

# Marketing and Promotions Using Wireless Devices

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# Marketing and Promotions Using Wireless Devices

## ■ Mobile Marketing

Marketing and promotions using the interactivity of mobile devices

- Sweepstakes (text message to enter)
- Voting and polling
- Alerts/updates
- Coupons
- Instant win/text to win

## ■ Mobile Advertising

Ads that can be accessed using a mobile device

- Ads on a WAP-enabled web site (i.e., a web site designed to be viewed using a mobile device)

## ■ Mobile Publishing

Content that is available for downloading onto a mobile device (for free or purchase)

- Ring tones
- Wallpaper
- Games
- Maps

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## Mobile Marketing – Any time, anywhere

- Real time experience and interactivity, virtually always available
- Personal (marketing can be tailored to recipient)
- Trusted (not much spam, everything opt-in)
- Less expensive than broadcast media
- Best reach of any media – 205 million subscribed handsets in 4<sup>th</sup> quarter 2007
- Cultural relevance – a fashion statement for key demographic groups

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## Mobile Marketing – In the 4<sup>th</sup> Quarter 2007...

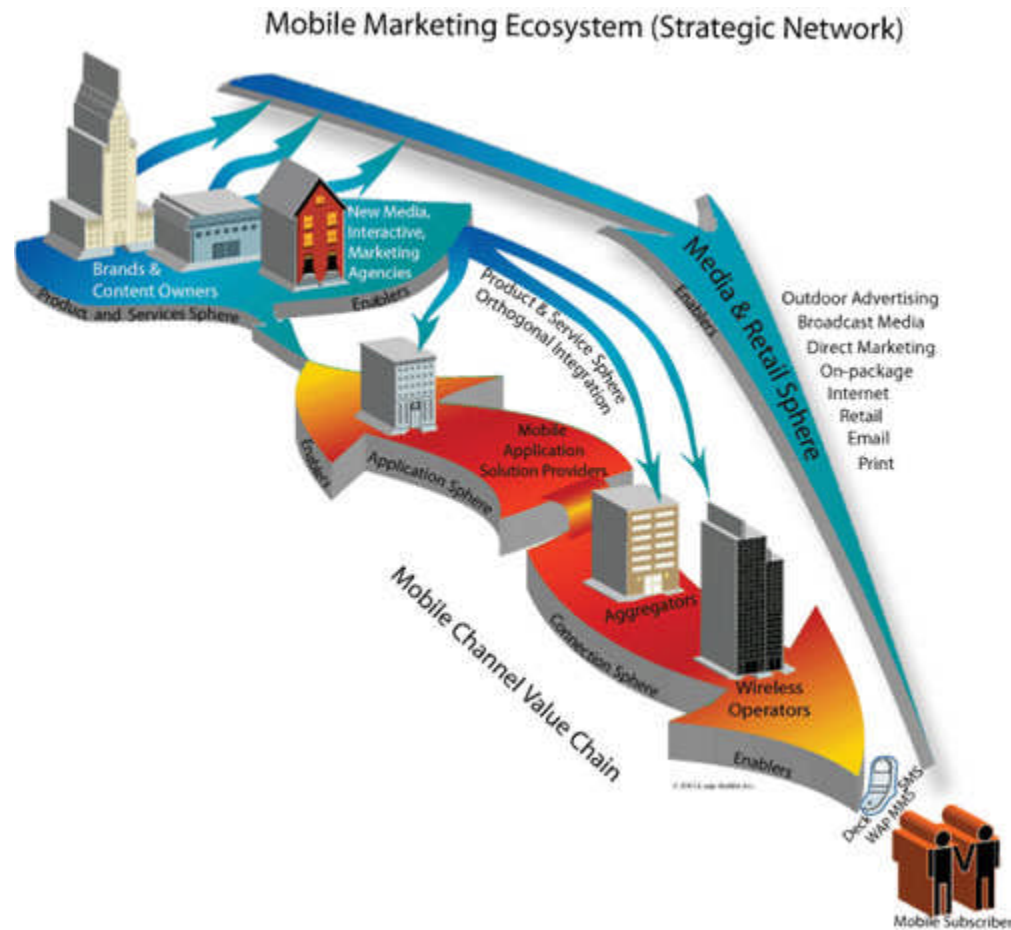
- **19% of US mobile users purchased a ringtone vs. 4% of EU mobile users**
- **27% of US mobile users sent a video or photograph vs. 20% of EU mobile users**
- **53% of US mobile users received SMS ads vs. 21% of EU mobile users**
- **4% of US mobile users watched a video vs. 5% of EU mobile users**

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## Mobile Marketing – how does it work?

- Advertisers team up with mobile aggregators (intermediaries between the advertiser and the wireless carrier)
- Mobile aggregators are connected to and have agreements with one or more wireless carriers
- Wireless carriers have their own restrictions as to what they will accept
- Cellular Telecommunications & Internet Association administers short codes (about \$500 for random code per month, \$1,000 for vanity code per month)

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Source: [www.mmaglobal.com](http://www.mmaglobal.com)



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- **Fragmentation and varying platforms create challenges for advertisers**
  - Different handsets and different protocols used by the wireless carriers mean ads are displayed differently on each device – might require advertisers to provide multiple versions of ads to the mobile aggregator
  
- **Carriers have their own restrictions as to what they will accept – for example:**
  - No profanity or sexually explicit images or language
  - No defamatory material
  - Nothing that facilitates an illegal activity
  - No false or misleading advertising
  - Nothing that would infringe someone's IP rights
  - No parody of wireless carrier's products or services

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## Regulatory Landscape

- Fluid – it's still the wild west in terms of regulation (but this is likely to change)
- Federal laws – TCPA and CAN-SPAM
- Mobile Marketing Association guidelines – *de facto* laws because so far not many laws that directly regulate mobile marketing
- Federal and state advertising laws
- Child protection registries
- State Attorneys General and civil litigants



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## Regulatory Landscape

- How a message is sent determines what law(s) apply
  - SMS (short message service aka text message) sent to a wireless telephone number = TCPA
  - Voice call (live or recorded) to a wireless telephone number = TCPA
  - Email sent to an email address that contains a wireless telephone number and a wireless carrier's domain name = CAN-SPAM + TCPA (maybe)
    - For example, 2124074000@wirelesscarrier.com

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- New York CLE code: LL0213

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## Telephone Consumer Protection Act (TCPA)

- TCPA prohibits calling any number on the national Do Not Call registry unless you have an established business relationship with the consumer (registry includes land-line and wireless telephone numbers); marketers should scrub their list every 30 days
- TCPA prohibits placing a call using an automatic dialer or delivering an artificial or recorded message without prior express consent; no established business relationship exemption

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## CAN-SPAM

- Applies very narrowly - only to email messages sent to an address that includes a wireless telephone number and a wireless carrier's domain name
- FCC maintains a list of wireless carrier domain names; marketers should scrub against the FCC list
- Marketer must get prior express authorization from recipient to send a message
- Certain disclosure and opt-out requirements
- Even if advertiser has prior express authorization to send a message, the usual CAN-SPAM requirements still apply (such as identifying the message as an ad, including notice of right to opt-out and opt-out mechanism, and physical address of sender)
- TCPA might also apply to this type of message – an Arizona court held that such a message is a “call” and subject to TCPA
  - *Joffe v. Acacia Mortgage Corp.* (Arizona Court of Appeals 2005) – court said this type of message is a call because result is that an email is translated into an SMS message and is forwarded to a cell phone

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## State Child Protection Registries

- Utah and Michigan have established child protection registries – individuals and schools can register telephone numbers, fax numbers, email addresses and instant message addresses that belong to or can be accessed by a child
- Marketers are prohibited from sending messages or calls that contain or advertise certain content such as pornography, alcohol, firearms, and tobacco products to any number or address on registry
- If advertiser is marketing this type of content, it needs to scrub list against registry

## **Marketing and Promotions Using Wireless Devices**

### **Mobile Marketing Association Guidelines (Code of Conduct, Mobile Advertising Guidelines, Consumer Best Practices Guidelines)**

- Comprehensive guidelines for all types of marketing to wireless devices
- Because there are so few laws right now regulating mobile marketing, MMA guidelines are widely followed
- MMA guidelines stress opt-in, disclosures and privacy standards
- Available at [www.mmglobal.com](http://www.mmglobal.com)

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## Mobile Marketing Association Guidelines on Privacy

- **Notice** – mobile marketers must inform the user of both the marketer’s identity or products and services, and the key terms and conditions that govern an interaction between the marketer and the user’s mobile device
- **Choice & Consent** – mobile marketers should ask for and obtain an explicit opt-in for all mobile messaging programs and should implement a simple opt-out process (single opt-in for standard rate SMS and double opt-in for premium SMS)
- **Customization & Constraint** – user information collected for marketing purposes should be used to tailor marketing to the interests of the mobile user; mobile marketers should target and limit mobile messages to that which users have requested
- **Security** – mobile marketers must implement reasonable technical, administrative and physical procedures to protect user information from unauthorized use, disclosure or access

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## Mobile Marketing Association Guidelines for Sweepstakes

- Consideration may be monetary or non-monetary
- Must provide an alternative method of entry
- Should provide information in initial message on how to find official sweepstakes rules
- Poorly written sweepstakes rules will result in delays in wireless carrier approval



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## Mobile Marketing Association Guidelines for Marketing to Children

- Mobile marketers should manage relationships with children responsibly
- Marketers should comply with all applicable laws and industry standards relating to children including COPPA
- In some cases, content providers may need to modify the advertising language of the program if children are the target market
- All advertisements must clearly disclose in the audio and visual that a service has a premium charge (where applicable)
- All advertising must clearly disclose that you must be 13 or older, or have a parent's permission to participate
- Marketers should offer subscribers the opportunity to cancel the service at any time

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## CARU and Mobile Marketing to Children

- CARU (Children's Advertising Review Unit) is paying close attention to mobile marketing to children
- CARU initiated proceedings against a company that advertised a free text message joke service during kids television programming
- Service allowed children to sign up without parental consent and did not disclose fees; children who responded were signed up to service that sent jokes by text message resulting in charges from wireless carrier
- Company agreed to stop advertising on kids cable network and to change its program

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## States are stepping in...

- Illinois and Georgia: AGs filed separate actions against real estate lead generation company for SMS blast solicitation messages

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## Text Message Sweepstakes Litigation

- At least 4 lawsuits were filed against the networks and producers of television shows that included sweepstakes that allowed entry by text message
- Plaintiffs claimed that sweepstakes were illegal lotteries because they charged a fee of 99 cents for text message entries (sweepstakes also offered alternative free method of entry)
- No definitive ruling yet

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## What is the future of mobile marketing?

- More regulation is likely, especially regarding messages sent to kids
- More location-based marketing and promotions
- Greater web searching capabilities on handheld devices
- FTC will hold a Town Hall meeting on May 6 & 7 in Washington, D.C., on mobile marketing. Topics will include:
  - The use of mobile-messaging services as instruments of M-commerce
  - Consumers' ability to control mobile applications
  - The adaptation of advertising to mobile devices, including the challenges presented by small screen disclosures
  - M-commerce practices targeting children and teens
  - Industry best practices in preventing fraud, disclosing costs, and resolving billing disputes
  - Evolving security threats and solutions and
  - Next-generation products and services



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