

Communications Compliance Refresher

GCADA wanted to re-issue the following article as a brief reminder on some of the communications compliance issues Dealers need to be mindful of under the TCPA, Do-Not-Call rule and CAN-SPAM Act when contacting customers.

Ensure Vendor Compliance

Dealers should work closely with their CRM or any vendor sending texts or making calls on the Dealership's behalf to ensure: 1) how are texts being sent (clarify if an autodialer is being used); 2) the frequency of texts/calls is acceptable; and 3) compliance efforts are being made by the vendor. Additionally, Dealers should ensure that any agreement with such a vendor includes indemnification language protecting the Dealer for legal action resulting from the vendor's actions, otherwise you may be solely responsible for any compliance violations.

Telephone Consumer Protection Act

[Click HERE for a chart from Mac Murray & Shuster for a chart outlining what type of consent may be required for your call or text.](#) Of course, in all cases Dealerships should check number against Do-Not-Call list and comply with the Do-Not-Call Rules.

Do Not Call

As stated above, in all cases Dealerships should be scrubbing all numbers they are contacting against the national [Do Not Call registry](#). Up to 5 area codes may be downloaded for free—beyond that a fee is required. Please check with your CRM and other providers to ensure that all numbers are scrubbed consistently every 31 days.

Exceptions to DNC

Even where a number is on the Do Not Call list, a Dealer may still be permitted to call in the following situations:

- Where a Dealer and a consumer have an established business relationship the Dealer may call for up to 18 months after the consumer's last purchase or service visit, unless the consumer asks the company not to call again.
- If a consumer makes an inquiry or submits an application to the Dealer, the Dealer can call for three months.

However, where a Consumer requests to not be called by the Dealer, the Dealer must add the Consumer to the Dealership's company-specific Do Not Call list within 30 days of the request. This list is permanent and should be maintained by the Dealership. [Click HERE for a chart from Mac Murray & Shuster outlining the Federal Do Not Call requirements.](#)

Timing of Calls/Texts

Calls or texts should not be made outside of 8:00am and 9:00pm in the time zone where the recipient is located.

Opt-in and Opt-Out

For any text campaigns, Dealers should ensure that a consumer has opted-in to receive such text messages (*note: sending a text to receive an opt-in can present risk. GCADA recommends against dealers engaging in this practice without campaign-specific legal advice*). See “Obtaining Consent” below for methods to obtain a customer’s opt-in consent. After receiving an opt-in the Dealer should send a confirmation text including: (1) Dealership name (2) customer care contact information (e.g., 10-digit telephone number, or HELP instructions); (3) how to opt-out; (4) a disclosure that the messages are recurring and the frequency of the messaging; and (5) clear and conspicuous language about any associated fees or charges and how those charges will be billed.

It’s further recommended that all texts include “text STOP to end” in messages sent. Further, Dealers should make sure their texting vendor immediately blocks unsubscribed numbers from all future text messages.

Obtaining Consent

While not all calls require prior express written consent, the best practice is to get your customers’ consent in writing prior to making any such calls or texts. The consent can appear in documents such as buyers’ orders, repair orders or any online applications or appointment pages (with an “I agree” button). Dealers should work closely with their staff and any third-party vendors to ensure that any calls and text messages made or sent by the dealer or on the dealer’s behalf comply with requirements.

To that end, GCADA suggests dealers use the following language, along with a distinct signature line:

I hereby consent to receive autodialed and/or pre-recorded telemarketing calls and/or text messages from or on behalf of (Dealer) at the number provided. I understand that consent is not a condition of purchase.

Signature _____

What about emails and CAN-SPAM?

Emails (and internet to cell phone SMS messages) are governed by the CAN-SPAM Act. Each separate email in violation of the CAN-SPAM Act is subject to penalties of up to \$46,517, so non-compliance can be costly. 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 valid physical postal address.
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 or another easy Internet-based way to allow people to communicate their choice to you.
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.

7. **Monitor what others are doing on your behalf.** The law makes clear that even if you hire another company to handle your email marketing, you can't contract away your legal responsibility to comply with the law. Both the company whose product is promoted in the message and the company that actually sends the message may be held legally responsible.

Again, this is merely a summary of compliance highlights and we encourage you to work with your vendors! If you have any questions please contact Ellen Mastrangelo or Nick Hanna at 440-746-1500 or by email at ellen@gcada.org or nhanna@gcada.org. **This notification and its contents should not be construed as legal advice.**