

Essential Guide to
Gaining & Proving Consent
for **TCPA Compliance**

activ/e prospect

If you're a marketer who relies on buying leads to fill your funnel, you're familiar with the challenges of integrating partners, filtering out unqualified leads, verifying and documenting consent for Telephone Consumer Protection Act (TCPA) compliance, tracking performance, and optimizing your process.

Out of these, the TCPA compliance challenge is the most important: if you're not careful, your company could go out of business due to fines and lawsuits. The last thing you want is to buy a lead who turns out to be someone who sues your company, and this happens often to both large and small businesses.

Not all lawsuits are large class-action ones; individuals file smaller lawsuits as well. The ones who file the most lawsuits are known as "serial litigators." They claim TCPA violations and usually settle out of court for amounts ranging from \$10,000 to \$250,000. One of the most prevalent serial TCPA litigators is Craig Cunningham, who has filed about 86 TCPA violation lawsuits to date.

How much could a lawsuit cost you?

Here are a few settled cases:



\$925m

VISALUS

2019 - Sent prerecorded voice messages, automatic telephone dialing systems, and unwanted text messages. Each robocall in the ViSalus judgment amounted to a \$500 penalty.



\$600k

POWERHOUSE GYM

2019 - Sent marketing texts without obtaining prior express written consent.



\$14m

HELLOFRESH

2021 - HelloFresh inundated Plaintiff with telemarketing calls without their prior express written consent.



\$28m

ALARM.COM

2019 - Made telemarketing calls using an automatic telephone system and pre-recorded messages without prior express written consent.



Adhering to the TCPA

One of the tenets of the TCPA is obtaining prior express written consent before calling the consumer. Many marketers think doing so is too complex, so they follow elaborate strategies to comply with the TCPA without obtaining documented consent from the consumer.

Examples include:

- + Calling consumers on a phone system that is not an autodialer.
- + Only calling residential lines and not mobile numbers when using an autodialer.
- + Avoiding the use of pre-recorded messages.
- + Avoiding the use of SMS technologies.

These strategies are complicated, and they waste a lot of time and money on contacting consumers who did not provide their prior express written consent.

With this type of consent, you can use more technologies like autodialers, send text messages, and implement pre-recorded messages, making your marketing operations efficient and cost-effective.

More good news: prior express written consent also supersedes the Do Not Call list (DNC), meaning you have one less obstacle to worry about. The biggest benefit? Contacting people who want to be contacted, which ultimately improves your conversion rates!

Getting prior express written consent is powerful. Think of it as your golden ticket!

Proper Legal Language

By checking this box, I agree to receive auto marketing messages.

Clear & Conspicuous Language

* If a Derived Program: provided that you also do one of the Standard or Modified Versions as included in the Licensed

Opt-in Mechanism



How to Outsmart TCPA Litigators: Prove Consent

It's a good idea to get the advice of an attorney when creating consent language on your web forms.

Many litigators assume you're not going to have documented consent and think it will be easy to sue you and get a settlement. If you want to outsmart the TCPA litigators, you need to properly collect consent, document that consent, and be able to quickly access the documentation.

Remember: you may be taking the necessary steps to obtain consent before contacting a consumer, but unless you can prove the consent was given, you are still vulnerable to fines and lawsuits

How to Collect and Document Consent the Proper Way:

Collecting consent requirements

- The consumer must be presented with the proper legal language.
- The language must be clear and conspicuous, not "legalese" or hidden.
- An opt-in mechanism must be available for people to express consent.

Documenting Consent

Prove you are collecting consent properly based on the above requirements. Remember: it's not what you know; it's what you can prove.

Example: someone fills out a form, and 3 years later a case is brought against you. You'll need to be able to easily find and share the documentation of that person's consent to avoid penalties.

Burden of proof is on the caller.

How would you provide proof of consent?

Consent Documentation Depends on the Channel

Consent via Web Forms - Most Popular

Web forms are by far the most popular channel for collecting consent. They are easy to use and scalable. However, web forms do come with several challenges

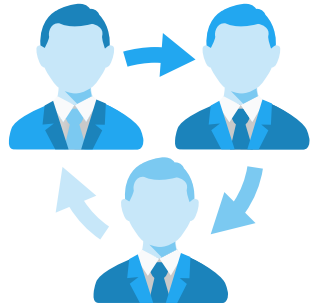
Consent via Phone

If you're thinking of using this channel, you'll need a call recording. Many tools are able to do this while also helping to store and locate the recordings. Remember to abide by applicable laws regarding consent to record. If you don't get explicit consent, the recording is invalid.

Consent via Written Contract

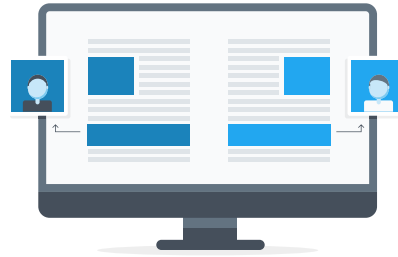
A written contract is rare, but they do exist. In this instance, you typically have an existing business relationship with a customer and are marketing other services to them. If you have a written contract, whether physical or electronic, keep it for the length of time your legal counsel has requested so you can find and share it if necessary.





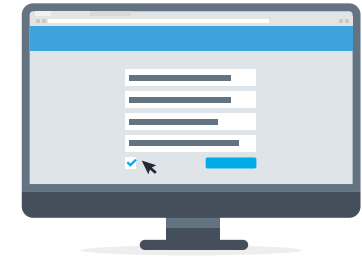
Challenge 1

A lot of marketers buy leads from a third party, but doing this means buying opt-in leads from someone else who controls the forms. You often don't even know where those forms are displayed or if the proper consent language is used.



Challenge 2

Many websites are dynamic, which means customers may have different experiences on the same web page. Some companies rely on obtaining the URL where a customer signs up as proof of consent, but with dynamic content, that isn't sufficient since the URL isn't express written consent. Also, these lead-generating sites change constantly, so how do you prove consent for content that was displayed three years ago?



Challenge 3


How do you know if the consumer opted-in? How do you know if they checked the box or clicked the "Submit" button? Unfortunately, you usually don't know.

With these challenges, proving consent is difficult, and TCPA litigation is exploding.

This is why we created TrustedForm.

Certificate of Authenticity for Web Leads

Certificate ID: 06c7d3c2fa73ed9cedc76808b2265a0a6b25f199



This certificate was issued by TrustedForm.com from ActiveProspect, the independent internet lead certification authority. It certifies the following information about this lead:

When did they visit?

Visit date:	August 2, 2022
Visit time:	6:35:22 PM EDT
Time on page:	22 seconds

Where did they visit?

Page URL: <https://christopher-williams-aa.github.io/form/staging>

Who visited?

Remote IP Address:	99.46.77.95
Geographic Location (Approximate):	Pflugerville, Texas, United States
Browser:	Chrome 103.0.0.0
Operating System:	Mac OS X 10.15.7

What did they see?

TrustedForm captures a copy of the web page viewed by the visitor and the user events that took place on the page including form inputs, mouse movements and clicks. It plays these events back as a session replay of how the user interacted with the page.

View Session Replay

Consent Language Detected 1

I confirm that all of my information is accurate and consent to be called as provided above.

Publisher Provided Data 1

Unique Identifier: CHR12TOPH3R

TrustedForm: The Easy Way to Prove Consent

TrustedForm is a lead certification product that documents consent for each individual lead. We're able to independently verify where and when consumers signed up using a web form by capturing the events and providing an instant session replay showing the consumers' exact actions.

TrustedForm allows you to:

1. See the exact website where the form was filled
2. See all events that take place on the page
3. See a session replay of the consumer filling out the form

How Does TrustedForm Work?

Our script is placed on the form, and the script issues a unique certificate as a URL for every lead submitted on that form. You then capture the TrustedForm certificate URL as an additional field with the rest of the data, like first name, last name, email address, etc.

Claim the certificate by calling our API. This call tells us to save the certificate, which can be stored indefinitely. You can also verify the consent language that was on the form before you call—all in real time!

Want to see TrustedForm in Action?

See the [instant demo](#) now.



Verify consumer consent in real time before you call!

Claim the certificate by calling our API. This call tells us to save the certificate, which can be stored indefinitely. You can also verify the consent language that was on the form before you call—all in real time!

Attorneys know that winning a lawsuit is much harder if a company uses TrustedForm.


“TrustedForm is the best product available to ensure compliance with the TCPA.”

Ahmad Sulaiman - *Managing Partner, Atlas Consumer Law*

  **Amy Smith**

Title CEO	Company Amy & Co.
Email amysmith@gmail.com	Industry Technology
Phone 512-298-0987	No. of Employees 8

TrustedForm Certificate
<https://cert.trusted-form.com/3b29438>
59302589078548
974358749872394



Gaining Consent for TCPA Checklist

Review any TCPA disclosure statements with your legal department to make sure that the statement follows your company's legal and compliance requirements.

COLLECTION

- The disclosure language is clear and easy to understand (no “legalese”).
- The disclosure statement is clearly visible in the immediate vicinity of the opt-in button.
- The disclosure statement states the identity of the company that will contact the consumer.
- The disclosure statement states that communication may be in the form of an SMS (text) or automatic dialing system (ATDS).
- If you're pre-recording the call, this is clearly stated in the disclosure.
- The disclosure states that opting in is not a requirement to take advantage of the offer.
- The disclosure states the approximate number of calls the consumer may receive.

DOCUMENTATION

- Provide proof the consumer gave consent by checking the box or completing the form.
- Provide a visual record of the TCPA disclosure language the consumer viewed.
- Provide data (IP address, browser, operating system, etc.) about the visitor who completed the form.
- Provide data about when and where the form was completed (timestamp and page URL).
- Documentation should be collected and stored by an independent third party so that it can't be manipulated.
- Documentation should be easily accessible and shareable.

Protect Yourself Even More

Check out these additional services to enhance your level of protection:



Right Party Verification

Does the phone number belong to the consumer?



Litigator Scrub

Is this person a known TCPA litigator?



Fraud Detection

Was the lead submitted by fraudulent site visitors such as bots or scammers?



active/prospect

For more information, visit us at
activeprospect.com