

Calling the Colorado District Court: Anyone Home?

The Colorado District Court blundered badly by ruling that the DNC *Do Not Call* Registry violates the First Amendment speech rights of telemarketers (September 25, 2003).

The right of Free Speech is not the right to force others to listen, or speak, or to stand up.

Freedom of the press allows us to print almost anything, but it does not grant us the right to be read, and it does not bestow a right to use the paper, ink, or printing machines of others.

Likewise, our freedom of speech does not give us the right to fill an unwilling ear. Having no desire to hear our message, others have the right to turn away, or to be absent. Just as freedom of the press is not freedom to commandeer others' printing machines, freedom of speech is not freedom to commandeer others' speaking machines (i.e., telephones).

If this is not clear to the Court, let the Court consider two analogies to trespass and property:

(1) The fact that my house has a door does not mean that I invite all and sundry into my living room at their convenience. Likewise the fact that my house has a telephone implies no invitation to any would-be message bearer to bend my ear.

(2) It is not unusual for those seeking to speak to someone to come to their door and knock. Of course, the householder may refuse to answer, or slam the door in the face of an unwelcome presence. But by common practice a householder announces, by displaying a *No Solicitors* sign, that commercial speech and proselytizing are unwelcome. Civil members of society respect such wishes. Just as *No Solicitors* says that my front door and footpath are sacrosanct against certain others, *Do Not Call* says that my telephone and ear are sacrosanct against certain others.

Marketeers are not the only ones with free speech rights. We all have them. One way to employ this right is to say "My private property is not to be used by solicitors." If making a "public nuisance" is illegal, why not repeated and deliberate "private nuisances?"

The Court got one thing right: in finding the FTC gave "consumers" a choice to limit only certain kinds of solicitations (non-profit and political organizations were exempted), the Court correctly found discrimination based on the content of speech.

Not only should *Do Not Call* should be allowed; but it should be extended to *all* forms of solicitation.