

TCPA Best Practices & Risk Reduction

The Five Stages of Grief

Five Stages of Grief

- Denial
- Anger
- Bargaining
- Depression
- Acceptance

Disclaimer

- I am not a lawyer and I am not offering legal advice.
- My sense of humor is an acquired taste. Some jokes may fall flat.
- This presentation reflects my interpretation and not the opinions of AAPOR, PAPOR, MRA, or CASRO.
- Most TCPA presentations end in depression, but please do not despair!

What is the TCPA - Essentials

- TCPA is an acronym for the Telephone Consumer Protection Act of 1991
 - For specifics go to FCC.GOV
- Key provisions “Prohibits any call made using automated telephone equipment ... to a cellular telephone”.
 - FCC has a broad interpretation of automated telephone equipment
 - Note that this is not the same as “manual dialing”.
 - For the purpose of TCPA text messages & faxes are considered calls.
 - The actual definition of ATDS is a hotly debated topic that is subject to the interpretation of a judge based on the present and potential features equipment and possibly the amount of human intervention involved.
- Most pieces of TCPA have carve outs for survey research. ATDS dialing of cellular phones does not.

Why this is important

- The law is vague
- The fines are huge
- Legal costs are high
- Lawyers like to threaten to sue and settle
- Vicarious Liability – “the responsibility of the superior for the acts of their subordinate”

What can you do?

- Don't lose hope.
- Understand the law and how it is changing
 - There are efforts underway to change or clarify the law through congress, the courts, and the FCC. Expect more information next Spring.
- Take steps to lower your risk.
 - Under the most liberal current interpretation any business can be sued for a violation, but there are sensible steps you can take.

Risk Reduction Strategy

Visit www.BobsRotaryPhones.com

Mention PAPOR and get a 10% discount.

Risk Reduction Tips 1 of 3

- If you can get permission from your membership get it. I recognize that this is impossible in RDD sample, hard with other sample sources, but if you are a large membership organization the permission should be part of your registration or renewal (but not required).
- If you have a predictive dialing system, be sure that you regularly scrub your landline sample to ensure that there are no cell phones mixed in. Cell Phone sample can be identified in two ways:
 - There is a list of known cell phone prefixes at the 1000 block level (XXX) YYY-X###. These are phone numbers only released to cell phones initially.
 - Neustar maintains a daily update of cell phone numbers that have been ported from a landline to a cell. This list is available on an annual subscription basis.

Risk Reduction Tips 2 of 3

- Make sure you have a non-predictive dialing system, understanding that an argument could be made that all phone systems are predictive dialers, you want to move as far down on the risk scale as possible.
- Educate all your employees on how you adhere to the TCPA legislation.
- Contact all your survey partners to understand their compliance with the TCPA legislation.
 - Ask them if they have a predictive dialing system in house.
 - If so, ask how they segment the cell sample into a separate system and what type is their non-predictive system.
 - Be careful of answers like "we are manually dialing all numbers".
 - Does their system log all the calls made so it can be proved which system a call was made from.
 - AAPOR TCPA Task Force is working on a generic questionnaire for this purpose.
 - International partners dialing into the US need to follow this law as well.
 - ** Not TCPA, but also check in on if they record calls and how they obtain the appropriate consent. **

Risk Reduction Tips 3 of 3

- Talk with your lawyers before the storm comes. Get advice from them about what else they would recommend if you do receive a notice.
 - “We are well aware of the law, we can easily prove we are in compliance, and we are well represented.”
- Keep an eye out on AAPORnet for announcements from the AAPOR TCPA Task Force. Read them and ask questions.
- Keep this in mind for internal processes too. If you have a lot of employees and use texts to keep them up to date, take a look at those processes.

Bob's Risk Continuum

Risk Free 1	Moderately Safe 2	Questionable 3	Probably violation under current law, but follows the spirit of the law 4	Clearly a violation 5
<p>-Rotary Phone</p> <p>-Single line phone with redial functionality (probably)</p>	<p>- Modern phone system (e.g. Cisco, Shoretel, Avaya) without any predictive modules (unfortunately for these systems there are many 3rd party predictive dialers that can dial 'through' these systems which institutes a risk.</p> <p>- Calling from any phone system with permission (as long as you immediately stop if permission is revoked)</p> <p>- Dialing landline sample using a predictive dialer (as long as you are sure it is landline and hasn't been ported to cell)</p>	<p>- Predictive dialing system stripped of its predictive dialing capabilities</p> <p>-Modem dialing</p> <p>- Click to call</p>	<p>- Manual dial using predictive dialing system (Human Intervention)</p> <p>- Predictive dialing a cell phone you have permission to dial with ATDS more than once which has been reassigned to someone else</p>	<p>- Predictive / auto dialing using predictive dialing system (No Human Intervention)</p>
<p>-Texting from a rotary phone</p> <p>-Carrier pigeon</p>	<p>- Texting with permission</p>	<p>- Phone to Phone texting without permission</p>		<p>- Bulk texting without express permission</p>

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