

Vine Notes

Published in the North Bay Business Journal, March 2015 Edition

Do You Call Your Customers and Sell Them Wine?

Telephone Calls and TCPA/FCC Compliance

As always, I feel we all win when we share the lessons learned from others in our business. I've recently had a flood of questions on our solutions that solve the FCC/TCPA compliance of making outbound phone calls, and this information should be of interest to any company making outbound calls, as well as those who use 3rd parties like my company to do so. I'm not a lawyer, but speaking from my own experience what I found most surprising is that the update in October of 2013 says that Existing Business

Relationships (EBR's) really mean nothing, and most vendors haven't caught up with the specifics of these new laws even though the TCPA laws have been around since 1991. Just because you've done business with someone in the past does not exempt you from these new laws, nor does it mean you can call that person and not be in potential violation.



Implementing systems that are TCPA compliant is becoming more and more important as each day passes, especially since the courts are being flooded with new TCPA lawsuits every single day – 1,714 TCPA lawsuits from January 1 through August 31 of 2013. That is over a 31% increase from the same period last year with CA leading the pack. Ignorance of the law is not a defense, and each violation (each and every call) could cost you a \$1,500 fine, so the settlements in these cases have been in the millions of dollars.

SHIPPING WINE TO UTAH MAY BE SAFER THAN MAKING CALLS

It is MUCH safer (and cheaper) to ship a case of wine to Utah and get caught than it is to violate the new TCPA law even one time. The last time I checked, there weren't any wineries being sued for shipping wine in the USA. Sure the compliance guy from Louisiana might call you and demand his tax check for \$0.37 cents for shipping wine into his state (yes, it happened to me), but the companies that are being hit with new TCPA lawsuits had no idea just how real and how serious they are, and include **Diageo** who is defending a massive, multi-million dollar TCPA lawsuit right now. Some of these lawsuits are even against schools, so nothing is sacred:

PLAINTIFFS: HOWARD SCHAUM
DEFENDANTS: PLEASANTVILLE SCHOOL DISTRICT; DOES
COURT NAME: USDC New Jersey, New Jersey
CASE NUMBER: 1:14cv04276
FILING DATE: 7/8/2014
SUMMARY: Telephone Consumer Protection Act violation. Defendant allegedly made repeated calls to plaintiff's cell phone using an automatic dialing system.

Here's a link to the massive list of the recent lawsuits filed in just part of 2014. The TCPA is a Federal Law and not state specific although every state has different laws about who and when you (or your 3rd party service provider) can and cannot make calls:

<http://www.allaboutadvertisinglaw.com/wp-content/uploads/sites/82/2014/09/TCPA-Update-9.23.2014.pdf>

ARE MY TELEPHONE SYSTEM AND VENDORS COMPLIANT?

Any telephone system or platform used to initiate a call (Avaya, Shoretel, Nortel, Five9, Salesforce, etc) should implement real-time compliance checks on every number AND take appropriate action including logging the result of the data check BEFORE placing each call, or it is not effective and you are not protected. These systems should be certified by a FCC/TCPA knowledgeable law firm AND the vendor of the tele-communications equipment used to make calls that they comply with the new laws. There are features within some of these systems that automatically make them non-compliant, even if they "appear" compliant on the surface. These days they only need a "capability" to do certain things, and this makes them non-compliant by default and you are therefore at risk. Someone who thinks they know what they are talking about and who tells you that your system or their system is compliant may not know the specifics of the law, nor have the right protections in place.



We supply compliance certification letters to our partners that are issued by a specialized FCC/TCPA law firm and our telecommunication vendor & equipment suppliers. You should ask for those from your suppliers. This work and the TCPA/DNC data subscription services for their upkeep is expensive, time-consuming and engineering intensive, but it ensures compliance and keeps us up to date.

TPCA COMPLIANCE – WHERE DO I START?



You have to start somewhere and there are some really great resources available, both free and paid. A good place to begin would be dnc.com. They have several whitepapers on the topic, and also host periodic webinars that help you stay in compliance. They also have a great service called “Litigator Scrub” which actually pinpoints individuals who make a living trying to trip up companies and identifies them before you get into trouble.

Getting prior express written consent from your customers to make calls to them is also an important aspect of compliance. Think of it like asking for a customer’s birthday when shipping alcohol.

Here are a few more resources outlining the new requirements of the TCPA:

<http://www.kleinmoynihan.com/publication/new-tcpa-rules-effective-october-16-2013/>

http://telemarketinglawyer.com/Telemarketing_Law.html

<http://newfccrules.com/>

CALIFORNIA – THE LAND OF EVEN MORE LAWS

As always, California laws make the situation even worse – did you know it is illegal to record or even listen in on just one side of a conversation in CA without both parties consenting to the recording and/or listening? Are your vendors recording calls? Are you or they listening in on all calls? Do the monitoring/recording systems observe and comply with the consent laws that also vary in each and every state by both day and by time? You might want to check.



We have learned from some of our partners that we may be the only company in the wine business taking inbound and making outbound telephone calls that is in compliance with these new laws. It has taken us years and much investment to get there, but knowing the stakes are much higher, we take this as seriously as you take your state by state compliance for shipping alcohol.

Using systems that log each inbound/outbound call and the result of the data DNC/phone type lookup in a real-time compliance system right before the call is placed and also log the specific action taken before the call is placed is the only way to not worry about this wonderful set of new federal TCPA laws we now have to deal with. Lastly, don’t take your vendor’s word that they are compliant. Ask for certifications from them and their vendors. This could save you a lot of headaches in the future.