



Fax Communications Compliance



**Circ Day LA
October 2, 2008**

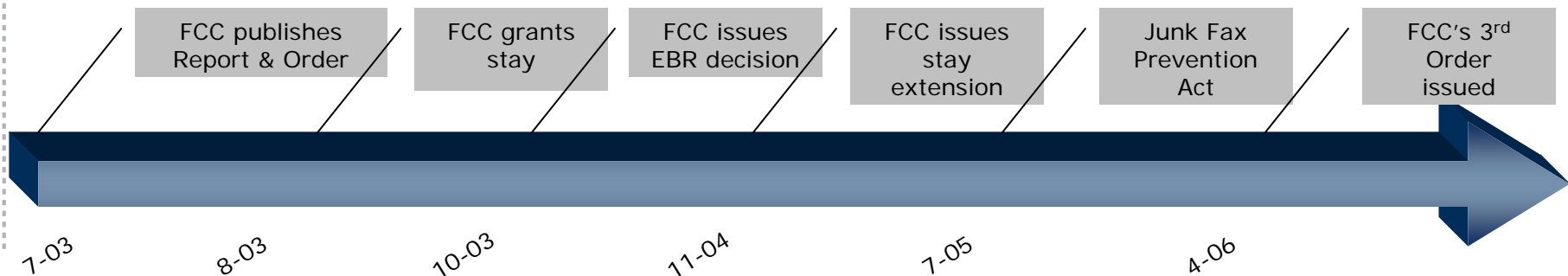
Discussion Outline

- »» Fax Legislation:
 - »» The state of confusion
 - »» History
 - »» Circ compliance
 - »» Non-circ compliance
 - »» California Fax Legislation
- »» Examples of Fax campaigns
- »» Q/A



Fax Legislation *State of Confusion*

» Transitional definitions by the FCC, new legislation and keeping tabs on California!





Fax Legislation *Circ Compliance*



- Renewals considered transactional not advertisements.
 - “A subscription renewal notice would be considered ‘transactional’ in nature, provided the recipient is a current subscriber and had affirmatively subscribed to the publication.”
- What about new name & marketing efforts?
- Balance compliance with best practices.

Fax Legislation *Non-Circ Compliance*

- » EBR
- » Source of fax #
- » Opt-out mechanisms
- » Opt-out removal
- » Accepting opt-out requests
- » Future communications with opt-out numbers
- » Faxing to gain permission



Fax Legislation *California*

- » Intra-state faxes still must have express permission.



Fax Legislation *Non-Circ Compliance*

DETAILS:

- »» Must have an established business relationship (EBR)
- »» An EBR is (paraphrasing): a prior existing relationship formed by a voluntary two-way communication with or without an exchange of consideration, on the basis of an inquiry, application, purchase, or transaction between the recipient and the sender regarding products or services.
- »» No defined EBR time limit (YET!)
- »» For an EBR fax, you must have received the fax number from the recipient in the context of the EBR, or from a public source such as a directory, advertisement, or web site,
 - »» UNLESS you had the fax number and the EBR existed before July 9, 2005.



Fax Legislation *Non-Circ Compliance*

- »» There must be a “clear and conspicuous” opt-out notice on the first page.
- »» The notice must state that the recipient may request that the sender not send future unsolicited advertisements to a fax machine or machines, and that failure to comply the request with the request in the shortest reasonable time established by the FCC is unlawful.
- »» The notice must provide both a phone number and a fax number for opt-outs, and provide a cost free mechanism. Provides that the “cost free” opt out mechanism may be either a website, email address, phone number or fax number (and a local phone number is cost free if the faxes are limited to local recipients) and must be available 24/7.
- »» Opt-out requests must be honored after 30 days, or sooner if the sender has the capability of removing the number sooner.



Fax Legislation *Non-Circ Compliance*

- » Later “invitation or permission” trumps an opt-out.
- » Associations and other nonprofits must comply with the opt-out requirements.
- » Finds that express invitation or permission must include a fax number and cannot be a negative option, but a company requesting a fax number on, for example, an application can include a statement that, by providing a fax number, the individual or business agrees to receive faxed ads from that company (or organization).

Lawyers of Concern

The following is a list of attorneys that are aggressively pursuing fax litigation:

- Peter Price (FL)
- David Roberts (GA)
- Vito Torchia (CA and NY)
- Alberto Cayetano (FL)
- Max Margulis (MO)
- Frank Owen (FL and IL)
- Andrew Quiat (CO)





Checklist of items to complete before starting a fax campaign

1. Make certain all the fax numbers are associated with subscribers in which the publication has an EBR
2. Make certain the effort is coordinated with the fulfillment house:
 - effort code assigned
 - allow the fulfillment house to review the final proof of the campaign to optical scanning
3. Select all fields to be pre-populated and provide those fields to the fax vendor
4. Allow editor to examine final proof for consistency with brand message



Checklist of items to complete before starting a fax campaign

5. Determine in advance if a follow up fax effort will be sent and when
6. Notify the fax vendor that a follow up fax effort will be sent so the fax vendor can key the responses for suppression from the follow up effort. (This avoids duplicate faxes being sent to responders from the initial effort.)



Examples: Request Fax

Keep In Touch With Industry News SUBSCRIBE TODAY!

Visit www.boating-industry.com/Subscribe/ or fax 815-734-5890

What is your Primary Business Activity?

RETAILING:

- 21 Boat and Motor Dealers
- 22 Marina Owners & Boat Motor Dealers
- 23 Accessory Store and/or Chandlery
- 24 Marine Service & Repair Yard
- 25 Boatyard — Service & Maintenance Yards
- 26 Marinas/Boatyards
- 27 Port/Harbor Management
- 29 Boat & Yacht Broker
- 41 Other Marina & Retailing Management

MANUFACTURING:

- 31 Boat/Yacht Builders
- 28 Marina design/Development
- 30 Naval/Marine Architect/Yacht Design
- 11 Marine Product/Accessory Mfgs.

DISTRIBUTION:

- 10 Marine Wholesalers, Distributors or Jobbers
- 20 Marine Mfg. Representative

- 33 Import Export Firm

OTHERS in Marine Trade Infrastructure:

- 34 Consultants
- 36 Government/Regulatory Agencies
- 37 Military/Law Enforcement Agencies
- 38 Marine Training/Educational Institutions
- 39 Marine Scientific/University Institutions

- 40 Marine Associations
- 50 Other

(please specify)

Indicate your primary job title:

(Check only one)

- 60 Owner, President, CEO
- 61 Vice President, Senior or General Manager
- 62 Purchasing Agent
- 63 Advertising Manager
- 64 Sales Manager

- 65 Service Manager

- 66 Technician

- 67 Other

(please specify)

(For Marine Retailers Only)

Your company's approx. annual marine sales in \$US:

- 77 \$50,000,000 or more
- 78 \$25,000,000 – \$49,999,999
- 79 \$10,000,000 – \$24,999,999
- 80 \$5,000,000 – \$9,999,999
- 81 \$3,000,000 – \$4,999,999
- 82 \$1,000,000 – \$2,999,999
- 83 \$500,000 – \$999,999
- 84 0 – \$499,999

Do you influence the purchase or specification of materials or equipment used in the boating industry?:

- Yes No

CANADA AND MEXICO RATES

— \$99 per year

ALL OTHER FOREIGN

— \$149 per year

• Remit payment in US funds.

• Mail check to: P.O. Box 548
Mt. Morris, IL 61054

Boating
INDUSTRY

Ehler Publishing Group
P.O. Box 548
Mt. Morris, IL 61054 USA
www.boating-industry.com

18109C

I wish to receive or continue to receive Boating Industry. [] Yes [] No
In the future, may we send you renewals via fax? [] Yes [] No

Signature _____	Date _____
Name _____	Position _____
Company Name _____	
Address _____	
City _____	
State/Province: _____	Zip/Postal Code _____
Country (If outside U.S.) _____	
Telephone _____	Fax _____
E-mail Address _____	

Con - Z104

Examples: Response Rates »»

Boating
INDUSTRY

Affinity Media
P.O. Box 548 Mt. Morris, IL 61054 USA
www.boating-industry.com

**YOUR FREE SUBSCRIPTION
IS UP FOR RENEWAL**

PLEASE MAKE ANY CORRECTIONS TO YOUR ADDRESS BELOW

Eve Smith **Circulation Director**
2947 Interstate Parkway
Brunswick, OH 44212

105 7724421 41252 898 Z82FAX

Renew your free subscription to *Boating Industry*. Please fill out this form and fax back to: **1-800-479-7574** by February 26.

Z82FAX

YES! I wish to receive/continue to receive my FREE SUBSCRIPTION to *Boating Industry*.

No, thank you.

SIGNATURE (REQUIRED) _____

DATE _____

NAME _____

TITLE _____

PHONE _____

FAX _____

In the future, may we send you renewals via fax? Yes No

E-MAIL _____

1. What is your Primary Business Activity? 2. Indicate your primary job title:

RETAILING:

- 21 Boat and Motor Dealers
- 22 Marina Owners & Boat Motor Dealers
- 23 Accessory Store and/or Chandlery
- 24 Marine Service & Repair Yard
- 25 Boatyard — Service & Maintenance Yards
- 26 Marinas/Boatyards
- 27 Port/Harbor Management
- 29 Boat & Yacht Broker
- 41 Other Marina & Retailing Management

MANUFACTURING:

- 31 Boat/Yacht Builders
- 28 Marina design/Development
- 30 Naval/Marine Architect/Yacht Design
- 11 Marine Product/Accessory Mfgs.

DISTRIBUTION:

- 10 Marine Wholesalers, Distributors or Jobbers
- 20 Marine Mfg. Representative
- 33 Import/Export Firm

OTHERS in Marine Trade Infrastructure:

- 60 Owner, President, CEO
- 61 Vice President, Senior or General Manager
- 62 Purchasing Agent
- 63 Advertising Manager
- 64 Sales Manager
- 65 Service Manager
- 66 Technician
- 67 Other (please specify) _____

(For Marine Retailers Only)

3. Your company's approx. annual marine sales in \$US:

- 77 \$50,000,000 or more
- 78 \$25,000,000 – \$49,999,999
- 79 \$10,000,000 – \$24,999,999
- 80 \$5,000,000 – \$9,999,999
- 81 \$3,000,000 – \$4,999,999
- 82 \$1,000,000 – \$2,999,999

5. May we continue to contact you via fax for subscription purposes?

Yes No

Please complete this form and then fax it back to:

1-800-479-7574.

In order to continue your free subscription you need to

Initial Campaign

28.5% Response / Feb 08

“Second Chance”

19% Response / April 08

3rd Quarter Control

22% Response / June 08

3rd Quarter Control Follow-up

15.23% Response / Aug 08

Examples: Response Rates

RENEW YOUR FREE SUBSCRIPTION TODAY

PLEASE MAKE ANY CORRECTIONS TO YOUR ADDRESS BELOW

Boating
INDUSTRY

Affinity Media
P.O. Box 548
Mt. Morris, IL 61054 USA
www.boating-industry.com

Nancy Mills Email & Fax Specialist
2947 Interstate Parkway
Brunswick, OH 44212

Z86FXB 128887389877 106

Z86FXB

Dear Nancy,
Renew your free subscription to Boating Industry. Please fill out this form and fax back to: 1-800-335-6883 by June 23rd.

YES! I wish to receive/continue to receive my FREE SUBSCRIPTION to *Boating Industry*. No, thank you.

SIGNATURE (REQUIRED)

DATE

NAME _____ TITLE _____

PHONE _____ FAX _____

In the future, may we send you renewals via fax? Yes No

E-MAIL _____

1. What is your Primary Business Activity?
- RETAILING:
- 21 Boat & Motor Dealers
 - 22 Marina Owners and Boat & Motor Dealers
 - 23 Accessory Store and/or Chandlery
 - 24 Marine Service & Repair Yard
 - 25 Boatyard — Service & Maintenance Yards
 - 26 Marinas/Boatyards
 - 27 Port/Harbor Management
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- 10 Marine Wholesalers, Distributors or Jobbers
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- OTHERS in Marine Trade Infrastructure:
- 34 Consultants
 - 36 Government/Regulatory Agencies
 - 37 Military/Law Enforcement Agencies
 - 38 Marine Training/Educational Institutions
 - 39 Marine Scientific/University Institutions
 - 40 Marine Associations
 - 50 Other (please specify) _____
2. Indicate your primary job title:
- 60 Owner, President, CEO
 - 61 Vice President, Senior or General Manager
 - 62 Purchasing Agent
 - 63 Advertising Manager
 - 64 Sales Manager
 - 65 Service Manager
 - 66 Technician
 - 67 Other (please specify) _____
- (For Marine Retailers Only)
3. Your company's approx. annual marine sales in \$US:
- | | |
|---|---|
| <input type="checkbox"/> 77 \$50,000,000 or more | <input type="checkbox"/> 81 \$3,000,000 – \$4,999,999 |
| <input type="checkbox"/> 78 \$25,000,000 – \$49,999,999 | <input type="checkbox"/> 82 \$1,000,000 – \$2,999,999 |
| <input type="checkbox"/> 79 \$10,000,000 – \$24,999,999 | <input type="checkbox"/> 83 \$500,000 – \$999,999 |
| <input type="checkbox"/> 80 \$5,000,000 – \$9,999,999 | <input type="checkbox"/> 84 0 – \$499,999 |
4. Do you influence the purchase or specification of materials or equipment used in the boating industry?
 Yes No
5. May we continue to contact you via fax for subscription purposes?
 Yes No

In order to continue your free subscription you need to answer all of the questions.

Fax this back to: 1-800-335-6883

3rd Quarter Test
23% Response / June 08

3rd Quarter follow up Test /
July 2008
15.61%



Proximity
Marketing

For more information:

Proximity Marketing Best Practices Website:

<http://www.proximitymarketing.com/bestpractices.htm>

Sign up for Legislative Updates:

<http://www.proximitymarketing.com/signup.html>

For Fax Campaigns Contact:

Nancy Mills, Proximity Marketing

440.708.0753