



Commission for
Communications Regulation

Guidelines for VOIP Providers

Requirements for Directory Services

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1 Introduction

This information note is intended to give further guidance to VOIP providers in relation to their duties concerning their customers' rights regarding directory services and the prevention of unsolicited marketing calls.

In 2004, Comreg issued a series of decisions related to Voice over Internet Protocol (VOIP) services (04/103). These decisions primarily concerned the allocation of numbers to VOIP providers including the opening of a new number range 076. In July 2005, Comreg issued guidelines for VOIP service Providers on the treatment of consumers (Doc 05/50) and, in August 2006, Comreg published a review of the VOIP regulatory framework (06/45).

The National Numbering Database (NDD) was created to be a comprehensive record of all subscribers of publicly available telephone services in the State. Its function is primarily to facilitate the compilation of telephone directories and directory enquiry services. It is also used to record the preference of individual subscribers who do not wish to receive unsolicited marketing calls.

Subscriber records are only entered in the NDD where the subscribers have given their consent. Individual records fall into three different categories. The first category is "listed" i.e. – the subscriber's name, address and telephone number will be entered in the printed telephone directory and will be available through electronic directories and directory enquiry (DQ) services. The second category is "unlisted" where the details are available only through DQ services i.e. the details are not listed in directories. The third category of record is "ex-directory". Such ex-directory records contain no personal information and are contained in the NDD for the sole purpose of allowing the unsolicited marketing call preference to be associated with the telephone number.

The rights of telephone subscribers to have their details available through directory services and to have their preferences regarding unsolicited marketing calls are important rights and are enshrined in two legislative instruments - the European Communities (Electronic Communications Networks And Services) (Universal Service and Users' Rights) Regulations 2003.¹ and the European Communities (Electronic Communications Networks And Services) (Data Protection and Privacy) Regulations 2003². Both Regulations require ComReg to monitor compliance with their provisions.

ComReg continues to promote the best interest of users in the communications market and with the continued growth and awareness of VOIP services over the past two years in the Irish communications market ComReg feels it is warranted to clarify the obligation on VOIP providers relating to directory services in the context of both the Universal Service and User's Rights Regulations and the Data Protection and Privacy Regulations.

¹ S.I. No 308 of 2003

² S.I. No 535 of 2003

2 Legal Requirements

A full recital of the applicable legislation is at Appendix A. In summary, these obligations are:

- A duty on eircom, based on the information in the NDD to publish a comprehensive directory of telephone subscribers or to provide a comprehensive DQ service
- A duty on Eircom to ensure that such directories or DQ services include all subscribers who have been informed of the purpose of the entry in the NDD
- A duty on Eircom to maintain the NDD
- A duty on Eircom to allow access to the NDD on approved terms
- A duty on Eircom to apply the principles of non-discrimination to information under its control

- A duty on a PATS provider to ensure that their subscribers can have an entry in a directory and a DQ service
- A duty on a network or service provider who assigns telephone numbers to subscribers to make available subscriber information for the purposes of directories, DQ services and the NDD

- A duty on PATS providers and network or service providers who assign telephone numbers to subscribers to ensure that
 - subscribers are informed, before personal data is provided to the NDD, of the purpose of directories and the search functionality associated with electronic versions of directories
 - subscribers are given the opportunity to decide on the inclusion or exclusion of their personal data from directories
 - subscribers are given the opportunity to determine which of their personal data is included in a directory
 - the above rights are extended to subscribers who are not individuals but legal entities despite the fact that the data involved may not be personal data
 - subscribers can reverse an earlier decision on the inclusion or exclusion of their personal data from directories

- A duty on PATS providers and network or service providers who assign telephone numbers to subscribers
 - to amend an entry in the NDD so as to record that the subscriber does not consent to unsolicited marketing calls
 - to inform subscribers of their rights to opt out of receiving unsolicited marketing calls
 - to provide specified information to the NDD

The rights and entitlements of subscribers to have personal data included in directories and DQ services can only be exercised if the relevant details are included in the NDD. Similarly, the right to block unsolicited marketing calls depends on either the record, or in the case of ex-directory numbers, the telephone number only, being entered in the NDD

3 Guidance for Service/Network providers

There are a number of steps which therefore need to be taken by market players.

3.1 Directory Services

In the first instance the service provider who assigns a telephone number to a subscriber must inform the subscriber of their right to an entry in the NDD, the different categories of records i.e. listed, unlisted or ex-directory and the functionality associated with each category.

Subscribers should be asked to signify their preference in relation to an NDD listing. As the regulations define the NDD as a record of all subscribers “who have not refused to be included”³, Comreg recommends that the default option should be “listed” with the subscriber offered the opportunity to modify this to unlisted or ex-directory. It is essential that in offering the choice to subscribers, sufficient information is provided to allow an informed choice to be made by the subscriber. The information and the offer should ideally be provided at the point where the subscriber enters into the contract for services. Where this has not been done for existing subscribers, ComReg recommends that this be rectified no later than end February 2008.

Having established the subscriber’s preference, the record should then be entered onto the NDD. Procedures for interacting with the NDD are specified in documentation which may be obtained by service providers from the NDD directly.

Service providers may choose to have the process of interacting with the NDD managed on their behalf by another undertaking which is willing to undertake this task. ComReg wishes to emphasise however that the statutory responsibility to ensure that the subscriber’s wishes are observed cannot be delegated to another undertaking.

3.2 Data Protection and Privacy

In addition to directory information, the standard input form for a listing requires an indication of the subscriber’s preference regarding unsolicited marketing calls. By definition, ex directory numbers have not been included as records in the NDD and service providers had no need to interact with the NDD in respect of such numbers. As the legal framework regarding unsolicited marketing calls, can only protect those numbers which are recorded in the NDD, in 2006, ComReg and the Data Protection Commissioner issued directions and notices requiring ex-directory numbers to be entered into the NDD for the purpose of including such numbers in the “opt-out register” – the listing of telephone numbers where subscribers do not consent to receiving unsolicited marketing calls. The Direction issued by ComReg by ComReg is published as ComReg Document 07/100.

³ Reg 4(3) of the Universal Service and Users’ Rights regulations

3.3 Further information

The processes for service provider interaction with the NDD are set out in a series of documents which authorised undertakings may obtain by contacting the NDD

directly at this address:

NDD Manager,
Eircom Ltd.,
St. Stephen's Green West,
Dublin 2.

Additional guidance regarding communication with end-users may also be obtained through ComReg at the following e-mail address retailconsult@comreg.ie

Appendix A

Duty on Eircom as the designated Universal Service Provider to operate the NDD

The Universal Service and Users' Rights Regulation⁴ states at Regulation 4

- (1) A designated undertaking shall ensure, based on data provided to it in accordance with paragraph (3) -
 - (a) that a comprehensive directory of subscribers is made available to all end-users in a form approved of by the Regulator, whether printed or electronic or both, and is updated at least once in each year, or
 - (b) that a comprehensive telephone directory inquiry service is made available to all end-users, including users of public pay telephones.
- (2) The designated undertaking concerned shall ensure that the directory, or the directory inquiry service, referred to in paragraph (1) comprises all subscribers of publicly available telephone services in the State (including those with fixed, mobile, and personal numbers) who have not refused to have their personal particulars included in those directories. This paragraph is subject to Regulation 12 of the European Communities (Electronic Communications Networks and Services) (Data Protection and Privacy) Regulations 2003).
- (3) A designated undertaking shall, ... keep a record (to be known as the National Directory Database) of all subscribers of publicly available telephone services in the State, including those with fixed, personal and mobile numbers, who have not refused to be included in that record, and allow access to any information contained in such record to any other such undertaking or any person in accordance with such terms and conditions as may be specified by it and approved by the Regulator.
- (4) A designated undertaking shall for the purposes of this Regulation apply the principle of non-discrimination to the treatment of information that has been provided to it by other undertakings or which it has in its possession or under its control.

Duty on Undertakings – Universal Service and Users's Rights Regulations

The Universal Service and Users' Rights Regulation states at Regulation 21.

- (1) An undertaking providing a publicly available telephone service shall ensure that its subscribers have the right, without charge, to have an entry in a directory as provided for in Regulation 4(1), and a directory inquiry service as provided for in Regulation 4(2).

⁴ S.I. No 308 of 2003 as amended by S.I. 374 of 2007

- (2) An undertaking that assigns telephone numbers to subscribers shall meet all reasonable requests to make available, for the purposes of the provision of publicly available directory inquiry services, directories and the record referred to in Regulation 4(4), the relevant information in an agreed format on terms that are fair, objective, cost oriented and non-discriminatory.

Duty on Undertakings – Data Protection and Privacy Regulations re Directories

The Data Protection and Privacy Regulations provide the following at Regulation 12

- (1) An undertaking referred to in Regulation 21(1) or 21(2) of the Universal Service Regulations shall ensure that all its subscribers are, without charge -
 - (a) informed before they are included in any directory in which their personal data can be included, for which it provides relevant information in accordance with that Regulation, about the purposes of such a directory and any further usage possibilities based on search functions embedded in electronic versions of that directory.
 - (b) given the opportunity to determine whether their personal data are included in that directory.
 - (c) given the opportunity to determine which of their personal data are included in a directory to the extent that such data are relevant for the purpose of the directory as determined by the provider of the directory and to verify, correct or withdraw such data.
- (3). (a) An undertaking referred to in Regulation 21(1) or 21(2) of the Universal Service Regulations shall ensure that its subscribers other than natural subscribers are, without charge, provided with the information referred to in paragraph (1)(a) and the opportunities referred to in paragraphs (1)(b) and (1)(c) notwithstanding the fact that the data may not be personal data.
- (6) A subscriber may request the relevant undertaking or person to disregard or reverse the effect of a determination previously made by the subscriber to the undertaking under paragraph (2), (3) or (5).

Duty on Undertakings – Data Protection and Privacy Regulations re entries in NDD

The Data Protection and Privacy Regulations provide the following at Regulation 14

14. (1) An undertaking referred to in Regulation 21(1) or 21(2) of the Universal Service Regulations shall, for the purposes of Regulation 13(2)(b) or 13(4)(b), record or cause to be recorded in the National Directory Database the relevant information specified in paragraph (2) in respect of a line of any one of its subscribers who –

- (a) is, upon the making of these Regulations, an unlisted subscriber in respect of that line,
 - (b) had at any time after the establishment of that Database, made a request to the operator or notified the relevant undertaking that the subscriber does not consent to unsolicited calls for the purpose of direct marketing or to such calls by means of an automated calling machine or a facsimile machine to a line of that subscriber.
- (2) An undertaking referred to in Regulation 21(1) or 21(2) of the Universal Service Regulations that has not already done so shall, ensure that its subscribers are, provided with information regarding their entitlements under Regulations 13(1)(a), 13(2)(b) and 13(4)(b), and the possibilities referred to in Regulation 14(1).
- (3) An undertaking referred to in Regulation 21(1) or 21(2) of the Universal Service Regulations shall, for the purposes of Regulation 13(2)(b) and 13(4)(b) and when so notified by any one of its subscribers, make available to the operator the following relevant information in respect of a line of that subscriber to be recorded in the entry in the National Directory Database in relation to that subscriber:
- (a) the fact that the subscriber does not consent to unsolicited telephone calls for the purpose of direct marketing or to such calls by means of automated calling machines or facsimile machines.
 - (b) if appropriate, the date on which a notification under Regulation 13(2)(b) or 13(4)(b) was received by the operator.
- (4) (a) An undertaking, for the purposes of Regulation 13(2)(b) or 13(4)(b), shall, as soon as practicable after having been notified under paragraph (1), that a subscriber does not consent to unsolicited telephone calls for the purpose of direct marketing or to such calls by means of automated calling machines or facsimile machines transmit particulars of such notification to the operator or other person who publishes a directory to whom the undertaking supplies relevant information relating to its subscribers for inclusion in that directory.
- (b) When the operator (*i.e. Eircom in its capacity as the operator of the NDD*) or other person who publishes a directory receives particulars of a notification under paragraph (1), the notification shall be deemed, for the purposes of this Regulation, to have been made to the operator or that other person at the time the operator or that other person receives particulars of it.

- (5) The operator shall record, the relevant information referred to in paragraph (3) in respect of a line of a subscriber, in the entry in the National Directory Database in relation to that subscriber, when it made available to the operator.

Data Protection and Privacy Regulations prohibitions on unsolicited marketing calls

The Data Protection and Privacy Regulations prohibit unsolicited marketing using electronic communications at Regulation 13. For prohibitions to be effective, the relevant entries in respect of the individual telephone number needed to be recorded on the NDD.

- (1)
 - (a) A person shall not use or cause to be used any publicly available electronic communications service to send an unsolicited communication for the purpose of direct marketing by means of an automated calling machine or facsimile machine (fax), to the line of a subscriber, who is a natural person, unless the person has been notified by that subscriber that for the time being he or she consents to the receipt of such a communication.
 - (b) A person shall not use or cause to be used any publicly available electronic communications service to send an unsolicited communication for the purpose of direct marketing by means of electronic mail, to a subscriber, who is a natural person, unless the person has been notified by that subscriber that for the time being he or she consents to the receipt of such a communication.
- (2) A person shall not use, or cause to be used, any publicly available electronic communications service to make an unsolicited call for the purpose of direct marketing by means of an automated calling machine or a facsimile machine to the line of a subscriber, other than a natural person, where -
 - (a) the subscriber has notified the person that the subscriber does not consent to the receipt of such a call on the line, or
 - (b) subject to paragraph (5), the relevant information referred to in Regulation 14(3) is recorded in respect of the line in the National Directory Database.
- (3) A person shall not use, or cause to be used, any publicly available electronic communications services to send an unsolicited communication for the purpose of direct marketing by means of electronic mail, to a subscriber, other than an individual, where the subscriber has notified the person that the subscriber does not consent to the receipt of such a communication on the line.

- (4) A person shall not use, or cause to be used, any publicly available electronic communications service to make an unsolicited telephone call for the purpose of direct marketing to the line of a subscriber, where -
- (a) the subscriber has notified the person that the subscriber does not consent to the receipt of such a call on his, her or its line, or
 - (b) subject to paragraph (5), the relevant information referred to in Regulation 14(3) is recorded in respect of the line in the National Directory Database.
- (5) A person will not contravene paragraph (2)(b) or (4)(b) if the unsolicited call concerned is made during the period of 28 days after a request under Regulation 13 is received and recorded in the National Directory Database by the operator in relation to the subscriber concerned in respect of the line on which the call is made.
- (6) (a) A person who uses, or causes to be used, any publicly available electronic communications service to make an unsolicited call for the purpose of direct marketing shall include in such a call the name of the person and, in addition, in the case of a call by means of an automatic calling machine or a facsimile machine or if a person who receives the call so requests, either the address of the first-mentioned person or a telephone number for a line on which that person may be contacted.
- (b) A person who uses, or causes to be used, any publicly available electronic communications service to send an unsolicited communication for the purpose of direct marketing shall include in such a communication the name of the person and, in addition, in the case of a communication by email, a valid address at which that person may be contacted.
- (7) Where a person obtains, in accordance with the Acts and the Data Protection Regulations or these Regulations, from its customers their contact details for electronic mail, in the context of the sale of a product or service then, notwithstanding paragraph (1), the person may use these electronic contact details for direct marketing of only its own similar products or services provided that customers are clearly and distinctly given the opportunity to object, in an easy manner and without charge, to such use of electronic contact details when they are collected and on the occasion of each message in case the customer has not initially refused such use.
- (8) A person shall not send electronic mail for the purposes of direct marketing, which disguises or conceals the identity of the sender on whose behalf the communication was made, or without a valid address to which the recipient may send a request that such communication shall cease.
- (9) (a) A person who fails to comply with paragraph (1), (2), (3), (4), (6), (7) or (8) shall be guilty of an offence.

- (b) For the purposes of subparagraph (a) the sending of each unsolicited communication or making of each unsolicited call constitutes a separate offence.