




AI Systems & TCPA

Where AI Technical Design Creates Compliance Gaps

Aaron S. Weiss
Carlton Fields, P.A.
Miami, Florida



AI Cannot Distinguish: Marketing vs. Informational

- ✓ AI systems treat all outbound messages as generic "communications"
 - ✓ TCPA requires different consent levels: marketing (written) vs. informational (basic)
 - ✓ AI lacks contextual understanding to classify message intent correctly
 - ✓ Result: Appointment reminder sent as marketing message = \$500-\$1,500 violation
 - ✓ Courts find AI vendors liable for systemic misclassification patterns
- 

AI Opt-Out Systems Fail to Prevent Re-Messaging

- ✓ Consumer says "STOP" on one AI platform; other AI systems have no visibility
- ✓ Consent databases not synchronized across marketing systems
- ✓ AI continues calls/texts on parallel campaigns unaware of revocation
- ✓ 2025 FTC enforcement: Found 78% of AI systems failed to honor opt-outs within 30 days
- ✓ Class actions allege systematic non-compliance with revocation timelines

Black Box Consent Tracking Defeats Proof

- ✓ AI-generated consent records lack transparency on how consent was obtained
- ✓ Neural networks decide "consent valid" but internal logic cannot be audited
- ✓ Courts cannot verify if AI actually validated consent or fabricated approval
- ✓ Litigation discovery: Cannot explain why system marked consent as valid
- ✓ Result: Summary judgment loses defensibility; moves to costly class settlement

AI-Generated Voices: Disclosure Gaps and Deception

- ✓ FCC bans AI synthetic voices without clear disclosure; AI systems often "forget" disclosure
- ✓ Natural-sounding AI voices may trick compliance teams into thinking voice is human
- ✓ Deepfake capabilities enable impersonation (e.g., sound like known person) = fraud liability
- ✓ AI text-to-speech doesn't include TCPA consent warnings; system uses generic script
- ✓ Penalties: \$23,000+ per call + consumer \$1,500/call damages; multiplied by class size

Is It an Autodialer? AI Systems Don't Know

- ✓ AI generates messages dynamically based on behavior/context, not pre-recorded scripts
- ✓ Courts must determine: Does dynamic generation = "autodialer" function?
- ✓ Post-McLaughlin: No deference to FCC position; courts split on interpretation
- ✓ AI vendors cannot certify whether system meets TCPA autodialer definition
- ✓ Uncertainty forces expensive litigation over system architecture (not just compliance)

Reassigned Numbers: AI Continues Calling New Owners

- ✓ AI cannot distinguish original recipient from new number owner
- ✓ Consent for Person A does not transfer to Person B (same number, different person)
- ✓ AI systems lack logic to refresh number-to-person validation
- ✓ Result: AI continues automated messages to wrong persons indefinitely
- ✓ South Florida 2025: 450+ cases where AI called reassigned numbers (new persons sued)

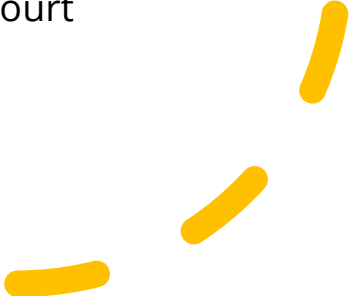
AI Transcription Without Consent = State Wiretapping Violations

- ✓ AI call monitoring systems transcribe/analyze conversations without explicit consent
- ✓ "Call may be recorded for quality" ≠ disclosure of AI processing/analysis
- ✓ Galanter v. Cresta (2025): Class action alleges AI analysis violated CIPA (CA 2-party consent)
- ✓ AI's training data processing = separate liability from call recording consent
- ✓ Federal + state liability stacks: TCPA + state wiretapping + privacy laws


AI Cannot Reliably Scrub Do Not Call Numbers

- ✓ AI systems have stale DNC Registry data (updates lag by weeks/months)
- ✓ Multiple lead sources + AI aggregation = duplicate numbers with conflicting DNC status
- ✓ AI's logic for matching phone numbers is imprecise (formatting variance not detected)
- ✓ FTC Operation AI Comply (2025): Found 65% of AI systems had DNC compliance gaps
- ✓ Class actions exploit known AI DNC scrubbing failures as pattern evidence


AI SMS Systems Uncertain on Legal Classification

- ✓ Post-McLaughlin: Courts split on whether texts = "telephone calls" under TCPA
 - ✓ AI systems programmed with old FCC position (texts covered); courts may disagree
 - ✓ AI cannot interpret circuit split; assumes single legal interpretation exists
 - ✓ Result: Same AI text system is compliant in some jurisdictions, liable in others
 - ✓ No way for AI to adjust requirements per court jurisdiction in real-time
- 

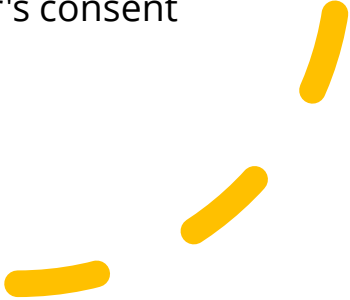
AI LLMs Fabricate Consent Records (Hallucination)

- ✓ LLMs generate false "consent documentation" when queried about customer history
 - ✓ AI invents approval dates, channel references, consent language that never existed
 - ✓ Legal teams rely on AI output to defend TCPA case; fabrication discovered in discovery
 - ✓ Stanford HAI 2025: LLMs hallucinate legal accuracy in 1 of 6+ benchmark queries
 - ✓ Ethical violations + sanctions risk for using AI-hallucinated "evidence" in litigation
- 

AI Compliance: Federal TCPA Only (State Laws Unrecognized)

- ✓ AI systems programmed for federal TCPA; unaware of Texas SB 140, Florida HB 761
 - ✓ State laws impose stricter requirements but AI has no state-specific logic
 - ✓ Texas Mini-TCPA covers text + image messages; federal TCPA does not
 - ✓ AI sends image-based marketing to Texas numbers = Texas violation AI system doesn't detect
 - ✓ State liability multiplies without state law integration in AI architecture
- 

AI Cannot Independently Verify Lead Gen Consent

- ✓ AI receives leads from third-party vendors without consent evidence
 - ✓ AI cannot audit whether lead gen vendor actually obtained compliant consent
 - ✓ Eleventh Circuit (2025): Callers remain liable even if vendor provided consent
 - ✓ AI processes lead as "consent exists" without independent verification
 - ✓ Result: Shared liability for lead gen partner's consent failures
- 

AI Scheduling Misses State- Specific Call- Time Rules

- ✓ Federal TCPA: 8am-9pm recipient's time (based on area code determination)
- ✓ Some states: Different hours; some state laws add SMS time restrictions
- ✓ AI systems use recipient's IP geolocation (inaccurate) or default to UTC conversion (wrong)
- ✓ Calls sent outside permitted windows = systematic TCPA violations
- ✓ 2025 litigation: AI call timing errors became basis for class certification

AI Misses B2B vs. Wireless Nuance

THE GAP: Database lookup ≠ compliance context

- ✓ Company registered with DOT/IRS via landline; AI calls business cell phones without written consent
- ✓ TCPA: Business exemption only applies to non-wireless business numbers
- ✓ AI systematically violates wireless consumer calls while claiming B2B exemption
- ✓ Result: AI-driven systemic pattern = class certification driver