

Marketing Compliance in 2025: What Changed and What Might Come Next

Prepared by PossibleNOW's sister company, CompliancePoint

Rather than sweeping statutory change, 2025 was shaped by judicial recalibration, evolving enforcement priorities, and increasingly sophisticated plaintiff strategies, which raised the compliance bar for organizations that rely on consumer outreach. 2025 was a record-breaking year for TCPA class actions. In this article, you'll also find what we're forecasting to be on the horizon for 2026.

2025 Recap: Key Developments

1. Courts Reclaimed Control Over TCPA Interpretation

The Supreme Court's decision in *McLaughlin Chiropractic Associates v. McKesson Corp.* ruled that courts are not required to defer to FCC interpretations of the TCPA. This shift has increased variability across jurisdictions and reduced reliance on settled regulatory guidance. One key impact is found in the text message context, as courts have diverged on whether SMS messages qualify as calls, making venue and factual nuance increasingly important.

2. Consent Remained the Primary Litigation Focus

TCPA cases in 2025 focused less on dialing technology and more on consent quality and management. Plaintiffs routinely alleged messages were sent after revocation, misuse of consent across entities, and that calls were meant for a previous owner of the number. These instances highlight that consent is now viewed as a lifecycle obligation, not a one-time event.

3. State Law Claims Are Expanding Exposure

State telemarketing and Unfair or Deceptive Acts or Practices (UDAP) laws increasingly impose stricter requirements than federal law and can include a private right of action for consumers. In 2025, Texas emerged as a focal point, creating a private right of action in September. Restrictions include telemarketer registration, disclosures, and other operational obligations. These developments signal a broader trend toward more prescriptive state regulation and are expected to influence legislative and enforcement priorities beyond Texas, expanding risk for nationwide outreach programs.

4. Email Compliance Quietly Re-Entered the Conversation

While federal CAN-SPAM enforcement remained limited, state anti-spam laws such as Washington's Commercial Electronic Mail Act drove litigation in 2025, with lawsuits targeting misleading headers, deficient unsubscribe mechanisms, and affiliate-driven email campaigns.

2026 Forecast: Where We Think Compliance Risk is Heading

- 1. Consent Quality Over Quantity:** Broad or inherited consent will be harder to defend; specificity and documentation will be critical.
- 2. Opt-Out Failures as a Primary Risk:** Delayed suppression and failure to capture revocation remain top litigation drivers. Vendor Oversight Remains Essential: Brands continue to face liability for third-party and affiliate conduct.
- 3. Defensive Texting Programs:** Ongoing legal uncertainty is pushing organizations toward lower-volume, tightly controlled SMS campaigns.
- 4. Auditable Compliance Expectations:** Programs must be demonstrably operational, not merely documented.
- 5. AI and Federal Preemption Uncertainty:** Growing use of AI in marketing, combined with federal efforts to preempt state AI laws, adds complexity where algorithmic decision-making intersects with consent, opt-outs, and transparency obligations.

The key takeaway from 2025 is that the rules may not have changed dramatically, but expectations have. As courts assert greater independence, plaintiffs refine their theories, and regulators continue to scrutinize messaging practices, compliance must move beyond static checklists. Organizations best positioned for 2026 will be those that treat compliance as a living, operational process that can be tested, audited, and explained when challenged.

Need assistance with customer contact compliance?

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PossibleNOW is the pioneer and leader in customer contact compliance. From federal and state regulations to international laws, our platform **DNCsolution** consolidates everything a business needs to stay compliant with regulations such as Do Not Call, TCPA, CAN-SPAM, and Reassigned Numbers Database. We back our solutions with a 100% compliance guarantee and keep companies out of the crosshairs of professional litigators.

Our **MyPreferences** platform centralizes the collection and distribution of customer communication consents and preferences, making compliance and personalization possible across the enterprise. PossibleNOW's strategic consultants take a holistic approach, leveraging years of experience when creating strategic roadmaps, planning technology deployments, and designing customer interfaces.

Our technology, processes, and services enable relevant, trusted, and compliant customer interactions.

PossibleNOW: Marketing Compliance Made Simple.

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