

COLUMNS

CTIA's SMS short code auditing: A playbook to kill US mobile innovators?

October 18, 2011



By **Shane Neman**

Sign up now

Luxury Daily

Two weeks ago, CTIA – The Wireless Association, reported that the United States' wireless carriers counted more mobile subscribers than U.S. citizens.

This is a staggering statistic that tells you all you need to know about how thoroughly the wireless communications revolution has changed the lives of every U.S. citizen.

At our company, we help small businesses run SMS marketing campaigns using short codes, which are five or six digit phone numbers that can send and receive text messages.

We provide services to small businesses because we believe that our nation's millions of small businesses should be able to participate in the mobile revolution, just like the biggest of businesses.

In difficult economic times, small businesses need all the help they can get. Last week, we were deeply troubled to receive the first results of the CTIA's new "auditing" process.

Vexing texting

CTIA, acting on behalf of the carriers, has issued dozens of alleged violations against Ez

Texting's use of its short codes. Why? Violations by our clients of nonsensical, often contradictory and ever changing Consumer Best Practices promulgated by the Mobile Marketing Association.

What sort of violations?

Things as trivial as improperly advertising keyword calls to action on abandoned MySpace pages – for example, publicizing a short code without mentioning specific phrasing such as “Msg&Data Rates May Apply.”

We take these matters seriously, but after reviewing these alleged violations we firmly believe that the CTIA is acting in a way that harms small businesses and consumers – and in doing so breaking the law.

Further, we believe that the auditing process itself is highly inconsistent.

Large brands and businesses repeatedly commit egregious, high profile violations, yet are rarely held accountable.

At the same CTIA expects small businesses like Ez Texting to submit to ongoing audits according to these arcane, constantly changing and illegal rules.

We have provided an appendix below highlighting how Twitter, operator of one of the highest volume text messaging programs in the world, does not and could not comply with these guidelines.

This is not to single out Twitter. Rather, it is to show how the largest businesses operate beyond the dictatorial whims of the carriers.

The CTIA is an advocacy organization led by the major wireless carriers, along with global handset manufacturers.

Although a visit to its Web site reveals a vision of “Expanding The Wireless Frontier” they are, in the case of the short code based text messaging ecosystem, a mere front for carrier interests (see their board/leadership).

CTIA and the carriers claim to be acting on behalf of consumers. This is a laughable proposition. One merely needs to browse its press releases to read hundreds of examples of whose interests they are looking out for.

Auditing and violations: A broken process

CTIA recently launched a new short code auditing process, outsourced to a multinational firm called WMC Global. WMC Global trolls the Internet, looking for violations of the “CTIA Playbook.”

The Playbook is a 21-page document containing hundreds of voluntary regulations that carry no legal backing.

The Playbook itself relies upon the MMA “Consumer Best Practices,” a 165-page set of ever-changing rules and regulations issued by the nation's major carriers.

These rules carry no legal backing and are not designed to protect consumers. They are simply the rules carriers throw up so they may pick and choose who can send text messages to their subscribers via short codes.

The Federal Communications Commission and various federal courts have ruled that text messages are telephone calls (see references below), making this action illegal as telephone calls are Title II Common Carrier services.

The only reason that the CTIA has even attempted to implement these clearly illegal measures is because the FCC had deferred ruling on whether text messages are specifically afforded “Common Carrier” protections.

You can read more about the FCC and Common Carrier protections at Public Knowledge. Given that they had already declared that text messages are phone calls it, would be contradictory for the FCC to rule against this petition.

What did CTIA’s audit reveal? Ez Texting allows any business to create a keyword that consumers can text to our short codes.

Some of these businesses are advertising their keywords on their Web sites and social media pages and profiles in ways that do not comply with these guidelines in inconsequential ways that would not confuse any consumer.

Further, many of these businesses created advertisements for these keywords that were in full compliance with the guidelines – but then the guidelines changed.

CTIA, highlighting the absurdity of this whole byzantine undertaking, has declared these alleged violations to be high priority, requiring two-day resolution.

What are these high priority violations?

- Not mentioning that “Msg&Data Rates May Apply” in marketing materials
- Not displaying prominent links to privacy policies
- Not displaying “Opt out” instructions
- Not displaying message frequency information – i.e. how often you will receive messages

First, many of these alleged violation notices we received were not violations at all.

Either WMG Global is using some sort of automated Web scraper or the staff performing these audits is doing so carelessly despite the serious regard CTIA claims to afford to this process. As the entire process is opaque, we can only wonder.

Second, many of those advertisements are for businesses that no longer exist, or ex-customers who have not updated their Web sites. It is preposterous to expect any text messaging provider to remedy such a situation.

Third, the opt-out instructions are required and automatically inserted by our service in all opt-in confirmation messages that consumers receive upon texting a business’ keyword.

This display requirement is unnecessary and would be viewed in other contexts as simply absurd.

Is a business required to display alongside its 10-digit phone number a formal description of what will happen when you call that number, that you might incur standard usage charges for calling that phone number – we are not talking about premium short codes or “900” numbers as an analog in this context – and provide instructions on how to formally request that the business never call you again?

Moreover, it would be considered absurd for you to be held responsible for others who may display your phone number – such as the Yellow Pages – on their Web sites. Short codes are merely five to six digit phone numbers. Removing a few digits does not give CTIA carte blanche to violate the law.

What would stop an unscrupulous competitor from inappropriately advertising a keyword that exists or does not even exist on another company’s short code? Nothing. And there would be nothing the harmed company could do to force the removal of the offending advertisement. Want to see how that works? Text Promo To 676767, It’s Free!

That short code belongs to Neustar which has been contracted by the CTIA to operate.

USShortCodes.com – a software portal where you can license and manage short codes. We expect that CTIA’s audit team will be contacting them any moment now to ask them to arrange for this improper advertisement to be removed from the Web.

What happens if you do not comply with CTIA’s audit demands?

Guidelines and best practices are fine to suggest to text messaging providers. Unfortunately CTIA and the carriers act as if these guidelines are based on law, are mandatory, and non-compliance with them can result in severe consequences.

If CTIA deems you in violation and you do not respond to an audit to its satisfaction as part of its enforcement, it will lock you out of the USShortCodes.com portal.

Any provider who operates multiple short codes would lose the ability to maintain, add and remove other short codes that have no alleged violations. This would be a devastating intrusion into the operations of an affected business.

How has Ez Texting responded to CTIA’s audit?

Although we believe CTIA is acting illegally, prejudicially and in an opaque manner, we have acted in good faith.

Yet there is only so much any business can do in the face of an unresponsive bureaucracy that has the interest of other, far larger parties in mind.

In response to these alleged violations we asked the CTIA audit team what happens if we cannot spur clients and former clients to act upon these demands. They instructed us to incur significant costs by sending cease-and-desist letters to Web sites displaying our short code.

What happens if the content is not removed or fixed? We were told to continue to send monthly cease-and-desist orders. Are those cease-and-desist orders even mentioned in the CTIA Playbook. Of course, not.

We asked the CTIA audit team for examples of actual consumer complaints regarding the phrasing or absence of various advertising display requirements. We have yet to receive an answer.

Perhaps we should have expected this given CTIA's description of its "Q&A Service" offered in the Playbook:

"Aggregators and content providers should appreciate that Q&A is a courtesy extended to them solely for the purpose of entertaining good faith questions and helping them understand how they may bring their advertising into compliance.

...

"Asking about the number or status of a content provider's violations monthly count also is inappropriate; therefore, questions of this nature will not be addressed. As often as not, careful reading of this entire document, including the relevant CTIA audit standards in the appendices, should suffice."

And what about the appeal process? The condescending language in the following excerpt from the Playbook is indicative of CTIA's attitude toward anyone who is not a wireless carrier:

"Appeals must be directed at the application of violations to the specific audit in question; the legitimacy of the audit standards themselves is not open for debate. Although content providers are encouraged to include all details relevant to the appeal, this presentation should be a straightforward account of the facts with evidence. A multiple-page thesis is an inappropriate format in which to couch an appeal.

"What should happen? We believe one of the following outcomes would be appropriate. 1) CTIA and the carriers should immediately abandon these illegal efforts or 2) The FCC should do their job and rule on the petition regarding text messaging's common-carrier status, which would make this entire issue moot."

The small businesses and entrepreneurs struggling to compete, innovate, and launch new businesses should be protected from the oligarchic whims of the carrier cartel.

We call upon other short code marketers, aggregators and operators to stand up for their legal rights.

Rghts are not handed to you. If you believe in what you do you need to fight for these rights – otherwise CTIA will continue to break the law in a way that harms your businesses.

□

Twitter: Case study in a prejudicial CTIA short code auditing process

Any Twitter user can encourage people to text follow their username to 40404 on the Web, in print, even over a Tweet.

Twitter does not comply with the advertising and opt-in guidelines on its own Web site.

A quick Google search reveals countless examples of Web sites and social media pages, profiles and updates that do not comply in any way with the aforementioned guidelines.

Twitter, just like anyone else operating a shared short code, cannot possibly be expected to be responsible every time one of its customer's advertisers what is essentially their keyword on Twitter's short code.

Let us look at the MMA Consumer Best Practices:

Advertising

1.2-6 Web Advertising must include:

- a) Additional carrier costs (Msg&Data Rates May Apply) – *Not present, whatsoever.*
- b) A resource (such as a Web site or phone number) where subscribers can reference all terms and conditions. – *Not present in any recognizable manner. First, you click the name of your Country, then a pop-up opens with a list of global short codes, then you click See SMS Short Codes For Other Countries, then click Back To Apps, SMS and Mobile. While there is a good bit of information here, there are no Terms and Conditions.*
- c) The frequency of the messaging – *Not present and cannot be present as described above.*
- d) Instructions for obtaining help (HELP) – *Not present in any recognizable manner. First, you click the name of your Country, then a pop-up opens with a list of global short codes, then you click See SMS Short Codes For Other Countries, then click Back To Apps, SMS and Mobile, Then Click Twitter Commands.*
- e) If the program is recurring, instructions on cancelling or opting-out of the service must be included. If the program being advertised is nonrecurring, then STOP messaging is not required – *Not present in any recognizable manner. First, you click the name of your Country, then a pop-up opens with a list of global short codes, then you click See SMS Short Codes For Other Countries, then click Back To Apps, SMS and Mobile, Then Click Twitter Commands.*

MMA Opt-In Guidelines:

1.5-7 After opt-in to a recurring program, a confirmation Mobile Terminating (MT) message must be sent to the subscriber containing, at minimum, the following information:

- a) Service description – *Twitter complies here!*
- b) Additional carrier costs (e.g. Msg&Data Rates May Apply) – *Twitter has an outdated*

message. If one of the largest messaging users in the world cannot keep up to date with the MMA/CTIA/Carrier rules, who can?

c) Frequency of messaging – This is not present because for Twitter it is not even possible. The same would apply to many other companies. Are they exempted by default from this rule? Is Twitter?

d) Customer support information (HELP) – The link on help to full information is a URL that does not even work.

e) Opt-Out information (STOP) – Not present, and when you reply HELP they instruct you to send the non-standard OFF. While STOP works, why do they not have to say so?

Further, Twitter immediately sends you a message compelling you to start Tweeting if you are not a Twitter customer. While this service is related, it is not the same because it is not what a consumer has asked for. We wonder what other businesses could get away with this questionable practice.

Non-compliant opt-in confirmation:

□

Non Functional Help Link:

□

*Shane Neman is CEO of **Ez Texting**, New York. Reach him at **shane@eztexting.com**.*

© Napean LLC. All rights reserved.

Luxury Daily is published each business day. Thank you for reading us. Your **feedback** is welcome.