

Legal Challenges For Text-Message Marketers

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ABSTRACT

As text-messaging usage climbs in the United States, marketers are scrambling to find ways to integrate this new technology into the marketing communications mix. Marketers must, however, be mindful of current U.S. Law – federal and state – which may restrict text message use. Although no current federal law exists to specifically regulate text-message marketing, several wireless communication laws, anti-spamming laws, and case law may apply. This paper reviews the current statistics and trends regarding usage of text-message marketing in the United States, presents “spamming” opportunities, reviews current federal law and state law by example, and makes recommendations to marketers considering use of text-message marketing.

TEXT-MESSAGING

Text messaging refers to the communication of short messages of no more than 160 characters by cellular phone or other wireless device. Although referred to most often in the United States as text-message marketing, European and Asian countries refer to this practice as short message service marketing or SMS marketing. While the majority of text messages are currently personal in nature – phone to phone – marketers are discovering the benefits of using text messaging as a communications tool with consumers to deliver marketing messages. Sending marketing messages as text messages via cellular phone gives marketers the opportunity to reach consumers wherever and whenever. In an increasingly mobile society, the ability to reach the consumer on the go (so-called brand-in-hand) is important.

In the marketing communications mix, text-message marketing is generally used as a support medium, coordinated with other forms of more traditional marketing. Text-message communications can be of a “push” type (marketing message is sent to consumers without their request) or “pull” type (marketing message appear alongside content requested by the consumer). Push-type text-message marketing generally refers to content delivered to the consumer without request. This could be considered spam if the consumer has not opted in to receiving information from the sender, or if the consumer has no previous relationship with the sender. Push-type text-message marketing has the greatest potential for ethical and legal issues surrounding spam. In pull-type text-message marketing, the message appears in some other media and encourages the consumer to begin the marketing conversation via text messaging. In this way, consumers can request further information, make a purchase, and even opt in to receiving further text message communications from the organization regarding their products and services. Popular use of the technology has consumers responding to contests (American Idol), and other promotions, discounts and coupons, downloading ringtones, requesting driving directions, communicating special offers, and more. A survey of 50 brand name companies by Airwide Solutions reported that “.half of brands <surveyed intend> to send special offers via the mobile phone and two in five <intend> sending competitions” (89% of major brands planning to market via mobile phones by 2008; mobile marketing to accelerate with more than half of brands planning to spend up to 25% of marketing budget). A recent Stoli brand campaign encouraged visitors to the Stoli website to opt in to the “Stoli Insider” program. As a Stoli Insider, consumers agree to receive new product updates and other alerts via text message (Mobile Marketing Association Case Studies, 2006). This is a popular format for pull-type text-message marketing promotions.

The advantages of text-message marketing include quick response rates (James, 2002), high response rates (Dickinger, Haghirian, Murphy, and Scharl, 2004; SMS marketing yields 15% response), viral opportunities, "...response rates over 10%, recall rates of over 75%, stronger ROI case than other media, ...immediate 'brand in hand,' 2-way: Dialogue with consumer, targeted..., cross media: mix with radio, TV, print, viral: consumers forward messages, and fun: 1.2 <billion> messages sent per month" (SMS Marketing, 2005). In addition, text message marketing campaigns are relatively inexpensive.

How do consumers perceive commercial text messages? Generally, consumers respond to text messages as they do to email marketing. Unsolicited messages are shunned, and are generally considered annoying. Add to that the fact that consumers must pay for incoming text messages, and the annoyance factor increases considerably. Consumers who do opt in to commercial text messaging programs may find them useful. From reminders to take weekly prescriptions to notices of weekly promotions, text messaging can add value. Marketers must be careful to consider the added value vs. added annoyance of text messaging when creating their text-message marketing campaigns. Consumer opt-in in to the communication is important. Only through opt-in can marketers be sure that they are not sending an unsolicited message, commonly referred to as spam. Anti-spamming laws are generally thought to apply to text-message marketing even though that specific technology is not necessarily mentioned in the legislation. Further discussion of these laws appears later in this paper.

U.S. TEXT MESSAGE USAGE CLIMBING

U.S. marketers are paying more attention to text-message marketing as the rates of text message usage among wireless consumers increases. Although text message usage in the United States is still comparatively low to other countries, its use is increasing dramatically. Consider that the number of text messages sent per month in the U.S. rose from 14.4 million in 2000 (Atschul, 2003), to 252 million in 2001 (Atschul, 2003), to 930 million in 2002 (SMS marketing yields 15% response, 2004), to 1.2 billion in 2003 (SMS marketing yields 15% response, 2004), to 4.7 billion in 2004 (Yuan , 2005), to 7.3 billion in 2005 (CTIA, 2006), and 10 billion per month in 2006 (Baker, 2006). Further, the CTIA reported in their Wireless Quick Facts (April 2006) that text messaging was up 50% in the first six months of 2005, and up 97% in the last six months of 2004. That kind of integration of consumer technology cannot be ignored.

A recent Pew Internet & American Life Project press release (March 14, 2005) cited approximately 134 million American adults with cell phones of whom 27%, or 34 million, had used text messaging in the last month. M:Metrics, Inc. reported in March 2005 that 36.4% of U.S. mobile subscribers has sent or received a text message. Baker (2006) reports that 90 million Americans have sent or received a text message, and cites Mobile Media Monitor findings that more than 80% of those under 25 years old have sent or received a text message.

Use of mobile marketing continues to increase. "By 2008, 89% of brands will use text and multimedia messaging to reach their audience, with nearly one-third planning to spend in excess of 10% of marketing budgets on the medium. In five years over half of brands (52%) expect to spend between 5% and 25% of total marketing budget on mobile marketing" according to a 2006 survey conducted by Airwide Solutions (89% of major brands planning to market via mobile phones by 2008; mobile marketing to accelerate with more than half of brands planning to spend up to 25% of marketing budget).

Text message usage by generation shows much higher usage among younger wireless consumers. Levram (2006) notes that a recent Pew Internet report on teens showed that nearly two-thirds of cell phone owners use text messaging. Table 1: Text Message Use by Generation shows illustrates text message use by generation. The direct relationship between age and text message use is evident here.

Table 1: Text Message Use by Generation

Generation/Age	Percentage Use
Generation Y (18-27 years old)	63%
Generation X (28-39 years old)	31%
Younger Baby Boomer (40-49 years old)	18%
Older Baby Boomer (50-59 years old)	13%
Over 60 years old	7%

Source: Pew Internet and American Life Project (2005)

It is certainly true that text messaging is more popular among the younger generations. In fact, Levram (2006) noted that “in search of a faster, more fluid way to communicate with friends, today’s so-called ‘instant generation’ is turning to text messaging and IM instead <of email>.” Email communications among teens is decreasing in favor of IM and text messaging. Levram (2006) reported that ComScore Media Metrix showed teen usage of email dropped by 8% in 2005. Statistics such as these have marketers considering increased usage of text-message marketing.

The popularity of text messaging among teens makes text-message marketing especially alluring to marketers of products targeting that generation. This does, however, bring up additional issues concerning privacy policies for children. Lazarus (2006) noted the increased number of text-message spam targeting the younger generation. Given the increasing popularity of text messaging, text spam is also likely to increase. The interest in text-message promotions to the younger generation brings up specific issues regarding the Children’s Online Privacy Protection Act which regulates the collection, storage, and use of information from children 14 years and younger. The additional burden of parental consent is put onto marketers using text messaging to reach this younger generation.

SPAMMING OPPORTUNITIES

Spam refers to unsolicited commercial messages. According to Scarborough (2006), the Mobile Marketing Association (MMA) defines spam as “push messaging that is sent without confirmed opt-in.” A study by Pew Research Center in 2005 found 28% of text message users already receive spam (Lazarus, 2006). Although often linked to email, spam also includes messages to other technological devices, such as cell phones. Although consumers complain about the annoyance of email spam, text spam has the additional issue of cost. U.S. wireless subscribers generally must pay for incoming text messages regardless of whether they are solicited or unsolicited. Once the consumer has received a text message they are responsible for payment for its transmission regardless of whether the requested the message or not, or whether they opened the message or not. The receiver is not able to accept or reject charges for incoming text messages.

Two trade associations who have addressed the ethical concerns regarding text message spam are the Mobile Marketing Association (MMA) and the Direct Marketing Association (DMA). The MMA code of conduct strictly requires all mobile marketing to use opt-in. As part of this requirement, organizations must have permission to send commercial messages to consumers in forms such as email or text message. Consumers often opt in to receiving these messages on a company website or through response to other media offers. The Direct Marketing Association’s (DMA) Guidelines for Ethical Business Practices (The DMA Alert, August 2005) “...prohibit marketers from knowingly calling a telephone number for which the party must pay the charges *regardless of whether the call was placed by a live representative or an automated or predictive dialer.*” Best practices, codes of conduct, and ethical guidelines from trade associations are not be enough, however, to dissuade text spam. As with email spam, self-regulation is not sufficient.

REVIEW OF U.S. LAW AND CASE LAW

As technology changes, marketers find new methods for delivering their messages. Although the federal regulations were not specifically intended to regulate text messaging, one may imply the law’s applicability to the technology. This imbalance between technology issues and law is not unusual. Technology generally moves forward faster than the laws created to regulate it. Additionally, the law is typically reactive rather than proactive when it

comes to regulating business and technology. That, however, is not to assume that any new technology, such as text messaging, is completely unregulated. By examining the content and intent of existing law, one may find applicability to new and emerging technologies. Such is the case with the regulation of text-message marketing.

Few laws currently exist to regulate text-message marketing specifically. That doesn't mean, however, that the medium is totally unregulated. There are potentially several federal laws which may apply. According to Baker (2006), the following federal laws may influence text-message marketing: The CAN-SPAM Act, the Do-Not-Call Implementation Act, the Federal Trade Commission's Telemarketing Sales Rule, Telephone Consumer Protection Act of 1991, Federal Communications Regulations, the Federal Fraud and Abuse Act, the Federal Trade Commission Act, and the Children's Online Privacy Protection Act (COPPA). Those most closely related to regulating text-message marketing are the CAN-SPAM Act, the Do-Not-Call Implementation Act, and the Telephone Consumer Protection Act of 1991. The applicability of these federal regulations to text-message marketing is discussed below.

According to Lazarus (2006) sending commercial messages to cellular phone users is prohibited by the Federal Communications Commission (FCC). However, as is the case with regulations for email, that prohibition does not apply if the company has already established a relationship with the customer. According to FCC Consumer Facts (2006), "As required by the <CAN SPAM> Act, the Federal Communications Commission (FCC) adopted rules that prohibit sending unwanted commercial e-mail messaged to wireless devices without prior permission." The FCC's ban on spam does not include non-commercial (personal) messages, transactional, or relationship messages. As such, companies may confirm or complete a transaction by text message, or send text messages to anyone with whom they have a confirmed previous relationship. The FCC also prohibits text spam if sent by an auto dialer or if the number dialed has been placed on the National Do-Not-Call Registry unless the sender was given prior consent or there is a previous relationship between the sender and receiver. Organizations should also know that those consumers who have opted-in to receiving commercial messages must be given a way to opt-out of the communication; and the consumer must be allowed to opt out the same way they opted-in. Upon the customer choosing to opt-out, companies have 10 days to process and cease calling the consumer.

The FCC's Telephone Consumer Protection Act (TCPA) prohibits calls from automatic dialers to wireless devices and numbers for which the recipient must pay. The only exemption is for prior express consent. The existing business relationship exemption does not apply in this case. The manner in which express consent is given is not defined in TCPA; however, the burden to prove express consent in any legal case is on the marketer (DMA Alert, August 2005). It is, therefore, in the marketer's best interest to catalog and record consumer consent. This consent may be verbal or written, and is generally referred to as "consumer opt-in." This is the point at which the consumer agrees to receive messages from a commercial party. Many marketers require written opt-in as it is easier to record and catalog in the case they must prove consumer consent. Some marketers require double opt-in to ensure consumer agreement for receipt of these commercial messages. Double opt-in requires the consumer to agree to communications from the commercial entity twice.

Marketers are also banned from sending commercial messages to any of the Internet domain names used by wireless service providers. Wireless service providers are required to notify the FCC of all Internet domain names used to transmit wireless messages within 30 days of activation. This list of domain names used by wireless communications companies is posted on the FCC's website. Marketers are banned from sending commercial messages to any of the domain names listed on this site, and must refer back to the list at least every 30 days for an update. According to the DMA Alert (August 2005), "It is currently illegal for marketers to send e-mail to individuals at addresses that include any of the domain names on the FCC's list, unless the marketers have received prior express consent from those individuals to send e-mail to those addresses. Marketers may download the FCC's list online and must scrub their e-mail campaign lists accordingly." The application of text-message marketing is not so evident here. Marketers may *intend* to send a commercial email message to an Internet domain name, but may, in fact, be sending a text message. This is due to wireless technology which can transform an email message into a text message when that message is sent to an Internet domain name used by a wireless provider and when the cellular phone is so equipped with text message capability. Even though the marketer's intent is to send an email message, the end result may be a text message for which the receiver must pay. Marketers must, therefore, be vigilant in updating their e-mail lists with the list of domain names used by wireless service providers on FCC's web site.

The issue of intent versus actual delivery method is highlighted in the case of Joffe vs Acacia Mortgage Corporation, 211 Ariz. 325; 121 P.3d 831 (2005). In January of 2001, Joffe's cellular telephone rang and when he checked his phone, he discovered that he had received an unrequested text message solicitation from Acacia, a mortgage company offering mortgage refinancing. After receiving a second unsolicited text message from Acacia on his cellular telephone in March of 2001, Joffe chose to take legal action against Acacia. In April of 2001, Joffe filed a civil complaint in the Arizona Justice Court alleging that Acacia violated the FCC's Telephone Consumer Protection Act (hereinafter referred to as the "TCPA") by using an automatic dialing system to make a call to a cellular telephone service in violation of 47 U.S.C. § 227(b)(1)(A)(iii). Acacia filed an answer to Joffe's complaint, and in addition, asserted a counterclaim against Joffe seeking \$55,000 in damages for harassment. The case was then transferred to the Arizona Superior Court, where the Superior Court denied Acacia's Motion for Summary Judgment. The Arizona Superior Court ruled in favor of Joffe, ruling that Acacia Mortgage, in sending text messages in the form in which they did, shifted some of their advertising costs to persons like Joffe, which violated the "TCPA", Joffe @ 833. Acacia subsequently appealed the judgment of the Arizona Superior Court to the Arizona Court of Appeals. The basis of Acacia's appeal was two-fold; Acacia argued that the superior court erred in rendering their decision as Acacia did not "call" Joffe within the meaning of the "TCPA", since they sent a text message to Joffe, and did not "call" him. In the alternative, Acacia argued that even if the Court were to find that the "TCPA" did apply to text messages, the "TCPA" itself violated the rights of Acacia as protected by the First Amendment to the United States Constitution.

The Arizona Court of Appeals was initially confronted with the task of interpreting what constituted a "call" under the "TCPA", as the term "call" was not defined in the Act. In reaching its decision, the court went through an exhaustive analysis of the technology involved in the transmission of Acacia's solicitations to Joffe, technology Acacia adopted for its own commercial purposes, Joffe @ 837. In an interesting ruling, the court found that while the "TCPA" did not define the term "call", that sending a text message to a cellular telephone service, whether or not the call had the potential for a two-way real time voice communication, was a type of "call" prohibited by the "TCPA", Joffe @ 836. Therefore, Acacia "called" Joffe in violation of the "TCPA", Joffe @ 838. Acacia's argument that the "TCPA" itself violated Acacia's rights under the First Amendment was similarly rejected by the Court of Appeals.

An interesting interpretation of this case is that an organization may be in violation of the law even if their intent was to communicate in compliance with the requirements of the "TCPA". The DMA Alert (August 2005) states that "Because of changes in technology, you could be calling wireless devices such as cell phones, pagers, or other numbers for which the called party pays for the call, even if you think you are calling lists of landline numbers. Similarly, you could be sending e-mail to wireless devices without knowing it..."

In addition to the various federal laws identified, several states have adopted their own telemarketing or text-message marketing laws which may be applicable. Florida, Washington, and Rhode Island are among the states that have adopted such laws.

In Rhode Island for example, Title 5, Chapter 61 of the Rhode Island General Law entitled "Telephone Sales Solicitation Act" was enacted in 1999. Following legislative amendments in 2003, Title 5, Chapter 61 currently has thirteen (13) sub-sections which address, among other topics, the registration of telephone soliciting companies, security, use of pre-recorded or synthesized voice messages, and hours of operation. § 5-61-3.5 of the Telephone Sales Solicitation Act entitled "Do Not Call Lists" specifically addresses the topic of transmitting text message advertisements to cellular telephones or pagers. § 5-61-3.5 states, in part, "that no company conducting business in Rhode Island may transmit or cause to be transmitted a text message advertisement to a telephone number assigned to a cellular telephone or pager service of a Rhode Island resident (§ 5-61-3.5(a)) and (§ 5-61-3.5(a)(1)). The statute further defines a text message advertisement as a message whose principal purpose is to promote the sale of goods or services to the recipient of the text message for the lease, sale, rental, gift, or disposal of realty, goods, services, or the extension of credit, (§ 5-61-3.5(a)). There are however, a limited number of exceptions to the law.

The provisions of § 5-61-3.5(a) do not apply if the Rhode Island subscriber to cellular or pager services; 1) receives a text message from his cellular or pager service provider and the provider has provided a so-called opt out provision to the subscriber not to receive such type of messages, (§ 5-61-3.5(a)(2)); 2), the subscriber receives a text

message from a business that the subscriber has an existing relationship with and the subscriber has been offered an opt out provision not to receive such text messages from the business, (§ 5-61-3.5(a)(3)); or 3), the subscriber receives a text message from an affiliate of a business with which the subscriber has an existing relationship and the subscriber has consented to receive text messages from affiliates of the business with which he/she has an existing relationship, (§ 5-61-3.5(a)(4)).

Violations of any provision of § 5-61 et seq. constitute a misdemeanor, and are punishable, upon conviction, of a fine of not more than five hundred (\$500.00) dollars per violation, (§ 5-61-3.5(b)). If however, any provision of § 5-61 et seq. is violated for the purposes of fraud or deceit, said violations are punishable as a felony. Upon conviction on a charge of violating any provision of § 5-61 et seq. for purposes of fraud or deceit, violators shall be punished by a fine not to exceed ten thousand (\$10,000.00) dollars per transaction, by imprisonment in the state prison for up to one (1) year, or both, (§ 5-61-5).

CONCLUSIONS

Text-message marketing use – and mobile marketing efforts in general – is on the rise. The younger generation is demanding more instantaneous communication channels and is abandoning e-mail for the more immediate channels of text messaging and instant messaging. Increased use of text messaging in the United States and an increasingly mobile society has marketers scrambling to reallocate media budgets to more effective channels.

Although the increase in text message use is new to the United States, it is not new globally. European and Asian consumers are far more advanced in their text message use, and global marketers are far more advanced in mobile messaging use to those consumers. As such, U.S. marketers are able to look to other countries for patterns of use and behavior, effective models, and burgeoning legal and ethical issues.

For these reasons, U.S. marketers are increasing planned use and larger budgets for mobile marketing efforts. This, however, requires careful consideration of the legal issues surrounding text-message marketing use. Marketers must be careful to steer clear of pushing spam to wireless devices or risk prosecution by the Federal Communications or Trade Commissions. Text spam, along with text message use in general, is increasing in the United States. Although no Federal text-message marketing law exists in the U.S., several telemarketing and anti-spam laws apply. Additionally, marketing trade associations have developed best practices to help marketers understand and define legal and ethical issues in text messaging.

The pace of technology far exceeds the pace of legislation of technology. As such, marketers must be aware of existing and pending legislation as well as case law which often aids in interpretation of existing law. Such was the case with Joffe vs. Acacia Mortgage Corporation, 211 Ariz. 325; 121 P.3d 831 (2005) which was important to defining what constituted a “call” under the Telephone Consumer Protection Act. Based on the review of the literature and laws presented in this paper, recommendations to marketers include the following:

1. Receive and document express consent from consumers *before* initiating communications to their wireless devices. Double opt-in is recommended.
2. Scrub e-mail lists at least every 30 days, and delete any Internet domain names used by wireless service providers. These domain names are listed on the FCC’s website. By doing so, marketers are less likely to send email messages which unintentionally become text messages and may violate the Telephone Consumer Protection Act.
3. Provide consumers the opportunity to opt-out of receiving communications with every message. Be sure to allow consumers to opt-out the same way they opted-in.
4. Update your list and delete those who have opted within 10 days of their communication.
5. Stay abreast of changes in all Federal and State laws – including case law – which may further define or limit marketing practices.

6. Given the borderless society in which we live, and the ease in which the Internet brings consumers and businesses together, marketers must also be mindful of changes in text-message marketing practices and law in other countries. According to Ezor (2006), South Korea and Hong Kong have recently drafted anti-spamming legislation which strictly targets text-message marketing.
7. When communicating with younger consumers via text message, be certain to receive parental consent for any information gathered from the receiver. Communicating via text message with this younger target market requires additional ethical and legal considerations not addressed in this paper.

New technologies, such as text-message marketing, are exciting and hold great promise. As legislation catches up with technology, marketers must be vigilant in keeping up with the legal requirements of text-message marketing. Federal and state laws are being drafted and case law is constantly changing. Marketers who don't stay abreast of the most recent developments in text-message marketing law may quickly find themselves breaking the law.

REFERENCES

1. 47 U.S.C. § 227(b)(1)(A)(iii), (2004).
2. 89% of major brands planning to market via mobile phones by 2008; mobile marketing to accelerate with more than half of brands planning to spend up to 25% of marketing budget. (2006). *MMA Global*. February 21, 2006. [Online]. Available: <http://mmaglobal.com/modules/wfsection/article.php?articleid=297> (9/1/06).
3. Altschul, M. (2003). Remarks of Michael F. Altschul senior vice president and general counsel Cellular Telecommunications & Internet Association before the Federal Trade Commission "Spam Forum" May 1, 2003. [Online]. Available: <http://www.ftc.gov/bcp/workshops/spam/supplements/altschul.pdf> (8/06/04).
4. Baker, M. (2006). Three ways to market on mobile. [Online]. Available: <http://www.imediainconnection.com/content/10604.asp> (8/12/06).
5. Baker, W. (2005). Text message marketing encounters the law. October 2005. [Online]. Available: http://www.wrf.com/publication.cfm?publication_id=12359. (8/12/06).
6. CTIA – The Wireless Association (2006). Wireless quick facts. April 2006. [Online]. Available: http://www.ctia.org/research_statistics/statistics/index.cfm/AID/10202 (8/12/06).
7. Dickinger, Haghirian, Murphy, and Scharl (2004). An investigation and conceptual model of SMS marketing. Proceedings of the 37th Hawaii International Conference on System Sciences. [Online]. Available: <http://csdl2.computer.org/comp/proceedings/hicss/2004/2056/01/205610031b.pdf> (8/15/2005).
8. DMA Alert. (2005). Marketing mistakes: Reaching wireless devices by telephone, text message, or e-mail. August 2005. [Online]. Available: http://www.the-dma.org/guidelines/WirelessAlert_MarketingMistakes_Aug05.pdf (8/12/06).
9. Ezor, J. (2006). E-mail marketing: Recent legal developments in U.S. and abroad. July 27, 2006. [Online]. Available: <http://www.lfirm.com/tp-060526092755/post-060727105745.shtml>. (9/1/06).
10. FCC Consumer Facts (2006). CAN-SPAM Unwanted messages and e-mail on wireless phones and other mobile devices. [Online]. Available: <http://www.fcc.gov/cgb/consumerfacts/canspam.html> (9/1/06).
11. James, D (2002). Tough 'Cell.' *Marketing News*. January 7, 2002.
12. *Joffe vs Acacia Mortgage Corporation*, 211 Ariz. 325; 121 P.3d 831 (2005).
13. Lazarus, D. (2006). Next frontier for spammers: text messaging. *San Francisco Chronicle*. August 4, 2006. [Online]. Available: <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2006/08/04/MNGILKB9L51.DTL> (8/12/06).
14. Levram, M. (2006). Ohmigod, teens are so over e-mail! [Online]. Available: <http://money.cnn.com/2006/07/26/technology/thirdscreen0726.biz2/index.htm> (8/12/06).
15. Mobile Marketing Association Case Studies (2006). Stolichnaya (Zingy). August 18, 2006. [Online]. Available: <http://mmaglobal.com/modules/wfsection/article.php?articleid=534>. (9/1/06).
16. M:Metrics, Inc. (2005). M:Metrics reports growth in photo messaging despite seasonal decline in content consumption. [Online]. Available: <http://mmetrics.com/press/PressRelease.aspx?article=20050502-photomsg> (8/17/06).

17. Pew Internet & American life Project press release (2005). Short summaries of our research reports and other project news. March 14, 2005. [Online]. Available: http://www.pewinternet.org/press_release.asp?r=99 (8/12/06).
18. R.I. Gen. Laws § 5-61 et seq. (2006).
19. R.I. Gen. Laws § 5-61-3.5 (2006).
20. R.I. Gen. Laws § 5-61-5 (2006).
21. Scarborough, I. (2006). The status on Mobile Spam. *iMedia Connection*. June 2, 2006. [Online]. Available: <http://www.imediaconnection.com/content/9761.asp>. (9/1/06).
22. SMS Marketing (2005). *Brainstorm*. [Online]. Available: http://www.brainstorm.co.uk/sms_marketing.htm (8/28/2005).
23. SMS marketing yields 15% response (2004). *The Economic Times*. [Online]. Available: <http://www.economictimes.indiatimes.com/articleshow/502766.cms>. (8/28/2005).
24. Yuan, L (2005). Text messages sent by cell phone finally catch on in U.S. *The Wall Street Journal*. [Online]. Available: <http://online.wsj.com/article/0,,SB112372600885810565,00.html> (9/11/2005).

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