

Contact Center Compliance
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Habits of Success: Greater Profitability Through Compliance

A good compliance strategy will both save you money and make you business more profitable

Overview

Direct marketing can be expensive, from communications platforms and call center workspace costs to licensing fees and taxes to paying employees to purchasing leads, among other expenses. With all of these costs, investing money in strategies for Telephone Consumer Protection Act (TCPA) compliance may seem like a luxury expense. But a good compliance strategy can more than pay for itself by both saving you money and actually potentially making your business more profitable.

Some marketers may mistakenly believe that merely scrubbing against the Do Not Call (DNC) list is a sufficient compliance strategy. The reality is that a truly successful compliance solution requires regular reviews of procedures and practices.

This guide will explain how a good plan for TCPA compliance can both protect you from future costs and make your customer contact strategy more effective, increasing your revenue. It includes a illustrative case studies, fun facts, and best practices that could be a useful model for the kinds of compliance strategies you should build for your business.

A Look Ahead

Does the prospect of a costly TCPA lawsuit have you worried? Fear not, we have solutions! Skip to the last page for best practices.

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Reducing Risk, Saving Money

Warren Buffet is quoted as saying, "Someone's sitting in the shade today because someone planted a tree a long time ago." While this may not be strictly true from an arboricultural perspective, it is a useful metaphor with regards to TCPA compliance. A small investment now can grow into a significant form of coverage and protection for anything that may arise in the future.

A TCPA lawsuit can be extremely costly, in more ways than one (See: Cost of a TCPA Lawsuit). The TCPA is a strict liability statute, meaning a violation is not contingent upon fault or criminal intent. Indeed, even unintentional or accidental violations of the TCPA can result in damages up to $500 per call. Intentional violations increase that to up to $1,500 per violation. The TCPA also has uncapped statutory damages, so those $500-per-violation penalties can add up to damages potentially in the tens of millions of dollars.

Even the threat of a lawsuit, in the form of a complaint or a demand letter, can cost you and your business. Nothing can provide you complete immunity from these threats but a rock-solid set of compliance procedures can reduce your risk of lawsuits and put you into a better position to win anytime you do find yourself having to defend your business in court. A solid compliance plan, documentation demonstrating that compliance, and a good lawyer should protect you from most of the costliest TCPA risks.

Did You Know?

An alarming trend in TCPA litigation is the targeting of corporate officers as individually liable defendants for lawsuits stemming from their companies' alleged violations.

TCPA lawsuits can come in the form of individual lawsuits, which often cost tens-of-thousands of dollars or more, and class actions, whose damages can run in the hundreds-of-millions at the highest end. And the defendants of TCPA lawsuits are often marked as future targets for predatory litigators, professional plaintiffs, and other operators of the lawsuit mill.

In addition to straightforwardly saving you money, the reduced threat of lawsuits allows you to focus more on actually running your business. Likely, compliance is not your business and neither is defending yourself from litigation. Let the professionals help you with these subjects so you can focus more of your time and energy on what you do best.

Did You Know?

According to a U.S. Chamber Institute of Legal Reform study, 60% of TCPA lawsuits over a 17-month period were brought by just 44 law firms or lawyers. These are the people who keep the lawsuit mill churning. Do not become the grist.

Case Study

In a recent Contact Center Compliance webinar, one of our esteemed guest speakers told a story about a client of his who worked in an insurance vertical. The client had a contract with a lead generator that ostensibly seemed like it protected him from vicarious liability. However, there was a provision in the contract involving a clause that contained a redirect link to a list of all of the companies to whom the consumer was giving consent to contact them for marketing purposes. The list contained hundreds of companies and, unfortunately, did not contain our guest speaker's client's company, leaving him potentially liable. The devil is in the details.

Greater Efficiency & Profitability Through Compliance

Compliant Leads

In addition to protecting you from the costly consequences of TCPA lawsuits, having a good compliance management system and corporate review policy can also make your business more profitable.

A key part of most direct marketing businesses is procuring leads to call. And an absolutely essential part of any TCPA compliance strategy is making sure your leads and calling lists are clean and safe—by scrubbing them against the state and federal DNC lists, by removing litigators and serial plaintiffs, by identifying reassigned wireless numbers, and by squaring them with your own internal DNC lists. These practices, of course, can save you a bundle by preventing your representatives from committing any violations or contacting the sort of people who are prone to litigation. They can also help you avoid any potential issues with vicarious liability. But they can also save you time and resources that would be wasted in calling people who are not interested in purchasing your products and services.

This general principle can be extended to the decisions you make about where you purchase your leads. Perhaps you are able to purchase some questionably-sourced leads from someone who promises you a good price for a large batch of leads. But the leads seller doesn't have any sort of TCPA compliance procedures that you can discern and their leads are likely to be both risky and not particularly useful.

Alternatively, you can purchase leads at a higher-per-lead price from a vendor with a TCPA compliance strategy and those leads will be more likely to be worth the cost, both in terms of protecting you from risks and providing you consumers to contact who are more likely to be receptive to direct marketing calls. Compliant leads are more effective leads.

Definition

Vicarious liability is defined as an attachment of responsibility to a party for harm or damages caused by another party in a lawsuit or civil action.

Opt-Outs

Another way that compliance strategies can improve your business's efficiency and profitability relates to opt-out procedures.

From a risk management perspective, having a good set of policies and procedures for honoring opt-outs protects you from committing violations by contacting people who have asked not to be contacted. From the perspective of maximizing your calling efficiency, it prevents you from wasting time with people who have explicitly told you that they do not want to purchase anything from you or, in some situations, do not want to be your customer anymore. And while there is often an understandable competitive impulse among direct marketers to want to try to win back these lapsed customers, it is generally not a profitable strategy to spend time and resources on consumers who have told you that they don't want to hear from you.

Fun Fact

The TCPA statute itself does not offer explicit guidance on revocation of consent, but it is best practice to recognize and honor all consent revocation requests immediately. According to the FCC, consumers can revoke consent, "at any time and in any reasonable manner."

Case Study

In 2017, a plaintiff sued a direct marketer alleging that they did not heed her revocation of consent to receive marketing text messages. The court ruled in favor of the marketer, finding that they had offered repeated, explicit instructions on opt-out procedures (using the keyword "STOP") which the plaintiff ignored by sending more ambiguously worded opt-out messages, such as, "I would appreciate if we discontinue any further texts." This marketer was saved by their well designed, consistently implemented, and carefully documented opt-out procedures.

Best Practices

Implement a TCPA Compliance Solution
Protect your company from vexatious litigators, FTC crackdowns, and DOJ warriors. Scrub national and state-level DNC lists. Remove bad actors from your data. Identify reassigned wireless numbers.

Get a Compliance Risk Assessment
Even the healthiest businesses may not be aware of the vast, arcane world of TCPA compliance. Consult legal counsel or a compliance expert to assess your business and personal risk.

Train Your Employees
The law requires you to both provide training and provide proof of training for all emlpoyees who would make or take phone calls. In addition to evidence of training, you must also have a written policy for handling your internal Do Not Call list, and every employee must know and understand your policy. Ask a compliance professional to help you implement a policy and a training program.

Have a Defense Strategy
Have a plan to defend your business from litigation and potential accusations of running afoul of regulators.

Document Consent for SMS
The most important procedure for maintaining TCPA compliance is obtaining proper consent and one of the most important methods for defending yourself against TCPA litigation is being able to document that consent. Additionally, it is recommended to follow the Cellular Telecommunications Industry Association's (CTIA) wireless standards.