

Requirements on content providers (CPA Guidelines)

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1.1 Marketing via SMS – requirements according to the Marketing Control Act § 2b

1.1.1 Active consent

Content suppliers can as a general rule only distribute marketing material via SMS, e-mail etc. to consumers that have actively consented to receive such marketing messages.

Consent can only be obtained by the consumer actively providing it after having been informed what such consent entails. This applies irrespective of whether an attempt is made to obtain consent from children or adults, cf. the guidelines on obtaining and using personal data¹.

If the consent to marketing is obtained through written registration (for instance on the internet), the consumer must be informed directly on the screen about what he is consenting to. It is not sufficient that the information is provided by a link for the consumer to access. Furthermore the consumer actively has to tick off in a box or similar to signal that he is consenting to receive marketing information.

When asking whether a consumer wishes to consent to receive marketing, e.g. by SMS, it is important to be aware of the fact that children and young people themselves cannot consent to receive direct marketing by e-mail, SMS, MMS etc. before the age of 15².

Content suppliers cannot transfer their right to send marketing information to consumers to other tradesmen without the consumer having freely given an informed and explicit consent to the transfer.

The consumer must be able to withdraw his or hers consent at any time by sending the text message "STOPP REKLAME" to the access number that is distributing the marketing or product information material. All receipts sent to a consumer who has used the "STOPP REKLAME" command shall be free of charge.

The purchase of content services may not be conditional on the consumer consenting to receiving advertising by SMS, MMS, e-mail etc. Luring consumers with access to free content services in exchange for consenting to receiving advertising messages can be illegal in certain cases. Each concept/marketing measure must be assessed specifically to determine whether such an approach can be allowed.

1.1.2 Established customer relationship

If a content supplier is to distribute marketing material via SMS or MMS without obtaining the consumer's active consent to receive such marketing messages, a customer relationship between the consumer and the content supplier must have been established.

The following applies for mobile content service marketing based on customer relationship:

Establishing customer relationship

¹ Lov om behandling av personopplysninger (Nr. 31 av 14. april 2000):
<http://www.lovdatab.no/all/nl-20000414-031.html>

² See http://www.forbrukerombudet.no/asset/1211/1/1211_1.pdf

A customer relationship can only be established when payable purchases/transactions are made from the same access number or mobile service portal in accordance with the following criteria:

One-time-use services: Three single purchases must be made within a period of 30 days for a customer relationship to be established. Subscription services: A consumer must subscribe to a service for 30 consecutive days in order for a customer relationship to be established. Chat services: The consumer must have made purchases on two separate, discontinuous days within a 30-day period before a customer relationship is established.

Notification of the establishment of a customer relationship

Before a customer relationship is established and before any marketing or product information can be distributed, the consumer must be notified via SMS that a customer relationship has been established, what such relationship entails and information on how to give notice if the marketing or product information is not wanted.

Duration of a customer relationship

A customer relationship should last no longer than 60 days after the final payable transaction. If the consumer has not been active for 60 days, the consumer must be automatically removed from any address lists and should receive no further marketing or product information thereafter.

Discontinued marketing in an established customer relationship

A customer in an established customer relationship should be able to stop any marketing material received by sending a "STOPP REKLAME" message to the access number that is distributing the marketing or product information. All distribution of marketing messages shall then immediately cease, and before another customer relationship can be established, the consumer's telephone number shall be quarantined for a period of at least 6 months. All receipts sent to the consumer after using the "STOPP REKLAME" command shall be free of charge.

Marketing in connection with a customer relationship

When distributing marketing based on an established customer relationship, only marketing messages for products/services similar to those the consumer has previously purchased can be delivered. Content services with an age limit are never to be considered similar to content services without an age limit. If the marketing is of an erotic nature, the consumer must meet the requirements for a customer relationship involving the purchase of erotic content services.

Price on text messages

All advertising messages, newsletters, information and receipts related to marketing shall be free of charge for the consumer.

1.2 Information required before a content services transaction is completed

1.2.1 General

All marketing directed towards consumers must be drawn up in a clear manner, so that it is not misleading or provides insufficient information. The marketing must give the consumer

the information the consumer has a reason to expect to receive. This means that the consumer must be informed of all important terms and conditions that are linked to the purchase before the consumer decides to enter into the agreement.

Mobile content services are not to be marketed towards children and young people if the content makes the services unsuitable for this age group. This applies, for example, to services with frightening, violent, erotic/pornographic content etc.

1.2.2 Information to be provided in the marketing

In all marketing of mobile content services, including advertisement in magazines, e-mail, SMS, TV, internet and boards, the following information must at a minimum, be provided in a clear and precise manner:

1. The price of the service. The price of all content services on SMS and MMS must be listed "per message received" (or per ringtone, picture, etc. received).

2. The name of the supplier of the service (the content supplier).

3. If it is a subscription service, the following information is to be provided in a clear and precise manner:

- that the service is a subscription, either by using the word "subscription" or by other means made clear that the service is a subscription. The service must not be marketed as a one-time-use service if it in fact is a subscription service³.
- that delivery of the services will be on a continuous basis
- whether the agreement is for a limited period of time or for no determined period
- whether the subscription is e.g. per day or per month, and whether the subscription is renewed automatically
- whether the right to use content services that the consumer has paid for but not used will expire when the subscription is renewed
- the number of messages the consumer can expect to receive. If this is not possible, the expected number of messages must be given. This applies for instance to chat services, alert services, quiz or similar.
- the price of the content services that are delivered pursuant to Subscription

4. If it is a subscription service, the consumer must be notified that the service can be stopped by sending the message STOPP to the same access number that the service was ordered from⁴. The code word STOPP must be used in all marketing for information about how to stop a subscription service.

5. Any age limit on use of the service.

³ The marketing should not focus on the consumers' choice to e.g. buy one single Ringtone, when the service in fact is a subscription service.

⁴ See the Ecom Regulation § 5a-2 third paragraph <http://www.lovddata.no/for/sf/sd/xd-20040216-0401.html#5a-2>

6. The contact details and phone number to the content supplier's customer service or of the company responsible for handling questions regarding the service.

7. Which phone and, if relevant, which configuration are required for the consumer to receive the correct content.

8. If tracking of the position of the consumer is part of the supplier's service, the consumer must be informed of this in the marketing material. In addition, the content supplier of the tracking service is required to obtain the consumer's consent for the use of positioning services and comply with the terms of the Personal Data Act.

1.2.3 Requirements regarding the presentation of the information

1.2.3.1 General

In all marketing the information in section **Feil! Fant ikke referansekilden.** must be horizontal, clear and easy to read when it comes to size, colour and location.

All major terms for the service, including price- and subscription terms must always be notified with equal or similar communicative effect as the access number. The same requirements apply if the consumer has to fill in his mobile telephone number to order the service.

On TV, text-TV, internet and other similar marketing channels, the price information must be presented for at least as long as the access number or the area for the filling in the mobile number, and in direct relation to it. The pricing details must be presented on the same screen as the access number or the area for filling in the mobile number. Such information must not be hidden between other terms etc.

On radio, on the phone and similar marketing channels, the information mentioned in section 1.2.2 must be given clearly when providing information about, or referring to, a content service.

TV and radio advertising may not specifically target children, cf. § 3-1 of the Broadcasting Act.

1.2.3.2 Information regarding purchases made by WAP

When WAP is used, the information described in section 1.2.2, must be given directly in the WAP dialogue before the consumer approves the delivery of the services and authorizes payment.

As a minimum requirement, the price must be listed in parenthesis on the link, if the content supplier has posted detailed information on the same page or via a separate link.

If the data transfer rate is not included in the price, the consumer must be informed that any data transfer will imply additional charges. For instance:

"Due to data transfer pricing, an additional charge for data transfer will be added to the price of the service. The service is expensive if used while abroad because of the data transfer rates imposed by the foreign carriers. In addition to the stated price there comes an addition due to the price of data traffic. If you are abroad, this will be relatively expensive due to roaming prices from international operators".

The content supplier must inform the consumer if the data transfer rate is included in the price. For instance: "The price includes data transfer and is the total price you will be charged in Norway. If using this service while abroad, an addition charge for the data transfer will be added to the total price, and as the charges are based on the foreign carriers' data transfer rates, this is quite expensive."

1.3 Entering into and completion of an agreement

1.3.1 General

For an agreement of delivery of mobile content services to be valid, the consumer must have received the information listed in section 1.2 in a clear and precise manner prior to delivery of the service.

When a consumer orders a service from an access number, the service and all related messages must be delivered via the same access number. The content supplier can only transfer the consumer from one access number to another or use multiple access numbers if the consumer has been informed in advance, and as long as there will be no consequences to the consumer.

The amount limits mentioned in section 1.3.3 must not to be evaded by transferring the consumer from one access number to another.

1.3.2 Payment

A content supplier cannot charge for delivery of a service through several transactions. The supplier must therefore use defined rates, and only charge the consumer once. For example, content suppliers cannot use several transactions to exceed the defined tariff.

Content suppliers must not charge a consumer for a content service before the service has been delivered to the consumer's telephone. If the consumer downloads the same content service twice, no charge should be placed on the second download as long as it is completed within an hour of the original download.

If the mobile telephone account is empty or the mobile phone has been temporarily blocked, the content supplier must cancel the service and not attempt to conduct a payment transaction or redelivery until the consumer has ordered a new service. However, where subscription services are concerned, the content supplier may make several attempts while the subscription is active, but only one attempt per day per customer. If the content supplier has not yet been charged for a service when a subscription period expires, the content supplier cannot transfer any outstanding charges from the previous period. If the content supplier is unable to charge the consumer for a service within a period of two months after the initial attempt, the consumer must be removed from the service, see section 1.4.1. If the subscription is permanently blocked, the consumer must be removed from all services, see section 1.4.1.

The content supplier must notify the consumer of the price for help and error messages if they are not free of charge for the consumer. The maximum price for an SMS containing help or error messages or other general information, must be NOK 1.

1.3.3 Usage ceilings

Usage ceilings for people aged over 18

Content suppliers must set a ceiling so that the consumers cannot be charged more than NOK 5,000 incl. VAT, per month for purchasing services from an access number.

The consumer shall, free of charge, be notified via SMS that the NOK 5,000 limit has been exceeded, and that the supplier will be unable to offer the consumer in question content services for the rest of the month.

Amount limits for minors

The ceiling for services directed towards children and young people must be far lower than the one for adults. The Consumer Ombudsman may consider a violation of the Marketing Control Act to have occurred if content suppliers do not set a limit of about NOK 1,000, incl. VAT, per month for the purchase of services from an access number.

The determination on whether a service targets children and young people must take into account the channels through which the service is marketed, the focus of the marketing and the content of the services. If these services are marketed in typical children's and youth magazines or on web sites for children and young people, the services will generally be considered as targeting children and young people. The same applies if the marketing or service contains characters from cartoons, TV-series, movies or games targeted at young people.

The amount limits may not be evaded by transferring the consumer to a new access number.

1.4 Specific about subscription services

1.4.1 Requirements for all subscription services

Information messages

Consumers ordering subscription services shall immediately receive an information message beginning with the word "Subscription".

All necessary information linked to the service and all key terms must be included in the information message, hereunder the following information:

- The service can be stopped at any time by sending an SMS with the code word "STOPP".
- The duration of the subscription.
- The price of the service and each message received.
- The period the service will be running, per week, month etc, and whether it is renewed automatically or not.
- The phone number to the content supplier's customer service.

Other key terms and conditions must also be mentioned.

A link to another information source that is not automatically available from the mobile phone, e.g. Internet or text-TV, is not sufficient. The information message can consist of more than one SMS, but the price for the information to consumers must be maximum NOK 1.

Example:

Welcome to ABC. Send STOP to 19xx to stop this service. NOK 5 per message received. The subscription is renewed each month until termination notice is given. Customer service 2233 4455. This message costs NOK 1.

Stop command

The consumer must be able to stop any subscription service by sending the message "STOPP" to the access number the service has been delivered from. It is irrelevant whether the consumer uses upper or lowercase letters in the stop message.

The content supplier must immediately stop all services (SMS, WAP, MMS, etc). If several services are active, the supplier must send the consumer an SMS listing the active services and information about how the consumer can stop each service by SMS. The maximum price of these SMS will be NOK 1. Consumers who terminate a subscription must receive confirmation of such termination.

If the content supplier receives the code word "STOPPALLE", "STOPALL", "STOPP ALLE" or "STOP ALL", the supplier must immediately stop all subscription services (SMS, WAP, MMS etc) for the consumer that sent the message, without further discussion with the customer.

Confirmation of order SMS and delivery

The customer shall first receive the information SMS with terms and conditions (as defined). The customer must then send a "confirmation of order" SMS to the short number that is used for charging/service delivery. If the consumer does not send the "confirmation of order" SMS, the subscription service shall not be started/activated and no further messages shall be sent to the customer before he/she makes a new order (new order requires same procedure with information SMS and "confirmation of order" SMS).

Failure of delivery

If the content supplier has not had any successful delivery of message or payment transaction within the last 60 days, the content supplier must not send marketing- or subscription messages to the consumer. In such cases, the content supplier shall erase all customer information and stop all existing subscription services of the consumer.

Age limit on use/buying of subscription services is 18 years old.

1.4.2 Specific terms for fixed subscription services

Examples of fixed subscription services are subscriptions on ring tones or games where the consumer pays a fixed amount and receives a fixed amount of over charged messages per week or per month.

At each automatic subscription renewal point, the consumer shall be given information about:

- The service
- The supplier, customer service
- How to terminate the service
- Whether the service runs per day or per month and whether it is automatically renewed or not
- The price for the service

A fixed subscription service is renewed automatically every time the consumer receives a message from the supplier that the customer is charged for. The consumer may terminate the service after every message received.

1.4.3 Specific terms for chat and other variable subscription services

Examples of variable subscription services are for example chat, notifications or competition services where the number of messages the consumer receives can vary.

When the consumer has received 20 messages since the last information message was sent, the supplier must send a new message with the same information, see the requirements in section 1.4.1.

A chat service cannot cost more than NOK 30 per message.

Scope

Only a limited amount of messages can be sent to a consumer within a short interval (e.g. no more than 4 messages received per minute). To prevent this, the content supplier must be able to offer services where the consumers receive a limited number of messages within a specific period of time.

Automatic stopping of the service

If a consumer has received more than 20 messages since the consumer last sent a message, the content supplier must stop the service immediately. The consumer must then enter into a new delivery agreement if he or she wants to continue using the service. If there is a variable subscription service with a limited number of messages, e.g. 0-10 messages per week, it is not necessary to terminate the service after 20 messages.

1.5 Consumers age

The content supplier shall classify the content according to minimum age and make checks with the operators to control the age of the consumer.

If the age control shows that the consumer is under the required age for the service, the transaction shall immediately be stopped and the content is not to be delivered to the consumer. The consumer shall receive an information message with reference to the consumer's age as a reason for rejected delivery. For example: "You are not old enough to use this service or your mobile operator does not have information about your age. Contact your mobile operator for registration of correct age." The price of this information message must be maximum NOK 1.

The content supplier must ensure that content unsuitable for the consumer's age is not sold. This applies to e.g. frightening, violent, erotic/pornographic content.

1.6 Re-use of mobile phone number

To prevent sending new customers messages targeted to previous owners of a phone number, the content supplier must terminate all subscription services and delete all customer information if feedback from the mobile operator indicates that the consumer has been

permanently blocked, or if the content supplier has unsuccessfully attempted to deliver a service to the consumer over a period of 60 days.

Of this reason the content supplier cannot distribute subscription- or marketing messages to a consumer if the content supplier has not had a successful message delivery or payment transaction in the past 60 days.

1.7 Customer service

The content provider is obligated to provide customer service for all services offered via the access numbers the company has an agreement with the operators to use, including questions related to marketing, ordering, delivery and payment. Consumers must be able to reach customer services for all services delivered via the same access number at one shared phone number. The content supplier must handle customer service directly and cannot forward customer service calls.

Complaints must be processed within a reasonable period after the complaint is received. All complaints must be processed properly. If the complaint is rejected, a minimum requirement is that the grounds for the decision is explained, and that the complainant's arguments are answered as fully as possible.

Customer service must communicate in Norwegian. The opening hours must be at least from 0900-1500 on weekdays. Information about the opening hours must be given to consumers when consumers call the number outside service opening hours. For example: Customer service: 930 00 000, is open on weekdays from 0900 – 1500.

If the content supplier receives the code words "HJELP", "HELP", "KUNDESERVICE", "CUSTOMERSUPPORT", "CUSTOMER SUPPORT" or "SUPPORT", the consumer must receive an information message with information about the content supplier's customer service including e-mail address, phone number and opening hours. The price of the information message must be maximum NOK 1.

The consumers' costs associated with contacting customer service must not exceed the regulator mobile call rate.