



TextDeliver



RUNNING
SMS
MARKETING
CAMPAIGNS
BY THE BOOK

Disclaimer

This guide was created for educational purposes only. It should not be taken as legal advice. The laws and national regulations are complicated and applied to businesses and individuals in different ways. Businesses require specific advice, which should be sought after both in your country of residence and where you are conducting your business.

Intro

There are many ways to use text messages to convert prospects, upsell, engage clients and improve your bottom line. You'll just have to pay attention to the way you're building and managing your lists and respect all SMS marketing regulations set in place by law enforcing organization. Knowing what those rules are is your first step toward success.

So, let's start your first SMS marketing legalese class!



1.

Who Makes The Rules



The rules you need to follow to ensure you won't get into trouble are based on the Telephone Consumer Protection Act (TCPA), which is a federal law, enforced by the Federal Communications Commission (FCC). The TCPA is establishing the specific requirements businesses must satisfy to be allowed to text their customers. It also states how the consumer's permission can be asked and received, and what you can do under that received permission.

Besides the FCC, there's another organization you should be aware of - CTIA (formerly known as the Cellular Telephone Industries Association). This one's an organization created by the wireless carriers which came up with a set of SMS marketing guidelines. CTIA can audit and shut down an SMS program that doesn't play by their rules, which are very specific about what a text message needs to include, like help and stop commands, privacy policies, etc.

The MMA (the Mobile Marketing Association), which also launched a document on SMS marketing best practices can only make recommendations, but the rules they set aren't enforceable.

2.

Running SMS

Marketing

Campaigns Under

the TCPA Federal

Law



Some marketers expose themselves to liabilities by assuming the TCPA rules do not apply to them because the law focuses on cold calls, pre-recorded or auto-dialled calls and faxes. In reality, the TCPA was updated in 2007 to also include unsolicited SMS texts.

Since 2013, when some TCPA amendments came into effect, a previous business relationship does not matter anymore. In the law, the requirement for an "established business relationship" was then replaced with a requirement for a "prior written express consent," which can't be a condition of purchase. That also means your old database cannot be used without getting your older customers to opt-in under the new TCPA guidelines.

The law clearly states that when you're getting people to opt-in, you must explicitly say that they're signing up to receive automated text messages and that their consent to receive the text messages isn't a condition of purchase.



3.

Data Collection Form Requirements



To collect the phone numbers of your customers and prospects (through a website form or a text message), the following conditions must be satisfied:

A. Get the "prior written consent" of your customers.

This acceptance must be clear to the client, they must know what they are subscribing to, so a recommended phrase is:

"By submitting your phone number, you consent to receive text messages delivered by an automatic telephone dialing system."

B. State this isn't a condition of purchase

You also need to make it crystal clear that the subscriber's permission is not a condition of purchase and make sure your website isn't stopping the customers who don't want to give you their phone numbers to make purchases. A recommended phrase is:

"Consenting to these terms in not a condition of purchase."

C. List all the info required by the CTIA

Remember that the CTIA can audit and stop non-compliant SMS marketing campaigns, so take the precaution measure of adding all they require:

- SMS program description (what are the customers going to receive).
- Disclosure of carrier fees (text and data).
- Stop/unsubscribe instructions.
- Links to Terms & Conditions, Privacy Policy, contact details.

Recommended phrases:

"Subscribe to receive recurring SMS news / discounts / offers."

"Text STOP to stop receiving messages/to opt-out."

"Data and text message rates may apply."

"Terms & Conditions, Privacy Policy available at bit.ly/_____."



4.

SMS Message Requirements (TCPA & CTIA)



The rules that apply to SMS marketing demand that each SMS text message you send:

- Clearly states the sender;
- Has an opt-out mechanism (STOP, CANCEL, UNSUBSCRIBE, QUIT);
- Is only delivered after 8 AM but before 8 PM subscriber's time;
- Links to the privacy policy, sender website.

5.

**SMS Messages
Exempt from
the TCPA Rules**



Some companies and organizations are exempt from the FCC / TCPA rules and so are their SMS texts:

- Messages delivering factual or transactional information (shipping alerts or notifications, flight updates, back transaction confirmations, etc.);
- Messages sent by tax-exempt nonprofits or political organizations;
- Messages from wireless carriers to their customers;
- Messages from healthcare organizations and entities regulated by the Health Insurance Portability and Accountability Act.
- Messages from collections agencies.

6.

**Penalties for
Breaking the
FCC / TCPA
Rules**





Complaints can be filed with the FCC, organization which has the capacity to determine if you willfully violated the TCPA. The standard fine for each message sent is \$500, but if it is established you knew you were breaking the law, the court can increase the penalty up to \$1,500/sent text.

7.

**Why You
Should Save
the Proof of
Consent**



The burden of proof in an investigation is the one of the marketers. They'll be the ones responsible for demonstrating that they had the unambiguous written consent of their subscribers to send them text messages and that the receivers knew what they were going to receive.

Marketers and advertisers should hold onto the consent proof for 4 years, the “proof” including screen grabs for web forms, and also the complete data record submitted by the user – IP, time, date, submitted phone number, etc.

You should also keep a record of all the advertisements you used to promote your SMS campaign, all sent messages, all received messages.

In past lawsuits for TCPA violations, companies ended up paying up to \$250,000,000 - like it happened to Papa John's. Papa John's franchisees texted their past consumers (people who bought pizza before from Papa John's). In court, Papa John's couldn't provide the proof that the customers receiving the text messages gave their express unambiguous consent to receive the messages.



8.

**The Awesome
Things You Can Do
with Compliant
SMS Messages**



Even if some regulations ask that you include some specific content in your text messages, you still have much freedom to create the most effective text messages to get people to buy your product or service.

Here are some effective ways to use your SMS marketing database:

- Announce limited time discounts;
- Drive foot traffic to offline stores and events;
- Announce new products and offers;
- Offer discount codes people could share with their friends and family;
- Announce seasonal sales;
- Send reminders for upcoming webinars;
- Announce people your new YouTube video is up;
- Offer free downloads;
- Announce people your new blog post is live;
- Announce people you'll live blog from an upcoming event, etc.

9.

**Rocking SMS
Marketing
Regulations in
Other Markets**



Here are the key things you should remember about using SMS marketing in other main English-speaking markets:



CANADA

- The Canadian Anti-Spam Legislation (CASL) is one of the harshest regulations regarding consumer privacy.
- The Canadian law applies in the case the message is delivered, but also if the message is accessed by a computer system/mobile phone located in Canada.
- It is forbidden to send “commercial electronic messages”, including SMS texts, to people or businesses who have not granted their express consent to receive them.
- In Canada, express consent is given when people send an SMS keyword to your short code, or they fill out a form on your website that clearly states they are subscribing for the campaign.
- Implied consent exists when the users are already in a business relationship or a non-business relationship with you.
- Implied consent also exists when the recipient has published or disclosed their SMS number but didn't state that they

don't want to receive commercial electronic messages and their role make the messages you're sending relevant (the business card exception).

- If you're sending an email or text message to ask for consent from someone, that is also considered a commercial electronic message, so you'd be breaking the rules.
- You are not allowed to collect email addresses or phone numbers manually or using data scrapping software or other computer software.
- On the web page, you cannot have the "I agree" box pre-checked, this is something the user will have to click on while giving their consent.
- If people need to enter their phone number in a web form, and it is undoubtedly clear what their phone number will be used for, they are not required by law to actually check a box.
- For the collection form to be valid, it needs to show who you are, how you can be contacted (physical address and email address), what the users will receive as a result of providing you their SMS number, and confirmation that people can unsubscribe at any time.



UNITED KINGDOM

- Sending text messages to customers with whom you have a previous business relation doesn't require them to opt-in, but you must offer them a way to opt-out.
- If there isn't an existing business relationship, you'll need them to opt-in specifically for receiving your texts, unless they're businesses. In that case, they don't have to opt-in, but they must be able to opt-out at any time.



AUSTRALIA

- If a business is making their phone number public without stating that they don't want to receive commercial electronic messages, you can text them without getting their consent first, but your offer must be relevant to their industry.
- You can also text current or past customers because, in the case of a previous business relationship, no opt-in is required.
- You must obtain express consent from individuals with whom you do not have an established business relation.

- Consent can be given in many ways, even getting a business card from a potential customer together with verbal confirmation.
- Consent can also be given by filling in a web form, checking a box on a website form, a phone conversation, a face-to-face meeting — but only as long as the recipient is aware they will receive your commercial messages.

Now that we've covered all you need to know about running SMS marketing campaigns by the book, it's time you get started taking advantage of this cost effective medium and boost your profits!