AND ENDORESEMENTS**

Testimonials and endorsements in any media (including, but not limited to, such comments on a company’s website and via social networking sites, online message boards, blogging, and “word-of-mouth” marketing) should be used only if they:

1. Are authorized by the person quoted;

2. Are accurate, genuine and related to the experience of the person giving them, both at the time made and at the time of the promotion, and disclose the expertise of the endorser in terms of whether he or she is an expert for the purposes of the advertisement or simply a consumer endorser;

3. Are not taken out of context so as to distort the endorser’s opinion or experience with the product or service;

4. Clearly and conspicuously disclose any material connections between the endorser and marketer, which the consumer would not expect. A material connection refers to a connection between the endorser and marketer that materially affects the weight or credibility of the endorsement, such as payments or free products, or an employer/employee relationship; and

5. Clearly and conspicuously disclose the generally expected, or typical, results/performance of the advertised products or services, if the claims made are not typical of what a user could expect under normal circumstances.

A marketer should be able to provide prior and adequate substantiation, including providing reliable scientific evidence, as necessary, for any claims of efficacy (i.e., whether the product/service will actually do what the marketer says it will do, typicality (i.e., whether the typical consumer will have an experience like that of the endorser), and environmental benefit. The marketer should also be able to substantiate that the endorser was a bona fide user of the product at the time of the endorsement.

Additionally, marketers should ensure that their celebrity endorsers disclose their relationships with marketers when making endorsements outside the context of traditional advertisements, such as on talk shows or in social media, and they should not knowingly make statements that are false or unsubstantiated.

For purposes of this article, the terms “testimonial” and “endorsement” refer to an advertising or marketing message made in any channel that consumers are likely to believe reflects the opinions,
beliefs, findings, or experiences of a party other than the sponsor of the message, even if the views expressed by that party are identical to those of the sponsor. Testimonials and endorsements can be verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual, or the name or seal of an organization.

IV. SWEEPSTAKES

ARTICLE 1. USE OF THE TERM “SWEEPSTAKES”

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.

ARTICLE 2. NO PURCHASE OPTION

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.

ARTICLE 3. CHANCES OF WINNING

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.

ARTICLE 4. PRIZES

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.

**Article 5. Premiums**

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 or participant in a promotion. If all participants will receive a premium, gift, or item, that fact should be clearly disclosed.

**Article 6. Disclosure of Rules**

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.

V. FULFILLMENT
ARTICLE 1. UNORDERED MERCHANDISE OR SERVICE

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.

ARTICLE 2. PRODUCT AVAILABILITY AND SHIPMENT

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

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.

ARTICLE 3. DRY TESTING

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

VI. DMACHOICE & CONSUMER CHOICE FILES

For each prospecting list that is rented, sold, exchanged, or transferred, the names registered on the applicable DMAchoice (ANA’s consumer choice website) name removal lists should be removed prior to use.

ANA’s 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 added to the service; and

- The Email Preference Service and Telephone Preference Service, as well as future preference service lists.

The use of the DMAchoice name-removal lists and preference service lists is not required for the company’s and organization’s existing customer or donor lists, only for prospects.
Members should be listed on the DMAchoice site to provide a direct connection to consumers for further choice requests.

- The company or organization listed must provide the correct point of contact where the consumer may exercise their marketing preferences. *(See also, Part II, Section II, Article 9, Accessibility.)*

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 ANA’s Accountability inquiry when requested in demonstrating its commitment to consumer choice and the marketer’s own consumer preference policies.

**VII. MARKETING LISTS**

**ARTICLE 1. PROMOTION OF MARKETING LISTS**

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.

**ARTICLE 2. MARKETING LIST USAGE**

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. Mobile opt-in lists should not be rented or exchanged for the purpose of sending Mobile Marketing solicitations to those on the list, without obtaining prior express consent from those on the list.

**VIII. MARKETING TO CHILDREN**

Offers and the manner in which they are presented that are suitable for adults only should not be made to children. For additional provisions regarding children, See Article 3, Section VII, Part I.

**IX. DIGITAL MARKETING**
ARTICLE 1. MOBILE SERVICE COMMERCIAL MESSAGE SOLICITATIONS DELIVERED TO A WIRELESS DEVICE

A Mobile Service Commercial Message ("MSCM") is a commercial electronic mail message that is transmitted directly to a wireless device that is utilized by a subscriber of a commercial mobile service. Marketers sending MSCMs messages should obtain prior express consent from recipients and should abide by CAN-SPAM, the Federal Communications Commission’s Wireless Email Rule, Part II, Section XII of these Guidelines, and any additional federal and state regulations.

ARTICLE 2. COMMERCIAL SOLICITATIONS ONLINE

1. Definition. This article refers to addressable commercial solicitations initiated online by marketers (or their affiliates); including commercial solicitations sent to an individual’s email address or another “direct contact point.” For purposes of this article, a “direct contact point” is defined as a user ID or other unique identifier at which an individual can be communicated with online or via a mobile Internet device. This may include, for example, a text message number, personalized activity feed identifier (e.g., “twitter” ID), or user ID for postings on or to a personal social network profile page.

Nothing in this Article or definition is meant to restrict or prohibit the use of aggregated or anonymized data pertaining to direct contact points, the use of profile data for online behavioral advertising (“OBA”), or online banner advertising.

2. Channel Appropriate Consent. Marketers (or their affiliates) may initiate commercial solicitations online to customers or prospects under the following circumstances.

- Individuals have given their channel-appropriate consent to the marketer (including, but not limited to, through the terms of a social media platform) to receive solicitations online; or

- Individuals did not opt out after the marketer has given notice of the opportunity to opt out from receiving solicitations online; or

- The marketer has received assurance from the third-party list provider that the individuals whose email addresses or other direct contact points appear on that list:
  - Have given their channel-appropriate consent to receive solicitations online; or
  - Have already received notice of the opportunity to opt out from receiving online solicitations and have not opted out, and the Email Preference Service (“E-MPS” on the DMAchoice.org service) suppression file was used by the third party.

3. Channel Appropriate Choice. Marketers should furnish individuals with the appropriate notice or a point of contact and an Internet-based mechanism individuals can use to:

- Request that the marketer not send them future online solicitations, and
• Request that the marketer not rent, sell, or exchange their email addresses or other direct contact point data for online solicitation purposes.

If individuals request that they be added to the marketer’s in-house suppression list, then the marketer may not rent, sell, or exchange their email addresses or other direct contact point data 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 solicitation.

Marketers that rent, sell, or exchange personally identifiable information need to provide individuals with notice of a mechanism to opt out of personally identifiable information transfer to third-party marketers.

Solicitations sent via email 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 email 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.

**ARTICLE 3. EMAIL AUTHENTICATION**

Marketers that use email for communication and transaction purposes should adopt and use identification and authentication protocols.

**ARTICLE 4. USE OF SOFTWARE OR OTHER SIMILAR TECHNOLOGY INSTALLED ON A COMPUTER OR SIMILAR DEVICE**

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 5. EMAIL APPENDING TO CONSUMER RECORDS**

Email address appending is the process of adding a consumer’s email address to that consumer’s record. The email address is obtained by matching those records from the marketer’s database against a third-party database to produce a corresponding email address.

A marketer should append a consumer’s email address to its database only when the consumer gives a marketer permission to add his or her email 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 email offers and where the consumer did not opt out, and

3. Reasonable efforts are taken to ensure the appending of accurate email addresses to the corresponding consumer records.

Marketers should not send emails to appended email addresses that are on their in-house email suppression files. Marketers should not send Mobile Service Commercial Messages (“MSCMs”) to appended email addresses that belong to Wireless Handsets or devices unless the recipient has provided prior express authorization to receive such messages from the sender. A marketer should not sell, rent, transfer, or exchange an appended email address of a consumer unless it first offers notice and choice to the consumer. All messages to an email appended address should include a notice and choice to continue to communicate via email.
PART II: MARKETING

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

X. TELEPHONE MARKETING TO LANDLINE & WIRELESS DEVICES

ARTICLE 1. REASONABLE HOURS

Telephone contacts, whether to a landline or Wireless Handset or device, should be made during reasonable hours as specified by federal and state laws and regulations.

ARTICLE 2. TAPING OF CONVERSATIONS

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.

ARTICLE 3. RESTRICTED CONTACTS

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 that specific number was provided by the consumer to that marketer for that purpose. A marketer should maintain an in-house Do-Not-Call list and refrain from calling numbers for solicitation purposes that are on the marketer’s in-house Do-Not-Call list.

A marketer should not knowingly call a wireless device, except in instances where the recipient has provided prior express consent to receive such calls from that marketer.

Prior to contacting a landline or wireless device, marketers should use applicable federal and DMA Wireless Suppression Files or another comprehensive wireless suppression service. Such suppression files should assist marketers in determining whether or not they are contacting a wireless device, including landline numbers that have been ported to Wireless Handsets or devices.

A marketer should use the DMAchoice Telephone Preference Service as required in Part II, Section VII and must use the federal Do-Not-Call registry and state Do-Not-Call lists when applicable prior to using any outbound calling list. Telemarketing calls may be made to landline telephones, where the telemarketer has an established business relationship with the individuals even if the individual is 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. Consumers who have provided informed, 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.

**ARTICLE 4. CALLER-ID/AUTOMATIC NUMBER IDENTIFICATION REQUIREMENTS**

Marketers engaging in Telemarketing to landline and wireless telephone numbers 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, landline telephone numbers gained from ANI, except where a prior business relationship exists for the sale of directly related goods or services. With regard to mobile telephone numbers, marketers should abide by Part II, Section VII and Section VIII, Article 2.

**ARTICLE 5. USE OF AUTOMATED DIALING EQUIPMENT, “ROBO” CALLING**

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 Part II, Section XII, Article 2).

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.

Whenever a live representative is not available within two seconds of the consumer’s completed greeting, the marketer should play a prerecorded identification message that includes the seller’s name and telephone number, states that the call was made for “Telemarketing purposes,” and provides a telephone number at which the consumer can request not to receive future marketing calls. The message must also contain an automated, interactive voice- and/or key press-activated opt-out mechanism that enables the called party to make a do not call request prior to terminating the call, including brief explanatory instructions on how to use such mechanism.

When the called party elects to opt-out using such mechanism, the mechanism must automatically record the called party’s number to the seller’s do not call list and immediately terminate the call.
Repeated abandoned or “hang up” calls to consumers’ residential or wireless telephone numbers should be minimized.

In no case should calls be abandoned more than:

Three percent of answered calls within each 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 federal or 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.

**ARTICLE 6. USE OF PRERECORDED VOICE & TEXT MESSAGING**

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

**Consent Required.** Marketers should only use text messaging sent via Automated Dialing Equipment or prerecorded voice to sell goods or services if they have first obtained the call recipient’s prior express written agreement to receive prerecorded messages through a written form which may be electronic to the extent permitted by law. In obtaining the consumer’s express 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 or send autodialed texts to the consumer.

- The written agreement should evidence the consumer’s informed consent to receive prerecorded calls or text messages by or on behalf of the specific marketer.
- The marketer should not require that the consumer agree to receive prerecorded calls or text messages as a condition of purchasing any good or service.

- Disclosures that the individual’s consent allows the marketer to make prerecorded calls and/or text messages, and that providing consent is not a condition of any purchase, should be made at the time the marketer is seeking written consent.

- Disclosure that by executing the agreement, the individual authorizes the marketer to deliver to the individual marketing text messages using Automatic Dialing Equipment or a prerecorded voice.

- 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.

**Choice Mechanism.** Marketers should provide an in-call opt-out mechanism that the call recipient can use to be placed on the company’s do-not-call list during the each prerecorded call, or provide an opt-out mechanism within the text message. The type of opt-out 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 prior 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 valid telephone number sometime during the call.

ARTICLE 7. USE OF TELEPHONE FACSIMILE MACHINES

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:

- 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.

ARTICLE 8. PROMOTIONS FOR RESPONSE BY TOLL-FREE AND PAY-PER-CALL NUMBERS
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.

**ARTICLE 9. DISCLOSURE AND TACTICS**

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.

**XI. MOBILE MARKETING**

**ARTICLE 1. OBTAINING CONSENT TO CONTACT MOBILE DEVICES**
Part II: Marketing

Marketers should obtain prior express written consent from existing and prospective customers before using automated dialing equipment to send Mobile Marketing to a Wireless device. When obtaining prior express written consent, marketers shall meet the following requirements:

1. 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 autodialed calls to the consumer’s Wireless telephone.

2. The written agreement should evidence the consumer’s informed consent to receive autodialed calls by or on behalf of the specific marketer.

3. The marketer shall not require that the consumer agree to receive prerecorded calls as a condition of purchasing any good or service.

4. The marketer shall disclose that the individual’s consent allows the marketer to make autodialed calls to the person’s Wireless telephone and that providing consent is not a condition of any purchase.

5. The agreement shall include the consumer’s telephone number and signature.

6. Marketers may obtain the written agreement electronically in accordance with applicable laws such as the E-Sign Act.

Article 2. Providing Notice and Choice about Mobile Marketing Practices

Marketers that send or intend to send mobile messages should publish an easily accessible notice of their information practices (which includes but is not limited to a notice in their respective privacy policies) with regards to Mobile Marketing. The notice must include sufficient information to allow Individuals to make an informed choice about their interaction with the marketer. This should include, at minimum, any applicable terms and conditions, details of the marketer’s information handling practices and clear directions about how to unsubscribe from future solicitations.

The Mobile Marketing notice should be easy to find, read and understand on mobile screens, and should comply with existing Guidelines. Of particular note, mobile marketers should review and comply with the Terms of the Offer (Part II, Section II, Articles 1-6, 8, 9), Advance Consent Marketing (Part II, Section III), Special Offers & Claims (Part II, Section IV), and Sweepstakes (Part II, Section V).

Article 3. Mobile Opt-Out Requests

Every Mobile Marketing message sent must include a simple and easy-to-use mechanism through which the individual can opt out of receiving future Mobile Marketing messages. Where possible, the opt-out mechanism provided should allow the Recipient to opt out via reply Text Message. Where Individuals respond to a marketer indicating that they do not wish to receive future Mobile Marketing messages (e.g., an individual replies “STOP”), the marketer should honor the request. Mobile opt-out requests should be honored within 10 days of being.
ARTICLE 4. SPONSORSHIP OR AFFILIATE MOBILE MARKETING

A marketer may include an affiliate or sponsorship message within a Mobile Marketing communication, providing that the Recipient has provided Prior Express Consent to receive Mobile Marketing communications from that marketer and that it is clear from the Mobile Marketing communication that the message has been sent by that marketer and not by the sponsor. A marketer should also comply with the Disclosure of Sponsor and Intent (Part II, Section II, Article 8).

ARTICLE 5. LOCATION-BASED MOBILE MARKETING

Marketers sending Location-Based Mobile Marketing messages to Recipients should adhere to Part II, Section XII, Articles 1–3. In addition, marketers should inform Individuals how location information will be used, disclosed and protected so that the Individual may make an informed decision about whether or not to use the service or consent to the receipt of such communications. Location-Based information must not be shared with third-party marketers unless the individual has given Prior Express Consent for the disclosure.

ARTICLE 6. MOBILE SUBSCRIPTION SERVICES AND PREMIUM-RATE MOBILE SERVICES

Mobile Subscription Services and mobile premium-rate products and/or services should be offered and delivered in accordance with DMA Guidelines, in particular the Terms of the Offer (Part II, Section II, Articles 1-6, 8, 9), Advance Consent Marketing (Part II, Section III), Special Offers & Claims (Part II, Section IV) and Sweepstakes (Part II, Section V). All advertising and marketing for Mobile Subscription Services or premium-rate mobile products/services should clearly define the service offered and outline the terms and conditions of the offer in accordance with these articles. Mobile Subscription Services or premium-rate mobile services should not be supplied unless the Recipient has actively requested to receive the specific service to be supplied. Further, Prior Express Consent should be obtained from a Recipient prior to supplying additional or separate Mobile Subscription Services and premium-rate mobile services at a subsequent date.

In accordance with Part II, Section III and Section XI, Article 4, and prior to sending or charging Recipients for Mobile Subscription Services and/or premium-rate mobile products/services, marketers should:

- Provide the Individual with an opportunity to see or hear the terms and conditions relating to the subscription service, including:
  - The cost per unit or the total cost of the subscription or premium-rate service;
  - The term of the subscription or premium-rate service;
  - The frequency of the subscription or premium-rate service;
  - Payment intervals; and
- How to terminate the subscription or premium-rate service including any terms and conditions that apply to such termination.

- Obtain Prior Express Consent from Recipients to receive and be charged for said subscriptions, products and/or services.

- Inform Recipients in the initial offer and in renewal reminders of their right to cancel their participation in the plan, and include contact information within the initial and renewal messages that allows the Recipient to directly contact them.

- Provide renewal reminders at the frequency specified in the initial offer.

- Promptly honor requests for refunds due upon a consumer’s cancellation of the plan.

- Abide by Part II, Section IX and Section XI, Article 4, and take reasonable precautions and implement adequate technical accountability and authentication measures to ascertain that:
  - The mobile phone number or email address provided indeed belongs to the intended Recipient of the subscriptions, products or services; and
  - Periodically, and not less than once a month, include contact information within the Mobile Subscription Service message or premium-rate mobile service message that allows the individual to directly contact the marketer.

**XII. FUNDRAISING**

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.

**XIII. LAWS, CODES, AND REGULATIONS**

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.
For additional help, contact ANA Accountability:

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