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Marketing Compliance Made Simple

Are You Liable for Your Telemarketing Vendor's Mistakes?

Prepared by PossibleNOW's sister company, CompliancePoint

A common question: "Can we get sued if the vendor messes up?"

Many assume that once a vendor is in place, responsibility for compliance with the Telephone Consumer Protection Act (TCPA), Telemarketing Sales Rule (TSR), and state-specific laws shifts to the vendor. In fact, offloading compliance is often seen as a benefit of outsourcing telemarketing. But that assumption can be risky and costly.

Courts have increasingly held businesses vicariously liable for their vendors' actions, even when the business didn't place a single call. More and more cases illustrate the legal exposure companies face due to vendor missteps, whether under the TCPA or state-specific laws. For example, a Texas federal court found last year in Salaiz v. VSC Operations, that the seller could be held liable simply because its vendor failed to register as a telemarketer in the state.

What Case Law Has Shown About Vicarious Liability

Across cases, several key themes have emerged where **businesses were held vicariously liable:**

- **Active business involvement** in scripts, target lists, or call strategies = higher risk.
- **Approving or benefiting** from unauthorized calls can trigger liability.
- **Failure to monitor or audit** vendors creates exposure, even with "independent contractor" disclaimers.
- **Allowing vendors to use your branding** often establishes apparent authority.

The Catch-22 of Vendor Involvement

Precedent shows that if a business is heavily involved in vendor activities, such as providing scripts, call lists, or marketing plans, courts may view this as control, which can increase liability. **But even if you take a completely hands-off approach, you may still be liable for failing to monitor.**

Courts and regulators are increasingly focused on who benefits and who controls the outreach. "We didn't know" is rarely an effective defense.

It's a seeming catch-22. But the answer isn't no involvement—it's strategic involvement. That means actively overseeing your vendors.

Best Practices for Telemarketing Vendor Oversight

1. Screen Vendors Thoroughly

Before engagement, vet vendors with compliance in mind:

- Investigate their regulatory history. Have they faced complaints, lawsuits, or enforcement actions?
- Verify registration and bonding in all applicable states, or document if they are claiming an exemption.
- Request a detailed description of their compliance program, including:
    - Consent handling
    - DNC list scrubbing
    - Opt-out processing
    - Training protocols

2. Get It in Writing

Contractual language matters—but indemnification or "we're not liable" clauses will not insulate you from risk on their own. Include:

- Explicit clauses requiring compliance with the TCPA, TSR, and applicable state laws;
- Termination rights for compliance breaches;
- Obligations to cooperate in audits and investigations;
- Vendor-provided compliance training; and
- Acknowledgment of your internal compliance guidelines.

Also, specify record retention requirements for consent records, opt-outs, and call logs. We recommend retaining these for at least five years.

3. Conduct Regular Audits and Monitoring

Once vendors are active, monitor them regularly:

- Review scripts, lead sources, and consent records.
- Monitor DNC list scrubbing practices (federal, state, and internal).
- Review how opt-outs are processed and documented. Require DNCs to be relayed to you immediately for your internal suppressing and vice-versa.
- Verify that licenses, registrations, and bonds remain active.
- Review call recordings and consider mystery shopper campaigns.
- Monitor for call labeling issues like "Spam Likely" flags from carrier analytics.
- Track regulatory changes with a system for monitoring state and federal rules.
- Assign someone internally to oversee vendor performance and escalate concerns.

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