

# Best Practices for Complying with Text Messaging Regulations

Document Version: 1.1  
April 2018



LIVEPERSON

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## Introduction

Mobile messaging is one of the most widely used means of consumer communication ever created. The simplicity and ubiquity of mobile messaging has enabled it to flourish as a consumer-to-consumer communication channel that offers unique benefits to brands looking to engage their customers on their mobile devices.

Messaging is a two-way communication medium, meaning that both parties—the consumer and the brand—can use it to engage and communicate with each other. Some local telecommunication and privacy regulations are aimed at restricting unsolicited telemarketing phone calls and text messaging from brands to consumers.

## Overview of Telecommunication and Privacy Regulations

- If a marketer wishes to initiate communication with a consumer through messaging, it is important to recognize that industry best practices, and in a number of cases a legal mandate, may require that the marketer receive explicit prior consent to send a message to a consumer's device (also referred to as securing an opt-in).
- The marketer should provide clear and transparent notice to the consumer as to what they are consenting to receive and a simple way to opt out of receiving future messages.

Regulations are often updated to reflect changes in communication technology and use. Listed below are some more recent stipulations:

- Never send unsolicited phone calls or messages to customers as this violates the TCPA (Telephone Consumer Protection Act).
- The brand must get unambiguous prior written consent before sending telemarketing calls or text messages via automatic telephone dialing systems (ATDS).
- Established business relationships with consumers may no longer relieve brands of the requirement for prior written consent.
- Prior to purchasing a prepaid mobile number, some country laws may require the collection (from you or your organization) of your business identification information/ identification document (e.g., excerpts from the trade register, a corporation's founding documents, or other comparable documents).

## Regulations for Brands Texting Customers

### Text Mass Marketing

Regulations may prohibit brands from sending mass SMS advertising messages, using autodialers or otherwise, to consumers without their explicit prior written consent. As this is not a feature of the LiveEngage SMS functionality, this document will focus on one-to-one texting.

### One-to-One Texting

One-to-one texting is a real conversation between two people. Although the majority of regulations are not directly aimed at texts sent as one-to-one communications, for example, reminding a customer about an appointment or answering questions, it could apply in the strictest interpretations. We recommend for our customers to err on the side of caution with

# BEST PRACTICES: TEXT MESSAGING REGULATIONS

regards to getting the proper consent and knowing the content of your employee-to-customer text messages. See the below section for further information.

## Best Practices for Texting Customers

LiveEngage SMS functionality was created to help brands facilitate one-to-one text conversations. Your team can receive and respond to SMS text messages from customers. Texts are sent and received through the LiveEngage platform, while transcripts are recorded and stored. You can achieve better control and send automatic opt-out messages through creation of custom Predefined Content via the Agent Workspace.

### Sample Scenarios

Scenario	Possible Regulatory Issue(s)	Best Practice(s)
Follow up a chat lead by texting the person.	Without prior written consent, any such text (or call) could violate local regulations.	Collect prior written consent during the chat conversation using Predefined Content (e.g., “Thanks for chatting with us...may we call or text you at the number provided?”).
Replying to a text lead (initiated by a person who typed your text-enabled phone number into their phone) by texting the person.	Consent may be implied because the consumer initiated the conversation via text.  Nevertheless, your response should be timely and include opt-out instructions.	Common sense says that a person sending you a texted question probably wants to be contacted in turn.  Provided your response is timely, includes opt-out instructions, and is not telemarketing in nature, it is not likely to be an issue.
Follow up a text lead (initiated by a person who filled out an online text form) by texting the person.	The online text form should explicitly call out that the consumer is consenting to receive SMS texts and describe the nature of such texts.	Offer customers an opt-out option at the start of the conversation. Ensure that your initial response is timely.
Initiate an outbound text to a person whose mobile phone number was obtained from a marketing list or some other place.	Without prior written consent, any such text (or call) could violate local regulations. This is one of the riskiest scenarios as you don't really know how or for what purpose the mobile number was gathered.	Do not contact.

## 4 Tips to Help Ensure Compliance

### 1. Gather the appropriate written consent wherever you capture phone numbers, from forms to in-person conversations

Make it part of the process to ask for a customer's agreement to be contacted via SMS text message. This includes clearly communicating what the customer can expect to receive when providing their number. You can add this to your customer survey(s), or to your Predefined Content which can be sent to the customer during a conversation.

### 2. Add the "message; data rates may apply" disclaimer

You should add it on consumer-facing calls to action such as the webpage or ad where the customer sees the number or the invitation to text. You want to ensure customers know what to expect even if they text you a question.

### 3. Send an initial confirmation text message with opt-out instructions

Include opt-out instructions, which can be as simple as "text STOP to cancel," even if the customer texted you first. Often called a "double opt-in message," it may be smart to ask the customer for permission to text back and forth with them, even if they texted you first as well.

### 4. Honor the opt-outs; expectations

Where a customer has opted-out, it may be a good idea to make a note of this in the Agent Summary in the Agent Workspace.

## Sample use of Predefined Content

Below is an example of how prior consent can be gathered to text (for a one-to-one communication purpose) during a conversation with a consumer:

**Brand's Customer Care Professional:** Bill, what is a good phone number for one of our sales members to reach you with the leasing quote?

**Consumer:** You can reach me at 555-123- 1234.

**Brand's Customer Care Professional:** Thank you, Bill. May we call or text you back at the phone number you've just provided?

**Consumer:** Yes, of course.

**Brand's Customer Care Professional:** Thank you. We will be in touch as soon as possible.

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