

2013



**GUIDE TO
TEXT MESSAGING
REGULATIONS
&
BEST PRACTICES**





Myth

Text message (SMS/MMS) marketing is complicated with too many unnecessary rules and regulations. Many legal cases are deterring marketers and consumers.



Truth

Text message (SMS/MMS) marketing is highly regulated just as the telephone industry is in order to protect consumers and marketers alike. Regulations are to deter spamming via text messaging.

Introduction

Supported by unprecedented mobile phone adoption and increased reliance by consumers on these devices, 2012 brought mobile marketing to the forefront of the marketing discussion. While mobile marketing encompasses many types of media and tools, from applications to mobile websites, this piece will focus on the highly responsive text message marketing

Text messages (plain text SMS and multimedia rich MMS) are a key piece in the marketing tool kit used by retailers, media companies, entertainment properties, consumer packaged goods brands and more. With a 95% open rate, and accessible to 98% of all mobile consumers, text message marketing is a quick and effective way to communicate with a mobile customer and drive a desired response (i.e. notify a consumer of an event, stimulate a sale and offers, promote a product, etc.) using engaging content, including incentives and offers and featuring branded multimedia including images and video.

Text message marketing is highly regulated. In order to keep this medium free from unsolicited messages, which historically have hurt the effectiveness of other marketing channels (i.e. direct mail, email marketing), responsible governing bodies carefully monitor all text message marketers and their programs. While text marketing rules and regulatory actions may appear intimidating, many of these rules and best practices are steeped in common sense. In fact, after reading this guide, you will see how painless and easy text marketing can be.

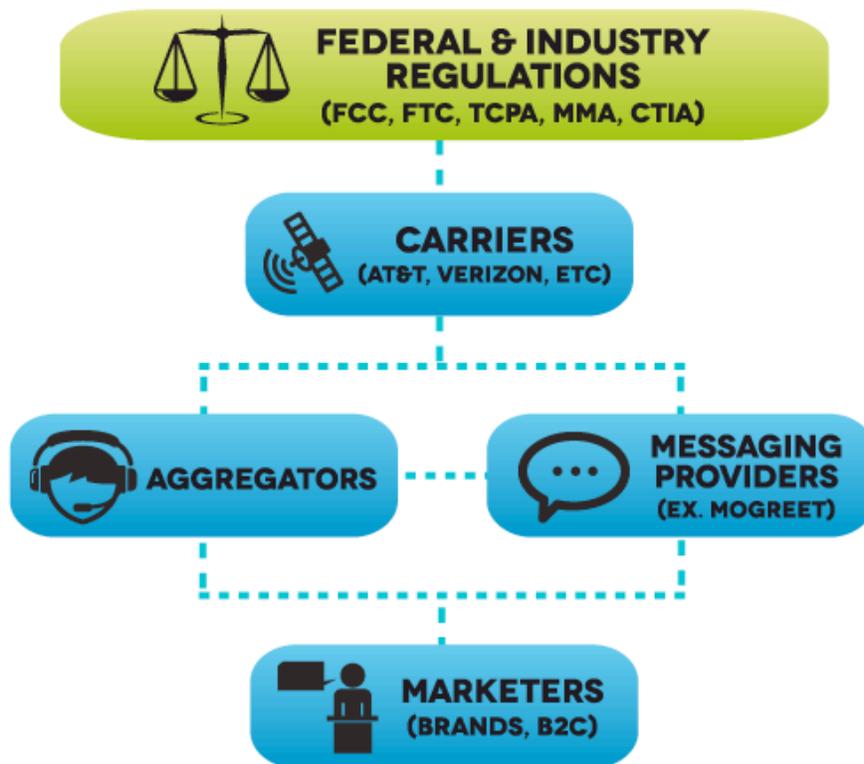
This guide provides an overview of the steps needed to build a strong, successful text marketing program including how to:

- Build a compliant database
- Document & save program opt-ins and messaging permissions
- Clearly communicate what people are signing up for (content, frequency, etc.) up front to ensure customer satisfaction

- Add your text marketing privacy policy to your website for easy access by program participants
- Utilize multimedia for better customer engagement and action
- Work with your legal team to ensure your program offerings are legally compliant
- Only send message to legally obtained opted-in numbers
- Follow through on your promise and send what you said you would send
- Follow laws for marketing based around alcohol, tobacco, & marketing directed towards children under 13

This guide is based on rules and regulations in place as of February 2013. Readers are encouraged to refer to documents published online by the CTIA, MMA, carriers, FCC and FTC for updates.

Text (SMS/MMS) Marketing Industry Landscape



Background

To be very clear, mobile is different than the Internet, and understanding the difference will keep you out of trouble and in the good graces of your customers. First, let's explore the parties involved in the text marketing ecosystem:

[Federal Communications Commission \(FCC\)](#) - The Federal Communications Commission regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states, D.C. and U.S. territories. They're here to protect the integrity of all mobile communications, including text messaging.

[Federal Trade Commission \(FTC\)](#) - The Federal Trade Commission is the nation's consumer protection agency. It collects complaints about companies, business practices, identity theft, and episodes of violence in the media. Its main function is to ensure text marketers adhere to proper business rules and conduct.

[Mobile Marketing Association](#) – The Mobile Marketing Association is the leading global non-profit trade association established to foster growth of all areas of mobile marketing. The MMA's stated goals are to clear obstacles to market development, establish mobile media guidelines and best practices for sustainable growth, as well as evangelize the use of mobile media.

[CTIA - The Wireless Association](#) – The industry trade group that represents a wide variety of interests on behalf of the international wireless telecommunications industry. Its members include all aspects of the mobile industry including wireless carriers and their suppliers, as well as providers and manufacturers of wireless data services and products. You can access its rulebook [here](#).

Mobile Aggregators – Mobile aggregators maintain direct connections to the wireless carriers. They deliver their customers' text messages, which they aggregate through their gateways. An aggregator enables a brand's message to be delivered by you to go to one mobile service provider who then connects and sends to all of the wireless carriers.

Mobile Carriers – AT&T, Verizon, Sprint, among others are the entities that own the pipes and wireless spectrum that voice calls, text messages, and data must travel through in order to reach individual mobile phones.

Text Messaging Platform Providers – These technology platform providers, such as [Mogreet](#), enable brands and businesses of all types to send text (SMS and/or MMS) messages to their customers. Top providers will provide strong guidance on the program best practices.

Text Message Marketers – Brands, entertainment properties, media outlets, B2C and B2B companies of all sizes who design and implement text marketing campaigns utilizing a wide range of creative programming and multimedia assets.

Why is text message (SMS/MMS) marketing regulated?

Text messages are distributed over the heavily regulated cellular phone network, so it falls under many of the rules and regulations that govern the wireless industry. This is why text message marketing is more heavily regulated than email marketing. Text messages (SMS and MMS) are considered to be the same type of transaction as voice calls and are encompassed by the [TCPA](#) ('Telephone Consumer Protection Act', the nation's primary anti-telemarketing law) as well as other federal regulations.

However, text messaging regulations don't end with the TCPA. In an effort to ensure that text marketing does not follow the footsteps of the spam-ridden email marketing channel, 5 or 6 digit phone numbers, called shortcodes (such as 585858 below) were created. These shortcodes enable brands to send commercial text messaging to consumers and are regulated by strict guidelines from all of the wireless carriers and enforced by their trade group, the CTIA.

It is important to note that many text message programs utilize longcodes or 10 digit phone numbers (such as 213-555-5555). However, longcodes are not universally supported by cellular networks and are not currently regulated by wireless networks, leaving this medium more susceptible to spam.

On the next page are the best practices for creating and managing a text message marketing program. In each section, we will discuss best practices and the relevant governing rules and laws.



The Do's and Don'ts of Text Message (SMS/MMS) Marketing

Below is a simple guide of Dos and Don'ts to help get you started with your text message (SMS/MMS) marketing program. This guide incorporates what we've discussed regarding text marketing regulations. It also includes how to begin a campaign by building your subscriber database and how to properly advertise your program to drive mobile subscribers (aka opt-ins).

Successful text marketing programs begin with building a loyal subscriber list in the most legal and ethical manner. The acquisition process is easy (promote and engage customers) but there are a few guidelines and rules you must follow.

1. Proper Acquisition of Mobile Phone Numbers

The best part of text message (SMS/MMS) marketing, besides the high ROI, is that it is **permission based**. The recipient *must* be the one to take the action to enter into your text message program before you ever send them a text. This can be done via web opt-in (when someone chooses to join your program) or text to shortcode.

No old, rented, or purchased lists!

This means you cannot use an existing list of phone numbers, even if provided to you by your customer, unless they specifically gave explicit permission to join the text message program. This means lists gathered for any reason other than to specifically join your text marketing program, may not be texted at all. Some companies have already been penalized for this violation and have incurred significant legal damages from not following the guidelines.

Be clear!

You must be clear, concise, and upfront about the text marketing program. The fastest way to see your database dwindle and to put yourself at risk for legal action, is to pull a bait and switch with your audience, and have them opt-in to receive one type of messages and then you start sending messages unrelated to what they opted-in for.

Consider clearly defining your text marketing program messaging strategies in the body of your first text message to make sure the customer clearly understands what they will receive and you will have a fan for life.

Disclose!

Any advertising (print, TV, online, and radio) or signup forms that solicits mobile numbers must include 'clear and conspicuous' disclosure of:

- The program's name, description, and frequency of text messaging (ex: 1 msg per week)
- URL to full terms and conditions containing privacy policy and stop/help information
- How a user can opt-out of a program, otherwise called STOP instructions (the word stop must be in bold, for recurring campaigns only, if you are only sending one message it's not required)
- HELP instructions (in bold text)
- Additional carrier costs disclosures
 - For "standard rate" campaigns, campaigns in which you are not charging a premium fee (i.e. \$3.99/mo) to join, the following copy must be included in every message, in one of these two versions
 - Message and data rates may apply
 - Msg&data rates may apply.

It is important to note that you cannot use the word "Free" in describing standard messaging rate campaigns. The carriers prohibit the use of the word, in this context, because the message send or receipt may cost the end user if they do not have a messaging plan. See example of disclosure of messaging in Figure 1 below.

Get it in writing!

Mobile marketers must obtain explicit 'written' not verbal consent from all recipients to add them to a text message subscriber list. In this case, "written" doesn't mean "on paper," but it does mean, "documented and saved".

Note: Verbal confirmation to join a mobile database is not acceptable. Consider promoting the program and how to join with in-store and register signage, allowing the customer to join at the time they are most engaged.

The following is a list of acceptable ways for a consumer to join your mobile database.

- The customer joins your text message database by texting a keyword from their mobile phone. This message is considered a "M.O.", or mobile-originated message. Like most text message providers, Mogreet records these types of opt-ins under the respective client as proof of "written" consent.
- The customer can join a subscriber list by filling out an online form. This form must explicitly explain what the person will receive when providing his/her mobile number. Depending on who is hosting the website where the form resides, you may be responsible for storing these mobile numbers.

- People can also join a database by filling out a paper form. This form must clearly explain what the person will receive when providing his/her mobile number, as well as include all legal copy shown in the sample ad above. You are responsible for maintaining these records.

Note: You cannot require a consumer’s consent as a condition of purchasing anything.

VANS MOBILE

PHONE NUMBER* *Required Field

ZIP CODE*

DATE OF BIRTH

month day year

GENDER MALE FEMALE

SEND ME UPDATES ON:

· SURF · SKATE · SNOW · BMX · LXVI · APPAREL
 · WOMENS · MUSIC · ART · OTW · OFFTHEWALL.TV
 · TRIPLE CROWN OF SURFING · METALLICA

I Accept the [Terms and Conditions*](#)

SUBMIT

Receive 3 messages per month from Vans. Msg&Data rates may apply. Terms and conditions will apply. May not be available for certain handsets. Check with wireless provider for details. For help, text HELP to 826766. To cancel, text STOP to 826766.

[Terms & Conditions](#) | [Privacy Policy](#) | [Contact Us](#) | Powered By Mogreet

Figure 1 - Vans.com Web Opt In Form with “Clear and Conspicuous” disclosure

2. Confirming the Subscribers’ Opt-in and Initial Messaging

Since text marketing is permission based, each text messaging platform provider must have processes in place to verify that the person signing up for mobile alerts is actually the owner of the mobile number that opted into the program. This ensures that no one is entered into a program without his/her permission. In these cases, you should use a “double opt-in” process, which is required when the opt-in comes from somewhere other than from the mobile device itself, such as a web or paper registration page.

The double opt-in requirement is satisfied by sending an initial text message to the mobile number asking the subscriber to reply Y or Yes to the received message, to verify they are in possession of the mobile phone and give permission to join the mobile database and receive text alerts from the known sender.

- If the opt-in occurred via MO (i.e. the subscriber texts in the keyword from their mobile phone), no additional validation is required and the person is opted in to your database.
- If the opt-in was not from a mobile phone but rather via web or paper, you must complete the double opt-in process.

Here is an example of a double opt-in message flow:

1. Mobile Number:
Weather forecast mobile alerts sent out **5** days/wk. Reply **HELP** for help. Reply **STOP** to cancel. **Msg&data rates may apply**. Terms/Privacy:
<http://www.mycompany.com/terms>
2. Initial Message to opting in customer: Channel 123 weather alerts. 5 msgs/week. Reply Help for help. Msg&data rates may apply. Reply Y to confirm your sign up.
3. Response (MO) from customer (double opt-in): Y
4. Welcome Message: Thanks for signing up for channel 123's weather alerts. Msgs go out each weekday at 7am. Reply HELP for help, STOP to cancel. Msg&data rates may apply

Tip: If you are sending a one-time message, a double opt-in is not required (but you cannot send another message to the subscribers for that campaign). However, if you are sending recurring messages (the most common type of mobile programs), the double opt-in requirement is mandatory and will be enforced.

3. Switching Partners & Shortcodes – How to Migrate Your Mobile Subscribers

As mentioned previously, you cannot message an existing list of mobile phone numbers who have not explicitly opted in for the text messaging program. The exception to this rule is if the list is being managed by another text messaging provider. In this case, if you can certify that all numbers on the list were properly opted in under the procedures outlined above and you follow the proper migrating procedure outlined below, you can continue to use your existing text messaging database.

In order to move an existing database from one provider to another provider along with a new shortcode, you must do the following:

- Utilizing your previous provider's shortcode, send one final message to your existing database, alerting subscribers that future messages will come from the new provider's shortcode
- Give subscribers 48 hours to opt out of the database if they wish to do so. This timeframe allows subscribers optimal time to make their decision
- After 48 hours, those who stayed in the database can be delivered to your new provider, who will import your database, and opt in your members, into the new vendor's platform.
- Once imported and opted in, send a message to the database introducing the new shortcode.

Sample Migration Messaging

Last message on old shortcode

Weekday weather alerts from channel 123 are moving to a new number, 56789. Future text alerts will come from that number. Reply HELP for help, STOP to cancel. Msg&data rates may apply.

First message on new shortcode

Welcome to 56789. Weekday weather alerts from channel 123 will now come from this number. Reply HELP for help or STOP to cancel. Msg&data rates may apply.

4. Opt-ins expire. Be Aware of The Six/Eighteen Month Rule

Opted-in text message subscriptions automatically expire after a certain period of inactivity. If you have not sent a message to your mobile database in that time frame, the campaign is considered inactive and subscribers can no longer be contacted and ported from one messaging provider to another.

- For standard rate campaigns (campaigns that do not charge a fee other than standard data and message rates), opt-ins expire after eighteen (18) months.
- For premium rate campaigns (campaigns in which the consumer is charged a fee to join), opt-ins expire after six (6) months.

5. Now That Your Database Was Built Properly, Time To Message Your Fans

After collecting an opted-in list of subscribers, you're ready to start sending text, picture and video messages to them.

Consumers that join your mobile messaging programs are your brand's most loyal fans. Who else would give you permission to text them on their most personal device? Keep them engaged with ongoing, branded experiences filled with valuable content and information based on their interests, preferences, etc.



What content can I send?

Only send what the consumer originally agreed to receive. If your mobile subscription program sign up page says they will receive exclusive content and discounts, focus on creating a program featuring mobile discounts and content. If you send differing content, like advertising or unrelated text messages, you risk alienating your database, as well as potential legal and/or regulatory violations.

This content can include extended text, pictures, slideshows, videos, audio, music files and more.



How often can I message my clients?

It's important to comply with the frequency you promised your customers. If you promise weekly messaging, you cannot send daily texts. If you go over and above the message count agreed upon by the customer during the initial consent phase, your messaging will be considered "unsolicited" because the consumer did not give you permission to send it. Sending fewer messages than anticipated is generally a more accepted practice.

Here are some additional frequency examples by industry:

- Retailers often send weekly specials
- TV shows send weekly tune-in reminders or previews
- Horoscopes, news, and weather alerts are typically sent daily, or Monday-Friday
- Breaking news, school closings, severe weather warnings are based on urgency
- Sports alerts are sent more frequently during the season than in the off-season and can depend on the sport. Alerts for leagues with more games (Baseball) tend to send more alerts than alerts for leagues with fewer games (Football).

As a marketer, it's important to set reasonable expectations about how often you are going to message your mobile audience. To ensure the best results, make sure you follow through on this brand promise.



What time of day can I send messages?

The most effective programs take into account the times of day that the mobile audience is most frequently on the phone and the time periods most appropriate and relevant within their daily routine. Always have a clear purpose and relevance to the time and date sending.

Mogreet recommends following the best practices in determining when to send your messages:

- **No one likes Mondays:** Unless your message is related to that specific date (or a reminder), Mondays have the lowest response most likely due to the overwhelming content that people receive after weekend via email, television, and mail.
- **Avoid rush hour:** Since it is text messaging, people cannot read or engage with a text message during common rush

hours, typically 6:30am – 8:30 am and 4:00pm-7:00pm local time.

- **Be respectful:** Not too early in the morning and not too late at night. Think about when users would want to accept a phone call. A text message has a similar alert method and people typically don't want to be bothered at those times.
- **Go local:** Always keep local time zones in mind. Send messaging out at the times most impactful to those in each local market. Particularly effective for TV/radio shows, retail sales, and time sensitive offers.
- **Breaking news trumps all:** The bigger the news, the more lenient you can be with messaging outside of "mobile business hours."
- **Appointment reminders:** Reminders should be sent at least 24 hours before the appointment and contain all necessary information.
- **Ongoing reminder messages:** Daily/monthly reminders on any subject are popular in this increasingly busy world. Send at the time that best fits your goals: horoscopes in the morning and high school football score alerts on Friday evening.
- **Drive midday foot traffic:** Trying to drive people into your establishment during lunch hours? Send messages at 11:30 AM local time to catch those who are making lunch plans. Include a coupon for higher redemption rates
- **Drive in-store weekend foot traffic:** Thursdays are popular dates to send text messages with strong response rates and Fridays between 2-5 PM have shown great success for driving retail traffic on Saturday mornings.
- **Support upcoming events:** Send reminders to increase RSVPs and attendance. Include specific event information to assist attendees with planning and logistics.
- **Seasonal and holiday messaging:** Send holiday messages of with valuable content up to a week before the event to allow customers time to plan (upcoming sales, in-store events etc.)



What content can't I send?

Text message marketing, like any form of marketing, requires consideration of the audience and consumers receiving the message. Here is a list of content prohibited by various rules, regulations, and laws – none of this should be surprising.

- Copyrighted or trademarked content that is not owned by you or your business (unless licensed)
- Sexually explicit material of any type

- Nudity
- Anything promoting illegal drugs / tobacco / controlled substance abuse
- Non-age verified Alcohol messages (can send messages with age verification)
- Intense profanity
- Hate/discriminatory speech
- Threats of violence
- Graphic violence
- Confidential information
- Anything involving misleading or confusing others via impersonation
- Anything promoting or involving dangerous, unlawful, or illegal activities.



Always Check with Your Legal Department or Representative

If you plan to send the following types of messages, there are additional state and federal laws you must follow.

Contests and sweepstakes are perfect for engaging consumers through text message marketing. But before you implement a program, you must be aware of individual state laws. Here are the most common types of program content that should be reviewed by legal teams.



Figure 2 - Alcohol Age Gating Example

- Contests / lotteries / sweepstakes are governed by individual state laws.
- Messages targeting children under the age of 13 must follow federal COPPA legislation. While messaging this audience is possible, it requires a combination of “age gating” and parental consent. Other laws may apply as well.
 - Age gating refers to the process in which a company confirms the person entering the program meets the minimum age required by the program
- Alcohol related text message campaigns also require age verification, and can only be promoted in places where the audience is over 21, such as bars and nightclubs. You cannot promote the use or consumption of hard alcohol.
- Tobacco promotions require age gating and you cannot directly promote its consumption

Tip! Interactive programs work very well in text marketing. Work closely with your internal legal team to ensure your sweepstakes and engagement offerings meet local, state and federal legal requirements.

What Are The Risks/Consequences If I Do Something Wrong?

The wireless carriers and CTIA audit all text messaging marketing programs on a regular basis. If your program is found to be non-compliant, you will be contacted through email by your vendor's mobile aggregator about each infraction.

If you are contacted about an infraction, work closely with your vendor to complete the steps needed to correct the issue. Typically infractions are related to improper language included in the program's promotional materials, or improper use of the word "FREE".

If the violation is considered severe, or repeated at a frequency deemed by the carriers or CTIA to be excessive, your text messaging provider may suspend your account (to protect both you and the vendor) or a carrier or aggregator may suspend your shortcode access, bringing any of your programs running on that shortcode to an immediate stop. The more serious consequences to violating the terms of your text program include:

- Your customers will opt out of your program
- Unhappy consumers lead to bad publicity, social media sharing, etc.
- You earn a reputation by your customers as a spammer or disrespectful
- You have a class action lawsuit filed against you for violating the TCPA

BUT... It's Simple To Do Things The Right Way!

Text message marketing can have amazing results for big and small companies alike. It is a medium customers like using and it is a remarkably easy tool for building long term relationships. By following a few simple rules, you can build a database that drives incredibly high ROI and longer-term customer loyalty.

Conclusion

To recap, here are the best practices for running a successful text marketing program:

- Build a compliant database
- Document & save program opt-ins and messaging permissions
- Clearly communicate what people are signing up for (content, frequency, etc.) up front to ensure customer satisfaction
- Add your text marketing privacy policy to your website for easy access by program participants
- Utilize multimedia for better customer engagement and action
- Work with your legal team to ensure your program offerings are legally compliant
- Only send message to legally obtained opted-in numbers
- Follow through on your promise and send what you said you would send
- Follow laws for marketing based around alcohol, tobacco, & marketing directed towards children under 13

To learn more about running a successful text marketing program, please refer to these additional Mogreet resources:

- [New White Paper: Achieving Tangible ROI with Multimedia Text Message Marketing](#)
- [5 Easy Ways to Build a Mobile Marketing Database](#)
- [How to Upgrade Your Existing SMS Marketing Program in 5 Easy Steps](#)
- [16 Tips for Driving Sales, Engagement and Loyalty with SMS/MMS messaging](#)
- [Are You Using Mobile Messaging in your Marketing Mix? Get Ready for the New Guidelines!](#)
- [MMA \(Mobile Marketing Association\) Best Practices](#)
- [FCC Text Guidelines](#)
- [CTIA Mobile Advocacy](#)
- [IAB Guidelines](#)