



Compliance Considerations for the Automotive Industry

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Introduction

Texting consumers is a very effective means to drive engagement and, ultimately, sales. Text messaging has outpaced email when looking at conversion and click-thru rates. In fact, 95% of texts are read in ninety seconds or less after being sent. Texting is unquestionably a great tool to engage consumers, but it is not without legal and regulatory risks. Dealerships must be mindful of the FCC's Telephone Consumer Protection Act (TCPA) – a regulation that has already put thousands of companies in the compliance crosshairs.

Why Compliance Matters

Car dealerships can put their business at legal and financial risk each time they act on a lead because the TCPA allows consumers and law firms to bring lawsuits over even minor compliance lapses. Over the past decade, the number of TCPA lawsuits has increase tenfold. With penalties of up to \$1,500 per text/call in violation, and the cost of an average TCPA settlement over \$6 million dollars, the potential threat the TCPA poses to a firm's bottom line and reputation are real.

The automotive industry is certainly not immune to TCPA lawsuits. For example, if a dealership sends a text to a prospect without consent three times, that's \$4,500. Consider how many texts a dealership sends when a sale is coming up and you'll realize just how quickly the numbers stack up.

This resource is not intended to be a scare tactic. The TCPA has created an entire industry of professional plaintiffs and opportunistic law firms who actively seek to capitalize on allegations of TCPA violations. TCPA lawsuits are rampant and consumers are more aware now than ever of their rights. A quick Google search of "*car dealership TCPA*" helps to illustrate the fact that this industry, like most, is not unaffected. However, with proper [compliance parameters](#) in place, your company can enjoy the benefits of texting/calling consumers with peace of mind.

Background

In an effort to give consumers control over the number of telemarketing calls they receive, Do Not Call (DNC) lists were created by lawmakers at the Federal and [State level](#). Consumers may register, or request to have their residential and/or wireless telephone number(s) placed on the DNC lists, with very little effort and at no cost.

Placing telemarketing texts/calls to numbers registered on the National DNC list are prohibited subject to the exceptions outlined below. Dealerships that make marketing calls are required to access and suppress against numbers on the National DNC list that is no older than 31 days. However, there are several types of calls that may be exempt from this requirement such as:

- Calls placed with an Established Business Relationship (EBR) exemption which
 - Expire 90 days after an inquiry or lead submission
 - Expire 18 months following a purchase
- Calls placed where the consumer has given Express Written Consent to a dealership
- Calls made for informational, transactional, or other non-commercial purposes

Additionally, the federal rules require sellers to maintain an internal list of telephone numbers the sellers may not contact. After an internal or company-specific DNC request has been made (“stop calling me”), the dealership must honor the request as soon as possible - but in no case later than 30 days after the request was made. This applies to calls and texts.

["Prior Express Written Consent"](#) is required for:

1. All telemarketing texts/calls made to **wireless** numbers using an automatic dialing or texting system
2. **All** artificial or pre-recorded telemarketing voice calls to wireless and residential numbers

Express Written Consent must be a clear and conspicuous disclosure that explains a consumer will receive future calls that deliver pre-recorded or autodialed telemarketing messages by, or on behalf of, a specific seller and that the consumer is not required to provide consent as a condition to purchase any good or service. The consent must unambiguously reflect that the caller has agreed to receive telemarketing calls or texts at a specific telephone number. It also must be signed (or electronically signed in accordance with the E-SIGN Act) by the party to be called.

An example of express written consent language (either next to an unchecked checkbox or agreed to over the phone) is as follows:

I/You consent to receive calls and texts from DEALERSHIP made with automated technology regarding automotive sales and updates. Consent is not required to purchase from us.

What is Considered Telemarketing?

The rules above mostly apply to marketing messages (“telemarketing”) and not informational messages. So, [what’s the difference](#) between the two? An informational call or text is meant only to aid in the transfer of information between a dealership and a consumer but not to promote or sell a product or service. Examples of true informational calls or texts are:

- Appointment reminders when the consumer has set the appointment
- Warranty information
- Recall notices

If the ultimate goal of the telephone call or text is to make a sale or promote a product, then the call must be deemed solicitous in nature and **not** informational. Examples of telemarketing calls/texts are:

- Proactively reaching out to customers who purchased a vehicle because they are in an advantageous equity position such that they can trade-in their vehicle for a new model (Data/Equity Mining)
- “We are having a July 4th Sale!”
- Contacting a dealership visitor to follow up on a test drive
- Contacting a purchased lead list from a third party (cars.com / truecar.com)
- Contacting a referral

Scenarios (Calling / Texting)¹

The scenarios below apply equally to calls and text messages. Note, if the consumer has asked to be placed on your internal do not call list this must be honored, and the consumer should generally not be contacted.

If an inbound lead initiated a chat on a website and provided contact info, or simply filled out a form (“contact us”), can you contact them?

If the prospect provided Express Written Consent (see above), then yes.

If not, only calls/texts for informational purposes may be made.

Calls made to numbers on the do-not-call list from a desktop phone or texts made from a cellphone would be permissible for 90 days if the person is not on a do-not-call list.

If you bought a list, or received referrals for individuals, can you contact them?

Short answer – no. Without consent, calls and texts made with an automated system to a cold or purchased lead are not allowed.

Calls made from a desktop phone or texts made from a cellphone would be permissible if the referred party is not on a do-not-call list.

If someone gave authorization to text or call 5 years ago, can you still contact them?

If the prospect provided Express Written Consent (see above), then yes.

If not, only calls/texts for informational purposes may be made.

Calls made from a desktop phone or texts made from a cellphone would be permissible if the person is not on a do-not-call list.

If someone comes to your dealership for a test drive but doesn’t buy anything, can you contact them?

If the prospect provided Express Written Consent (see above), then yes.

If not, only calls/texts for informational purposes may be made.

Calls made from a desktop phone or texts made from a cellphone would be permissible for 90 days as long as the customer isn’t on the company do-not-call list.

¹ Please see the Email section below about information on this communication channel.

If someone buys a car, can you contact them for customer service or surveys?

Yes, as long as the call/text does not also include a sales component.

Can you contact a consumer to confirm an appointment for a test drive or servicing a vehicle?

Yes, as long as the call/text does not also include a sales component.

Can I contact a past purchaser to inform them they can get a newer car with a smaller payment?

If the prospect provided Express Written Consent (see above), then yes.

If not, calls made from a desktop phone or texts made from a cellphone would be permissible for 18 months from the original purchase as long as the consumer is not on the company do-not-call list.

Emails

Despite its name the CAN-SPAM Act doesn't just apply to bulk email. It covers all commercial messages, which the law defines as "any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service," including emails that promote content on commercial websites. The law makes no exception for business-to-business email. That means all marketing emails – for example, a message to former customers announcing a new car line – must comply with the law.

Each separate email in violation of the CAN-SPAM Act is subject to penalties of up to \$43,280, so non-compliance can be costly. Luckily following the law isn't complicated. Here's a rundown of CAN-SPAM's main requirements:

1. **Don't use false or misleading header information.** Your "From," "To," "Reply-To," and routing information – including the originating domain name and email address – must be accurate and identify the person or business who initiated the message.
2. **Don't use deceptive subject lines.** The subject line must accurately reflect the content of the message.
3. **Identify the message as an ad.** The law gives you a lot of leeway in how to do this, but you must disclose clearly and conspicuously that your message is an advertisement.
4. **Tell recipients where you're located.** Your message must include your actual physical postal address. This can be your current street address, a post office box you've registered with the U.S. Postal Service, or a private mailbox you've registered with a commercial mail receiving agency established under Postal Service regulations.
5. **Tell recipients how to opt out of receiving future email from you.** Your message must include a clear and conspicuous explanation of how the recipient can opt out of getting email from you in the future. Craft the notice in a way that's easy for an ordinary person to recognize, read, and understand. Creative use of type size, color, and location can improve clarity. Give a return email address, link to a preference management page, or another easy Internet-based way to allow people to communicate their choice to you. You may create a menu to allow a recipient to opt out of certain types of messages, but you must include the option to stop all commercial messages from you. Make sure your spam filter doesn't block these opt-out requests.
6. **Honor opt-out requests promptly.** Any opt-out mechanism you offer must be able to process opt-out requests for at least 30 days after you send your message. You must honor a recipient's opt-out request within 10 business days. You can't charge a fee, require the recipient to give you any personally identifying information beyond an email address, or make the recipient take any step other than sending a reply email or visiting a single page on an Internet website as a condition for honoring an opt-out request. Once people have told you they don't want to receive more messages from you, you can't sell or transfer their email addresses, even in the form of a mailing list.

Please note, that commercial emails in the U.S. may be sent without prior consent or permission from the consumer so long as they have not previously opted out of receiving messages from you.

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