

HIGHER EDUCATION: REGULATIONS TO KNOW BEFORE YOU TEXT

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INTRODUCTION

If you're like most higher education organizations, you're probably wondering, "Can I legally text message (SMS) my university's students and alumni?" The simple answer is, Yes! If the message recipient has voluntarily disclosed her telephone number to your organization, you generally have all the "consent" necessary to send that individual informational text messages.

However, there are a few rules and guidelines you should be aware of before you get started. The Telephone Consumer Protection Act (TCPA) is the major law in the U.S. that establishes ground rules for text messaging and other forms of communication. Reduced to its essence, the TCPA creates an *opt-in* framework if text messages are sent using an Automatic Telephone Dialing Systems (ATDS or autodialer).

The type of consent, if any, you'll need will depend on the content of the message you wish to send. The TCPA recognizes three main categories of messages: Emergency, Telemarketing, and Informational.

1. EMERGENCY

A message that notifies the recipients of potentially hazardous conditions or threats.

"Tornado warning issued for campus. Seek shelter immediately."

2. TELEMARKETING

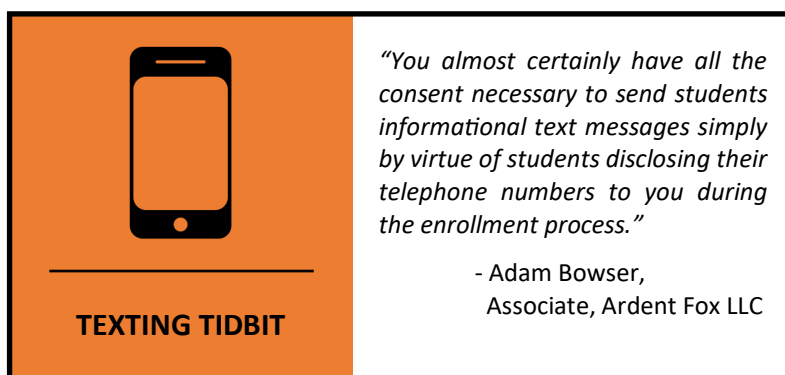
A message that encourages the purchase of a good or service.

"Deciding on where to attend college? Talk to an admissions counselor now!"

3. INFORMATIONAL

“Informational” is the catch-all category, such that if a message is neither an emergency message nor telemarketing, it should be considered informational. But it’s important to note that just because a message involves commercial activity, it should still be considered informational if the message relates to an existing business relationship and you’re not attempting to sell anything *new* to the recipient. An attempt to collect a debt is a great example of an informational message because it’s within the scope of the existing business relationship.

“Tuition is past due. Please remit payment or contact admission representative to avoid penalty...”



THE SLIDING SCALE OF CONSENT

As you go from emergency, to informational, to telemarketing, the level of consent needed increases if you are sending autodialed text messages to students or alumni.

- **Emergency messages do not require ANY prior consent. Period.** Text messages from universities can potentially save lives in dangerous situations, so universities should feel encouraged to utilize this form of communication during such an event, even if the student never released her telephone number to you directly.
- **Informational messages only require “prior express consent.”** When students enroll in college, the assumption is they’d like information about campus life and staying on track to obtain their degree. Thus, the rule is that if they voluntarily provide their cell phone number to you, e.g., during the application process, that constitutes “prior express consent” to receive informational messages from your school.
- **When telemarketing, you must have “prior express written consent.”** This enhanced consent is obtained after providing a clear and conspicuous disclosure that the consumer is agreeing to receive autodialed telemarketing messages to the telephone number provided.

ADDITIONAL FACTORS TO CONSIDER

1. Value

Before hitting “SEND,” ask yourself this practical question, “would the person receiving this message likely want it?” Remember, your subscribers are giving you permission to text them, so respect their time and privacy by only sharing useful information. Make each message worthwhile.

2. Hours/Frequency

Be courteous to your subscribers by only sending texts during appropriate hours. Telemarketing messages can typically only be sent between 8AM and 9PM in the time zone your recipient is in. Also, be mindful of how many messages you’re sending in a given amount of time. It’s best to be upfront with your subscribers about how frequently they should expect to hear from you. Too many messages could actually diminish the importance of your messages.

3. Opt-Out

Your subscribers can revoke their consent by providing reasonable notice of their decision to opt out. As a best practice, you should include “Text STOP to unsubscribe” in your message. You should also keep an ongoing log of subscribers who have opted-out, to ensure they no longer receive future messages of any kind, which is easy to manage on the TrueDialog platform.

CONCLUSION: QUESTIONS TO ASK YOURSELF

We suggest you ask yourself the following questions when reviewing your mobile program:

1. Are you sending SMS messages to only people that have provided consent?

As part of that consent, are you...

- Displaying all program terms, instructions and privacy policies?
- Not treating it as a blanket approval for all other programs?
- Keeping record of it in a database of some sort?

2. Are you maintaining opt-out mechanisms and honoring these requests?

3. Are you only sending messages that the individual receiving the message would likely want or find helpful/useful?

If you answered “YES” to all of the questions above, you seem to be well on your way to respecting your students and alumni, and maintaining a mutually beneficial relationship.

[If you have questions, we’re happy to help.](#) Call 512-501-5947 or Text “Easy” to 370370.

About the Author: Adam Bowser has been recognized as a Washington, DC Super Lawyers “Rising Star” in Communications Law every year since 2014. Adam is a specialist in consumer-protection and privacy laws, particularly the Telephone Consumer Protection Act (TCPA).

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