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1. Introduction

Sytel Limited is a manufacturer of software for the outbound marketplace based in the United Kingdom. It produces predictive dialing software that is used in many countries around the world, including the US. Sytel has campaigned for many years for the responsible use of predictive dialers. It has worked closely with a number of national marketing organisations around the world to put help codes of practice in place. It has also been a strong advocate of ‘do not call’ systems for use by consumers not wishing to receive outbound calls. For the past two years it has produced a free newsletter focused on best outbound practices (www.outboundfocus.com), that is read widely around the world.

This paper focuses on what predictive dialers do and makes some recommendations for how they might be used in future in the US.

2. Non-Agent Calls

Predictive dialers take a number of actions to deal with those calls (non-agent calls) that it either believes or knows cannot be delivered to an agent, at the time a consumer answers, or attempts to answer their phone, in response to an outbound call from a call center. These call types are analysed below. Such calls should be very small in number in a well-controlled dialer, and arise because there are more calls launched than there are call center agents (actually or potentially) available to talk with them.

Any action to regulate predictive dialers must consider the full range of such calls; if this doesn't happen, then restriction on one type of non-agent call, may lead to (an unexpected) increase in the incidence of another, as dialers attempt to compensate for loss in productivity. For example, this is a possible consequence of the implementation of AB870 in California, where no consideration was given to hangups on ringing calls (see (i) below).

(i) Hangups on Ringing Calls. The phone rings a few times and then stops before a consumer has a chance to reach it.

Historically some dialer practice has been to launch more calls than is reasonably required to present available agents with a live call each, and then with no more agents available, any remaining calls still ringing have been hung up on, and not recorded as calls abandoned by the dialer. This has meant many calls being terminated after only several seconds of ringing. The US DMA addressed this by setting a minimum ring time of 12 seconds. The UK DMA in its updated code of practice for dialers, announced in January 2002, has set a comparable figure of 15 seconds. Survey work that Sytel has done in the US suggests that the practice of early hangups is still widespread.

Recommendation: The FTC should consider a restriction similar to that set by the US DMA but with the aim of ensuring that it allows consumers a reasonable length of time to answer the phone.

(ii) 'Dead Air' Calls. Consumers answer the phone, and there is no one there to respond to them, so they wait for seconds, often many, and may hang up before an agent comes on the line.

One or both of two things is happening.

The dialer is holding up the call while it tries to determine if the response is an answering machine or a live person. Since it can take several seconds or more to test for answering machines, then this means that the same delays apply in connecting agents to live calls. Whether or not live calls are being delayed by screening for answering machines, dialers have historically kept callers waiting anyway, when agents have not been available to match up with answered calls. This has been done in the hope or expectation that called parties will not hang up and instead wait for an agent to come on the line and talk to them. If called parties hang up, then such calls are not registered as abandoned calls, since the dialer hasn't abandoned them. Quite contrary to popular belief, called parties in general in the US do not hang up quickly, but instead stay connected trying to determine what is happening, waiting, on average, for over 10 seconds before hanging up, if no

agent is available.

The US DMA guidelines set a maximum time for two seconds for a call to be held up, from the time that the consumer's phone goes offhook. The equivalent figure set in the UK is one second. At two seconds, consumers will often be aware of a 'predictive pause'. Immediately this happens, the quality of the call declines.

When the US guidelines were developed, the two second limit allowed some scope for answering machine detection to occur, an activity that the US outbound industry has long seen as being an indispensable aspect of predictive dialing. Building on the experience of 'dead air' in the US, the UK DMA recently took the view that this issue should be consumer-driven, and that any delay in abandoning a call, beyond one second, was unacceptable.

Sytel's own predictive dialing solution does not encompass answering machine detection done by dialers, and Sytel does not claim any special expertise in the way that such detection gets done. If the FTC, decided that a maximum hang-up time in the area of 1-2 seconds was appropriate, then it is very possible that many call centers might find that this was incompatible with their existing use of answering machine detection, driven by dialers, and not agents. This could lead in turn to a two tier market, with some call center vendors claiming the ability to work effectively within such a limit, and others outside it. Whilst we believe that answering machine detection, done very quickly and accurately, can benefit call centers without inconveniencing consumers, we don't believe that the absence of it would do major harm to the outbound industry, if some equipment could not work effectively within hangup limits that might be set. Many of Sytel's own users insist that answering machine detection should be done by the agent. This ensures the agent gets the 'first hello', and there is no degradation in the quality of the call on account of 'predictive pauses'. And this is seen as more than compensating for any loss in agent talk time per hour, compared with detection done by the dialer.

Recommendation: The extent of this call type in the US is very considerable. We

believe that an effective ban should be considered, by setting a maximum hold up time on answered calls of two seconds, with consideration being given to a lesser figure.

(iii) Playing of Messages. There is no agent available so the dialer plays a message to avoid 'dead air' on the line, or having to abandon the call.

We understand that the playing of messages is generally banned, not just under US DMA codes of practice, but in the US by Congress, under the Telephone Consumer Protection Act (TCPA), as long ago as 1991.

The idea of playing messages rather than have a dialer abandon a call was considered by both the Kansas and the Californian legislatures in the past year. The Kansas legislature allowed it. The Californians dropped the idea on the basis that it was in conflict with other law (the TCPA?).

Without any controls, it is not a good idea, since a dialer can dial as many numbers as it likes, connect live calls to waiting agents, then play messages to everyone else. The extent of non-agent calls is potentially limitless.

Recommendation: We believe that the playing of messages might possibly be seen as an alternative (not an addition) to abandoning calls (see (iv) below), but there would need to be similar rules on the extent of messages (relative to live calls), as well as on their length and content.

(iv) Abandoned Calls. Consumers answer the phone and the dialer abandons the call.

These are abandoned calls as per DMA codes. All DMA codes stipulate that they must be measured as a percentage of live calls, namely calls answered by consumers. Many users still use the 'all calls' measure, often in ignorance. The differences in definition are important. For example, if the percentage of live calls is 50% (25%), then an abandoned target of 2% that is expressed as a percentage of 'all calls' (i.e. two abandoned calls for every 100 calls dialed), is actually 4% (8%) when measured correctly as a percentage of

live calls.

Recommendation: Provided that appropriate consumer safeguards are in place (see below), we believe that a small number of abandoned calls is reasonable, allowing dialers to produce the substantial business savings this can lead to. We also believe that the appropriate way to measure abandoned calls is as a percentage of live calls. We believe that the maximum level for abandoned calls should be 5%, and that consideration should be given to setting a lower level. We would also strongly recommend that before a lower level should be set, the FTC give due regard to the huge reduction in non-agent calls of all types that will happen if restrictions on other 'non-agent' calls, as suggested in this paper, are made.

3. The Extent of Non-Agent Calls

A feature of both the FTC Review and most other information in the public domain in the US on the subject of predictive dialing is that there is virtually no empirical information at all available on the extent of non-agent calls. In the absence of any consumer safeguards it could be argued that this doesn't matter, and that no non-agent calls should be allowed. But some quite stringent consumer safeguards are under discussion at Federal as well as State level, and if these are implemented, then consumers either need not receive such calls or have the ability/right to see who called them. Under these circumstances, Sytel believes that it is quite reasonable to allow dialers to make predictive calls, but with restrictions along the lines discussed herein.

Whilst it is reasonable to ask what the absolute levels of non-agent calls (in terms of our recommendations, effectively abandoned calls, possibly replaced by messages - see 3. (iii) and 3. (iv)) should be, Sytel also believes that debate and progress on these matters would be helped very considerably if there were independent research available indicating what the current levels of non-agent calls are. Our own studies indicate that the level of non-agent calls in the US, by dialing devices of all kinds, is very high indeed, and that if our recommendations were implemented and complied with, including an abandoned call rate as high as 5%, then the rate of non-agent calls received by consumers

would drop by a very substantial amount.

4. Consumer Safeguards

Sytel believes that the dialing proposals such as those outlined in 2. above are necessary, but not sufficient. We also believe that consideration should be given to the following two consumer safeguards.

(i) 'Do Not Call'. All US consumers should have access to a 'do not call' scheme(s) that allows them not to receive unsolicited calls of any kind. Such a scheme(s) should allow consumers to sign up easily, provide for low-cost ease of use by call center operators, and have clear and enforceable penalties, for non-compliance. We have no particular views on how such a scheme(s) should be constituted, or whether it/they should be based on any existing schemes, such as those run by the DMA or individual states. We regard such a scheme(s) as essential.

(ii) Call centers wishing to use predictive dialers should provide effective Caller ID. We see this as being desirable, though not necessarily mandatory if an effective "do not call scheme" is in place.

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