



TCPA: Not all leads are created equal

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This year, more than 5,000 lawsuits alleging violations of the Telephone Consumer Protection Act (TCPA) have been filed. From 2015 to 2016, the number of TCPA suits increased by 38 percent, and this year will likely see similar growth. Many of these suits are destined for class action status.

The TCPA, in its present state, is almost unworkable for most modern businesses, most of which now drive business through technology and automation. If your company is engaging in any form of phone sales based on leads created through the internet or smart phone applications, then it is particularly at risk.

Every call or text presents a risk, and every call to a mobile number increases that risk as there is no room for error and Congress granted special protections to mobile numbers. This holds true whether a consumer is being cold called or has expressed a willingness to be contacted. It even holds true if a company already has a relationship with the consumer or is merely responding to a consumer inquiry or request.

What about leads? Some are created through well-documented channels. Some are not. Some are created in-house, and some are purchased from lead generators. They come in written and digital form, and many come through digital channels. Are your leads “safe” to call? How do you know?

It should be a no-brainer that a consumer completing a lead form or application desires to be called. They might even click on a digital acknowledgment that they consent to be called. In this scenario, TCPA compliance and the avoidance of lawsuits should be a piece of cake. Not so fast!

There are many trap doors that catch countless companies—nearly all of which thought they were engaging in “good faith compliance.” Here are a few lessons, learned the hard way:

- There is no such thing as “good faith compliance.” This is not a defense. The TCPA is a strict liability statute, and the language of a consumer’s consent is important. If it is even slightly incorrect, there will be problems. The same goes for how and when a consumer gets called. It is either done correctly, or not. There is no middle ground.
- Leads require a high level of due diligence. Legal and compliance professionals need to know what questions to ask, and of whom.
- Companies need to know what a consumer read and signed in expressing consent to be called and have the ability to document that consent. Does your lead aggregator provide that documentation?
- Companies should put their lead vendors to the test. Can the vendor provide meaningful assistance in the event of a consumer complaint or lawsuit?
- Technology must also be closely scrutinized and tested. Compliance depends on ensuring that CRM and lead management systems, as well as phone hardware and software, are operating in accordance with the most recent legal guidelines.
- Employee education, awareness and training are the primary elements of risk mitigation and defense. Are your systems up to par?

Every type of business is witnessing a huge increase in lawsuits and liability, nearly all of which is avoidable with proper thought and planning in every area consumer contact might be initiated, whether by phone or text, including sales, operations, servicing and account management. Emerging technology and automation continue to exacerbate these risks. There is simply no substitute for planning and vigilance.

