

# Consensual Fax

## Strategies for happy customers and FCC compliance



### **Executive Summary**

Ready or not, Federal Communications Commission's (FCC) regulations regarding fax communications are here.

Think they don't affect you — think again.

Are you aware of the Telephone Consumer Protection Act (TCPA) with regard to fax? FCC fax regulations are both a challenge and an opportunity.

**The challenge:** Make every fax you send a "Consensual Fax," one that is expected and wanted by the recipient.

**The opportunity:** In a Consensual Fax world, your message is read and noticed.

This white paper provides a detailed description of the FCC regulations and shows how to implement permission-based fax. FaxBack's Consensual Fax products are used as examples, showing companies how to improve their fax communications and ensure FCC compliance.



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# Introduction

Faxing documents without permission can subject companies to potential FCC enforcement, state enforcement and more importantly a private lawsuit for up to \$500 per violation, which can be trebled if the violation is knowing and willful.

Parties must have a pre-existing business relationship, such as the one existing between your business and your clients or the one you may have with your resellers, distributors or partners.

On June 28th, 2005, the Junk Fax Prevention Act was passed. This act enables businesses to continue communication with their customers - re-establishing the EBR (Established Business Relationship) rule.

*FCC regulations require all businesses - to have an established business relationship prior to sending faxes that contain advertisements*

This whitepaper provides a brief introduction to the Junk Fax Prevention Act of 2005 that was signed into law on July 9, 2005 regarding fax and it also discusses tools to help companies fax responsibly. This whitepaper is designed to be a guide for companies needing to adapt their fax communications to ensure FCC compliance.

This whitepaper focuses on the practical impact on fax marketing. It also presents the “Consensual Fax” solution from FaxBack Inc.

## FCC Background

Sending unsolicited faxes has been illegal since 1991, but many groups were shielded by a provision that allowed faxing to those with “established business relationships.” The current Junk Fax Prevention Act for 2005 was introduced in the Spring of 2005 by several Senators. It was known as bill S714 and includes the following provisions:

- Creation of an “established business relationship,” (otherwise known as EBR), with no set “time to live” limit on the EBR existence.
- Unsolicited commercial (business) faxes MUST include an opt-out provision on the first page of the fax. The opt-out clause MUST be FREE of COST to the user and available 24/7/365.
- Fax numbers to which unsolicited advertising will be sent must be obtained directly from the recipient or from a public source to which the recipient gave the number for publication (ie phone books, website sign-up form).
- Fax numbers in the possession of the sender at the time of enactment are “grandfathered” as to the means by which the number was obtained.
- If an EBR that exists at the time of enactment of this legislation for which the sender does not possess the fax number, that fax number would have to be obtained in the same manner as if it were a new relationship being established.
- Once the bill is enacted (which happened July 9, 2005), there is 3 month period, the FCC is authorized to determine if there are significant abuses of faxes sent under the EBR exception and may reconsider imposing limitations on the EBR.

The FCC has granted a request for an additional six month delay in the regulations that would have required written, signed permission and would have done away with the FCC's regulation (that has not been honored in many courts) permitting faxes where there is an established business relationship (EBR). Both the refusal of state courts to honor that FCC regulation and the FCC's proposal to do away with it created the need for the new fax law.

FCC regulations require all businesses - even non-profit organizations - to obtain written consent prior to sending faxes that contain advertising. This regulation puts many types of business fax communications within its scope because it is open to wide interpretation.

## How the FCC Defines an "Unsolicited Advertisement"

An "unsolicited advertisement" is defined by the FCC as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission." Unfortunately, this definition is very broad and may capture many types of faxes as "advertising," such as:

- § Companies that send faxes to every customer in their database notifying them of a new upgrade
- § A cruise line has a ship sailing in one week, in which half the cabins are empty; they send a fax advertising 50% discounts to every travel agent in its database
- § Rate sheets between a wholesale lender and a mortgage broker or between a broker and realtor
- § A notice of a meeting, seminar or conference
- § A renewal notice sent to trade members, newspaper or magazine subscribers for acquisition or retention efforts
- § Restaurant menus listing daily specials

Dual-purpose faxes (i.e. those that contain both an unsolicited ad and other material) are covered under the fax ban; in other words, a fax that is, in any part, an advertisement will "taint" the rest of the document under these rules.

## Getting Consent

To avoid the murkiness of EBR, many companies are obtaining permission to fax to the recipient in writin. This can include an electronic or digital form of the recipient. The recipient should have the ability to clearly indicate that he or she consents to receiving such faxes from the company to which permission is given, and provide the specific fax number.

Companies may obtain consent for their faxes through such means as direct mail, web sites and interaction with consumers in their stores. Online and email consent will suffice. Opt-in is required, and including an "opt-out" notice on faxes to those who have provided written consent is easy to do and strongly recommended.

## Fax Identification

The prior rules to the July 2005 Act remain in place that require every fax to identify (in the top or bottom margin on each page) the date and time it was sent, the sender's identity (the originator of the fax, not the name of the service), and the senders fax number or telephone number.

If a broadcast fax service is used and the fax broadcaster is responsible for the content of the fax or for supplying the fax numbers to which the faxes are sent, then the fax broadcaster's name also must be identified in the header. According to the FCC, this is because fax broadcasters can be held liable for unlawful faxes when there is a "high degree of involvement" on the part of the broadcaster or when there is actual notice of unlawful fax activity without corrective action being taken.

As part of the new rules, the FCC requires the sender (and service) to identify their legal name "under which they are officially registered to conduct business."

## Penalties

Violation of these new regulations could bring FCC and state enforcement, as well as the risk of private lawsuits. Penalties range up to \$11,000 per violation. Fax broadcasters may be liable for unsolicited faxing if there is a high degree of involvement or actual notice of the unlawful activity and the broadcaster fails to take steps to prevent such a facsimile transaction. These rules officially become enforceable on June 30, 2005. In the meantime, existing fax regulations are being enforced by the FCC.

## Consent Action Items

Companies should obtain permission to send faxes. There are several ways to obtain this consent:

- § Send out a business reply postcard seeking a consent signature
- § All web forms, applications, renewal forms, etc. need to be updated to include the ability to obtain the consent
- § For non-profit organizations and associations, calls can be placed to remind individuals to provide written consent (the do-not-call rules do not apply to these groups)
- § Modify all procedures and processes to obtain consent at the point at which they obtain fax numbers (i.e. for all orders and purchases – whether online, by mail or in person) the company should seek to obtain the fax number and signed consent on the order form.
- § Include "opt-out" clauses to the bottom of all your fax cover pages to ensure the business communications are conducted in a professional and courteous manner.
- § Companies should either not rent out customer lists that contain fax numbers or they should include a prominent notice with the list. The notice should state that it is illegal under federal law to send faxes without first obtaining express written consent of all recipients. Publication of fax numbers in a printed or online directory should also be accompanied by the same prominent notice and warning.

## Practical Compliance Tips

The following are some practical tips to keep in mind:

- § Ensure opting-out is a hassle-free procedure for the fax recipient (preferably toll-free opt-out number that is available 24 hours a day, 7 days a week)
- § Obtain the consent in the name of the company or organization, not merely in the name of an individual (this will provide broader authority to fax to anyone in the company/organization and eliminate the need to obtain additional consents for other employees)
- § Obtain consent for all fax numbers in the company for which consent is desired
- § Any time a company receives a notification of change of address, fax number, new contact a company name change, etc. procedures should be in place to ensure that a new consent form is sent out, completed and returned.

§ For online consent (website), be sure that those providing consent are required to manually key in their company/organization name, their name, all fax numbers that apply and click a box or equivalent affirmatively indicating the company's consent to receive faxes.

## Other Fax Regulations

Several states across the country have adopted laws that prohibit unsolicited faxes. For example, Tennessee's "Do Not Fax" law, which took effect July 1, 2003, requires companies that send faxes to include a toll-free return fax number that a person may use to get removed from the fax list. This follows California who adopted a similar law five years ago requiring companies to include a 1-800 opt-out number on faxes.

## Ensure "Opting-Out" is Hassle-Free

While including an "opt-out" notice on faxes to those who have provided written consent is not required (although the inclusion of the telephone or fax number of the sender is mandated) it may be prudent given the new FCC regulations and in a potentially highly litigious climate.

By adding an "opt-out" clause to the bottom of all your fax cover pages, you're helping to ensure that business communications are conducted in a professional and courteous manner.

## FaxBack's "Consensual Fax System"

To aid organizations, FaxBack provides companies with an automated "Consensual Fax" system. It provides a convenient and affordable option for delivering consent forms and handling fax removal requests. This system aids in saving money from potential abuses and fines as well as freeing valuable time for staff members handling these requests.

Consensual Fax System includes the following components

- § The NET SatisFAXtion fax server for sending and receiving faxes
- § The FAXability Fax Broadcast software client for delivering high-volume, customized faxes
- § The FaxBack Voice Server with Interactive Voice Response to collect fax numbers from callers.

The next several pages show examples of the Consensual Fax system in action.

# Getting Consent with a Fax Broadcast



Sales: 800.329.2225 / 503.597.5350  
Fax: 800.329.6453 / 503.597.5399  
E-mail: [info@faxback.com](mailto:info@faxback.com)  
[www.faxback.com](http://www.faxback.com)

7409 SW Tech Center Drive • Suite 100  
Tigard, OR 97223

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Date: November 4, 2003  
To: **Alex Chazan**  
Company: **Wired Accessories**  
From: Jennifer Brown & Brett Williams  
Subject: Updating our records

---

Dear Alex:

In the past you have requested to receive information from us regarding our fax solutions. Periodically we would like to send you our technical bulletins (most recently the one titled "Tackling FCC Regulations on Fax"), industry news, and product updates. In complying with government regulations, though, we need your permission to do so.

Alex, we list your fax number as **5183449991**. Would you kindly let us know that you'd like to continue receiving information and industry news from us by signing and returning this fax?

Please complete the form below and fax it toll-free to 1-800-329-6453 if you wish to remain on our contact list. If we don't hear from you, we will remove you from our fax list and you will receive no further faxes from us. You may opt-out at any time, and rest assured that FaxBack WOULD NEVER share your information with any third party. Alternatively, you may register online at [www.faxback.com/permission](http://www.faxback.com/permission).

I Prefer Email     I Prefer Fax     Email or Fax

**Changed Contact Information** (please print):

Name: \_\_\_\_\_ Company: \_\_\_\_\_  
Fax Number: \_\_\_\_\_ E-Mail: \_\_\_\_\_

Your Signature: \_\_\_\_\_

**FAX THIS TOLL-FREE TO: 1.800.329.6453**

Warm regards,

**Jennifer Brown**  
Territory Manager  
[jennifer@faxback.com](mailto:jennifer@faxback.com)  
800.329.2225 ext. 5368  
503.597.5366 (direct)

**Brett Williams**  
Account Executive  
[brett@faxback.com](mailto:brett@faxback.com)  
800.329.2225 ext. 5352  
503.597.5352 (direct)

Example one-page fax sent to customers and prospects requested an opt-in signature. This fax was delivered using the FAXability Broadcast software with mail merge.

## Getting Consent on Your Web Site

FaxBack- maker of network fax server,web integration,fax-on-demand and IVR solutions - Microsoft Internet Expl...

File Edit View Favorites Tools Help

Address <http://www.faxback.com/permission/> Go

 **FaxBack**<sup>®</sup>

Products Client Solutions White Papers Corporate Contact Support Site Map

In the past you had requested to receive information from us regarding fax solutions and we would like to continue to provide you with periodic updates on the fax industry and FaxBack's role in it. In complying with the new government regulations, though, we need your permission to do so.

We'd like to update our records to both reflect your permission and insure that we have correct contact information for you. Would you kindly let us know that you'd like to continue receiving updates from us by updating this information below?

Please complete the form below if you wish to remain on our contact list. You may opt-out at any time, and rest assured that FaxBack WOULD NEVER share your information with any other company. If we don't hear from you, we will remove you from our fax list and you will receive no further faxes from us.

Please complete the form below to remain on our contact list:

Name

Company

Phone

Fax

Email

In accordance with FCC regulations, I consent to receive fax communications from FaxBack

Signature (please type)

I Prefer Email  I Prefer Fax  Either Email or Fax

This example web page shows a simple form to collect “Opt-in” permissions from prospects or customers. We recommend saving the results from your web page to the same database used by the Consensual Fax system.

## Getting Consent via a Touch-Tone Menu

This FaxBack IVR solution prompts the caller for their fax number and then updates a Consensual Fax database. The system gives fax server administrators a powerful tool. Their target audience now has a convenient way to “opt-in” or “opt out” of fax deliveries. The system collects both “opt-in” and “opt out” fax numbers on a 24 x 7 basis, and stores them in a database. This system can be scaled to as many voice and fax ports as needed.

### Example Consensual Fax Greeting

Thank you for calling our Consensual Fax Manager.

To remove your fax number from our list and cancel your subscription, press 1

To add your fax number to our subscription list, press 2

The system then prompts the caller for their fax number, plays it back to confirm, and then records the number in a database. Separate databases for “opt-in” and “opt-out” are maintained. In typical “opt-in” usage, the caller is responding to an advertisement or signing up for a subscription.

# Example Consensual Fax Opt-In Subscription Form

To: 5035975321

From: FaxBack Permission Manager

11-12-03 3:14pm p. 1 of 1



Sales: 800.329.2225 / 503.597.5350  
Fax: 800.329.6453 / 503.597.5399  
E-mail: info@faxback.com

[www.faxback.com](http://www.faxback.com)

7409 SW Tech Center Drive • Suite 100  
Tigard, OR 97223

---

Date: 11/12/2003, 3:13:22 PM  
Your Fax: **5035975321**  
From: FaxBack Permission Manager  
Subject: Your Subscription Request

---

Thank you for your Subscription Request!

A few moments ago you called our Fax Permission Manager system and asked for a subscription to our white papers, industry news, and product updates. In order to complete your subscription, please complete this form and fax it toll-free to 1.800.329.6453.

Your subscription will be activated as soon as we receive this signed document.

In the future, you may cancel your subscription at any time, and rest assured that FaxBack WILL NEVER share your information with any third party. Alternatively, you may manage your subscription online at [www.faxback.com/permission](http://www.faxback.com/permission).

**Contact information (please print):**

Name: \_\_\_\_\_ Company: \_\_\_\_\_

Fax Number: \_\_\_\_\_ (if different from 5035975321)

Your Signature: \_\_\_\_\_

**FAX THIS TOLL-FREE TO: 1.800.329.6453**

Example fax returned to a caller who selects the "opt-in" option from the touch tone menu.

## Using the Collected Fax Numbers Every Day Compliance

Once your Consensual Fax system is in place, you will have a two database files filled with customer fax numbers. One will contain the “opt-out” or “DoNotFax” list. The other will contain the “opt-in” or “Consensual Fax” list.

The FAXability Fax Broadcast engine can be configured to check either or both of these lists before delivering dialing to send a fax.

Enter the broadcast configuration:

Name: Newsletter

Type: Word Mail Merge

**General**

From: Art King

Send faxes in fine resolution (200dpi)

Automatically resend failed faxes 1 times

Do not send more than one fax to the same recipient

Do not send to recipients who are in this 'Do Not Fax' list:

Browse...

Send only to recipients who are in this 'Permission Granted' list:

c:\lists\subscribers.csv Browse...

Billing... << Back Next >> Cancel

The FAXability Broadcast wizard screen below shows the checkboxes for both data files: “DoNotFax” and “Permission Granted”.

## A Recommended Fax Footer

Make sure that every fax you send has a footer at the bottom that looks something like this:

To have your fax number immediately removed from our database, call this 24x7 toll-Free number 800-111-2222.  
This fax was delivered to – 503-222-1111

## Consensual Fax Benefits Summary

FaxBack's "Consensual Fax" collection system provides an automated solution for effortlessly gathering fax numbers from your prospects, customers, distributors who wish to receive business communications from your company.

- § Provides an easy "opt-in" or "opt-out" mechanism for anyone receiving fax communications from you on a 24 x 7 basis
- § Automatically records fax numbers entered into a Microsoft Access or SQL database for quick retrieval
- § Eliminates the need for staff members to manually handle the requests
- § Eliminates the "human error" factor that can occur when numbers are written down incorrectly
- § Generates date/time-stamped lists (every entry shows the date and time of the request with corresponding fax number(s))
- § The system is scalable to handle as many calls as you anticipate
- § Demonstrates to your fax audience that your organization is courteous and professional with its fax communications.

## The FaxBack Solution

FaxBack provides a comprehensive range of options of the NET SatisFAXtion fax server, FAXability Broadcast software, and Consensual Fax IVR system. These products can be purchased as software-only, or turnkey computer systems that include the voice and fax hardware.

Users can use the FAXability Broadcast module to fax with confidence knowing that every outbound fax that is sent is fully checked before dialing begins. If a user attempts to send a fax to a number not found on the “Consensual Fax” list, the server will automatically reject the fax.

## Consensual Fax System Configuration

With a turnkey system, NET SatisFAXtion fax server and fax card and voice card are installed and pre-configured on the latest hardware platforms from Dell.

Administrators and even non-technical people will enjoy the hassle-free approach. Simply plug the system into your network, hook in the phone lines, and you're ready.

Every turnkey Consensual Fax system includes:

- § Industry-standard Dell hardware (3 year warranty)
- § Support for up to 8 ports for fax and or voice traffic
- § NET SatisFAXtion fax server software and FAXability Fax Broadcast software
- § FaxBack Voice Server and Consensual Fax voice call path
- § Remote access software and network configuration (pre-set)
- § 30-days complimentary technical support (option to purchase annual support agreements)



Turnkey packages combine all the necessary hardware and software in one highly economical, easy-to-use network appliance.

## Summary

Failure to put into the necessary tools to ensure your company follows the mandates laid out in the July 2005 Junk Fax Prevention Act could put your organization at risk of litigation and significant fines. On the other hand, successfully implementing a Consensual Fax policy gives you a very effective ongoing communication tool with your customers and prospects.

The results are worth the effort. Fax remains a tried and true communication medium. Once you have secured opt-in permission from your customers, fax has many advantages over email for customer and prospect communications. E-mail has reached its saturation point. DoubleClick reported that the volume of e-mail consumers received rose 60 percent from 2004 to 2005, and Gartner expects that amount to triple by 2006. People are tuning out most e-mail, even the ones they opted into. Sixty percent say they delete most e-mail without reading it. Also, ISPs are boosting efforts to block spam, making it tougher for messages from legitimate marketers to reach their audience. Consensual Fax messages get attention.

For over twenty years FaxBack has been a leading fax messaging company with solutions that radically simplify the way organizations communicate. We provide award-winning network fax servers, fax-on-demand, broadcasting and web-to-fax solutions that streamline information processes, get time-sensitive information into the hands of your audience faster than ever before while reducing the cost of doing business.

Our technology is enjoyed by thousands of global organizations including AT&T, Arco, Bank of America, Compaq, Kaiser Permanente, Kodak, NEC, Sherwin-Williams and Wells Fargo. Countless other organizations in nearly every industry from real estate to manufacturing and travel to education and healthcare trust FaxBack and NET SatisFAXtion for their fax communications needs.



Backed by our software and years of industry expertise, companies can drastically reduce their costs, increase efficiency and position themselves to meet the business communication demands of today.

NET SatisFAXtion was a recipient of the Windows .NET Magazine Reader's Choice Award for network fax servers.

## Contact Info

### FaxBack, Inc.

7409 SW Tech Center Drive, Ste. 100  
Tigard, OR 97223  
[www.faxback.com](http://www.faxback.com)

**Phone:** 503.597.5350 or 800.329.2225 ext. 5350  
**Fax:** 503.597.5399 or 800.329.6453  
**E-mail:** [info@faxback.com](mailto:info@faxback.com)



## FCC Links

Junk Fax Prevention Act of 2005  
<http://www.copia.com/tcpa/s714.pdf>

FCC web site pertaining to telecommunications  
<http://ftp.fcc.gov/cgb/>

Major Telemarketing Orders and Notices  
<http://ftp.fcc.gov/cgb/donotcall/#ordersandnotices>