



Consumer Protection for Text Messaging: Meeting Compliance Challenges

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OPT-IN GUIDANCE

Consumers have had years to perfect dodging telemarketers and email spam is usually hidden. But compared to email and phone, texting technology is relatively new and in the world of marketing and advertising, brand new. While 97% of adults have their mobile phone with them at all times, most of us still don't expect that ping or buzz in our pocket to be a text message from a business.

MASS SALES & MARKETING COMMUNICATIONS

Everyone recognizes a mass text message when they see one; a generic phone number, a random message, a suspicious looking link. Sometimes they even use your name and pertain to something of interest. But whether they're compliant or not largely hinges on two things.

1. **Autodialer technology for mass marketing:** Does the company sending that message use technology that 'dials out' automatically? Does it use "pre-stored" contact lists within the software? Are there formulas or predictive algorithms for "suggested" dialing? Does the technology use algorithms or other "software" devoted to contact collection or outbound dialing? If the answer to these is yes, the technology qualifies as an autodialer, is being used for marketing to mass lists and the audience must be opted-in.
2. **Content:** And if you are using an autodialer, is the message a direct sales or advertising message? If yes, let's hope you opted in through prior written express consent or the company sending to you is not in compliance!

Regulation and compliance for mass commercial texting are fairly straightforward. The Federal Communications Commission (FCC) – the governmental agency in charge of regulating commercial text messaging – has provided significant guidance on the Telephone Consumer Protection Act (TCPA) in the realm of autodialers and the rules of engagement for advertising messages. Similarly, major trade associations such as the [MMA](#) and [CTIA](#) have published [guidelines, standards](#) and [best practices](#) for compliance when it comes to mass texting.

ONE-TO-ONE ENGAGEMENT

The FCC has not specifically addressed the 1-to-1 commercial communication scenario for text messaging. That said, one-to-one communications for relationship management – what Hearsay Relate was built for – differ from mass sales and advertising messages and don't carry the same compliance risks.

First, one-to-one texting products, such as Hearsay Relate, do not leverage autodialer technology since they facilitate human-to-human interaction, and therefore do not require a formal opt-in procedure. While the FCC left the door open in its [2015 FCC 15-72A](#) order whether the scope of the "autodialer" definition could encapsulate 1-to-1 communication, it expressly held that smartphones were not autodialers. Recent federal cases that have reviewed this issue, such as the recent Federal Circuit decision in [ACA International](#) on March

WHAT IS OPT-IN?

Opt-in is a form of consent given by prospects and customers, acknowledging interest in a product or service and authorizing a company to contact them with further information. "Opting in" generally refers to email communication, and more recently text messages, and is used for permission to send newsletters, product sales, and other marketing material to customers and prospects **on a mass scale**.

16, 2018, have reinforced the limitation that autodialers must have some capacity (either present or potential) to either call/text automatically absent human intervention or have the ability to dial/text to pre-stored lists. Given this guidance, Hearsay Relate has been architected to mimic the smartphone experience and has been designed to ensure there is no programmatic texting or calling without human intervention, nor does Hearsay Relate generate random or sequential numbers.

Second, the content use cases for 1-to-1 texting are different than mass texting. When advisors and agents use texting for relationship management, they are communicating with consumers who have already reached out to them or with whom they have an existing business relationship. The main purpose of these types of communications is not advertising or solicitation but facilitation of meetings, sharing information and keeping the lines of communication open – just like an advisor would do from their built-in smartphone texting capability.

COMPLIANCE CONSIDERATIONS FOR 1-TO-1 TEXTING

The FCC uses three general consumer protection principles when interpreting regulations:

1. Texts aren't free of cost; not everyone has an unlimited texting plan.
2. Phones are inherently more personal than email, and
3. Consumers should be free from harassment.

Keeping these principles in mind, key strategic considerations for developing your 1-to-1 texting program include:

Advertising Lexicon: Customers want a way to ensure their advisors and agents are not using non-compliant phrases in their digital communications and Hearsay Relate prevents that from happening. Relate draws on Hearsay's proprietary Advertising Lexicon to flag potential unsolicited advertising risks so that the supervision team is aware of violations in the field and can stop risky text messages before they are sent. The advertising lexicon is uniquely tailored to the financial services market.

Policy & Training: Companies now deal with many different use case for text messaging that creating a single texting policy is simply not viable; things like two-factor authentication, short code promo codes, bank-by-phone, live chat, and other texting scenarios have such different goals and risks. The advisor/agent population communicates to build trust and loyalty and to deepen client relationships, not to make direct solicitations or provide purely transactional information (e.g., deposit confirmations). As such, one-to-one texting programs may require a different policy from a firm's autodialer texting policy. Combining a policy with advisor and agent training alongside non-autodialer technology like Hearsay Relate eliminates any risk to the firm.

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Whitelisting: Understanding that content controls are difficult to manage in 1-to-1 texting communications, having some control over the texting recipient can mitigate risk. Relate can be configured such that users can only text consumer telephone numbers that appear on a company whitelist, a list of telephone numbers that have already opted-in or otherwise consented to receive advisor text messages. Our Canadian customers use this method to comply with Canada’s Anti-Spam Law (CASL), where implied or expressed consent is required for all commercial electronic messages (CEMs). Hearsay’s platform fully supports CASL-compliant Outreach with the ability to only send emails and texts to contacts that are expressly loaded into Hearsay either manually by reps or through your CRM.

STOP Functionality: While there is no express requirement that smartphones contain some functionality to prevent unwanted calls, it should be a best practice for any commercial entity to honor and respect its consumers’ wishes not to be disturbed by unwanted communication. As the FCC highlights freedom from harassment as a key consideration for consumer protection, Hearsay Relate provides a way for clients to immediately stop receiving text communications by simply texting the word STOP in any text communication. Once Hearsay Relate recognizes the word “STOP” being used in that capacity, the Relate user will be blocked from sending any further text messages until the consumer elects to opt into receiving text messages again.

OTHER OPT-IN OPTIONS

If you decide you need to adopt an opt-in policy, we can work with you. We have a variety of methods for accomplishing opt-in that our customers can use. Those options include self-opt-in, text opt-in, and email opt-in.

Find out how Hearsay can help your advisors and agents grow business compliantly:

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|--------------|--|
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ABOUT HEARSAY SYSTEMS

Hearsay Systems offers the Hearsay Advisor Cloud for financial services, empowering advisors to efficiently and compliantly use social media, websites, text and email to engage with customers, build stronger relationships and grow their business. Its prescriptive technology processes and prioritizes data from across digital channels and data systems, providing actionable suggestions for advisors on how they should engage with clients next. Built for the enterprise, Hearsay connects these advisor-client interactions and data to corporate CRM systems and digital marketing programs, and provides efficient compliance supervision and review workflows – all on a secure, enterprise-ready platform.

Hearsay is used by more than 150,000 advisors and agents at the world’s largest financial services and insurance firms. The company is headquartered in Silicon Valley with offices throughout North America, Europe and Asia. Connect on Facebook, Twitter, LinkedIn and the Hearsay blog.

