

Consent Policy

SPECIAL NOTE: OBTAINING CONSENT FOR COMMERCIAL TEXTS AND EMAILS

It is important that you obtain consent from your customers and prospective customers prior to sending text and email marketing messages using the Escher Innovations service. Obtaining consent is not only common courtesy, but it is required by anti-spam and other privacy and consumer protection laws. The consequences for not following the rules can be quite severe, with penalties in the U.S. of \$500-\$1,500 per message in the case of text messages and penalties of up to \$16,000 per message in the case of emails. In Canada, penalties range from \$1-10 Million, and in both countries, individuals can bring private rights of actions against companies for certain violations.

It is your responsibility to ensure that all necessary consents have been obtained and recorded in compliance with applicable law. This note is provided as a courtesy and is not intended as legal advice. You should consult with your own legal counsel to ensure you are in compliance with applicable laws.

1. Email

In the U.S., senders of commercial emails are not required to obtain express consent prior to sending their messages. Instead, the CAN-SPAM Act requires senders to provide an opportunity for recipients to opt out of receiving future commercial emails and to honor that opt-out request within 10 business days. To that end, commercial email messages must include a clear and conspicuous instruction that explains how the recipient can opt out of receiving future emails from the sender, such as a return email address or another easy Internet-based way to allow people to communicate their choice. Senders may create a menu to allow a recipient to opt out of certain types of messages, but one of the options must be to opt out of all commercial messages from the sender.

When sending commercial emails to residents of Canada, senders are required to obtain prior consent before sending their messages. In limited circumstances — such as when you have an existing business relationship with the recipient — this consent can be implied. But most often, express prior consent to send an email is required. This means that a person must affirmatively state a desire to receive emails from you; pre-checked boxes will not suffice. And you must maintain records of all consents you obtain.

In addition to an opt-out requirement, both the CAN-SPAM Act and CASL impose various content requirements for commercial emails, such as accurately identifying the

sender of the email, identifying the email as an advertisement, and including opt-out instructions. These content requirements are not limited to just bulk email, but apply to all commercial messages. To help ensure that you comply with the law and best practices of the jurisdictions where you send emails, you should also do the following:

- Do not use false or misleading header information. Make sure that your “From,” “To,” “Reply-To,” and routing information – including the originating domain name and email address – is accurate and identifies your business as the originator of the message.
- Do not use deceptive subject lines. The subject line should accurately reflect the content of the message.
- Identify the message as an advertisement, in the subject or body of the message.
- Include your contact information, including a valid physical postal address. This can be your current street address, a post office box you’ve registered with the U.S. Postal Service, or a private mailbox you’ve registered with a commercial mail receiving agency established under Postal Service regulations.
- Check with your legal counsel to ensure that your messages comply with then-current legal requirements, as these may be updated from time to time.
- Clearly tell recipients how to opt out of receiving future email from you. Craft the notice in a way that’s easy for an ordinary person to recognize, read and understand (e.g., using different type sizes, colors and location can improve clarity).
- Make sure that your spam filter does not block opt-out requests and do not charge a fee for opt-out requests or make the recipient take any step other than sending a reply email or visiting a single page on an Internet website as a condition for you honoring an opt-out request.
- Honor opt-out requests promptly (within 10 days maximum) and remove anyone who opts out from your database, regardless of how they indicate their desire to opt out. You may create a menu to allow a recipient to opt out of certain types of messages, but you must also include an option to opt out of all commercial messages from you.

2. Text Messages

a. What type of consent is required?

The consent required for text messages differs under U.S. law depending on whether the message is an informational text message or a marketing text message. If the message has any content that might be viewed as advertising or promoting any products or services then it should be treated as a marketing text message.

1. Informational Text Messages

For purely informational, non-marketing text messages, U.S. law requires that the recipient provide prior express consent. Prior express consent can be obtained in a variety of ways, including by implication when a person provides their phone number under circumstances indicating they intended to agree to be contacted using that number. Thus, for purely informational text messages, it is easier to demonstrate that the legally required consent has been obtained.

2. Marketing Text Messages

For marketing text messages, U.S. law requires that the recipient provide prior express written consent. Prior express written consent can be obtained through a signed, written agreement that clearly and conspicuously discloses to the prospective message recipient:

- The prospective message recipient authorizes the sender to deliver marketing text messages using an automatic dialing system to a designated phone number; and
- Consent is not required as a condition of purchasing any products or services.

3. The required signature for the written agreement can be obtained in any manner that complies with applicable state or federal law, including via e-mail, website form, text message, telephone key press or voice recording.

b. Text Message Best Practices

Here are some tips for best practices when it comes to text messages:

- Since most customers would like to retain flexibility for sending any type of message, consider obtaining consent that meets the requirement of prior express written consent from all recipients in your subscriber list.
- Only rely on prior express consent if you are certain that all of your messages will be purely informational in nature.
- Never assume you have consent to send a text message. Obtain and maintain records of all consents obtained, whether in the form of prior express consent or prior express written consent.

- Check with your legal counsel to ensure that your method of obtaining consent is valid and complies with then-current legal requirements – as these requirements are frequently updated by the relevant authorities.
- Never send text messages to any lists you have purchased or acquired from a third party unless you have assured yourself that the persons in that database have consented to receive text messages specifically from you, or that the messages will otherwise be sent in a manner that complies with applicable law.
- Allow recipients to opt out of receiving any future messages, such as by replying “stop” to any message you send. Make sure to maintain your database and remove anyone who opts out, regardless of how they indicate their desire to opt out.
- You may have liability for messages sent to a number in your database if the number is reassigned to a different person. Consider whether to subscribe to a service to track and alert you if numbers are re-assigned.