

COPIAFACTS™



Complying with the revised TCPA Law pertaining to fax transmissions

Copia International Informational White Paper

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Abstract

This white paper provides a discussion of the recent changes to the Telephone Consumer Protection Act (TCPA) and how they relate to business communication via fax. Also covered are suggested steps that should be taken and methods that could be used to attain compliance.

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CONTENTS

- SUMMARY 1**
- History of the TCPA Law and Fax 1
- Elimination of the Existing Business Relationship (EBR) 2
- Overview of FCC Fax Regulations* 3
- What is an advertisement and what is not? 3

- WHAT CONSTITUTES CONSENT AND HOW DO I OBTAIN IT? 5**

- TCPA VIOLATION PENALTIES 6**
- Identification and Service bureaus liability 6

- HOW TO COMPLY WITH THE TCPA 7**
- How COPIAFACTS can help 8
- Do Not Send (DNS) lists and opt-out support 8
- Outbound Fax and E-Mail Gateway 9

- OPEN ENDS TO THE TCPA – OTHER CONSIDERATIONS 10**
- There is no such thing as a free ride 10

- EXAMPLE OF A TCPA PERMISSON FORM 11**

- REVIEW 12**

- FOR MORE INFORMATION..... 13**

SUMMARY

The Federal Communications Commission's (FCC) set of laws regarding fax communications has recently been updated. This new ruling affects each and every business that sends or receives faxes.

The Telephone Consumer Protection Act (TCPA) of 1991 outlawed unsolicited fax advertising. In July 2003, the FCC altered the existing 1991 TCPA law with revisions and clarifications. The refined laws cover any fax sent to customers, vendors, a potential customer(s), or any other business/individual.

Before the recent revisions, the original TCPA law left existing business relationships exempt from fax advertising constraints. The new ruling is very explicit against any faxing without prior written permission. A common, but frightening example is this: A customer calls you and requests that you fax them a quote for your product. If you go ahead and fax them their quote, which may be interpreted as advertising based on the current law, without first obtaining their express written consent, you have violated the TCPA and are now subject to a penalty. This can include state, federal and/or private lawsuits for up to \$1500 per violation. The same holds true if you accidentally fax the quote to a wrong number that happens to be a fax machine. Since you did not have the proper written permission to fax to the wrong number, you are violating the TCPA.

Most companies outside the faxing industry are unaware of these recent events. Your company needs to address the potential legal and financial issues regarding fax transmissions.

This document provides you a starting point for evaluating your company's use of fax and more importantly, suggestions on how your business can comply with the recent FCC rulings. These new laws are not just aimed at large fax service bureaus, or fax blasters, but at each and every fax that is sent. Companies that send 1 or 1,000,000 faxes per day have to take a proactive response to educate their employees and put in place a proper faxing system or set of faxing procedures in order to avoid fines and/or litigation.

History of the TCPA Law and Fax

Since the Telephone Consumer Protection Act (TCPA) of 1991 the sending of unsolicited faxes has been illegal. No unsolicited fax advertisements were allowed to be sent to individuals or organizations that were not already customers.

The TCPA's main purpose was to limit the unsolicited telephone calls made by telemarketers to consumers. The national do-not-call list prompted further revisions to the existing TCPA law concerning telemarketing and in July 2003, the FCC issued a Report and Order amending the TCPA law.

The FCC reasoned that unsolicited faxes constituted a financial burden on the recipient and the new regulations concerning fax required that any entity must

get signed approval from each individual/business to whom they intended to send faxes. The new regulations were originally set to take affect on August 25, 2003, which gave businesses 30 days to contact each and every customer and contact to get their permission on file.

Many companies and trade organizations petitioned the FCC to allow more time to comply with the new laws and in August 2003, the FCC agreed and issued a stay to delay the starting date until January 1, 2005.

This stay will give businesses more time to get signed permission and approval forms from organizations and people to whom they send faxes. It also allows time for the Commission to respond to requests to modify and/or reconsider the new rules. Before January 1, 2005, organizations are supposed to gather permission from each contact. During this time they are still allowed to send faxes to their established business contacts without having signed permission on file, under the old TCPA ruling. After January 1, 2005, only written permission will be acceptable. It is important to check with each individual state law as some states currently do not recognize the exemption for existing business contacts and have other requirements concerning fax transmissions.

Even with the new revisions, the TCPA definition of an unsolicited advertisement is open to interpretation and, as such, puts all business fax communications within its scope.

Also clarified in the ruling, is the inclusion of all transmission vehicles and fax recipients. That is, faxes sent from fax machines, fax modems, fax servers, PDA's, etc are all covered in the TCPA as well as all fax receiving systems such as computers or fax servers.

Elimination of the Existing Business Relationship (EBR)

The elimination of the EBR clause is the single biggest change to the TCPA rules. Previously, organizations were allowed to contact members, clients, customers, or any individual or organization with whom they had previously conducted business.

The FCC has now defined EBR to mean those persons with whom you've had a financial transaction/payment within the last 18 months or those persons who have inquired about your products/services within the last 3 months. Therefore, beginning August 25, if you have a business relationship that falls outside either the 18-month or the 3-month windows, you must now receive oral or written permission before faxing anything construed as an advertisement.

With the EBR clause eliminated, the new law states that it is illegal to fax anyone anything containing something that can be construed as advertising without signed permission on file.

Overview of FCC Fax Regulations*

- It is unlawful to send an unsolicited advertisement to a facsimile machine without the prior written permission of the recipient of the advertisement;
- The business or entity on whose behalf the fax is being sent must identify itself in the top or bottom margin of each page or on the first page of the fax message, and must include its telephone number and the date and time the fax is sent;
- If a facsimile broadcaster (the person or entity transmitting messages to a fax machine on another person's behalf) demonstrates a "high degree of involvement" in the sender's facsimile messages, such as supplying the facsimile numbers to which a message is sent, the facsimile broadcaster must provide its name on the fax;
- A facsimile broadcaster may be liable if it supplies facsimile numbers to a business or entity sending unlawful fax advertisements; and
- Faxes sent to fax servers and personal computers are covered by the faxing rules.

* As per the FCC website - <http://ftp.fcc.gov/cgb/consumerfacts/unwantedfaxes.html>

What is an advertisement and what is not?

Much confusion surrounds the term "unsolicited advertisement" regarding fax. While the term unsolicited is generally understood, advertisement is left open for interpretation. Is a newsletter advertising? Is a support renewal notice advertising?

The FCC defines advertising as "any material advertising the commercial availability or quality of any property, goods, or services". This definition leaves many businesses owners unsure of what is, or isn't considered advertising.

Aside from the obvious advertisements for trips and office supplies, here are a few examples of what might also be considered advertising:

- A quote or PO for your company products/services
- A fax from the school or church about an upcoming PTA fund raising activity like a bake sale
- A newsletter to customers with tips and tricks for running software or announcing the availability of a new version (may not even be your software)
- Faxed menu from a local restaurant
- Announcement of a free conference that your company will be attending

-
- A renewal notice for a subscription or periodical
 - A proposal or bid for work

It is important to note that no advertising of any kind be permitted in the fax that is sent. If you mention, discuss, offer or describe any property, goods, or services, the entire fax may be deemed as advertising. There are very few faxes that do not contain some mention of a property, goods or service. Therefore, as set forth by the FCC, the majority of sent faxes constitutes of advertising.

WHAT CONSTITUTES CONSENT AND HOW DO I OBTAIN IT?

The revision to the TCPA law requires signed permission or consent on file. While the FCC did not outline specifics regarding the form of consent, they do state some requirements. The intended fax recipient must express consent to receive faxes from a specific company, provide the approved fax number(s) to send to and must also sign (physically or digitally) their consent form.

This is a change from past allowance of a “negative option” in many states. These were referred to as opt-out lists and were commonly placed at the bottom of fax advertisements. Laws vary from state to state, but in some instances you still must have an opt-out number to allow for removal from your fax distribution list in addition to the federal TCPA rules even in cases where you have permission to send the fax.

Obtaining permissions can be done in a number of ways. Direct mail, web site forms, and direct interaction with customers at a store front are the most common ways. For example, digital signatures online require keying in a contact or company name, fax number and checking a box indicating consent to receive faxes. The important aspect to note is that you must be able to prove, in writing, that you have explicit signed, prior permission on file to fax to a certain fax number.

TCPA VIOLATION PENALTIES

Penalties and fines vary, but companies can be sued for the actual monetary loss that resulted from the TCPA violation, or up to \$500, whichever is greater. If the court finds that the company sending the fax willingly or knowingly committed the violation then fines can be tripled for each such violation.

Also, the FCC can impose civil monetary penalties of up to \$11,000 for violations. The attorney general for the state bringing the suit may also bring suits in federal court for the actual damages, or \$500 per violation. Again, there can be additional damages for knowing and willful violations.

Identification and Service bureaus liability

The previous law required identification of the fax sender in the top or bottom margin of every page for every single fax, regardless of content. This information had to include the identity of the fax sender (the company sending the fax, not the service bureau sending on their behalf), the date/time, and the fax number or telephone number of the sending machine.

The revised TCPA now also requires that the company name must be the name registered with a state corporation's commission. Also, if the service bureau sending the fax has a "high degree of involvement" in preparing and sending the faxes (ex: designing the fax or providing the fax numbers) then the broadcaster must also include its name on the first page or the margin of each page.

International Issues

The TCPA also applies to companies faxing the USA from outside the United States. A company sending an unsolicited fax from outside the USA can still be fined if they have any place of business in the USA. Multinational organization should establish global fax procedures to ensure that overseas entities do not violate the TCPA law and subject the parent or branch US location to litigation.

HOW TO COMPLY WITH THE TCPA

The best procedure to ensure compliance with the TCPA is to err on the side of caution. Your organization needs to address the following issues:

- Evaluate how your business uses fax.
- What are the acceptable methods for you to obtain the permission forms? Web Site? Fax? Direct Mail?
- Where are the permissions stored? Will they be stored in your contact database or elsewhere?
- How does your organization check for permission on file before sending a fax? What are the procedures?
- How will individuals/corporations revoke their granted permission?

After answering these questions, you can better address the issue of obtaining and honoring permissions.

- You can currently send a fax to your existing customers and contacts to obtain written permission until January 1, 2005. After that you are prohibited from sending that type of fax without the permission you are trying to obtain.
- You should also modify all your of agreements, web forms and web stores to include an explicit field granting permission pursuant to the TCPA law.
- Try and get blanket permission for all fax numbers in an organization from a member of the organization that is authorized to do so (CEO, President, etc)
- Keep your permission procedures documented in case of litigation. This shows that you have taken steps to verify permission and are not willfully violating the law.
- Keep your lists private. You can not sell, rent or lease permissions, nor can you buy, rent or lease permissions. Permission is granted between two entities and any list that you might buy will most likely not include express written permission for your company for each supplied number.
- Make it easy to get removed from the fax list. This can be done with a toll free number at the bottom of the fax that will remove the number from your fax list.
- Grant permission to all of your customers to fax you. As shown in our example TCPA Permission Form (Page 11) when requesting permission, be sure that you have granted others to fax the permission form back.

How COPIAFACTS can help

The **COPIAFACTS** suite makes it easy for your business to comply with the new rules and to make fax a viable part of your communication solution. The **COPIAFACTS** suite includes **FAXFACTS**, **VOICEFACTS** and **E-MAILFACTS**. The combination of these three functions of the **COPIAFACTS** suite gives you unparalleled control over your three main methods of communication, fax, voice and e-mail.

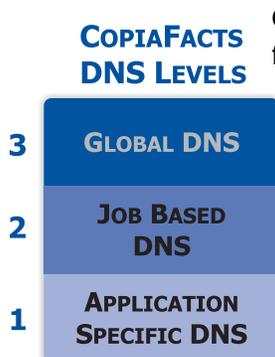
Do Not Send (DNS) lists and opt-out support

Since the introduction of **FAXFACTS** in 1989, Copia systems have had the support for multiple Do Not Send (DNS) lists. Each fax operation can pass through one, or many, different checks to see if a fax number has been added to the DNS list. Service bureaus and large organizations can set up global and local DNS lists to act as a master list to block transmission to fax numbers that requested removal. In addition to the master DNS list, each job, or group of faxes, can have their own DNS list to check against. This allows you considerable flexibility.

VOICEFACTS, the voice component of the **COPIAFACTS** suite, provides your organization the ability to use IVR to automate the updating of the DNS list. This approach is used when you add a toll-free number to the bottom of each fax. With the **VOICEFACTS** IVR solution you have the ability to completely customize the removal process and update the DNS list immediately.

While providing an opt-out option is not required in the TCPA, many state laws require that you include a removal number (often a toll free 800 or 888 number) at the footer of each page. This should always be the case, regardless of laws, simply for proper business etiquette. The opt-out number can run 24x7x365 and eliminate the manual entering of fax numbers into a DNS list.

Any numbers that fail the DNS list can be gathered into a report and then you can use that to clean your database or modify your lists to no longer include those numbers in broadcasts. You can even set-up custom processes that update any number or types of database automatically, or run any other program. The options are limitless.



COPIAFACTS, by default, can use three separate DNS lists. The first DNS check is application specific. For example, everyone using the standard **COPIAFACTS WORKSTATION** client can use the same initial DNS list for the first check. You can also apply a specific DNS list to any of your custom developed interfaces.

The second DNS level pertains to a per "job" comparison. A job can be a fax broadcast campaign or any other set of faxes and can do a second check against a specific DNS list. It also allows for service bureaus to have separate DNS lists

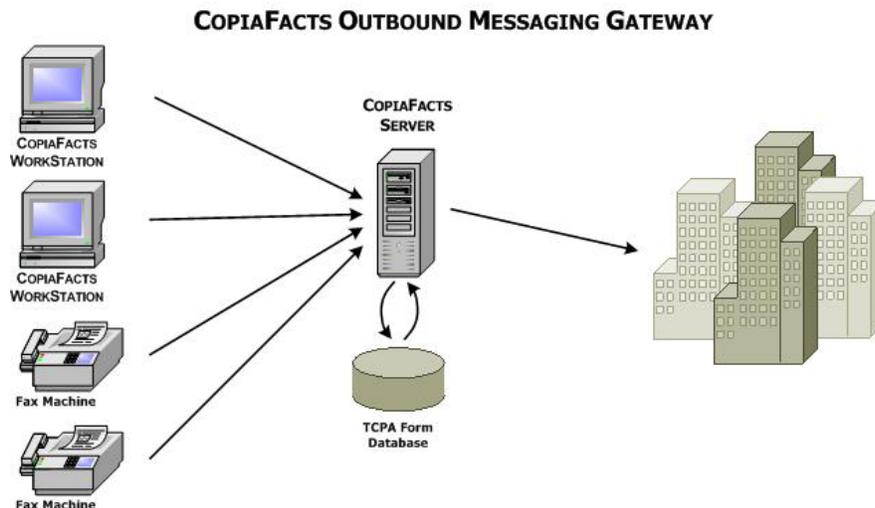
for each client. The final check is against a global DNS list. This list applies to every outbound fax in the system.

The Do Not Send list can also facilitate voice messages for companies that use **VOICEFACTS**. A list, such as the National Do Not Call list, can be loaded into your global DNS list to ensure that outbound voice calls through the **COPIAFACTS** system are not placed to numbers on the Do Not Call list.

Outbound Fax and E-Mail Gateway

The **COPIAFACTS** engine has plenty of flexibility built into the system. An exciting new development is the outbound gateway function.

The outbound gateway allows your organization to control your outbound fax messages to ensure that no fax goes out without having permission on file. This gateway acts as a police officer for all outbound transmission through your **COPIAFACTS** system allowing your organization to curb any unauthorized transmissions. This works in a similar fashion to the Do Not Send (DNS) list.



The **COPIAFACTS** server collects the outbound messages from the various clients and any background automation programs. The outbound messages are then checked against a database of completed permission forms. If a completed permission is not on file, the message is not sent. The sender can then be notified of a failed transmission due to lack of permission.

The process is flexible enough to allow for messages to queue up and then periodically check the database for the permission. This allows a sales staff to generate quotes and send them to the **COPIAFACTS** system for distribution, but the customer will not receive the quote until they have granted permission.

This same procedure can be applied to e-mail messages through the **E-MAILFACTS** program. Your opt-in list can control all outgoing e-mails.

OPEN ENDS TO THE TCPA – OTHER CONSIDERATIONS

Given the backlash received after the August 2003 revision of the TCPA, there are many issues that the FCC still needs to work out. The vagueness of the advertising definition is very important, as well as definitive examples on proper consent forms. Who is consent really granted to? Does consent lie with the fax number, the individual, or the corporation. When does consent expire? Where is the international line drawn? Is a parent company of an international organization liable if the actual sending company is not located in the United States? All are questions that still need to be answered by the FCC.

The general rule of thumb to follow is to assume the worst. If there is any chance that your fax could be construed as an advertisement, then obtain permission. In fact, many companies are requiring permission for ANY fax communication, just to be on the safe side, and it is also our recommended course of action.

There is no such thing as a free ride

An important consideration to this new law concerns free faxing. There are several companies on the Internet that will fax things for you for free. The basis of their business model is to sell advertising space on your fax. Some can argue that the recipient of the fax did not agree to receive advertising from the company that bought space on the "free" fax. This then falls under unsolicited fax advertising and the sender and/or the company paying for advertising space may be liable for damages under the TCPA.

EXAMPLE OF A TCPA PERMISSION FORM

This is provided only as an example of a permission form. Copia makes no claims of its legality and proper legal counsel should always be consulted.

FCC Contact Method Permission Form

As of June 26, 2003, the Federal Communications Commission (FCC) requires companies to have on file, written & signed permission authorizing the method in which they are allowed to communicate with their existing and potential customers. You can find a link to the updated Telephone Consumer Protection Act of 1991 (TCPA) at: <http://www.copia.com/tcpa/>

We believe that we (Copia) have an Established Business Relationship (EBR) with you and/or your company. The FCC has ruled that even with an EBR, we must have written & signed permission to send information to your company.

Please take a moment to fill out this form and submit it back to Copia either via e-mail at permission@copia.com, regular mail, or fax it to **800-251-4513** in the USA, or **630-778-8848** outside the USA, so that we have written permission on file to communicate with you.

Company Name: _____
 Okay to contact by Phone - Number: _____
 Okay to contact by Fax - Number: _____
 Okay to contact by E-mail: _____

Primary Contact Name: _____

Signed _____ Date: _____

I give Copia International, Ltd. permission to send information to me via the above means and not checking a preferred method will indicate all methods listed above are acceptable. I understand that this information may be determined to be unsolicited advertising by the FCC in regard to the TCPA. I also realize that this permission can be revoked at anytime by contacting Copia International, Ltd. This grant is for Copia information only. No other company's information will be sent and Copia does not sell, rent, or lease your contact information.

Copia International, Ltd. grants the above signer permission to fax this written permission to Copia International, Ltd. at **800-251-4513** or **630-778-8848**.

Additionally, Copia International, Ltd. grants the above company and/or individual permission to communicate via fax, telephone and/or e-mail from this date forward. Copia may revoke this permission by providing written notice thereof.



Steve Hersee
President

REVIEW

The recent changes to the TCPA affect the methods and the manners used by organizations to contact others. The rules on fax advertising in the revised Telephone Consumer Protection Act are vague and must be taken very literally. In many cases, faxing to your customers is illegal without signed permission on file. Each business, including non-for-profits, need to evaluate their faxing procedures to avoid fines.

It is imperative that your business establishes a set of procedures to log signed permissions. Equally important is the implementation of a system to ensure only authorized outbound faxing. Employees need to be briefed on the correct procedure for obtaining signed permission forms as well as the possible legal actions. The safest ideology is to treat each fax as an advertisement and obtain signed permission for each contact.

Copia has been in the enterprise fax market for over 16 years and believes that fax is still an important business tool will remain that way with responsible usage.

By using a single messaging platform, you gain better control over outbound transmissions. The **COPIAFACTS** system provides your organization these tools and the flexibility to integrate with your existing document storage infrastructure. A **COPIAFACTS** system, with **FAXFACTS**, **VOICEFACTS** and **E-MAILFACTS**, will allow your business to better utilize your resources, improve productivity, and comply with the ever evolving federal laws.

FOR MORE INFORMATION

For the latest information concerning the Telephone Consumer Protection Act, the FCC and direct marketing, see the following Web sites:

- TCPA and Do-Not-Call list website - <http://ftp.fcc.gov/cgb/donotcall/>
- The Direct Marketing Association - <http://www.the-dma.org/>
 - A Matter of Fax – What you need to know before sending a fax - <http://www.the-dma.org/cgi/dispissue?article=47>
 - Industry Alert: Fax Solicitations and Lawsuits - <http://www.the-dma.org/cgi/dispnewsstand?article=808>

Links to FCC Documents:

- Revised TCPA - http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf
- Issued stay on the new fax regulations - http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-03-208A1.pdf