

# TCPA Guidelines 2013

*October 2013*



## Disclaimer

The following statements are provided for information and educational purposes only.

The samples, suggestions, practices and other information in this presentation are provided as general background information and may not be appropriate for your situation.

You should not act or rely on this information without seeking the advice of an attorney.

We will not be held liable for any actions taken by a client with regard to any information presented in this document or with regard to the new TCPA regulations that went into effect October 16, 2013.

We make the best effort to educate and equip clients with regard to TCPA regulations. Ultimately though, it is advertiser's duty and responsibility to fully research and adhere to any and all TCPA guidelines.

## TCPA Rulings Summarized

- On October 16, 2013, new laws under the Telephone Consumer Protection Act (TCPA) went into effect. The TCPA applies to both voice and short message service (SMS) text messages if they are transmitted for marketing purposes.
- Under the new TCPA rules, an advertiser must now have unambiguous written consent before sending a text message to the consumer. The consumer consent must include a "clear and conspicuous disclosure" that he/she will receive future contact via text message. The advertiser bears the burden of proof to demonstrate that a clear and conspicuous disclosure was provided. Such written consent should be maintained for at

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least four years which is the statute of limitations, provided by the TCPA.

- In the past, businesses were able to send a marketing text message to a consumer if it had a previous “established business relationship” with the customer. Under the new TCPA, established business relationship no longer relieves advertisers of the prior unambiguous written consent requirement. Advertisers need to obtain such written consent even if they previously had a business relationship with the consumer.
- There are significant fines for the violation of the TCPA between \$500 and \$1500 per message for non-compliance.

*Prior Written Consent Real World Sample*

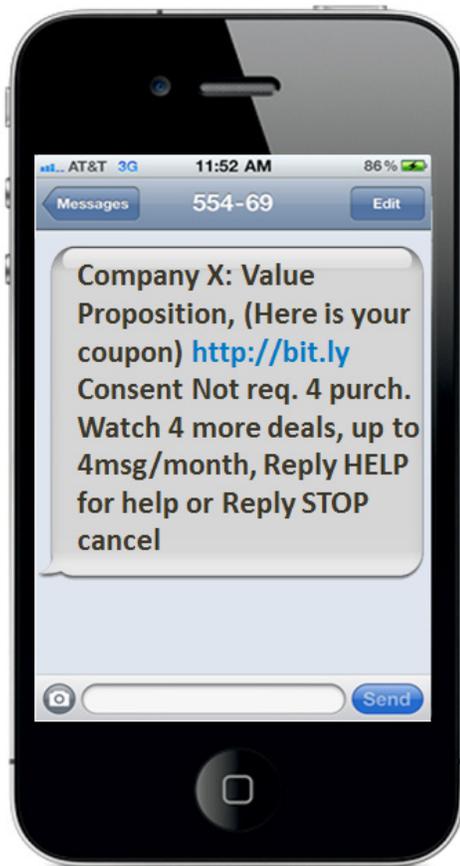


## What is Prior Written Consent?

Definition: Prior express written consent is obtained through a signed written agreement, digitally signed agreement, or SMS opt-in with the correct terms & conditions that clearly and conspicuously discloses to the consumer that:

1. By signing or acknowledging the agreement, he or she authorizes the seller to deliver marketing text messages to the designated phone number
2. The consumer is not required to sign the agreement or agree to enter into it as a condition of purchasing any property, goods, or services NEW
3. This requires signature be obtained in any many that complies with state or federal law. This Includes e-mail, website form, text message, telephone key press, or a voice recording.

*A Compliant Mobile MT Response Sample*



## **Making Your MT [Mobile Terminated] Response Compliant**

Once a potential opt-in has viewed the collateral and engages with a text-message, the response back to their phone also has to be compliant.

Each message response has to verify in an unambiguous fashion what that client is opting in for in the future and provide the ability for them to opt-out.

### **The Following Items Need to be Present in the MT Response:**

1. Identify the company
2. Value Proposition or Coupon
3. Statement about future messages/offers/coupons are forthcoming with a frequency along with it clearly stated (up to 4 msg/mo)
4. Statement about that they do not have to consent to the future marketing messages to purchase, use the coupon, or participate in the contest
5. Statement about how to request help or end the future messages. (Reply HELP for help or STOP to cancel.)

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## Creating Compliant Web Opt-In Forms

The creation of web forms with the correct disclaimers to remain compliant mirrors the rules regarding unambiguous disclosure of the opt-in as stated above for collateral. There are two minor differences to take into consideration;

1. The disclaimer should be immediately below or beside the form requiring the mobile phone number. Help and Stop should both be in bold, and the disclaimer is supposed to be on a white background.
2. It is suggested that there is an unchecked box next to the disclosure that a person can check to opt-in. This is not a requirement, but a suggestion.

The disclaimer directly below or beside the mobile number form on the website should carry the unambiguous information stating all of the following items clearly.

1. Identify the Advertiser
2. Identify the promotion or Value Proposition (Why are they providing their phone number? To get a coupon? To get alerts? To enter to win a contest?)
3. Statement about future messages/offers/coupons are forthcoming with a frequency along with it clearly stated (up to 4 msg/mo)
4. A statement that says consent to future messages is not required for purchase of the goods or services being advertised.
5. A statement regarding how a person gets help or can opt-out of the database along with Standard Text-message and data rates may apply.

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The second message that they deliver back from their phone is their "written signature".

### How this translates to the real world.

1. Potential opt-in inputs their number on the web-form.
2. Potential customer gets an instant text message on their mobile device that says something like, "Company Name: To receive your (coupon, offer, reminders, information, alerts) reply with the word "KEYWORD" to this message. Msg&data rates may apply, reply Help for help or STOP to cancel"

*NOTE: An additional keyword is created for the potential opt-in to reply with that keyword. When they reply they then have given their "written signature" and consent to the future messages.*

3. The potential opt-in replies with the keyword
4. The client then receives a text message response from the keyword created and has officially opted in in a compliant fashion.



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## Tablet Landing Pages - Kiosks

The creation of compliant Kiosks is much the same as web opt-in forms. If you want to opt-in Consumers for future marketing efforts then a double opt-in would be required;

1. Consumer types in mobile number
2. Consumer receives confirmation text-message  
*"To receive your instant coupon, reply with the word Arby to this message. Watch 4 more, up to 4/mo, consent not req. for purch. Reply HELP for help/ STOP to cancel.*
3. Consumer replies with the keyword to a redeemable coupon.
4. Consumer receives the coupon back and the database is valid for remarketing purposes in the future.

## Virtual Business Card [Apps or Mobile Websites]

The creation of compliant Virtual Business cards that are done from a mobile website or app is much the same as web opt-in forms. If you want to opt-in Consumers for future marketing efforts then a double opt-in would be required;

1. Consumer types in mobile number
2. Consumer receives confirmation text-message  
*"To receive all of my information reply with the word RobC to this message. Watch 4 more, up to 4/mo, consent not req. for purch. Reply HELP for help/ STOP to cancel.*
3. Consumer replies with the keyword to your V-Card
4. Consumer receives the information back to their phone and the database is valid for remarketing purposes in the future.

*Virtual Business Card [Apps or Mobile Websites] Example*

